

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

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

Plaintiffs/Respondents

and

**GRENVILLE CHRISTIAN COLLEGE, THE INCORPORATED
SYNOD OF THE DIOCESE OF ONTARIO, CHARLES
FARNSWORTH, BETTY FARNSWORTH, JUDY HAY, Executrix
of the Estate of J. ALASTAIR HAIG and MARY HAIG**

Defendants/Appellants

AMENDED NOTICE OF APPEAL

THE APPELLANTS appeal to the Court of Appeal from the Judgment of the Honourable Madam Justice Janet Leiper dated February 26, 2020, made at Toronto, Ontario.

**THE APPELLANTS ASK THAT THE JUDGMENT BE SET ASIDE AND
JUDGMENT BE GRANTED AS FOLLOWS:**

- (a) Dismissing the action;
- (b) Alternatively to (a), vacating the Judgment and returning the matter to a trial before a different judge;
- (c) Alternatively to (a), varying the Judgment to specify and narrow the acts of the Appellants that breached the applicable standard of care compared to that found by the Learned Trial Judge;

- (d) Costs be awarded to the Appellants for this appeal and the trial below;
- (e) Such further and other relief or direction as This Honourable Court may deem just.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

- (a) The Learned Trial Judge made a palpable and overriding error in utterly ignoring the evidence lead by the Appellants at trial regarding the common issues before her;
- (b) The Learned Trial Judge made a palpable and overriding error in concluding, in paragraph 329 of her Reasons, that the evidence of the Appellants' witnesses as to what life was like at Grenville was "remarkably consistent" with the evidence of the Respondents' witnesses, when in fact the evidence tendered by the respective parties was diametrically opposed;
- (c) The Learned Trial Judge erred in law in directing herself with respect to the evidence of the Respondents' expert witnesses that she had no choice but to accept their evidence in their entirety and conduct no assessment of their credibility and reliability because the Defendants did not call their own expert witnesses;
- (d) The Learned Trial Judge erred in law in holding that if evidence of a defence witness was consistent on a particular point with the evidence of a plaintiff witness, that served to corroborate all of the evidence of the plaintiff witness;

- (e) The Learned Trial Judge misapprehended the evidence and the parties' respective positions in holding that it was not the Respondents' case that the Class suffered harm as a result of an atmosphere of fear and humiliation;
- (f) The Learned Trial Judge made a palpable and overriding error in failing to discuss the "Blue Room" incident in her Reasons and address the major issue that such evidence created with respect to the credibility of the Respondents Lisa Cavanagh and Margaret Granger;
- (g) The Learned Trial Judge erred in law in failing to articulate the definition of "systemic" negligence that she was applying, and in effectively applying the wrong test for systemic negligence;
- (h) The Learned Trial Judge erred in law in finding that any regular practice of discipline at Grenville qualified as "systemic" whereas Supreme Court of Canada caselaw defines systemic as an act of abuse toward the entire class;
- (i) The Learned Trial Judge erred in law by failing to apply the proper test for the risk of reasonable foreseeability of actionable harm, as established in the duty of care, to the evidence of class-wide practices;
- (j) The Learned Trial Judge erred in law in relying on the holding in *Cloud v. Canada* to support her systemic negligence analysis;
- (k) The Learned Trial Judge made an error in law in concluding in paragraph 340 of her Reasons that because, on her finding, the "mission" of Grenville was to apply the philosophies of the Community of Jesus and to enforce a

way of living among its students using violence, shaming and humiliation of students who were insufficiently obedient, too haughty or proud, any practice, the means of enforcement fell below the standard of care, regardless how one-off or consistent with the practices at other private schools of the day;

- (l) The Learned Trial Judge erred in finding that teaching certain philosophies about life, in particular, regarding human sexuality amounted to systemic negligence thereby rendering any action taken in furtherance of the teaching of those philosophies to be systemic negligence;
- (m) The Learned Trial Judge made a palpable and overriding error in applying current day standards of care of educational institutions to the conduct of Grenville in the 1970's, 1980's and 1990's.
- (n) The Learned Trial Judge erred in law by identifying individual breaches of the standard of care and then asking whether such breaches were class-wide/systemic because they were related to institutional policies, beliefs or culture that did not fall below the standard of care;
- (o) The Learned Trial Judge made a palpable and overriding error by treating individual instances of disciplinary practices that fell below the standard of care as class-wide conduct, effectively ascribing the experiences of individual students to the class as a whole;

- (p) The Learned Trial Judge made a palpable and overriding error in holding that every student who was subjected to corporal punishment at Grenville had been the victim of a breach of the applicable standard of care, regardless of the severity of the punishment or when that punishment had been administered;
- (q) The Learned Trial Judge made a palpable and overriding error in holding that every student ever subjected to “Discipline” (or “D”) at Grenville had been the victim of a breach of the applicable standard of care;
- (r) The Learned Trial Judge made a palpable and overriding error in holding that any assault by Grenville staff of a student was systemic in nature and fell below the applicable standard of care, regardless of the nature and severity;
- (s) The Learned Trial Judge made a palpable and overriding error in holding that every public light session fell below the applicable standard of care;
- (t) The Learned Trial Judge made a palpable and overriding error in holding that public light sessions were a systemic practice;
- (u) The Learned Trial Judge made a palpable and overriding error in holding that private corrective sessions were systemic;
- (v) The Learned Trial Judge made a palpable and overriding error in holding that all private corrective light sessions fell below the applicable standard of care, regardless how restrained or reasonable the session was;

- (w) The Learned Trial Judge made a palpable and overriding error in holding that taking students to the boiler room to observe the “flames of hell” was a systemic practice;
- (x) The Learned Trial Judge made a palpable and overriding error in holding that Grenville’s teachings regarding sexuality fell below the applicable standard of care;
- (y) The Learned Trial Judge erred in holding that Grenville’s treatment of homosexuality fell below the standard of care;
- (z) The Learned Trial Judge made a palpable and overriding error in holding that Grenville’s teachings about sexuality were actionable given the private school’s constitutional freedom to express its views and its right to freedom of religion, including the adoption of traditional Christian teachings;
- (aa) The conclusion of the Learned Trial Judge that the philosophies of Grenville somehow fell below some standard of care represents an unjustified intrusion into the constitutional freedom of expression and religion enjoyed by Grenville Christian College as a private religious institution;
- (bb) The Learned Trial Judge made a palpable and overriding error in holding that Grenville’s teachings and philosophies were actionable given the private school’s constitutional freedom to express its views and its right to freedom of religion;

- (cc) The Learned Trial Judge erred in law in failing to set out in her conclusions (para. 371) any particulars of what conduct on the part of Grenville breached the duty of care owed to the Class;
- (dd) The Learned Trial Judge erred in holding that Grenville breached the fiduciary duty it owed to students of the school;
- (ee) Rules 61 and 62 of the *Rules of Civil Procedure*;
- (ff) Such further and other grounds as counsel may advise and This Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

Final Judgment of a Justice of the Superior Court within the monetary jurisdiction of the Court of Appeal, pursuant to Section 6.(1)(b) of the *Courts of Justice Act*.

1. The Judgment appealed from is final.
2. Leave to Appeal is not required.

April 14, 2020

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CAVANAUGH et al
Plaintiffs/ Respondents

v.

HAIG and GRENVILLE CHRISTIAN COLLEGE et al
Defendants/Appellants
Court File No. C68263

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Proceeding commenced at Toronto

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