Court File No. C68263

COURT OF APPEAL FOR ONTARIO

B E T W E E N :

LISA CAVANAUGH, ANDREW HALE-BYRNE, RICHARD VAN DUSEN, MARGARET GRANGER and AMANDA AYLESWORTH THE EXECUTOR FOR THE ESTATE OF TIM BLACKLOCK

Plaintiffs/Respondents

- and -

GRENVILLE CHRISTIAN COLLEGE, THE INCORPORATED SYNOD OF THE DIOCESE OF ONTARIO, CHARLES FARNSWORTH, BETTY FARNSWORTH, JUDY HAY THE EXECUTRIX FOR THE ESTATE OF J. ALASTAIR HAIG and MARY HAIG

Defendants/Appellants

RESPONDING FACTUM
OF THE RESPONDENTS/PLAINTIFFS

March 24, 2021

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PART I - OVERVIEW

1. This is a case involving child abuse which occurred from September 1973 to July 1997 ("Class Period") at the now defunct Grenville Christian College ("GCC") boarding school which was located in Brockville, Ontario. The Honourable Justice Leiper presided over the common issues trial to determine whether the institutional policies, practices and patterns of behaviour ("policies") employed by GCC breached the standards of care and duties owed to the Class and whether punitive damages were appropriate in the circumstances.

2. While there were five common issues certified, given the parties' agreement[1] respecting the existence of duties of care, including fiduciary duties prior to the trial, the only issues considered and determined by Justice Leiper at the common issues trial were as follows:

(a) Did the defendants breach the duty of care owed to the plaintiff class?

(b) Did the defendants breach their fiduciary obligations to the plaintiff class?

(c) Does the conduct of the defendants merit an award of punitive damages?

3. The appellants are essentially focused on two issues: Whether the breaches of duty of care were systemic or individual and whether the damages were foreseeable. The evidence clearly supports the trial judges' finding that the breaches were systemic and foreseeability of damages was not an issue before her.

4. In *Cloud*, this Court acknowledged that whether the defendants owed legal obligations to the class members that were breached by the way they ran the school was a necessary and substantial part of each class member's claim, without which, "no individual can succeed in his

[1] Ex. 3 "Agreements and Issues Brief", Tab 1 "Agreement Respecting Duties of Care", ABCO Tab 29, pp. 402-411.

or her claim to recover for harm suffered because of the way the respondents ran the School without establishing these obligations and their breach".[2]

5. So too here, Justice Leiper's findings respecting GCC's systemic negligence and their breach of the standard of care and fiduciary duties advances the litigation tremendously for each individual Class Member who will come forward hereafter, (in a manner to be determined by the litigation plan and guidance of the case management judge), to establish whether and to what extent those breaches impacted them.

6. Necessarily therefore, the focus at this common issues trial was on GCC's systemic institutional policies during the Class Period.

> The parties called evidence on these features of life at Grenville during the class period. Although there was evidence tendered about the atmosphere at the school as experienced by various students, this class action concerns the practices and policies at Grenville. As in *Cloud*, the Divisional Court certified the Grenville action based on allegations of systemic negligence in how the defendants ran the school and not on the basis that every member of the class suffered the same or any of the abuse alleged by the plaintiffs.[3]

7. These systemic policies were proven through more than 146 joint documents and another 62 trial exhibits[4] and the 25 fact-witnesses of both parties (being former staff and students of GCC).

8. Justice Leiper correctly weighed all of the evidence before her, including the evidence of the appellants. Much of the appellants' evidence corroborated the existence and employment of certain policies throughout the Class Period:

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[2] *Cloud v. Canada (Attorney General)*, 2004 CanLII 45444 (ON CA), See also paras. 81-88 ["*Cloud*"]. ABA Tab 2.
[3] *Cavanaugh et al. v. Grenville Christian College et al.*, 2020 ONSC 1133, at para. 27 ["Trial Judgement"]., ABCO Tab. 3, pp.031.
[4] There were a total of 65 Trial Exhibits, 3 of which (Exhibits 1, 2 and 9) were the 3 vols. of the Joint Exhibit Book.

> "[…] the evidence of what life at Grenville was like was remarkably consistent among the plaintiff and defendant witnesses. There was no denying that any of the forms of discipline described took place. There was evidence from both staff and students spanning the entire period of the class about the practices at issue here. Further, the attitudes, practices and philosophies that were the genesis of these discipline methods were described in school writings and records. […] ".[5]

9. Justice Leiper acknowledged the overlap in the evidence of the parties in her decision and it is clear from her reasons that this convergence formed the basis of her findings and conclusions respecting the facts and systemic negligence.[6]

10. Additionally, two expert witnesses gave uncontradicted evidence respecting the standards of care for private and public schools in Ontario applicable during the Class Period (Dr. Axelrod), and institutional abuse and the impacts of childhood abuse, maltreatment and trauma (Dr. Barnes). Collectively, their evidence supported the learned trial judge's conclusions that GCC's policies fell below the standard of care applicable during the Class Period and could cause harm.[7]

11. The appellants argue that the breaches of the duty of care were not systemic because not every class member had the same experience. The evidence, of some of the appellants' witnesses, differed only in respect of their opinions respecting the impact of the systemic negligence and breaches of care, which, with respect, was not an issue before Justice Leiper at the common issues trial, and could not to be considered, let alone determined at this stage of the proceeding.

> The defendants submit that the analysis should proceed with the question of the school atmosphere. This could allow the analysis to drift into the direction of

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[5] Trial Judgement at para. 329., ABCO Tab. 3, pp.093-094.
[6] Trial Judgement at paras. 340-341., ABCO Tab. 3, pp. 095-096.
[7] Trial Judgement at paras. 29, 135-145, 240-305, 307-327, 340-345, 352-356., ABCO Tab. 3, pp. 032, 059-060, 076-088, 089-093, 095-096, 097-098.

> purely subjective experience. I have focused instead on the more objectively measurable evidence of Grenville's institutional methods and routines, its norms and expectations, and how it enforced those norms and expectations as a way of understanding whether it breached the standard of care and its duties to its students. This analysis is also responsive to the common issues. The individual impacts, which may range from significant to minimal, are not part of the common issues to be considered at this stage of the case.[8]

12. The common issues trial appropriately did not address the impact of those breaches on any Class Member. It did not devolve into a "contest about what happened to the individual students" as the appellants contend. The evidence of the all of the fact witnesses, for both parties, overwhelmingly supports the learned trial judge's findings that the policies employed by GCC during the Class Period were systemically negligent, fell below the standard of care, were in breach of the duty of care and fiduciary duties owed the students, and merited an award of punitive damages (the quantum of which was to be determined at a later stage).

13. This appeal ought to be dismissed. The appellants simply disagree with the outcome of the common issues trial and the learned trial judge's assessment of their arguments therein.

14. The appellants have not established that there were any legal or palpable or overriding errors made: neither in respect of the weighing of the evidence nor the articulation and application of the law to the facts in this case.

15. This common issues trial took place twelve years after the claim was filed and took five weeks to try. It involved 27 witnesses[9], travelling from across Canada, the United States and overseas in order to provide their testimony. Retrying this case, as suggested by the appellants, is not only improper in the absence of any appealable errors, but an enormous undertaking of

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[8] Trial Judgement at para. 335., ABCO Tab. 3, pp.095.
[9] 25 Fact Witnesses and 2 Experts

time and judicial resources that undermines the principles of both access to justice and judicial economy, which are two of the founding principles upon which class proceedings legislation was based.

16. A trial judge's decision, particularly on factual matters is to be afforded considerable deference. It is respectfully submitted that this appeal ought to be dismissed.

PART II – FACTS & EVIDENCE

17. The evidence at the common issues trial established the following facts about the policies employed at GCC during the Class Period. As Justice Leiper found: "in many respects, the witnesses for all parties testified consistently about the operations of G[CC]."[10] The existence and employment of these systemic policies were supported by witnesses for both parties:

(a) GCC was a place of strict discipline and scrutiny: "more strict than a normal school".[11] Students were expected to submit, yield and obey authority unquestioningly at GCC.[12] It was (described by witnesses for both parties) as being "militant"[13].

(b) GCC imposed a rigorous schedule on its students[14] and strictly controlled and monitored all aspects of students' lives,[15] including:

(i) dress code and appearance of the female students, such as:

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[10] Trial Judgement at para. 31. ABCO Tab 3, pp. 032.
[11] Transcript of Evidence ["TRN"], Dr. Simon Best, Vol 5, p. 1509-1511., RCO Tab. 5, pp. 67, ln. 19 – pp. 69, ln. 29.
[12] Exhibit ["Ex."] 8: "Student Handbook: 1994-1995", RCO Tab. 48, pp. 495-522; TRN Mark Vincent, Vol 4, p. 1184-1185, RCO Tab. 27, pp. 354, ln. 2 – pp. 355, ln. 30.
[13] TRN Liam Morrison, Vol 4, p. 980., RCO Tab. 19, pp. 301, ln.10-16; TRN Joan Childs, Vol 1, p. 119-121., RCO Tab. 7, pp. 89, ln. 24 – pp. 91, ln. 19; TRN Donald Farnsworth, Vol 7, p. 2027-2028, 2045-2047, RCO Tab. 9, pp. 150, ln. 28 – pp. 151, ln. 32, pp. 153, ln. 6 – pp. 155, ln. 15.
[14] TRN Ken MacNeil, Vol 8, p. 2090-2091, RCO Tab. 15, pp. 245, ln. 30 – pp. 246, ln. 16.
[15] TRN Joan Childs, Vol 1, p. 216-219, RCO Tab. 7, pp. 115, ln. 19 – pp. 118, ln. 16; Transcript of Cr-Ex of Tim Blacklock, Oct. 7, 2008, p. 12-13, Q67, RCO Tab. 54, pp. 581-585; (See Ex. 1: Joint Exhibit Book ["JEB"], Vol. I, Tab 43, "Student Handbook: 1987-1988"; RCO Tab. 36, Ex. 8: "Student Handbook: 1994-1995", RCO Tab. 48, pp. 493-522; Ex. 2: JEB, Vol. II, Tab 97, "Student Handbook: 1996-1997", RCO Tab. 43, pp. 436-465).

(A) the length of their skirts, make up and the style of their undergarments:[16]

> "A full slip or camisole and half-slip must be worn with dresses and skirts; briefs must be regular waist style with no 'hip hugger' or bikini types".[17]

(B) bathing suits. Female students were forced to model them for the staff and bend over forwards and backwards so staff could inspect and determine how much cleavage or buttocks were visible based on the bathing suit style, only to have all the girls cover these bathing suits up with t-shirts and shorts, as per the policy;[18]

(ii) friendships and relationships between students were discouraged and in some cases forbidden;[19]

(iii) music, particularly 'rock music' was prohibited, along with Walkman's and clock radios (including on travel to and from school)[20] and even rock t-shirts;[21]

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[16] Ex. 2: JEB, Vol. II, Tab 71, "Girls Dress Regulations", RCO Tab 41, pp. 424; TRN Joan Childs, Vol 1, p. 169, 213-214, RCO Tab. 7, pp. 100, ln. 16-19, pp. 113, ln. 18 – pp. 114, ln. 1; TRN Margit Mayberry, Vol 1, p. 316-318, RCO Tab. 17, pp. 263, ln. 4 – pp. 265, ln. 22; TRN Lisa Cavanaugh, Vol 3, p. 897-898, RCO Tab. 6, pp. 73, ln. 6 – pp. 74, ln. 21; TRN Kathy Smart, Vol 6, p. 1560, RCO Tab. 24, pp. 326, ln. 6-19; TRN Heather Bakken, Vol 6, p. 1649, RCO Tab. 2, pp. 29, ln. 8-27; TRN Julie Lowe, Vol 6, p. 1743, RCO Tab. 13, pp. 211, ln. 11-20.

[17] Ex. 51: "Girls Official Clothing List for Grenville Christian College 1986/87", RCO Tab 55, pp. 586-592.

[18] TRN Beth Granger, Vol 2, p. 641-642, RCO Tab 11 pp. 181, 9 – pp. 182, ln. 24; TRN Lisa Cavanaugh, Vol 3, p. 897, RCO Tab. 6, pp. 73, ln. 9-20.

[19] TRN Joan Childs, Vol 1, p. 153, 217, RCO Tab. 7, pp. 97, ln. 16-26, pp. 116, ln. 8-10; TRN Beth Granger, Vol 2, p. 638, RCO Tab. 11, pp. 179, ln. 3-9; TRN Liam Morrison, Vol 4, p. 948, 959-960, RCO Tab. 19, pp. 293, ln. 22-31, pp. 294, ln. 29-32; TRN Dr. Simon Best, Vol 5, p. 1479, 1510, RCO Tab. 5, pp. 65, ln. 24-25, pp. 68, ln. 18-32; TRN Heather Bakken, Vol 6, p. 1715-1716, RCO Tab. 2, pp. 38, ln. 21 – pp. 39, ln. 12; TRN Julie Lowe, Vol 6, p. 1744-1745, RCO Tab. 13, pp. 212, ln. 16 – pp. 213, ln. 23; TRN Rev. Byron Gilmore, Vol 7, p. 1822-1823, RCO Tab. 10, pp. 162, ln. 6 – pp. 163, ln. 16; TRN William Newell, Vol 7, p. 1887, RCO Tab. 20, pp. 306, ln. 16-23; TRN Lucy Maxwell Postlethwaite, Vol 8, p. 2173, RCO Tab. 22, pp. 315, ln. 7-30; TRN Emma Postlethwaite, Vol 8, p. 2248, RCO Tab. 21, pp. 311, ln. 6-29; TRN Lisa Cavanaugh, Vol 3, p. 896, RCO Tab. 6, pp. 72, ln. 19-24; Ex. 9: JEB, Vol. III, Tab 133, "Purpose and Practice of Religion in Education Now in Grenville Christian College," p. 2., RCO Tab 49, pp. 524-526.

