

TELEFAX COVER SHEET

STIEBER BERLACH LLP

Barristers & Solicitors
900 - 130 Adelaide Street West
Toronto, ON M5H 3P5

Telephone No. 416-366-1400
Telefax No. 416-366-1466

DATE: Monday, September 20, 2010
FROM: Linda C. Phillips-Smith / (416) 594-4680 / lphillips-smith@sbglegal.com
File No: 08-0295 / Diocese of Ontario ats Cavanaugh (Grenville Class Action)

TO:	FIRM	FAX NO.
Loretta Merritt	Torkin Manes Cohen Arbus LLP	(416) 863-0305
Russell Raikes	Cohen Highley LLP	(519) 672-5960
Christopher J. Haber	Haber & Associates	(905) 876-3254
Geoffrey D.E. Adair	Adair Morse LLP	(416) 863-1241
Eric R. Williams	Williams McEnergy	(613) 237-3163

Number of pages being transmitted, including this page ~~12~~

The original of this transmission:

- will not follow
 will follow by mail
 will follow by courier

**If all of the pages have not been received, please contact Hope at (416) 366-1440
Ext. 2675**

COMMENTS:

Please see attached.

The information contained in this transmission is privileged and confidential and intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are hereby notified that any distribution, copying, disclosure or taking of any action in reliance on the contents of this transmission is strictly prohibited and review by any individual other than the intended recipient shall not constitute waiver of privilege. If you have received this transmission in error, please notify us immediately and return the transmission to us.



**STIEBER
BERLACH LLP**

Reply to:
Linda C. Phillips-Smith
Direct Dial:
(416) 594-4680
lsmith@sblegal.ca

Our File No. 08-0295

September 20, 2010

BY FACSIMILE

Loretta Merritt
Torkin Manes Cohen Arbus LLP
151 Yonge Street
Suite 1500
Toronto, ON M5C 2W7

Russell Raikes
Cohen Highley LLP
One London Place
255 Queens Avenue
11th Floor
London, ON N6A 5R8

Christopher J. Haber
Haber & Associates
3370 South Service Road
2nd Floor
Burlington, ON L7N 3M6

Geoffrey D.E. Adair
Adair Morse LLP
1 Queen Street East
Suite 1800
Toronto, ON M5C 2W5

Eric R. Williams
Williams, McEnery
169 Gilmour Street
Ottawa, ON K2P 0N8

Dear Counsel:

Re: Diocese of Ontario ats Cavanaugh (Grenville Class Action)

Court File No. 08-CV-347100CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

LISA CAVANAUGH, ANDREW HALE-BYRNE,
RICHARD VAN DUSEN, MARGARET GRANGER and TIM BLACKLOCK

Plaintiffs

- and -

GRENVILLE CHRISTIAN COLLEGE, THE INCORPORATED SYNOD OF THE
DIOCESE OF ONTARIO, CHARLES FARNSWORTH, BETTY FARNSWORTH,
J. ALASTAIR HAIG and MARY HAIG

Defendants

**In the matter of a Proceeding Instituted Pursuant to
*The Class Proceedings Act, 1992, S.O. 1992, c.6***

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE DEFENDANT,
THE INCORPORATED SYNOD OF THE DIOCESE OF ONTARIO**

1. The Incorporated Synod of the Diocese of Ontario ("Diocese") admits the allegations contained in paragraphs 8, 14 and 15 of the Amended Amended Statement of Claim but except as hereinafter expressly admits, denies each and every other allegation contained therein.
2. The Diocese specifically denies the allegations contained in paragraphs 7, 9, 18, 21, 22, 26, 27 through 35 inclusive (as alleged against the Diocese), 42, and 43 through 51 inclusive, and puts the Plaintiffs to strict proof thereof.
3. The Diocese has no knowledge of the allegations contained in paragraphs 2 through 6 inclusive, 12, 13, 16, 17, 19, 20, 23 through 25, and 36 through 41 inclusive and puts the Plaintiffs to strict proof thereof.

- 2 -

4. The Diocese of Ontario admits the allegation in paragraphs 10 and 11 that J. Alastair Haig ("Haig") and Charles Farnsworth ("Farnsworth") were both ordered deacons in June 1977 and ordained as priests on September 29, 1977, but at no material time did the Diocese grant either Haig or Farnsworth license to act as a parish priest. The Diocese has no knowledge as to the balance of the allegations contained in paragraphs 10 and 11 and puts the plaintiffs to the strict proof thereof.

