

CITATION: Cavanaugh et al. v. Grenville Christian College et al., 2020 ONSC 1133
COURT FILE NO.: CV-08-347100CP
DATE: 20200226

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

– and –

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

Defendants

*Loretta Merritt and Sabrina Lombardi and
Christopher Haber, for the Plaintiffs*

*Geoffrey D.E. Adair, Q.C., David Boghosian
and Nathaniel Read-Ellis, for the Defendants*

HEARD: September 16-19; September 23-
27, September 30-October 4; October 7-9,
11; October 15-18, December 17, 2019

LEIPER J.

REASONS FOR JUDGMENT

I. BACKGROUND TO THE ACTION

[1] These are the reasons for judgment after a five-week trial of a class action pursuant to the *Class Proceedings Act*, 1992. The action was brought by former boarding students of Grenville Christian College between 1973 and 1997. The boarding students claim damages from the

school, and from the estates of two former headmasters, Alistair (or “Al”) Haig and Charles Farnsworth. The plaintiff class is comprised of 1360 former Grenville boarding students.

II. BACKGROUND TO THE ACTION

[2] Grenville Christian College (“Grenville” or “the school”) was a boarding school located in the countryside east of Brockville Ontario. The school included the former St. Mary’s seminary, a historic limestone building built in 1918. The school grounds, which were on the banks of the St. Lawrence river, were said to be beautiful.

[3] Beginning in 1969, Grenville (originally known as the Berean Christian School) offered primary and secondary level education for boys and girls. Secondary students lived in dormitories at the school.

[4] In 1973, the school’s first headmaster, Al Haig, spoke to the Brockville Rotary Club about a new program of “tough love” at the school. He gave examples of the new approach in action, which included work chores for students, short hair for boys, and a spanking for a girl who had broken the rules. The school’s new program came from the ways of living used at an American Christian community known as the “Community of Jesus” (“COJ”).

[5] The plaintiffs are five former boarding school students who attended Grenville at various times throughout the class period. One of the plaintiffs, Margaret Granger, was the child of Grenville staff members. Ms. Granger grew up at Grenville, attended school there and was a staff member after her secondary school years.

[6] The plaintiffs allege that when the school started its new program in 1973, it created an intolerant, authoritarian educational institution unlike others in Ontario. They allege the school administration engaged in injurious and painful corporal punishment, humiliating, isolating and demeaning disciplinary practices, intrusive and sexualized “confessions” and other abusive practices. They say that Grenville intentionally adopted attitudes and practices flowing from the COJ principles. They allege that Grenville knew its institution was operating in a manner that was out of step with the educational standards of the day.

[6] The plaintiffs claim that Grenville and its former headmasters failed to meet the standards of care owed to its boarding students and are liable in negligence to the members of the class who suffered injury as a result of this failure.

[7] The plaintiffs also claim that Grenville and the individual defendants breached their fiduciary obligations owed to the boarding students.

[8] The defendants point to the success of the Grenville graduates who testified as demonstrating that Grenville provided them with a quality education and prepared them for adulthood. The defendants argue that any school setting will include graduates who have not enjoyed their experience, but that this does not amount to a systemic breach of the school’s obligations to its students. They submit that Grenville was a strict school, but its operations did not fall below the standard of care. The defendants submit that the plaintiffs’ position fails to account for the evidence of those who had a positive experience at Grenville.

[9] The defendants also argue that the plaintiffs failed to prove that the school engaged in harmful conduct that affected the whole class. They acknowledge there was credible evidence of actionable wrongdoing to some students, by inflicting excessive “paddling” (corporal punishment), public humiliation sessions, and other excessive discipline measures. However, the defendants argue these are “one-off” excesses which do not amount to systemic negligence. They submit that any school discipline that fell below the standard of care was in response to individual student conduct. The defendants argue that the disciplinary actions which fell below the standard of care were unrelated to school ideology and were not systemic.

[10] The common issues to be decided at trial were determined at the time of certification. These issues are listed next.

III. THE COMMON ISSUES

[11] In *Cavanaugh v. Grenville Christian College*, 2014 ONSC 290 at para. 22, the Divisional Court certified five common issues to be decided at this trial:

1. Did the defendants owe a duty of care to the plaintiff class?
2. Did the defendants breach the duty of care owed to the plaintiff class?
3. Did the defendants owe a fiduciary duty to the plaintiff class?
4. Did the defendants breach their fiduciary obligations to the plaintiff class?
5. Does the conduct of the defendants merit an award of punitive damages?

[12] The defendants have admitted common issues 1 and 3 as follows:

Duty of Care: Grenville owed a duty of care to the plaintiffs and the class members to take reasonable steps to care for and ensure their safety and to protect them from actionable physical, psychological and/or emotional harm and provide them with a safe, secure learning environment.