[20] Ex. 1: JEB, Vol. I, Tab 4, "Grenville Christian College Re: Statement re School", RCO Tab 29, pp. 365-370; Ex. 1: JEB, Vol I, Tab 43, "Student Handbook 1987-1988", RCO Tab 36, pp. 383-410; Ex. 8: "Student Handbook: 1994-1995", p. 9, RCO Tab 48, pp. 495-522; TRN Joan Childs, Vol 1, p. 216, RCO Tab. 7, pp. 115, ln. 20-27; TRN Richard Van Dusen, Vol 3, p. 853 RCO Tab. 26, pp. 341, ln. 7-13; TRN Lisa Cavanaugh, Vol 3, p. 896 RCO Tab. 6, pp. 72, ln. 19-20; TRN Francois Lukawecki, Vol 5, p. 1303 RCO Tab. 14, pp. 220, ln. 6-9; TRN Heather Bakken, Vol 6, p. 1643 RCO Tab. 2, pp. 28, ln. 16-31; TRN Julie Lowe, Vol 6, p. 1730 RCO Tab. 13, pp. 210, ln. 14-18; Affidavit of Tim Blacklock, Oct. 13, 2010, p. 3, RCO Tab 52, pp. 545; Transcript of the Cr-Ex of Tim Blacklock, Sept. 13, 2011, pp. 22-25, Q135-154., RCO Tab 53, pp. 566-569.

[21] TRN Andrew Hale-Byrne, Vol 2, p. 379-380, RCO Tab. 12, pp. 202, ln. 14 – pp. 203, ln. 1.

(iv) the "Honor Code"[22] – students "tattling" on other students[23]

(v) imposition of "days of silence": day(s) where students were required not to speak unless spoken to;[24] and

(vi) staff, student leaders and prefects would monitor and be on the look-out for rule breaking, including behavioural and attitudinal transgressions.[25]

(c) The written and unwritten rules applied and discipline for contravening them would also be imposed for infractions off-campus as well as on-campus.[26]

(d) So-called "bad attitudes" were not tolerated at GCC.[27] Students were expected to conform to the "spirit" as well as the letter of the school rules and unwritten expectations.[28] Corrections of bad attitudes and rule breaking could take a

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[22] TRN Liam Morrison, Vol 4, p.965-967, RCO Tab. 19, pp. 295, ln. 25 – pp. 297 ln. 19.

[23] Ex. 2: JEB, Vol. II, Tab 131, "Charles Farnsworth Life History Transcript", RCO Tab 46, pp. 473-491; TRN Julie Lowe, Vol 6, p. 1756-1757, RCO Tab. 13, pp. 217, ln. 16 – pp. 218, ln. 14; TRN Joan Childs, Vol 1, p. 172-173, RCO Tab. 7, pp. 102, ln. 25 – pp. 103, ln. 21; TRN Beth Granger, Vol 2, p. 601, RCO Tab. 11, pp. 174, ln. 25-30.

[24] TRN Andrew Hale-Byrne, Vol 2, p. 376, RCO Tab. 12, pp. 200, ln. 14-24; TRN David Webb, Vol 9, p.2579-2580, RCO Tab. 28, pp. 362, ln 8 – pp. 363, ln. 15; TRN Mark Vincent, Vol 4, p. 1162-1163, RCO Tab. 27, pp. 344, ln. 7 – pp. 345, ln. 7; TRN Joan Childs, Vol 1, p. 171, RCO Tab. 7, pp. 101, ln. 11-17; TRN Margit Mayberry, Vol 1, p. 319, RCO Tab. 17, pp. 266, ln. 8-13; TRN Beth Granger, Vol 2, p. 645-646, RCO Tab. 11, pp. 185, ln. 3 – pp. 186, ln. 21; TRN David Shepherd, Vol 4, p. 1234, RCO Tab. 23, pp. 320, ln. 9-26; TRN Francois Lukawecki, Vol 5, p. 1316, RCO Tab. 14, pp. 233, ln. 2-8; TRN Lisa Cavanaugh, Vol 3, p. 906, RCO Tab. 6, pp. 76, ln. 28-30 ; TRN Robert Creighton, Vol 9, p. 2329-2330, RCO Tab. 8, pp. 127, ln. 24 – pp. 128, ln. 4.

[25] TRN Beth Granger, Vol 2, p. 614-615, 804-805, RCO Tab. 11, pp. 175, ln. 11 – pp. 176, ln 13, pp. 192, ln. 23 – pp. 193, ln. 6; TRN Andrew Hale-Byrne, Vol 2, p. 374, RCO Tab. 12, pp. 198, ln. 21-31.

[26] TRN Francois Lukawecki, Vol 5, p. 1306, RCO Tab. 14, pp. 223, ln. 6-25; TRN Andrew Hale-Byrne, Vol 2, p.379, RCO Tab. 12, pp. 202, ln. 5-17; TRN Beth Granger, Vol 2, p. 614, RCO Tab. 11, pp. 175, ln. 6-11; TRN Ken MacNeil, Vol 8, p. 2108-2109, RCO Tab. 15, pp. 252, ln. 5 – pp. 253, ln. 5; TRN Richard Van Dusen, Vol 3, p. 851-853, RCO Tab. 26, pp. 339, ln. 29 – pp. 341, ln. 11; TRN Lucy Maxwell Postlethwaite, Vol 8, p. 2174, RCO Tab. 22, pp. 316, ln. 25-31; TRN Joan Childs, Vol 1, p. 211, RCO Tab. 7, pp. 112, ln. 2-19; TRN Margit Mayberry, Vol 1, p. 318-320, RCO Tab. 17, pp. 265, ln. 29 – pp. 267, ln. 14; TRN William Newell, Vol 7, p. 1887, RCO Tab. 20, pp. 306, ln. 29-31; TRN Robert Creighton, Vol 9, p. 2467, RCO Tab. 8, pp. 138, ln. 16-21; TRN Rev. Byron Gilmore, Vol 7, p. 1836, RCO Tab. 10, pp. 169, ln. 17-21; TRN Julie Lowe, Vol 6, p. 1755, RCO Tab. 13, pp. 216, ln. 11-20; TRN David Webb, Vol 9, p. 2564-2565, RCO Tab. 28, pp. 359, ln. 3 – pp. 360, ln. 25; TRN Gordon Mintz, Vol 9, p. 2436, RCO Tab. 18, pp. 272, ln. 4-30.

[27] TRN Joan Childs, Vol 1, p. 152-153, 183, RCO Tab. 7, pp. 96, ln. 19 – pp. 97, ln. 13, pp. 106; TRN Beth Granger, Vol 2, p. 643, RCO Tab. 11, pp. 183, ln. 2-9; TRN Francois Lukawecki, Vol 5, p. 1318, RCO Tab. 14, pp. 235, ln. 23-30; TRN Marc Bergeron, Vol 6, p. 1803, RCO Tab. 4, pp. 63, ln. 2-25; TRN William Newell, Vol 7, p. 1887-1888, RCO Tab. 20, pp. 306, ln. 29 – pp. 307, 8; TRN Ken MacNeil, Vol 8, p. 2101, RCO Tab. 15, pp. 250, ln. 13-27.

[28] TRN David Shepherd, Vol 2, p.1234-1235, 1249, RCO Tab. 23, pp. 320, ln. 23 – pp. 321, ln. 3, pp. 323, ln. 15-18; TRN Francois Lukawecki, Vol 5, p. 1305, RCO Tab. 14, pp. 222, ln. 16-24; TRN Andrew Hale-Byrne, Vol 2, p. 374, RCO Tab. 12, pp. 198, ln. 1-26; TRN Beth Granger, Vol 2, p. 640-641, RCO Tab. 11, pp. 180, ln. 24 – pp. 181, ln. 30; TRN Ken MacNeil, Vol 8, p. 2098, RCO Tab 15, pp. 248, ln. 2-17; TRN Richard Van Dusen, Vol 3, p. 851-853, RCO Tab. 26, pp. 339, ln. 19 pp. 341, ln. 13; TRN Lucy Maxwell Postlethwaite, Vol 8, p. 2130-2131, RCO Tab. 22, pp. 313, ln. 25 – pp. 314, ln 1; TRN Joan Childs, Vol 1, p. 124-125, 211, RCO Tab. 7, pp. 92, ln. 25 – pp. 93, ln. 8, pp.

humiliating form, both for those subject to the correction, and others witnessing same.[29]

(e) Light Sessions consisted of both large public assemblies, before the whole student body in the Chapel or Dining Room, and/or smaller groups of staff and/or students.[30] Light Sessions were a common practice at the Community of Jesus ("COJ") (the Christian cult upon which GCC was modelled and operated) and amongst the Grenville Community (the oblate members of the COJ operating GCC). They were considered part of the structure and fabric of that lifestyle.[31]

(f) At Light Sessions, students were:

(i) stood-up in front of the entire student body, in the Chapel or Dining Room, and publicly reprimanded by various Staff and other students, for various behavioural and attitudinal transgressions and rule-breaking; and[32]

(ii) were also confronted in smaller groups of staff and/or students for similar "misbehaviour."[33]

112; TRN Margit Mayberry, Vol 1, p. 318-319, RCO Tab. 17, pp. 265, ln. 15 – pp. 266, ln. 5; TRN William Newell, Vol 7, p. 1887, RCO Tab. 20, pp. 306, ln. 29-31; TRN Robert Creighton, Vol 9, p. 2360, RCO Tab. 8, pp. 131, ln. 5-15; TRN Rev. Byron Gilmore, Vol 7, p. 1836, RCO Tab.10, pp. 169, ln. 17-21; TRN Julie Lowe, Vol 6, p. 1745-1746, RCO Tab. 13, pp. 213, ln. 16 – pp. 214 ln. 23; TRN David Webb, Vol 9, p. 2564-2565, RCO Tab. 28, pp. 359, ln. 3 – pp. 360, ln. 25; TRN Gordon Mintz, Vol 9, p. 2443, RCO Tab. 18, pp. 277, ln. 13-23.

[29] TRN Francois Lukawecki, Vol 5, p. 1321-1323, RCO Tab. 14, pp. 238, ln. 15 to pp. 240, ln. 33; TRN Andrew Hale-Byrne, Vol 2, p. 373, RCO Tab. 12, pp. 197, ln. 14-28.

[30] All testifying witnesses confirm public Light Sessions or public assemblies occurred in the Dining Room and Chapel; Smaller or private Light Sessions were confirmed by: TRN David Shepherd, Vol 4, p. 1235-1236, RCO Tab. 23, pp. 321, ln. 24 – pp. 322, ln. 33; TRN Beth Granger, Vol 2, p. 635, 729-730, RCO Tab. 11, pp. 177, ln. 8-29, pp. 189, ln. 1 – pp. 190, ln. 9; TRN Andrew Hale-Byrne, Vol 2, p. 436, RCO Tab. 12, pp. 206, ln. 16-28; Affidavit of Tim Blacklock, Oct. 13, 2010, p. 13, RCO Tab 52, pp. 555; Transcript of Cr-Ex of Tim Blacklock, Sept. 13, 2011, p. 7, Q36 to p. 9, Q42, p. 88, Q541 to p. 91, Q561, RCO Tab 53, pp. 563-579; TRN Philip Mailey, Vol 4, p. 1140-1141, RCO Tab 16, pp. 258, ln. 29 – pp. 259, ln. 8; TRN Lisa Cavanaugh, Vol 3, p. 911-912, RCO Tab. 6, pp. 81, ln. 6 – pp. 82, ln. 22; TRN Tyler Stacey-Holmes, Vol 4, p. 1068-1070, RCO Tab. 25, pp. 334, ln. 15 – pp. 336, ln. 33; TRN Francois Lukawecki, Vol 5, p. 1310-1312, 1373, RCO Tab. 14, pp. 227, 20 – pp. 229, 9, pp. 241, 2-12; TRN Kathy Smart, Vol 6, p. 1579, RCO Tab. 24, pp. 330, ln. 6-11; TRN Heather Bakken, Vol 6, p. 1650, RCO Tab. 2, pp. 30, ln. 16-27; TRN Liam Morrison, Vol 4, p. 949, RCO Tab. 19, pp. 292, ln. 6-15.

[31] TRN Joan Childs, Vol 1, p. 112-114, 149-150, 200-202, 204, 220-221, RCO Tab. 7, pp. 86, ln. 16 – pp. 88, ln. 17, pp. 95, ln. 21 – pp. 97, ln. 30, pp. 108, ln. 1 – pp. 110, ln 32, pp. 111, ln. 2-32, pp. 119, ln. 2 – pp. 120, ln. 19; Ex. 6: "Community of Jesus Vow of Service", p. 20, RCO Tab 47, pp. 493; TRN Beth Granger, Vol 2, p. 598, RCO Tab. 11, pp. 173, ln. 1-33; TRN Ken MacNeil, Vol 8, p. 2121, RCO Tab. 15, pp. 255, ln. 21-32.