5. The Diocese is responsible for the administration of the churches within its jurisdiction. The Diocese is not responsible for the general activities of Anglicans or Anglican Priests who operate outside the scope and authority of a defined parish.

6. The Diocese of Ontario played no role or involvement in, nor was it consulted about the establishment of Grenville Christian College ("the College"), nor was it involved in any way in the promotion, staffing or administration of the College. The Diocese was not responsible for or associated with the College. The Diocese expressly denies any and all allegations that it at any time was responsible for, involved in, or associated with the administration, running or supervision of the College and further denies any affiliation, formal or informal, or any association with the College at any material time.

7. The Diocese had no jurisdiction nor responsibility for the supervision, guidance or control over either Haig or Farnsworth as members of the community, teachers or instructors at the College, or officers, directors or head masters at the College and had no role in, control or authority respecting the nature or substance of the religious instruction provided to students at the College nor did the Diocese supervise or was expected to or requested to provide supervision, guidance or advice to the College.

- 3 -

8. In the alternative, to the extent there could be any finding that the Diocese had some involvement in the supervision, control or guidance of Haig or Farnsworth for any of the allegations in this claim, which is denied, it could not be any earlier than their ordination date of September 29, 1977.

9. The Diocese denies that Haig and Farnsworth were not suitable by education, training and experience to enter the priesthood. Prior to his ordination, Alastair Haig was an ordained minister with the United Church and was a university graduate with a Divinity degree. Charles Farnsworth studied at the University of Georgia and Georgia State College as well as a bible research foundation in Atlanta, Georgia. He was ordained as a minister in 1960 in Atlanta, Georgia and was a pastor of a community in Georgia, and Texas thereafter. The Diocese pleads and the fact is that both Haig and Farnsworth were ordained as priests in accordance with practices, policies and procedures of the Anglican Church, and met the requirements for ordination.

10. In any event, the Diocese pleads that the mere fact Haig and Farnsworth were ordained priests did not place the Diocese in control of their actions, the school, the teachings at the school or the religious services held there.

11. The Diocese pleads that from time to time, the Bishop and/or other members of the Diocese were invited by the school to attend at certain ceremonies, such as graduation, but denies any or all allegations regarding regular attendance or visits apart from those extended by a specific invitation from the College.

12. The Diocese denies the existence of a duty of care or of a fiduciary relationship with the College staff or students and as such, denies all allegations respecting a duty of care or fiduciary

duty owed to the plaintiffs. In the alternative, if such duty existed, the Diocese denies that it breached such duties.

13. The Diocese further denies the application of the doctrine of vicarious liability and in particular, pleads that the College was an independent private school, operated by a corporation with its own separate Board of Directors, which supervised, hired and directed all activities at the School. The Diocese denies that Haig and Farnsworth, and any or all headmasters, teachers and staff at the school, were at any time under the control, authority or supervision of the Diocese.

14. The Diocese further denies that it knew or ought to have known of the alleged acts now complained of and/or the possible effects that they may have upon the plaintiffs as alleged and puts the plaintiffs to strict proof thereof.

15. The Diocese denies the plaintiffs sustained damages as alleged and further pleads that if any damages, injuries or losses were sustained, same arise from factors and events unrelated to any acts or omissions of the Diocese and/or were caused or contributed to by factors and events which occurred prior to and subsequent to their attendance at Grenville College. The Diocese further denies that the plaintiffs' attendance at Grenville caused, aggravated, influenced or otherwise contributed to these pre-existing or subsequent injuries, losses, illnesses, accidents, diseases or damages.

16. The Diocese pleads that the plaintiffs' claims are excessive and too remote or unforeseen and that the plaintiffs have failed to mitigate same.

17. The Diocese pleads and relies upon the Negligence Act, R.S.O. 1990, c.N.1 as amended.

18. The Diocese pleads that some or all of the acts complained are barred by virtue of the passage of time and pleads and relies upon:

- (i) The *Limitations Act*, R.S.O. 1990, c.P.3, s. 7;
- (ii) The *Limitations Act*, R.S.O. 1970, c. 246;
- (iii) The *Limitations Act*, R.S.O. 1980, c. 240;
- (iv) The *Limitations Act*, R.S.O. 1990, c.L.15, s. 45;
- (v) The *Limitations Act*, R.S.O. 2002, c.L.24, including sections 4, 5 and 24(3).