[32] All testifying witnesses describe the process similarly.

[33] *Supra*, note 126.

(g) Light Sessions were held over such attitudinal and/or behavioural transgressions as:

(i) being in, or perceived to be in, a relationship[34] or breaking boy/girl proximity rules (including touching while passing an eraser);

(ii) bad attitudes;[35]

(iii) "too much jewellery with the uniform and acting like whores and prostitutes";[36]

(iv) "not smiling enough"[37] or "smiling too much";[38]

(v) disrespectfulness[39], including "not saying good-morning";[40]

(vi) being "haughty", or too self-centred;[41]

(vii) lustfulness;[42] and

(viii) being "rebellious" (which included breaking the spirit of, as well as the rules themselves).[43]

(h) Both students[44] and staff could be called upon to participate in Light Sessions.[45]

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[34] TRN Andrew Hale-Byrne, Vol 2, p. 374-377; RCO Tab.12, pp. 198, ln. 4 – pp. 201, ln. 25; TRN Joan Childs, Vol 1, p. 166, RCO Tab. 7, pp. 98, ln. 15-23; Affidavit of Tim Blacklock Oct. 13, 2010, p. 11., RCO Tab 52, pp. 553.
[35] TRN Beth Granger, Vol 2, p. 643, RCO Tab. 11, pp. 183, ln. 5-24; TRN Julie Lowe, Vol 6, p. 1755, RCO Tab. 13, pp. 216, ln. 11-20; TRN Andrew Hale-Byrne, Vol 2, p. 374, RCO Tab. 12, pp. 198, ln. 16-31.
[36] TRN David Shepherd, Vol 4, p. 1250, RCO Tab. 23, pp. 324, ln. 11-18.
[37] TRN Lisa Cavanaugh, Vol 3, p. 918, RCO Tab. 6, pp. 84, 21-25; TRN Andrew Hale-Byrne, Vol 2, p. 369, RCO Tab. 12, pp. 195, ln. 28-32.
[38] TRN Mark Vincent, Vol 4, p. 1177, RCO Tab. 27, pp. 353, ln. 14-23.
[39] TRN Emma Postlethwaite, Vol 8, p. 2223 RCO Tab. 21, pp. 310, ln. 22-24.
[40] TRN Rev. Byron Gilmore, Vol 7, p. 1837, 1846, RCO Tab. 10, pp. 170, ln. 1-27, pp. 171, ln. 18-30.
[41] TRN Andrew Hale-Byrne, Vol 2, p. 369-370, 373, RCO Tab. 12, pp. 195, ln. 21 – pp. 196, ln. 19, pp. 197, ln. 3-29; TRN David Shepherd, Vol 4, p. 1235-1236, RCO Tab. 23, pp. 321, ln. 24 – pp. 322, ln. 32; TRN Beth Granger, Vol 3, p. 740, RCO Tab. 11, pp. 191, ln. 14-25; TRN Joan Childs, Vol 1, p. 124-125, RCO Tab. 7, pp. 92, ln. 25 – pp. 93, ln. 8; TRN Francois Lukawecki, Vol 5, p. 1322-1323, RCO Tab. 14, pp. 239, ln. 4 – pp. 240, ln. 24; TRN Marc Bergeron, Vol 6, p. 1803, RCO Tab. 4, pp. 63, ln. 2-25; TRN Julie Lowe, Vol 6, p. 1755, RCO Tab. 13, pp. 216, ln. 13-20; TRN Rev. Byron Gilmore, Vol 7, p. 1826-1827, RCO Tab. 10, pp. 166, ln. 19 – pp. 167, ln. 7; TRN William Newell, Vol 7, p. 1868, RCO Tab. 20, pp. 305, ln. 18-29.
[42] TRN David Shepherd, Vol 4, p. 1228, 1236, RCO Tab. 23, pp. 318, ln. 18-32, pp. 322, ln. 18-32.
[43] TRN Ken MacNeil, Vol 8, p. 2097, RCO Tab. 15, pp. 247, ln. 17-31; TRN Julie Lowe, Vol 6, p. 1755, RCO Tab. 13, pp. 216, ln. 13-20; TRN Kathy Smart, Vol 6, p. 1575, RCO Tab. 24, pp. 327, ln. 10-32.

(i) Light Sessions were intimidating, intense and even terrifying for some.[46] Light Sessions could elicit extreme emotions, including, but not limited to, embarrassment and humiliation[47] by the students targeted, but also fear, intimidation and confusion by the students undergoing and witnessing same.[48]

(j) Corporal punishment was meted out at GCC: "It would be used for any [infraction] major or just an attitude".[49] Examples include:

(i) being in a relationship with the opposite sex,[50]

(ii) smoking,[51]

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[44] TRN Joan Childs, Vol 1, p. 124-125, RCO Tab. 7, pp. 92, ln. 12 – pp. 93, ln. 8; TRN Beth Granger, Vol 2, p. 644, RCO Tab. 11, pp. 184, ln. 16-32; TRN Ken MacNeil, Vol 8, p. 2099, RCO Tab. 15, pp. 249, ln. 3-23; TRN Gordon Mintz, Vol 9, p. 2440-2441, RCO Tab. 18, pp. 275, ln. 27 – pp. 276, ln. 6.

[45] TRN Joan Childs, Vol 1, p. 124-125, RCO Tab. 7, pp. 92, ln. 12 – pp. 93, ln. 8; TRN Francois Lukawecki, Vol 5, p. 1308, 1311-1312, RCO Tab. 14, pp. 225, ln. 10-26, pp. 228, ln. 14 – pp. 229, ln. 9; TRN Beth Granger, Vol 2, p. 644-645, RCO Tab. 11, pp. 184, ln. 3 – pp. 185, ln. 20; TRN Ken MacNeil, Vol 8, p. 2099, RCO Tab. 15, pp. 249, ln. 3-23; TRN Gordon Mintz, Vol 9, p. 2440, RCO Tab. 18, pp. 275, ln. 6.

[46] TRN Ken MacNeil, Vol 8, p. 2098, RCO Tab. 15, pp. 248, ln. 18-26; TRN Beth Granger, Vol 2, p. 645, RCO Tab. 11, pp. 185, ln. 12-23.

[47] TRN Joan Childs, Vol 1, p. 178, RCO Tab. 7, pp. 104, ln. 4-22; TRN Lisa Cavanaugh, Vol 3, p. 909-910, RCO Tab. 6, pp. 79, ln. 19 – pp. 80, ln. 31; Transcript of Cr-Ex of Tim Blacklock, Sept. 13, 2011 p. 118, Q692-693, RCO Tab 53, pp. 579; TRN Andrew Hale-Byrne, Vol 2, p. 373-377, RCO Tab. 12, pp. 197, ln. 3 – pp. 201, ln. 32; TRN William Newell, Vol 7, p. 1893, RCO Tab. 20, pp. 308, ln. 1-29; TRN Donald Farnsworth, Vol 7, p. 2040, RCO Tab. 9, pp. 152, ln. 11-30; TRN David Shepherd, Vol 4, p.1228-1235, RCO Tab. 23, pp. 318, ln. 14-18, pp. 321, ln. 24-26; TRN Heather Bakken, Vo 6, p. 1686-1687, RCO Tab. 2, pp. 36, ln. 4 – pp. 37, ln. 24; TRN Philip Mailey, Vol 4, p. 1140, RCO Tab. 16, pp. 258, ln.5-8 ; TRN Ken MacNeil, Vol 8, p. 2098, RCO Tab. 15, pp. 248, ln. 18-26; TRN Robert Creighton, Vol 9, p. 2383, RCO Tab. 8, pp. 136, ln. 4-26.

[48] TRN Liam Morrison, Vol 4, p. 948-949, 977, RCO Tab. 19, pp. 291, ln. 7 – pp. 292, ln. 15, pp. 298, ln. 4-31; TRN Beth Granger, Vol 2, p. 645, RCO Tab. 11, pp. 185, ln. 2-20; TRN David Shepherd, Vol 4, p. 1229, RCO Tab. 23, pp. 319, ln. 7-30; TRN Andrew Hale-Byrne, Vol 2, p. 373-377, RCO Tab. 12, pp. 197, ln. 3 – pp. 201, ln. 32; TRN Margit Mayberry, Vol 2, p. 353, RCO Tab. 17, pp. 270, ln. 6-30; TRN Rev. Byron Gilmore, Vol 7, p. 1846-1847, RCO Tab. 10, pp. 171, ln. 18 – pp. 172, ln. 26; TRN Gordon Mintz, Vol 9, p. 2457-2458, RCO Tab. 18, pp. 278, ln. 9 – pp. 279, ln. 13.

[49] TRN Joan Childs, Vol 1, p. 171, RCO Tab. 7, pp. 101, ln. 9-17; TRN Rev. Byron Gilmore, Vol 7, p. 1827-1828, RCO Tab. 10, pp. 167, ln. 5 – pp. 168, ln. 21.

[50] Ex. 1: JEB, Vol. I, Tab 34, "Letter from Charles R. Farnsworth to Mr. & Mrs. M. M. Shepherd re Spanked x 2 Occasions," RCO Tab 35, pp. 182-183.

[51] TRN Mark Vincent, Vol 4, p. 1164-1165, 1168-1170, RCO Tab. 27, pp. 346, ln. 25 – pp. 347, ln. 1, pp. 348, ln. 1 – pp. 350, ln. 2; TRN Donald Farnsworth, Vol 7, p. 2060-2061, RCO Tab. 9, pp. 159, ln. 1 – pp. 160, ln. 32; Affidavit of Tim Blacklock, Oct. 13, 2010, p. 6-8, RCO Tab 52, pp. 548-550, p. 1589-1591; Transcript of Cr-Ex of Tim Blacklock, Oct. 7, 2008 p. 18, Q99 to p. 20, Q109, RCO Tab 54, pp. 581-585; Transcript of Cr-Ex of Tim Blacklock, Sept. 13, 2011, p. 61, Q378 to p. 65, Q398, RCO Tab 53, pp. 563-579.

(iii) "telling a teacher [a student] was too busy to do" what they were told[52] and

(iv) "ruining ceiling tiles".[53]

(k) Corporeal Punishment was utilized at least until the mid-1980s[54] possibly even in the 1990s.[55] Corporeal Punishment meted out at GCC did not conform with the policies and practices employed by other educational institutions utilizing same[56]. At times, corporeal punishment was administered with excessive force[57]

(l) Students on Discipline were segregated and ostracized from the rest of the students at GCC.[58] In addition to the physical discipline imposed upon them, and/or Light Sessions, they were subjected to the following:

(i) students on "D" were not permitted to speak with other students. They were often if not always out of uniform through the duration of their discipline; they were not permitted to wear their uniform, and instead had to wear their "work clothes";[59]

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[52] TRN Rev. Byron Gilmore, Vol 7, p. 1828, RCO Tab. 10, pp. 168, ln. 4-21.
[53] TRN Liam Morrison, Vol 4, p. 945, RCO Tab. 19, pp. 289, ln. 1-31.
[54] TRN Donald Farnsworth, Vol 7, p. 2060, RCO Tab. 9, pp. 159, ln. 11-15.
[55] TRN Ken MacNeil, Vol 7, p. 1960-1961, RCO Tab. 15, pp. 243, ln. 24 – pp. 244, ln. 19.
[56] Trial Judgement at paras. 141-144, 285-288 ABCO Tab. 3, pp.060, 085; TRN Dr. Paul Axelrod, Vol 5, p. 1414-1415, 1420, 1423-1426; RCO Tab. 1, pp. 7., ln. 8 – pp. 8, ln. 32, pp. 10, ln. 5, pp. 11, ln. 6 – pp. 14, ln. 21.
[57] Trial Judgement at para. 284 and 277 ABCO Tab 3, pp.084, 083.
[58] TRN Joan Childs, Vol 1, p. 167, RCO Tab. 7, pp. 99, ln. 2-11.
[59] TRN Joan Childs, Vol 1, p. 167, p. 171-220, RCO Tab. 7, pp. 101, ln 11-14, pp. 119, ln 13-22; TRN Donald Farnsworth, Vol 7, p. 2051-2053, RCO Tab. 9, pp. 156, ln. 27 – pp. 158, ln. 4; TRN Margit Mayberry, Vol 1, p. 319, RCO Tab. 17, pp. 266, ln. 16-29; TRN Lisa Cavanaugh, Vol 3, p. 916, RCO Tab. 6, pp. 83, ln. 14-25; TRN David Webb, Vol 9, p. 2567, RCO Tab. 28, pp. 361, 5-26; TRN David Shepherd, Vol 4, p. 1249, RCO Tab. 23, pp. 323, ln. 19-30; TRN Mark Vincent, Vol 4, p. 1161, RCO Tab. 27, pp. 343, ln. 20-29; TRN Beth Granger, Vol 2, p. 637, RCO Tab. 11, pp. 178, ln. 7-15; TRN Andrew Hale-Byrne, Vol 2, p. 380, RCO Tab. 12, pp. 203, ln. 22-32; TRN Francois Lukawecki, Vol 5, p. 1312-1313, RCO Tab. 14, pp. 229, ln. 10 – pp. 230, ln. 24; TRN Robert Creighton, Vol 9, p. 2333, 2367-2368, RCO Tab. 8, pp. 130, ln. 20-30, pp. 133, ln. 26 – pp. 134, ln. 7; TRN Gordon Mintz, Vol 9, p. 2439, RCO Tab. 18, pp. 274, ln. 12-18; Ex. 2: Joint Exhibit Book, Vol. II, Tab 131, "Charles Farnsworth Transcript", p. 10, RCO Tab 46, pp. 482; TRN Tyler Stacey-Holmes, Vol 4, p. 1053-1054, RCO Tab. 25, pp. 332, ln. 14 – pp. 333, ln. 7; TRN Liam Morrison, Vol 4, p. 977-979, RCO Tab. 19, pp. 298, ln. 32 – pp. 300, ln. 9; TRN Philip Mailey, Vol 4, p. 1144, RCO Tab. 16, pp. 261, ln. 20-28; TRN Lisa Cavanaugh, Vol 3, p. 900, RCO Tab. 6, pp. 75, ln. 14-21; TRN Dr. Simon Best, Vol 5, p. 1480, RCO Tab. 5, pp. 66, 15-21; TRN Heather Bakken, Vol 6, p. 1670, RCO Tab. 2, pp. 34, ln. 7-14; TRN Rev. Byron Gilmore, Vol 7, p. 1824, RCO Tab. 10, pp. 164, ln. 15-32; TRN Ken MacNeil, Vol 8, p. 2101-

(ii) students were not allowed to eat their meals with their peers, often eating in a separate room from the rest of the student body;[60]

(iii) students on "D" would be pulled out of their classes (all day) in order to perform these various manual labour tasks.[61] They would have to try to make-up the class-work they missed in the evenings during study hall. Sometimes teachers would provide the missed lessons/homework to these students at study hall, but not always.[62] and

(iv) some students slept separately from their peers[63] while on discipline in the infirmary or annex known as "Hotel 'D'"

(m) Other extreme and unorthodox forms of punishment were utilized at GCC, including:

(i) being brought down to the boiler room to see and feel the "flames of Hell"[64];

(ii) there was a physical regime sometimes referred to as "cold grits" which consisted of a boot-camp like fitness regimen to be completed prior to the

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2102, RCO Tab. 15, pp. 250, ln. 21 – pp. 251, ln. 10; TRN William Newell, Vol 7, p. 1863, RCO Tab. 20, pp. 303, ln. 6-8.

[60] TRN Rev. Byron Gilmore, Vol 7, p. 1824, RCO Tab. 10, pp. 164, ln. 20-29; TRN Ken MacNeil, Vol 8, p. 2102, RCO Tab. 15, pp. 250, ln. 15-19.

[61] TRN Joan Childs, Vol 1, p. 166-167, 220, RCO Tab. 7, pp. 98, ln. 29 – pp. 99, ln. 11; TRN Margit Mayberry, Vol 1, p. 319, RCO Tab. 17, pp. 266, ln. 6-13; TRN Julie Lowe, Vol 6, p. 1747, RCO Tab. 13, pp. 215, ln. 12-15; TRN Robert Creighton, Vol 9, p. 2375, RCO Tab. 8, pp. 135, ln. 11-14; TRN Francois Lukawecki, Vol 5, p. 1312, RCO Tab. 14, pp. 229, ln. 18-27; TRN Liam Morrison, Vol 4, p. 978, RCO Tab. 19, pp. 299, ln. 18-21; TRN Lisa Cavanaugh, Vol 3, p. 900, RCO Tab. 6, pp. 75, ln. 22-24; TRN Beth Granger, Vol 2, p. 637-638, RCO Tab. 11, pp. 178, ln. 7 – pp. 179, ln. 32; TRN Kathy Smart, Vol 6, p. 1577, RCO Tab. 24, pp. 329, ln. 3-11; TRN Andrew Hale-Byrne, Vol 2, p. 383, RCO Tab. 12, pp. 205, ln. 9-17; TRN Tyler Stacey-Holmes, Vol 4, p. 1053-1054, RCO Tab. 25, pp. 332, ln. 32 – pp. 333, ln. 7; TRN Philip Mailey, Vol 4, p. 1142, RCO Tab. 16, pp. 260, ln. 6-26.

[62] TRN Margit Mayberry, Vol 1, p. 320, RCO Tab. 17, pp. 267, ln. 7-13; TRN William Newell, Vol 7, p. 1864, RCO Tab. 20, pp. 304, ln. 8-20.

[63] TRN Joan Childs, Vol 1, p. 167, RCO Tab. 7, pp. 99, ln. 3-9; TRN Donald Farnsworth, Vol 7, p. 2046, RCO Tab. 9, pp. 154, ln. 28-31; TRN Tyler Stacey-Holmes, Vol 4, p. 1053, RCO Tab. 25, pp. 332, ln. 25-26; TRN Francois Lukawecki, Vol 5, p. 1315-1316, RCO Tab. 14, pp. 232, ln. 25 – pp. 233, ln. 8; TRN Philip Mailey, Vol 4, p. 1140-1141, RCO Tab. 16, pp. 258, ln. 29 – pp. 259, ln. 8; TRN Andrew Hale-Byrne, Vol 2, p. 381, RCO Tab. 12, pp. 204, ln. 9-15; TRN Dr. Simon Best, Vol 5, p. 1480, RCO Tab. 5, pp. 66, ln. 25-30.

[64] TRN Joan Childs, Vol 1, p. 222, RCO Tab. 7, pp. 121, ln. 27-29; TRN Gordon Mintz, Vol 9, p. 2526, RCO Tab. 18, pp. 286, ln. 7-15; Ex. 2: JEB, Vol. II, Tab 131, "Charles Farnsworth Transcript", pp. 13-14., RCO Tab 46, pp. 485-486.

start of the school-day (the start of the day being approximately 6:30 am for almost all students). This regimen was punitive[65]; and

(iii) exorcism-like experiences, described as being both uncanny[66] (by a defence witness) and very dramatic.[67]

(n) Collectively the punishments and disciplines were felt to be excessive by most students: defence witnesses Robert Creighton and Rev. Byron Gilmore describe them as excessive, "not positive" and often outweighing "the crime".[68]

(o) In addition to the disciplinary practices employed at GCC, Class Members also were exposed to maltreatment from the messaging they received respecting sexuality and gender.[69] Former staff witnesses, of both parties, described GCC's messaging as an unhealthy and unbalanced preoccupation with "the Christian view of sexuality – teaching fear rather than celebrating what God intended it to be".[70] Gordon Mintz, a defence witness, further described GCC's messaging in this regard as "paranoid" and an example of one of GCC's failings.[71]

(p) GCC required annual AIDS testing for all of its staff and boarding students, between 1989 and up to the mid-1990s.[72] Grenville knew that the testing was unnecessary and inappropriate,[73] even prior to implementing the policy.[74]

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[65] Ex. 2: JEB, Vol. II, Tab 131, "Charles Farnsworth Transcript", p. 10, RCO Tab 46, pp. 482; TRN Marc Bergeron, Vol 6, p. 1774, RCO Tab. 4, pp. 60, ln. 10-20; TRN Lisa Cavanaugh, Vol 3, p. 908-909, RCO Tab. 6, pp. 78, ln. 14 – pp. 79, ln. 11; TRN Beth Granger, Vol 2, p. 643, RCO Tab. 11, pp. 183, ln. 7-30; TRN Francois Lukawecki, Vol 5, p. 1318-1319, RCO Tab. 14, pp. 235, ln. 31 – pp. 236, ln. 12; TRN Gordon Mintz, Vol 9, p. 2475, 2511-2512, RCO Tab. 18, pp. 280, ln. 11-19, pp. 284, ln. 7 – pp. 285, ln. 5.

[66] TRN Marc Bergeron, Vol 6, p. 1776-1777, RCO Tab. 4, pp. 61, ln. 4 – pp. 62, ln. 22.

[67] TRN Andrew Hale-Byrne, Vol 2, p. 458-459, RCO Tab. 12, pp. 207, ln. 19 – pp. 208, ln. 15.

[68] TRN Robert Creighton, Vol 9, p. 2331, 2366, RCO Tab. 8, pp. 129, ln. 2-13, pp. 132, ln. 1-20; TRN Rev. Byron Gilmore, Vol 7, p. 1827-1828, RCO Tab. 10, pp. 167, ln. 20 – pp. 168, ln. 4.

[69] TRN Dr. Rosemary Barnes, Vol 2, p. 501, 587, RCO Tab. 3, pp. 56, ln. 26-30, pp. 58, ln. 1-25.

[70] TRN Gordon Mintz, Vol 9, p. 2437, RCO Tab. 18, pp. 273, ln. 3-10; TRN Margit Mayberry, Vol 1, p. 321-322, 353, RCO Tab. 17, pp. 268, ln. 2 – pp 269, ln. 19, pp. 270.

[71] TRN Gordon Mintz, Vol 9, p. 2527, RCO Tab. 18, pp. 287, ln. 14-28.

[72] Ex. 1: JEB, Vol. I, Tab 55, "AIDS Testing policy, November 17, 1987", RCO Tab 38, pp. 414-415; TRN Joan Childs, Vol 1, p. 182, RCO Tab. 7, pp. 105, ln. 19-27; TRN Donald Farnsworth, Vol 7, p. 2013, RCO Tab. 9, pp. 140, ln. 24-30.

[73] TRN Donald Farnsworth, Vol 7, p. 2018-2020, RCO Tab. 9, pp. 145, ln. 4 – pp. 147, ln. 32.

[74] Ex. 2: JEB, Vol. II, Tab 68, "Notes. Human Rights Commissions vs GCC, Wed. Dec. 28, 1988", RCO Tab 40, pp. 421-422.

> Grenville was the subject of a Human Rights Tribunal investigation in relation to its AIDS testing policy.[75] It was confirmed, in early 1989 (January/February) that there was no medical or legal basis for requiring this testing,[76] but did not withdraw the policy until many years later.[77]

18. These were not discrete behaviours employed sporadically and inconsistently to the Class Members based on individual circumstances. The appellants' witnesses testimony *alone* confirms both the existence and the consistent employment of these policies throughout the Class Period.

19. The appellants' contention that their "witnesses denied witnessing degrading and/or arbitration punishments", or "physical or verbal abuse" or even "pervasive abuse"[78], is clearly not substantiated by the evidence. The real areas of divergence between the evidence of the witnesses for each party were whether they characterized the practices as "abusive" and if and to what extent the practices directly affected or impacted them.

20. The key findings of fact are not only supported by the testimony of both parties' witnesses, but also supported by the 146 joint the documents and additional 62 trial exhibits. The following documents are a few examples of documents supporting the testimony of witnesses, and ultimately, the findings of fact in this case:

(a) Transcript of a tape-recording by former headmaster and founder of GCC, Alastair Haig, confirming that GCC knew it was deviating from the educational

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[75] Ex. 2: JEB, Vol. II, Tab 63, "Letter from Legge & Legge, Barristers & Solicitors to W. Murray Cotton, Esq, C.D., Human Rights Officer, Ontario Human Rights Commissions, Sept. 28, 1988", RCO Tab. 39, pp. 417-419.
[76] Ex. 2: JEB, Vol. II, Tab 76, "Opinion of the Efficacy of Mandatory Human Immunodeficiency Virus (HIV) Antibody Testing in the Prevention of Spread of AIDS in Residential School Environment", pp. 4-9, RCO Tab. 42, pp. 426-434.
[77] TRN Donald Farnsworth, Vol 7, p. 2020, RCO Tab. 9, pp. 147, ln. 1-29.
[78] Appellants/Defendants' Appeal Factum, para. 5

standards of the day and purposely employing the policies, it did, for its own ends[79];

(b) Parent Surveys in which some parents of GCC students, over the course of the Class Period, communicated their displeasure and disapproval of the various disciplinary practices. In particular, there were criticisms respecting the so-called "Honour Code" and the public chastisement of students (via Light Sessions and/or school-wide public assemblies);[80]

(c) December 7, 2000 letter from GCC to alumni, authored by the then administrators, Kenneth MacNeil and Joan Childs, apologizing to their alumni, for the "negative experiences" and for not always using the "best approach".[81] The letter further acknowledged "why students would have felt hurt" on account of the policy decisions that were implemented during the Class Period that, in hindsight, it would have done differently.[82]

(i) Joan Childs subsequently apologized for her role in the abusive practices employed by Grenville during the Class Period.[83]

(ii) Ken MacNeil (a defence witness) acknowledged at the common issues trial during cross-examination that the former practices and policies at Grenville may have resulted in abuse.[84]

(d) Corporeal Punishment Letters [85]