19. The Diocese pleads and the fact is the plaintiffs failed to commence their claims on a timely basis or at all prior to the expiration of the limitation period despite having knowledge of all the material facts and the consequences and impact upon each plaintiff as now alleged prior to expiration of this applicable limitation period. Accordingly the claim as against the Diocese is barred.

20. The Diocese further pleads that the plaintiffs are not entitled to pursue this claim and/or prejudgment interest and/or costs by reason of the delay and laches in pursuing this claim.

21. The Diocese pleads and relies upon the provisions of the Class Proceedings Act, S.O. 1992, c.6 as amended and further pleads that pursuant to the requirements of section 5, this is not a proper case for class certification as each allegation of abuse respecting each individual and the alleged damages arising therefrom are unique, do not constitute common issue and require individual evidence and trial and accordingly neither liability nor can damages be determined as an aggregate.

22. The circumstances alleged, if proven, are not such as to give rise to liability for punitive, exemplary, or aggravated damages. Further, the particulars giving rise to such damages have been insufficiently pleaded and lack necessary particulars.

23. The Diocese respectfully requests that this action be dismissed as against it with costs on a substantial indemnity basis.

CROSSCLAIM

24. The Diocese of Ontario claims as against Grenville Christian College, Charles Farnsworth, and J. Alastair Haig for:

- (i) contribution and indemnity;
- (ii) costs of defence of the main action and costs of this crossclaim;
- (iii) G.S.T., H.S.T. and interest on the above amounts pursuant to the *Courts of Justice Act*;
- (iv) such further and other relief as this Honourable Court deems just.

25. The Diocese repeats and adopts the allegations contained in the Statement of Defence herein.

26. The Diocese repeats and adopts the allegations of negligence and breach of fiduciary duty made as against its co-defendants in the Amended Amended Statement of Claim herein.

27. The Diocese pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c.M.1 herein.

- 7 -

Date: September 20, 2010

STIEBER BERLACH LLP

130 Adelaide Street West
Suite 900
Toronto, ON M5H 3P5

Steven Stieber

LSUC No. 13317W

Linda C. Phillips-Smith

LSUC No. 32005A

Tel: (416) 366-1400

Fax: (416) 366-1466

Lawyers for the Defendant,
The Incorporated Synod of the
Diocese of Ontario

TO: **TORKIN MANES COHEN ARBUS LLP**

151 Yonge Street
Suite 1500
Toronto, ON M5C 2W7

Loretta Merritt

LSUC No. 27916P

Tel: (416) 863-1188

Fax: (416) 863-0305

Lawyers for the Plaintiffs

AND TO: **COHEN HIGHLEY LLP**

One London Place
255 Queens Avenue
11th Floor
London, ON N6A 5R8

Russell Raikes

Tel: (519) 672-9330

Fax: (519) 672-5960

Lawyers for the Plaintiffs

- 8 -

AND TO: **HABER & ASSOCIATES**
3370 South Service Road
2nd Floor
Burlington, ON L7N 3M6

Christopher J. Haber
Tel: (905) 639-8894
Fax: (905) 639-0459

Lawyers for the Plaintiffs

AND TO: **ADAIR MORSE LLP**
1 Queen Street East
Suite 1800
Toronto, ON M5C 2W5

Geoffrey D.E. Adair
Tel: (416) 863-1230
Fax: (416) 863-1241

Lawyers for the Defendants,
Grenville Christian College, Charles Farnsworth,
Betty Farnsworth and J. Alastair Haig

AND TO: **WILLIAMS, McENERY**
169 Gilmour Street
Ottawa, ON K2P 0N8

Eric R. Williams
Tel: (613) 237-0520
Fax: (613) 237-3163

Lawyers for the Defendant,
Mary Haig

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**STATEMENT OF DEFENCE AND
CROSSCLAIM OF THE DEFENDANT,
THE INCORPORATED SYNOD OF THE
DIOCESE OF ONTARIO**

STIEBER BERLACH LLP
130 Adelaide Street West
Suite 900
Toronto, ON M5H 3P5

Linda C. Phillips-Smith
LSUC No. 32005A
Tel: (416) 594-4680
Fax: (416) 366-1466

Solicitors for the Defendant,
The Incorporated Synod of the
Diocese of Ontario