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[79] Trial Judgement at para. 169, ABCO Tab 3, pp. 065; Ex. 12: Transcript of audio tape and index of the Stamps, RCO Tab. 51, pp. 531-541.
[80] Ex. 1: JEB, Vol. I, Tab 49, "Criticisms from Parent Questionnaire (multiple)" p. 1, RCO Tab. 37, pp. 412.
[81] Ex. 2: JEB, Vol. II, Tab 105, "Letter dated Dec. 7, 2000, to alumni, signed by Kenneth MacNeil and Joan Childs", p. 3-4, RCO Tab. 44, pp. 467-469; TRN Joan Childs, Vol 1, p. 190, RCO Tab. 7, pp. 107, ln. 10-29.
[82] *Ibid*.
[83] TRN Joan Childs, Vol 1, p. 190, 250-252, 265, RCO Tab. 7, pp. 107, ln. 10-29, pp. 122, ln. 10 – pp. 124, ln. 9., pp. 125, ln. 14-29; Ex. 2: JEB, Vol. II, Tab 125: "Factnet post by Joan Childs", RCO Tab. 45, pp. 471.
[84] TRN Ken MacNeil, Vol 8, p. 2120-2121, RCO Tab. 15, pp. 254, ln. 5 – pp. 255, ln. 31.
[85] Ex. 1: JEB, Vol. 1, Tab 22, "Letter from C. Farnsworth to Mr. & Mrs. Ourward N. Cann Sr re Paddling and Discipline", RCO Tab 30, pp. 372; Ex. 1: JEB, Vol. I, Tab 24, "Letter from Charles R. Farnsworth to Mr. & Mrs. W. H. Barker re Spanking, Lecture and Special Discipline", RCO Tab 31, pp. 374; Ex. 1: JEB, Vol. I, Tab 27, "Letter from Charles Farnsworth to Rev. & Mrs. Kenneth H. Russ re Paddled", RCO Tab 32, pp. 376; Ex. 1: JEB, Vol. I, Tab 28, "Letter from Charles Farnsworth to Mr. & Mrs. G. Huttinger re Paddled", RCO Tab 33, pp. 378; Ex. 1: JEB, Vol. I, Tab 29, "Letter from Charles R. Farnsworth to Mr. & Mrs. W. H. Barker re Paddling", RCO Tab 34, pp. 380; Ex. 1: JEB,

(e) Girls Dress Code[86]

(f) AIDS Policy documents[87]

(g) Suicide Record[88]

(h) Charles Farnsworth Transcript (especially in re: Honour Code and "flames of hell")[89]

(i) How do we Nurture Christian Values – March 27, 1981[90]

21. Two expert witnesses were put forward by the respondents at the common issues trial. Dr. Axelrod and Dr. Barnes provided evidence with respect to educational standards applicable and potential harms. Their evidence was uncontroverted.[91]

22. Dr. Axelrod discussed the standards of care in education, from the 1950s through the reforms of the 1960s and beyond. He explained that the reforms of the 1960s were based on a child-centered focus and were crystalized by the Hall-Dennis Report of 1968, which report focused education on the abilities and interests of the students with teachers in the role of mentors, not just authority figures, marking the beginning of a liberalization of education policy

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Vol. I, Tab 34, "Letter from Charles R. Farnsworth to Mr. & Mrs. M. M. Shepherd re Spanked x 2 Occasions," RCO Tab 35, pp. 382-384.

[86] Ex. 2: JEB, Vol. II, Tab 71, "Girls Dress Regulations", RCO Tab 41, pp. 424.

[87] Ex. 1: JEB, Vol. I, Tab 55, "AIDS Testing policy, November 17, 1987", RCO Tab 38 pp. 414-415; Ex. 2: JEB, Vol. II, Tab 68, "Notes. Human Rights Commissions vs GCC, Wed. Dec. 28, 1988", RCO Tab 40, pp. 421-422; Ex. 2: JEB, Vol II, Tab 76, "Letter from Legge & Legge Barristers & Solicitors to Father Farnsworth re Request for tax receipt re fees/work completed on AIDS", RCO Tab 42, pp. 426-434; Trial Judgement at para. 234, ABCO Tab 3, pp. 072; TRN Donald Farnsworth, Vol. 7, p. 2013-2022, RCO Tab 9, pp. 140, ln. 24 – pp. 147, ln. 29.

[88] TRN Gordon Mintz, Vol. 9, p. 2505-2507, RCO Tab 18, pp. 281, ln. 21 – pp. 283, ln. 19; Ex: 62, RCO Tab 56, pp. ; Trial Judgement at para.214, ABCO Tab 3, pp.072.

[89] Ex. 2: JEB, Vol. II, Tab 131, "Charles Farnsworth Life History Transcript", Pg. 10, 13-14, RCO Tab 46, pp. 482, 485-486.

[90] Ex. 9: JEB, Vol III, Tab 135, "How Do We Here At Grenville Nurture Christian Values?", RCO Tab 56, pp. 594; Trial Judgement at paras. 245-249, ABCO pp. 51-52.

[91] Trial Judgement, at paras. 135-136 and 250-253., ABCO Tab. 3, pp. 059, 078.

and standards in Ontario throughout the 1970s right through to the 1990s.[92] The Hall-Dennis Report called for:

(a) the abolition of all corporal and other degrading forms of punishment;

(b) creating a more engaging learning environment, including teachers as guides, advisers and facilitators rather than authoritarian leaders and allowing students greater freedom and choice; and

(c) more generally, creating an atmosphere of respect and trust.

23. The court learned, through Dr. Axelrod's evidence, that the guidelines and guidance that grew out of that 1968 Report included a 1969 letter from the Ministry of Education to all schools in Ontario, including private schools, encouraging educators to interpret the current longstanding regulation requiring pupils to submit to such discipline as would be exercised by a kind, firm and judicious parent, in such a way as to foster an atmosphere of respect and trust between students and teachers with the cultivation of individual responsibility as a major goal.[93] The letter further outlined the Ministry's position with respect to the emerging new standard in Ontario, which included the following:

(a) the abolition of all corporal and *other degrading forms* of punishment;

(b) creating a more engaging learning environment, including teachers as guides, advisers and facilitators rather than authoritarian leaders and allowing students greater freedom and choice; and

(c) more generally, the emphasis on creating an atmosphere of respect and trust.[94]

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[92] TRN Dr. Paul Axelrod, Vol 5, p. 1393, 1417, RCO Tab. 1, pp. 2, ln. 1-21, pp. 9, ln. 5-31.
[93] TRN Dr. Paul Axelrod, Vol 5, p. 1450-1451, RCO Tab. 1, pp. 22, ln. 10 – pp. 23, ln. 6.
[94] TRN Dr. Paul Axelrod, Vol 5, p. 1417, RCO Tab. 1, pp. 9, ln. 24-31.

24. Dr. Axelrod provided evidence respecting the other influences on the education standards in Ontario through the 1980s and 1990s.

25. Dr. Axelrod opined that the stated philosophies of education, and policies of GCC fell well below the standards of the day − as compared to other educational institutions in Ontario, including other private schools.[95] Dr. Axelrod concluded that GCC was unusually harsh, doctrinaire and very severe compared to other similar institutions. He further opined that the disciplinary practices, teachings and messaging respecting sexuality at GCC were abusive and at odds with schools in Ontario and was harmful and hurtful to students.[96]

(a) GCCs stated goals were unclear, vague and confusing;[97]

(b) GCC's AIDS testing policy, was likely a violation of privacy rights respected at other private schools in Ontario at the time;[98]

(c) the degree of control GCC exhibited was both unsophisticated and suggestive of a repressive environment, not at all in keeping with other comparable institutions;[99]

(d) the penalties imposed at GCC, the hostile way in which students were treated, and their vilification, along with the abusive language used, were unique and again, not in any way in line with or in keeping with the standards of the day;[100]

(e) even taking into consideration that corporal punishment was not formally criminalized until the 2000s;[101] and

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[95] TRN Dr. Paul Axelrod, Vol 5, p. 1424-1426, 1428, 1431-1433, 1435-1437 and 1450-1451, 1461-1462, RCO Tab. 1, pp. 12, ln. 4 – pp. 14, ln. 21, pp. 15, ln. 2-8, pp. 16, ln. 1 – pp. 18, ln. 27, pp. 19, ln. 26 – pp. 21, ln. 30 and pp. 22, ln. 10 – pp 23, ln. 1, pp. 25, ln. 29 – pp. 26, ln. 1.
[96] *Ibid*.
[97] *Supra*, note 89 at p. 1401-1403, RCO Tab. 1, pp. 3, ln. 31 – pp. 5, ln. 6.
[98] *Supra*, note 89 at p. 1432-1434, RCO Tab. 1, pp. 17, ln. 24 – pp. 19, ln. 19.
[99] *Supra*, note 89 at p. 1401-1403, RCO Tab. 1, pp. 3, ln 31 – pp. 5, ln. 6.
[100] *Supra*, note 89 at p. 1433, RCO Tab. 1, pp. 18, ln. 2-15.
[101] *Supra*, note 89 at p. 1411, 1459, RCO Tab. 1, pp. 6, ln. 16-19, pp. 24, ln. 26-31.

(f) with respect to Light Sessions and public humiliations, he said the practice was unheard of and constituted emotional maltreatment as it came to be understood in education.[102]

26. According to the evidence of Dr. Barnes, GCC's policies were abusive and amounted to maltreatment of the students, exposing class members to increased risk of psychological harms.[103] Dr. Barnes outlined how GCC functioned as a "Total Institution", where staff subjected many Class Members to coercive control. She concluded that these aspects of GCC's structure and operation likely increased Class Members' vulnerability to the abuse.[104] In her opinion, GCC subjected students to repeated, varied and severe forms of maltreatment and trauma, or emotional harm.[105] Dr. Barnes also explained that Total Institutions tend to impose conditions of disconnection, degradation, and powerlessness on the children in their care and that those conditions are all aspects of emotional harm, which is a form of maltreatment in and of itself, and that these conditions existed at GCC.[106]

PART III – ISSUES

27. The only issues before this Court are whether or not the learned trial judge made any legal or palpable and overriding errors 1) in finding systemic negligence and 2) with respect to foreseeability.

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[102] *Supra*, note 89 at p. 1435, RCO Tab. 1, pp. 19, ln. 16-25.
[103] TRN Dr. Rosemary Barnes, Vol 2, p. 471, 486-490, RCO Tab. 3, pp. 41, ln. 22-32, pp. 45, ln. 21 – pp. 49, ln. 32.
[104] *Ibid*.
[105] *Supra,* note 97 at p. 493-495, 498-502, RCO Tab. 3, pp. 50, ln. 3 – pp. 52, ln. 26, pp. 53, ln. 12 – pp. 57, ln. 28.
[106] *Supra,* note 97 at p. 480-482, RCO Tab. 3, pp. 42, ln. 22 – pp. 44, ln. 8.

PART IV – LAW & ANALYSIS

(a) The Standards of Review

28. On a pure question of law the standard of review is that of correctness. [107]

29. The standard of review for findings of fact, or mixed fact and law, is "palpable and overriding error".[108]

30. There are numerous reasons for applying this standard, including:

(a) The scarcity of judicial resources[109]

(b) Promoting the autonomy and integrity of trial proceedings[110]; and

(c) Recognizing the expertise of the trial judge and her advantageous position, owing to her extensive exposure to the evidence, hearing testimony *viva voce* and familiarity with the case as a whole.[111]

31. The role of an appellate court "is not to write better judgments but to review the reasons in light of the arguments of the parties and the relevant evidence, and then to uphold the decision unless a palpable error leading to a wrong result has been made by the trial judge".[112]

32. In the within case, the appellants primarily accuse the learned trial judge of errors respecting her weighing of evidence, her factual findings and inferences and the result on her legal findings. With respect, the narrowly defined scope of appellate review dictates that a trial judge should not be found to have misapprehended or ignored evidence, or come to the wrong

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[107] *Housen v. Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235, para 8. ["*Housen*"]. AOR Tab 10.
[108] *Housen, supra* note 101, at paras. 1, 36. AOR Tab 10.
[109] *Housen supra*, note 101 at para. 16. AOR Tab 10.
[110] *Housen supra*, note 101 at para. 17. AOR Tab 10.
[111] *Housen supra*, note 101 at para. 18. AOR Tab 10.
[112] *Hounsen, supra*, note 101 at para. 4. AOR Tab 10.

conclusions merely because an appellate court (and the appellants in this case) diverges in the inferences it draws from the evidence and chooses to emphasize some portions of the evidence over others.[113]

33. The Supreme Court of Canada, in *Toneguzzo-Norvell*, states that the weighing of evidence: the choice of placing less weight on certain evidence over other evidence was "in the province of the trier of fact" and ought not to be interfered with at appeal.[114]

34. Justice Leiper considered all of the evidence before her, which is self-evident in her extensive reasons.[115] She was not required to weight nor comment on all of the evidence equally. Her assessments respecting the weighing of evidence and the credibility of witnesses was reasonable and justified and expressly set out: she made no legal or palpable and overriding errors.

35. Justice Leiper correctly applied the facts of this case to the applicable legal principles. Her findings respecting systemic negligence, breaches of the standards of care applicable, and breach of fiduciary duty ought not to be overruled or revisited.

b) Systemic Breaches of the Duty of Care and Fiduciary Duties

36. Systemic negligence is negligence not specific to any one victim, but rather to the class of victims as a group.[116] It arises when individual acts, omissions, and/or decisions are directed

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[113] *Housen, supra*, note 101, at para 56. AOR Tab 10.
[114] *Housen, supra*, note 101 at para 58. AOR Tab 10; *Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital*, 1994 CanLII 106 (SCC), [1994] 1 SCR 114 at p. 122. AOR Tab 19.
[115] Trial Judgement, at paras. 8, 9, 24, 27, 31-35, 174, 184, 189, 198, 203, 206, 214, 219, 226, 228-234, 238, 241, 274, 281, 284, 325 and 331-334, ABCO Tab. 3, pp.028-029, 031, 032-033, 066-067, 069-071, 072-076, 082-084, 093-095 – all reference the defendant/appellant witnesses and their evidence. See also paras. 307-309, 315,317, 322, 328-329, 335, and 339-346 – expressly referencing the defendants' concessions re: the evidence of harm and breaches of the standards of care and their submissions on the interpretation of the evidence
[116] *Rumley v. British Columbia*, 2001 SCC 69, at para. 34 ["*Rumley*"]. ABA Tab 5.

towards a general, rather than specific set of circumstances. The impugned acts or omissions are said to be negligent because they create or maintain a system that is inadequate to protect the class from the alleged harm.[117]

37. To establish systemic negligence, a plaintiff must show that the systemic negligence of the institution created the necessary context for the acts complained of and the harm sustained. In *Rumley*, the Supreme Court stated the test as: the failure to have in place management and operations procedures that would reasonably have prevented the [tortious action].[118]

38. Justice Leiper made no errors in reaching the conclusion that GCC's policies were systemically negligent and likely to cause harm. The learned trial judge correctly approached the question from an objective viewpoint, and weighed and judged the evidence before her accordingly.[119]

39. Justice Leiper addressed the appropriate considerations and made no errors in coming to her conclusions respecting breaches of the standard of care.[120]

40. Notwithstanding the agreement between the parties herein as to the existence of duties of care[121], it is well established in Canadian law (1) that school authorities and administrators owe their students a duty of care;[122] and, (2) that the standard of care to be exercised by school

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[117] *White v. Canada (Attorney General)*, 2002 BCSC 1164, at para. 30 ["*White*"]. AOR Tab 21.
[118] *Rumley, supra,* note 110, at para. 30. ABA Tab 5.
[119] Trial Judgement at para. 28 ABCO Tab. 3, pp.032
[120] Trial Judgement at para. 29 ABCO Tab. 3, pp.032
[121] Ex. 3, "Agreement on Facts, Chronology and Definitions", ABCO Tab 29, pp. 402-411.
[122] *Proulx v. Pim*, (2008) 89 OR (3d) 290 (Sup Ct J) at para 61 [*Proulx*], AOR Tab 15.; *Myers v Peel (County) Board of Education* [1981] 2 SCR 21 at page 31 [*Myers*], AOR Tab 14.; *H.(S.G.) v Gorsline supra* 2001 ABQB 163 at para 84 [*Gorsline*], aff'd 2004 ABCA 186, leave to appeal refused, AOR Tab 8; *Rowson v Abel*, 2011 ONSC 4350 at para 22 [*Rowson*], AOR Tab 17.

authorities and administrators in providing for the supervision and protection of their students is that of the careful or prudent parent at the time of the alleged negligence.[123]

41. Canadian case law establishes that the standard of care is breached where a school authority or administrator fails to adequately supervise staff, fails to detect signs of abuse that would be apparent to a prudent parent, and/or fails to properly report or investigate allegations of abuse.[124] This standard of care is also breached where the school authority or administrator's acts and/or omissions and the way the school was run was systemically negligent. By way of examples, systemic negligence occurs where the school created or maintained a pervasive culture of abuse.[125] The institutional duty of care may also be breached through the inadequate provision of entitlements; through inherently damaging or destructive institutional policy; or, through a failure to have policies in place to deal with abuse.[126]

42. Where the institution has a "taken for granted" view of itself and the world, a way of seeing that is simultaneously a way of not seeing, that does not allow for the recognition of risk or harm, structural blindness occurs.[127] Rigidity, inability to admit wrongfulness and preoccupation with image also contribute to the institution's inability to "see" what, to the

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[123] *Myers*, *supra* note 117 at p. 14, 31, AOR Tab 14; *Rollins (Litigation Guardian of) v English Language Separate District School Board No 39*, [2009] OJ No 6193 (Sup Ct J) at para 93 [*Rollins*], AOR Tab 16; *Rumley, supra*, note 110, ABA Tab 5.

[124] *F.S.M. v Clarke*, [1999] BCJ No 1973 (SC) at paras 181, 183, [*F.S.M.*], AOR Tab 5; *A. (T.W.N.) v Clarke*, 2003 BCCA 670 at para 122 [*A.(T.W.N.)*], AOR Tab 1.

[125] Margaret Isabel Hall, "Institutional Tort Feasors: Systemic Negligence and the Class Action" (March 2006) at pg. 7, online: ResearchGate , [Hall], AOR Tab 9; E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia, 2005 SCC 60 ["*Oblates*"] at para. 4, AOR Tab 2; White v. Canada (Attorney General), 2002 BCSC 1164 ["*White*"] at paras. 20-21, 49, AOR Tab 22; Cloud v. Canada, 73 O.R. (3d) 401, [2004] O.J. No. 4924 ["*Cloud*"] at para. 66, ABA Tab 2.

[126] *Oblates supra*, note 120, at para 7 AOR Tab 2.; *Rumley*, *supra*, note 110, at para 30. ABA Tab 5.

[127] Hall, *supra*, note 263 pp. 7-8, AOR Tab 9.

outsider, appear as obvious indicators of abuse.[128] Structural blindness acts as the foundation and necessary precursor for a more active wilful blindness.[129]

43. The policies of GCC, as established by the evidence at the common issues trial, showed GCC to be below the standard of care throughout the entire Class Period (1973-1997).[130] The trial judge found the following below standard systemic breaches of the duty of care: Discipline or "D", Corporal Punishment, All School Assemblies and Correction Sessions, Grenville's Views and Teachings Regarding Sexuality[131]. These below-standard policies were also determined to likely cause harm, and their employment during the Class Period was deemed to be a systemic breach of the school's duty of care to the Class Members.[132]

44. There was ample evidence to support these findings.

> The evidence from the available record, former staff and students reveals that Grenville had written policies, rules, standards and its underlying philosophies. In contrast, there was an absence of policy for how those rules would be enforced, including how and when corporal punishment would be used, for what infractions, the duration and manner of students being placed "on discipline" and the duration and nature of all school sessions to humiliate and single out students who had breached the rules. As a result, certain practices and consequences were meted out arbitrarily.
>
> The uncontradicted expert evidence at trial established that Grenville's practices of enforcing its rules were abusive, caused harm to students and placed the student body at risk.
>
> The findings of maltreatment establish that the health and well-being of students were placed at risk by Grenville's operational choices. In particular, Grenville's administration failed to ensure that there were checks on its use of its power to punish its students for breaches of the rules. This placed those students at risk of harm to their healthy development.[133]

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[128] Hall, *supra*, note 263 at p. 8, AOR Tab 9.
[129] *Ibid*.
[130] Trial Judgement at paras. 138-144 and 243-249. ABCO Tab. 3, pp. 059-060, 077-078.
[131] Respondents' Factum, Appendix.
[132] Trial Judgement at paras. 256-259, 268-270, 275, 285-288. ABCO Tab. 3, pp. 079-081, 082, 085.
[133] Trial Judgement at paras. 352-354, ABCO Tab 3, pp.097.

45. The fact that not all former students consider the school's conduct abusive, allege mental injury or acknowledge having been harmed by their experience at GCC does not change the fact that the policies employed at GCC, throughout the Class Period, were systemically negligent and could cause harm to the Class Members. In fact, this was rightly ignored at this stage of the proceeding. As Dr. Barnes explained in her testimony, there are many individual resiliency factors that can work to mitigate against the impact of abuse and maltreatment.[134] Ultimately these differences in impact and experience are a matter for consideration and the damages-assessment phase of this litigation, not the common issues trial.

46. As a boarding school, GCC's primary purpose should have been to provide educational and boarding experiences that would foster child and adolescent development. Instead, the policies they employed were systemically negligent, amounted to maltreatment of its students, and created an environment where harm was the likely and foreseeable result.

Fiduciary Duty

47. It is well established in Canadian law that school authorities and administrators owe a fiduciary duty to their students. As Horkins J of the Ontario Superior Court of Justice stated in *Seed v Ontario*[135] – a class action alleging that the defendant Crown knew or ought to have known of the physical, emotional and sexual abuse being perpetrated against the students of a school it operated, administered and managed for the visually impaired –, "[i]t is not disputed

[134] Trial Judgement at paras. 331-334, ABCO Tab 3, pp. 094-095.
[135] *Seed v. Ontario*, 2012 ONSC 2681 [*Seed*], AOR Tab 18.

that the law recognizes that a fiduciary duty is owed in the facts of this case. Parents, guardians, school boards and other persons with care of children owe a fiduciary duty to those children."[136]

48. The Supreme Court of Canada defines the fiduciary duty imposed on parents as a duty to act loyally and not put one's own or others' interests ahead of the child's in a manner that abuses that child's trust.[137] The parent "need not be consciously motivated by a desire for profit or personal advantage; nor does it have to be her own interests, rather than those of a third party, that she puts ahead of the child's. Instead, it is a question of disloyalty – of putting someone else's interests ahead of the child's in a manner that abuses the child's trust.

49. The fiduciary obligations owed by school administrators and administrators to their students are similar to that of a parent.[138] School authorities and administrators owe a fiduciary duty to their students "to ensure that reasonable care [is] taken of the students both physically and emotionally and that they [are] protected from intentional torts."[139] They have a responsibility 'to ensure the students' safety at school and in the residence."[140]

50. Justice Leiper found that GCC breached it's fiduciary duty to the class:

> The evidence at trial established a 24-year course of conduct which amounted to a marked departure from the educational standards in Ontario. Some students ran away, hid or asked to be taken out of the school. Others were not believed or suffered in silence. I have concluded that the evidence of maltreatment and the varieties of abuse perpetrated on students' bodies and minds in the name of the COJ values of submission and obedience was class-wide and decades-wide. The plaintiffs have established that this conduct departed from the standards of the day. The school created a place to mold students using the precepts and norms of

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[136] *G.(E.D.) v Hammer*, [1998] BCJ No 992 (SC) at paras 39-41, 49 [*Hammer SC*], AOR Tab 6, aff'd 2001 BCCA 226, aff'd; *G.(E.D.) v Hammer*, 2003 SCC 52 at paras 26-27 [*Hammer SCC*], AOR Tab 7. See also *Gorsline*, *supra* note 117 at para 113. AOR Tab 8.
[137] *K.L.B. v. British Columbia*, 2003 SCC 51 (CanLII) at para 49, AOR Tab 12.
[138] *Blackwater v Plint*, 2005 SCC 58 ["*Blackwater*"] at para 57., AOR Tab 4.
[139] *Ibid*.
[140] *Blackwater, supra*, note 133, AOR Tab 4.

> the COJ. It obscured its more extreme practices from its patrons and parents. It failed to keep records of the more extreme discipline practices. It had no written policy on its disciplinary practices. It required the appearance of happiness, enforced by strict discipline. Grenville insisted on the highest possible standards for *its own benefit and reputation to continue to obtain enrolment*. [EMPHASIS ADDED]
>
> The hidden cost for many students came the form of lack of privacy, physical and emotional stability, autonomy, and well-being.
>
> Grenville knowingly created an abusive, authoritarian and rigid culture which exploited and controlled developing adolescents who were placed in its care. In doing so, it caused harm to some students and exposed others to the risk of harm. This meant that the headmasters profited from their positions, reputations, status and control over a cowed student body.
>
> Grenville's founders knew they had created a counterculture—they had a preferential place in the culture and did not hold themselves to the standards they expected of others. There were no light sessions for the headmasters, in spite of the espoused value of "Living in the Light." Without any accountability, either by reporting to a board or to written established policy, the headmasters were the absolute masters of the Grenville domain, indulging in acts of petty cruelty and doling out disproportionate physical and emotional pain to vulnerable or less-favored students. [141]

51. The evidence adduced at the trial of the common issues supports this finding and is consistent with caselaw where breach of fiduciary duty has been found.

(c) Punitive Damages

52. Justice Leiper also correctly determined the common issue respecting the applicability of punitive damages. She correctly applied the law as set out in *Whiten v. Pilot Insurance*.[142] The evidence adduced at the common issues trial speaking to the appellants' conduct was the very same evidence required to make her determination respecting punitive damages.

53. Where, as here, the primary common issue is whether GCC breached a duty of care and/or fiduciary duty, and this determination necessarily requires the court to assess the

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[141] Trial Judgement at paras. 364-366. ABCO Tab 3, pp. 099.
[142] *Whiten v. Pilot Insurance Co.*, [2002] 1 SCR 595, 2002 SCC 18, ["*Whiten*"] AOR Tab 23.

knowledge and conduct of those in charge of GCC over a period of time, availability of punitive damages is appropriately determined at this same stage, given that the inquiry necessary to determine breach of duty is the same fact-finding necessary to determine whether punitive damages are justified.[143]

54. The availability of a punitive damages award is based on the defendant's conduct rather than the plaintiff's loss. The court can award punitive damages where (1) the defendant committed an independent or separate actionable wrong causing damage to the plaintiff; and, (2) the defendant's conduct constitutes high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.[144]

55. Additionally, where, as here, liability is founded in systemic negligence, " […] the appropriateness and amount of punitive damages is amenable to resolution as a common issue".[145]

56. Justice Leiper found that GCC knowingly created an abusive, authoritarian and rigid culture.[146] GCC's founders knew they had created a counterculture—yet they themselves had a preferential place in the culture and did not hold themselves to the standards they expected of others.[147] Justice Leiper made no errors in law and no palpable or overriding error in respect of her determination about the applicability of punitive damages herein.

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[143] *Rumley, supra*, note 110 at para 34. ABA Tab 5.
[144] *Whiten, supra*, note 137 at paras 78-79, 94. AOR Tab 23.
[145] *Whiten, supra*, note 137 at paras 78-79, 94. AOR Tab 23.
[146] Trial Judgement at paras. 365-366, ABCO Tab. 3, pp. 099.
[147] Trial Judgement at para. 366, ABCO Tab. 3, pp. 099.

(d) Foreseeability

57. As part of the appellants' submissions herein, they have raised the issue of foreseeability with regard to the harm the plaintiffs suffered. Foreseeability is not part of the analysis of breach of duty and was not certified as a common issue. In the alternative, there was a reasonable basis upon which Justice Leiper could find that harm to class members was foreseeable.

58. At trial, the appellants focused their defence on whether the harm was actionable. During the trial, the appellants did not present expert evidence on foreseeability, they did not cross examine the respondents' experts on it, nor did they present any lay evidence to support any such submission. To summarize, the substance of their submission centred on the following:

(a) That many students had good experiences while attending the school;

(b) That many acts were not wrong and did not amount to a breach of the standard of care; and

(c) Although there may have been a few deliberate wrongs, these were not systemic actions.

59. On appeal, the appellants submit that Justice Leiper erred in failing to recognize that the evidence did not support a finding of foreseeable risk of mental injury, and also erred in not providing analysis on how a class-wide breach of the standard of care could cause foreseeable mental injury to the class.

60. In tort law, the foreseeability analysis is restricted to two particular stages of the negligence analysis. First, foreseeability is addressed during the duty of care inquiry (i.e. when determining whether a duty is owed), and secondly, in the context of damages, in relation to the issue of whether damage are too remote.

61. The law is clear that foreseeability is not considered or discussed in any other context during the negligence analysis and has no place in the analysis of whether a breach of duty occurred. In the Supreme Court of Canada decision, *Mustapha*, the discussion of foreseeability was restricted to the damages/remoteness analysis. CJC McLachlin, as she then was stated the following:

> […] The remaining question is whether that breach also caused the plaintiff's damage in law or whether it is too remote to warrant recovery […] Any harm which has actually occurred is "possible"; it is therefore clear that possibility alone does not provide a meaningful standard for the application of reasonable foreseeability. The degree of probability that would satisfy the reasonable foreseeability requirement was described in *The Wagon Mound (No. 2)* as a "real risk", i.e. "one which would occur to the mind of a reasonable man in the position of the defendant ... and which he would not brush aside as far-fetched.[148]

62. On appeal, the appellants rely on *Saadati* to raise the issues of foreseeability. It is clear in *Saadati* that the Supreme Court is discussing foreseeability in the context of the damages analysis and not whether a duty of care had been breached. The Court in *Saadati* states as follows:

> Liability in negligence law is conditioned upon the claimant showing (i) that the defendant owed a duty of care to the claimant to avoid the kind of loss alleged; (ii) that the defendant breached that duty by failing to observe the applicable standard of care; (iii) that the claimant sustained damage; and (iv) that such damage was caused, in fact and in law, by the defendant's breach (Mustapha, at para. 3). At issue here is the third element. As they argued at the Court of Appeal, the respondents say that the trial judge erred by awarding damages for mental injury that did not correspond to a proven, recognized psychiatric illness. More specifically, the Court must answer the narrow question of whether it is strictly necessary, in order to support a finding of legally compensable mental injury, for a claimant to adduce expert evidence or other proof of a recognized psychiatric illness.[149]

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[148] *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 (CanLII) ["*Mustapha*"] at paras. 11-13, AOR Tab 13.
[149] *Saadati v. Moorhead*, 2017 SCC 28, ["*Saadati*"] at para. 13, ABA Tab. 6.

> Indeed, the claim in Mustapha failed on that last element: the claimant's damage was not caused in law by (that is, it was too remote from) the defendant's breach. Mustapha thus serves as a salutary reminder that, even where a duty of care, a breach, damage and factual causation are established, there remains the pertinent threshold question of legal causation, or remoteness — that is, whether the occurrence of mental harm in a person of ordinary fortitude was the reasonably foreseeable result of the defendant's negligent conduct (Mustapha, at paras. 14-16). And, just as recovery for physical injury will not be possible where injury of that kind was not the foreseeable result of the defendant's negligence, so too will claimants be denied recovery (as the claimant in Mustapha was denied recovery) where mental injury could not have been foreseen to result from the defendant's negligence.[150]

63. Both *Mustapha* and *Saadati* demonstrate that foreseeability does not arise during the discussion of whether the standard of care was breached. GCC has not, at trial, or subsequently at this appeal, presented case law that rebuts this principle.

64. As such, issues pertaining to foreseeability cannot be raised by GCC or considered by this Court at this stage. Based on all of the above, the appellants' submission that Justice Leiper erred in failing to appropriately contemplate foreseeability in her analysis, is not permitted, and even if it is, it is misplaced and incorrect at this stage of the litigation (it will arise and be addressed in the context of damages, in the next phase(s)).

65. In the alternative, if foreseeability was part of the common issues certified it is respectfully submitted that it was established and is self-evident in the reasons of Justice Leaper, relying on the facts and evidence as well as the law as it applies to the common issues in this case.

66. In assessing foreseeability, the standard will be an objective one in which the court considers, what would or ought to have been known, at the relevant time, by a reasonable person

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[150] *Saadati*, *supra*, note 144 at para. 20, ABA Tab. 6

with the defendant's knowledge and experience, and whether they would have acted similarly to the defendant in the same circumstances.

67. Recently in, *Rankins (Rankin's garage & Sales) v JJ,*[151] the Supreme Court of Canada, while assessing duty of care, reviewed the law on reasonable foreseeability and reaffirmed that whether or not something is 'reasonably foreseeable' is an objective test.[152] The SCC confirmed that 'the analysis is focussed on whether someone in the defendant's position ought reasonably to have foreseen the harm rather than whether the specific defendant did.'[153] The SCC highlighted that a key factor is whether the plaintiff has 'offered facts to persuade the court that the risk of the type of damage that occurred was reasonably foreseeable to the class of plaintiffs that was damaged.'[154]

68. The law is clear that Courts will apply this objective test, in consideration of the specific contextual circumstances, and in particular any specific circumstances that may increase the intensity, dependency, or vulnerability experienced by the complainants, as a possible contributing factor in determining the likelihood harm was foreseeable. Justice Leiper correctly identified this objective test in her conclusion on the existence of a duty of care at the beginning of her decision.[155]

69. *John Doe (GEB #25) v Roman Catholic Episcopal Corp. of St. John's*,[156] is a recent case wherein the Newfoundland and Labrador Court of Appeal also considered the issue of foreseeability and confirmed that an objective test applies. The action was brought against the

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[151] *Rankin (Rankin's Garage & Sales) v. J.J.* 2018 SCC 19, ABA Tab 4.
[152] *Rankin, supra* note 146, at para. 53, ABA Tab 4.
[153] *ibid*
[154] *Rankin, supra*, note 146 at para. 24, ABA Tab 4.
[155] Trial Judgement at para. 18, ABCO Tab 3, pp. 030.
[156] *John Doe (G.E.B. #25) v The Roman Catholic Episcopal Corporation of St. John's*, 2020 NLCA 27 (CanLII) ["John Doe"] leave to appeal denied 2021 CanLII 1097 (SCC), AOR Tab 11.

Roman Catholic Archdiocese of St John's and involved sexual abuse that occurred in the 1950s. The plaintiffs appealed the trial judgment dismissing their claims against the Archdiocese for vicarious liability and negligence. The appeal court held that the trial judge had erred in two ways: firstly, in respect of their analysis of the existence of the duty of care and secondly with respect to the analysis regarding foreseeability of harm:

> For the reasons that follow, we conclude that the judge made two errors in his analysis and conclusion on foreseeability.
>
> The first relates to whether a subjective or objective standard is used in assessing reasonable foreseeability. The judge indicated that a subjective test is applied, stating "[f]oreseeability by definition is the subjective view of the observer" (para. 244).
>
> However, with respect, this is not the standard. The Supreme Court confirmed in Rankin's Garage that the test is objective, stating at paragraph 53 that "[w]hether or not something is 'reasonably foreseeable' is an objective test", and that the "analysis is focused on whether someone in the defendant's position ought reasonably to have foreseen the harm rather than whether the specific defendant did".
>
> […]
>
> Applying an objective test of reasonable foreseeability, the question to be considered is not what Monsignor Ryan would have understood or believed. It is whether a reasonable person in his situation ought to have foreseen harm if no action was taken. The judge makes no reference to what a reasonable person ought to have foreseen. We conclude that the judge erred in this regard.
>
> The second error in the judge's approach is that the focus was on whether the abuse was foreseeable. However, when assessing foreseeability, the Supreme Court has indicated that the focus must be on whether harm or injury to the plaintiff was foreseeable. It is the foreseeability of harm resulting from a failure to act which must be considered, not whether people would have believed the Brothers were sexually assaulting the boys.
>
> In Deloitte & Touche v. Livent Inc. (Receiver of), 2017 SCC 63, [2017] 2 S.C.R. 855, the Supreme Court stated that the main issue to be determined in this context is whether injury or harm to a plaintiff is reasonably foreseeable.

> Assessing reasonable foreseeability in the prima facie duty of care analysis entails asking whether an injury to the plaintiff was a reasonably foreseeable consequence of the defendant's negligence (Cooper, at para. 30).
>
> The key question is whether, on an objective analysis, a person in Monsignor Ryan's situation ought to have reasonably foreseen that future harm might result from a failure to act. Ultimately this question was not addressed because the judge's focus was on foreseeability of the particular abuse disclosed to Monsignor Ryan, not foreseeability of harm from a general failure to act.[157]

70. *FSM v Clarke*[158] was an action brought against the Anglican Church, the Minister of Indian and Northern Affairs and Clarke for damages for negligence, breach of fiduciary duty, and vicarious liability. The action arose from the plaintiff's repeated sexual assault at an Indian residential school where the plaintiff was a resident from 1969 to 1976. In determining whether the harm was foreseeable to establish a duty of care, the Court applied the objective test of what a reasonable and prudent person would do, taking into consideration the knowledge of each party and the ability of each to act.[159] The Court held that:

> the very concept of negligence presupposes that the actor either does foresee an unreasonable risk of injury or could foresee it if he conducted himself as a reasonably prudent person. **Foreseeability of harm, in turn, unless it is to depend on supernatural revelation, must depend on knowledge**. Knowledge has been defined as the consciousness of the existence of a fact.[160]

71. In *FSM*, the Court concluded that both the Anglican Church and the Crown had or ought to have had the requisite knowledge of the future harm the abuse would have on the plaintiff.[161] Importantly, the Court highlighted that the intensive environment fostered at the residential school, along with the role assumed by the Anglican Church, in knowingly immersing FSM in a pervasive, purposeful *institutional* Anglican environment, the defendants undertook a role to

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[157] *John Doe, supra*, note 150, at paras. 275-285. AOR Tab 11.
[158] *F.S.M. supra*, note 119, AOR Tab 5.
[159] *FSM supra*, note 119, at para. 176, AOR Tab 5.
[160] *ibid*
[161] *FSM supra*, note 119, at para. 184, AOR Tab 5.

influence FSM's life fundamentally, with the expectation of his blind obedience enforced by discipline.[162] The defendants knew the emotional dependency that would arise in the children at the school as a result of "the intimacy and pervasiveness of the relationship that was fostered between the children and the adults directly responsible for their care."[163] It was for these reasons that the Court determined that defendants had assumed a duty to act reasonably and as a result, knew or *ought to have* known of the foreseeability of harm that could result from the abuse that occurred.[164]

72. In *V.B. v Cairns*, the plaintiff brought an action against the Watch Tower Bible, Tract Society of Canada and three elders of the Jehovah's Witness Clergy, for the emotional abuse suffered in confronting her father for the sexual abuse she had suffered as a child.[165] The defendant sought to rely on *FSM* as authority for the submission that in a counselling relationship between a clergyman and a congregant, there could be no duty of care at all.[166] However, the Court held that in *FSM* the court was distinguishing a situation of pastoral counselling from a highly regimented religious residential school and as such, was actually dealing with *the extent* of the duty of care to be imposed, not whether there was a duty of care at all.[167]

73. The Court in *VB* similarly applied the objective test as outlined in the cases above concluding that a prima facie duty existed. They then proceeded to consider whether the duty arose in the specific the factual circumstances before them.[168] In doing so they outlined that "in

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[162] *FSM supra*, note 119, at para. 171 , AOR Tab 5.
[163] *FSM supra*, note 119, at para. 172, AOR Tab 5.
[164] *FSM supra*, note 119, at para. 173, AOR Tab 5.
[165] *V.B. v. C., 2003 CanLII 2429* (ON SC) ["*Cairns*"], AOR Tab 21.
[166] *Cairns, supra note 159* at para. 147 AOR Tab 21.
[167] *Cairns, supra note 159* at para. 148 AOR Tab 21.
[168] *Cairns, supra note 159* at para. 157 AOR Tab 21.

the Jehovah's Witness faith, there is an even closer and more dependent relationship between members of the congregation and the clergy than is the case in most religions. For members of the Jehovah's Witnesses, religion is a pervasive and dominant influence in everyday life."[169] As such, many of the aspects of dependency and control noted in *FSM* were also present in *Cairns*. Moreover, the Court emphasized that the plaintiff had been taught to put her complete trust in her faith and the elders, and obedience was required. Given all of this, the Court held that the defendants were fully aware of the plaintiff's vulnerable emotional state and as such, it was readily foreseeably that having to confront her father would likely cause further emotional harm.[170] The Court concluded on this point by stating:

> Accordingly, I find that the plaintiff was obliged to go through the difficult and traumatic experience of confronting her father about his past sexual abuse in front of her father and two elders of her community. **Although the plaintiff knew this confrontation would be harmful to her, she felt she had no choice but to comply**. Further, because of her religious upbringing and the requirements of her religion, she was powerless and dependent upon the elders…**Further, although the Toronto elders were aware this experience would likely be traumatic for her, they failed to take reasonable steps to avoid that harm**, such as obtaining competent expert advice or, at the very least, advising the elders in Shelburne of the situation they would be facing.[171]

74. *FSM* and *Cairns* are both instructive due to the emphasis by the Court on the contribution of the intensive religious environment to the harm that was reasonably foreseeable to the defendants in question (particularly the Court's emphasis of 'blind obedience enforced by discipline' and the emotional dependency that would obviously arise as a result). As the Court outlined in *Cairns*, "there was a close and direct relationships between the elders and the plaintiff in which there was every expectation that she would rely upon and follow the advice given…it

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[169] *Cairns, supra note 159* at para. 157 AOR Tab 21.
[170] *Cairns, supra note 159* at para. 157 AOR Tab 21.
[171] *Cairns, supra note 159* at para. 178 AOR Tab 21.

was readily foreseeable that the course of action recommended would likely cause further emotional harm to the plaintiff."[172]

75. These above cases are similar to GCC, insofar as they involve intensive religious environments that aimed to teach religion through discipline. If the appellants are correct, which we do not concede, and to the extent foreseeability is relevant in the context of a breach, it was objectively, reasonably foreseeable that some harm would come from the policies employed at GCC, and there is ample evidence that the trial judge could rely on to infer that it was causing harm.[173]

76. Respectfully, it would be an error to permit the appellants to raise issues related to foreseeability on appeal, when they admitted duties are owed and the common issues do not include damages. Alternatively, it is overwhelmingly apparent based on the evidence adduced at the common issues trial, that the harm suffered by students at GCC was reasonably foreseeable to GCC at the time the abuse occurred.

PART V – CONCLUSION

77. Justice Leiper made no legal or palpable or overriding errors in her decision on the common issues herein and her decision is due considerable deference and ought not be interfered with.

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[172] *Cairns, supra note 159* at para. 157. AOR Tab 21.

[173] Appendix to Factum, pp. 7-10.

78. The totality of the evidence adduced at the common issues trial overwhelmingly supports the learned trial judge's findings that the GCC's policies were systemically negligent, fell below the standard of care and were in breach of the duties (both common law and fiduciary) owed to the Class Members.

PART VI – RELIEF SOUGHT

79. In order to promote the autonomy and integrity of the trial process, preserve scarce judicial resources, and give meaning to "access to justice" as intended by class proceedings legislation, this appeal ought to be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of March, 2021.

Sabrina Lombardi

CERTIFICATE

Counsel certifies that an order under subrule 61.09(2) is not required.

Counsel estimates that the time for argument of the appeal, not including reply, is 3.5 hours.

SCHEDULE "A"

A. (T.W.N.) v. Clarke, 2003 BCCA 670
B. (E.) v. *Order of the Oblates of Mary Immaculate in the Province of BC*, 2005 SCC 60
B. (K.L.) v. British Columbia, 2003 SCC 51
Blackwater v. Plint, 2005 SCC 58
Cavanaugh et al. v. Grenville Christian College et al., 2020 ONSC 1133
Cloud v. Canada (Attorney General), 2004 CanLII 45444 (ON CA)
F.S.M. v. Clarke, [1999] BCJ No 1973 (SC)
G. (E.D.) v. Hammer, [1998] BCJ No 992 (SC)
G. (E.D.) v. Hammer,[2003] SCC 52
H. (S.G.) v. Gorsline, supra 2001 ABQB 163
Hall, Margaret Isabel, *"Institutional Tort Feasors: Systemic Negligence and the Class Action"* (March 2006). https://www.researchgate.net/profile/Margaret_Hall3/publication/228141080_Institutional_Tort_Feasors_Systemic_Negligence_and_the_Class_Action/links/5755cd0708aec74acf58341f/Institutional-Tort-Feasors-Systemic-Negligence-and-the-Class-Action.pdf?origin=publication_detail.
Housen v. Nikolaisen, 2002 SCC 33 (CanLII), [2002] 2 SCR 235
John Doe (G.E.B. #25) v The Roman Catholic Episcopal Corporation of St. John's, 2020 NLCA 27 (CanLII)
K.L.B. v. British Columbia, 2003 SCC 51 (CanLII)
Mustapha v. Culligan of Canada Ltd., 2008 SCC 27 (CanLII)
Myers v. Peel (County) Board of Education, [1981] 2 SCR 21
Proulx v. Pim, (2008) 89 OR (3d) 290 (Sup Ct J)
Rankin (Rankin's Garage & Sales) v. J.J. 2018 SCC 19
Rollins (Litigation Guardian of) v. English Language Separate District School Board No 39, [2009] OJ No 6193 (Sup Ct J)
Rowson v. Abel, 2011 ONSC 4350
Rumley v. British Columbia, 2001 SCC 69
Saadati v. Moorhead, 2017 SCC 28
Seed v. Ontario, 2012 ONSC 2681
Slark (Litigation Guardian of) v. Ontario, 2010 ONSC 1726
Toneguzzo-Norvell (Guardian ad litem of) v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 SCR 114
V.B. v. C., 2003 CanLII 2429 (ON SC)

White v. Canada (Attorney General), 2002 BCSC 1164
Whiten v. Pilot Insurance Co., [2002] 1 SCR 595, 2002 SCC 18

SCHEDULE “B”

n/a

APPENDIX

Findings of Below Standard Systemic Practices

Discipline or "D"

The disciplinary methods to which the former students testified, including the evidence of enforced isolation from peers, silence and in some cases, excessively lengthy or degrading, painful or dangerous forms of work duties also fell below the standard of care. Dr. Axelrod testified these were below standard. (para 275)

Dr. Axelrod testified that a practice of having students work for excessively long periods of time under unsafe conditions would be unique and not meet the standard of care. (para 268)

These practices of putting students "on discipline" were systemic: the administration applied these practices to enforce the rules, expectations and norms around attitude for Grenville students. They applied to boarding students as a form of internal "suspension" from school. These practices were created and applied by the headmasters. They also incorporated the philosophies and challenges which the staff had learned from the COJ and practiced among themselves. In addition to incorporating sometimes harsh or painful elements, these punishments were arbitrarily meted out. There was no written policy or protocols about the nature of the work jobs, the length of time, limits on what students could be asked to do, no avenues of appeal or protest and at times, disregard to student health and safety during these disciplinary stints. These practices were part of how Grenville was operated. (para 276)

Corporal Punishment

Dr. Axelrod testified that the excessive use of the paddle (as to number of strokes and causing injury and prolonged pain) at Grenville fell below the standard of care, and in particular because of the following:

- it was applied arbitrarily and inconsistently;
- there was an absence of policy as to what breaches would lead to its use;
- there was an absence of recordkeeping as to its use or to act as a check on any abuse of this power;
- students were placed at risk of harm: injury and/or pain, depending on how Charles Farnsworth felt about the student; and
- students were injured by the excessive use of the paddle, including Mark Vincent, David Shepherd, Tim Blacklock, Richard Van Dusen, and others who were witnessed but not named. (para 288)

Dr. Axelrod opined that although the use of a paddle for punishment would have been permitted, where its use caused injuries or the painful results described in the hypothetical circumstances, this did fall below the standard of care (para 286).

The senior administration determined who received physical discipline. From the beginning, physical punishments were included as part of this school's new "tough love" program. This use of physicality, and inclusion of humiliating aspects (including paddling boys with their pants down) aligned with the stated values of the school. These were not isolated events. The fact that not all students experienced the same discipline (e.g. there do not seem to be examples of girls being paddled), or that some experienced lighter versions of this punishment, speaks more to the evidence of some degree of arbitrariness, or of favoritism for the sake of the school's reputation, than to a conclusion that these were non-systemic, isolated cases of abuse in an otherwise well-meaning and well-run institution.

The use of strict discipline was embedded in the operational policy as directed by the operating minds of Grenville: headmasters Haig and Farnsworth. I find that the use of the paddle for the years it was employed at Grenville was a systemic practice. (para 294 and 295)

All School Assemblies and Correction Sessions

Just as staff held "light sessions" with each other, the school corrected students either in small groups of staff and/or students for misbehavior or by standing up students at chapel or the dining room to be publicly reprimanded by staff and students for their attitudes or rule-breaking behaviour.

The public sessions took place approximately 4-6 times a year. Sometimes they lasted hours or days. They interrupted regular class times. These sessions caused students to feel embarrassed and humiliated. Students who witnessed these sessions said they felt fear, intimidation and confusion. Other students and prefects were invited to join in the process. At times, in the aftermath of these sessions, the entire student body was required to be silent for hours at a time. (para 296 and 298)

Dr. Axelrod testified that the practice of humiliating students publicly for either behavioural or attitudinal issues was "unheard of in other educational venues." This type of treatment constitutes abuse and fell below the standard of care. (para 301)

The defendants concede that the school harmed students who were stood up in front of their peers to be humiliated. However, the defendants submit that a line should be drawn between the observers and the targets of these humiliating practices. I do not accept that submission. The uncontradicted expert evidence from Dr. Barnes on the nature of the public humiliations was that harm can be experienced by both those on the receiving end of the attention, but also by those who are encouraged to participate, thus violating their own moral codes and shaming their peers. There was also expert evidence from Dr. Barnes, that being exposed to an institution in which punishment could be arbitrary or harsh can be damaging: As Dr. Barnes put it: "Children do not have to experience arbitrary or excessive punishment to want to avoid it. They just have to witness enough of it to understand that they could be next." I accept the expert evidence from Dr.

Axelrod and Dr. Barnes. I find that the school assemblies and correction sessions with students fell below the standard and in the case of the assemblies, I decline to limit further recourse only to those who were singled out for this form of punishment. (para 307)

The leaders at Grenville created a community that submitted to these types of corrections. They applied the same practices to operate the school and mold the behaviour of the students. These disciplinary practices spanned decades. The school had no policy or accountability for these practices. I find this was a systemic practice which fell below the standard of care. (para 309)

The Boiler Room and the "Flames of Hell"

At times students were taken to the boiler room in the school to be shown the furnace flames. This form of discipline involved telling the students that if they did not behave, they would go to hell. Dr. Axelrod said this practice fell below the standard of care. (para 310 and 312)

Grenville's Views and Teachings Regarding Sexuality

The plaintiffs have established on a balance of probabilities that Grenville breached its duty of care to its students in its treatment of them concerning their sexuality and the teachings about human sexuality. Grenville's views and concerning sexuality amounted to abuse and fell below the required standards. This included but was not limited to the use of demeaning epithets for girls and women as: "sluts, shores, Jezebels, bitches in heat" etc. The following features of life at Grenville were established by the evidence. Based on the expert evidence of Dr. Barnes, these were acts of "sexualized abuse":

- Requiring sexual confessions;
- Berating students for inciting lust or being lustful;
- The use of derogatory terms such as temptress, bitches in heat, sluts, prostitutes;
- Requiring girls to bend over, front and back, to check for coverage of bathing suits;
- Humiliating students over expressions of romantic or sexual feelings towards other students;
- Vilification of homosexuality; and
- An unbalanced view of and preoccupation with sexuality as sin. (para 313 and 314)

Dr. Axelrod gave expert evidence that the teachings at Grenville concerning sexuality were harmful, abusive practices. They were at odds with the practices at other schools in Ontario. While some schools may have shared similar religious views to Grenville's about homosexuality, the difference was that at Grenville, these views were accompanied by hostile treatment, use of abusive language and out of the ordinary explanations for what caused homosexuality. This

sexual messaging was out of keeping for the standards of sexual education in Ontario during the class period. (para 316)

Grenville chose practices for the treatment of adolescents during their sexual development that were out of step with those of other educational institutions. The plaintiffs have established on a balance of probabilities that sexualized abuse was part of the Grenville belief system. All students were exposed to these norms and attitudes—the extent of that exposure and the impact on individual students are not the subject of this common issues trial (para.326 and 327).

CAVANAUGH, et al. Plaintiffs/Respondents	v.	HAIG and GRENVILLE CHRISTIAN COLLEGE, et al. Defendants/Appellants	Court File No: C68263

Court of Appeal for Ontario

Proceedings commenced in TORONTO

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