Fiduciary Duty: Grenville owed a fiduciary duty to the plaintiffs and class members to refrain from harmful acts involving disloyalty, bad faith or self-interest.

[13] I will discuss each common issue in turn.

IV. ISSUE #1: THE DUTY OF CARE OWED TO STUDENTS

[14] As noted, the defendants admitted they owed a duty of care to their students. The law in Canada recognizes a unique relationship between school authorities and their students. School authorities have a duty of care to supervise and protect their students from unreasonable risk of harm: *Myers v. Peel Co. Bd. Of Education*, [1981] 2 S.C.R. 21 at page 31; *Proulx v. Pim*, (2008),

89 O.R. (3d) 290 (Ont. S.C.) at para. 61; *H. (S.G.) v. Gorsline*, 2001 ABQB 163 aff'd 2004 ABCA 186 at para. 84.

[15] School authorities, including private schools, must exercise a standard of care like that of a careful or prudent parent: *Myers* at pages 31-32; *Zhu v. Kendellhurst Academy Inc.*, 2018 ONSC 7685 at para. 17.

[16] A duty of care includes a duty to avoid causing foreseeable mental injury. Mental injury has a great impact on a person's ability to live life and pursue their goals: *Saaditi v. Moorhead*, 2017 SCC 28 at para. 23.

[17] Actionable mental injury involves serious trauma or illness—there must be more than a transient mental state that falls short of injury: *Mustapha v. Culligan of Canada Limited*, 2008 SCC 27 at para. 9.

[18] The standard of care owed by school authorities to students, is decided on an objective standard. This means I must determine if someone in the position of the defendants ought to have reasonably foreseen the harm, not whether the defendants themselves foresaw the risk of harm at the time: *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at para. 53.

[19] Institutions can breach their duties directly or indirectly. In her paper, "Theorizing the Institutional Tortfeasor" (2016) 53:4 *Alta L. Rev.* 995, Margaret Isabel Hall describes two types of institutional breaches. The first is the institution which fails to control rogue actors in its midst either by failing to adequately supervise staff, failing to have policies in place to address abuse or failing to investigate allegations of abuse. The second involves the "unreasonable institution" which itself creates the risk of harm.

[20] Canadian courts have dealt with negligence cases involving both types of institutions. In a line of cases starting in 1999, actions were taken against schools which allegedly breached their duties to students by inadequately supervising employees or having faulty supervisory policies: *F.S.M. v. Clarke*, 1999 CanLII 9405 (B.C. S.C.) at paras. 174-181; *T.W.N.A v. Clarke*, 2003 BCCA 670, 235 D.L.R. (4th) 13 at paras. 113-115; *Rumley v. British Columbia*, 2001 SCC 69, [2001] 3 S.C.R. 184 at para. 30.

[21] In another line of cases, the institutions themselves were alleged to be directly responsible for the harm caused to students. In those cases, the school's "operational characteristics" led to the claims of harm: *E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia*, 2005 SCC 60 at para. 4; *White v. Canada (Attorney General)*, 2002 BCSC 1164 at paras. 20-21, 49; *Cloud v. Canada*, 73 O.R. (3d) 401, [2004] O.J. No. 4924 at para. 66.

[22] In this case, the plaintiffs claim that Grenville was operated negligently and caused harm.

V. ISSUE #2: DID THE DEFENDANTS BREACH THEIR DUTY OF CARE TO THE STUDENTS?

[23] The plaintiffs allege that Grenville enforced its rules and norms using harsh, humiliating and damaging disciplinary measures that fell below the standard of care for educational institutions at the time. These acts could reasonably be foreseen to lead to mental harm. The plaintiffs argue that Grenville was systematically negligent because it harmed its boarding students by way of its operational characteristics during the class period.

[24] In contrast, the defendants framed the first issue for considering the evidence as whether Grenville was operated in a way to “produce a prevalent atmosphere of repression, fear, humiliation and degradation to the point that actionable harm was reasonably foreseeable?” The defendants submit that the next inquiry should be whether the individual forms of misconduct were reasonably foreseeable to cause actionable harm. The defendants submit that the question of systemic negligence should be the final step in the analysis. I have concluded that this is not the appropriate analytical framework.

[25] The plaintiffs claim is that the evidence about Grenville’s operations, including its discipline policies and practices, fell below the standard of care and could reasonably have been foreseen to lead to the risk of harm in the form of emotional trauma to students. The harm is not alleged to have come about because of a “prevalent atmosphere of repression, fear, humiliation and degradation.”

[26] Further, in granting certification in *Cavanaugh* the Divisional Court held that the matters relevant to the common issues might include:

- The history of the school;
- The duties owed to the class members particularly relating to discipline;
- The practices and policies, if any, that existed at the school and their impact on those duties;
- Any practices or policies that should have been in place to prevent abuse;
- Whether certain of the school’s alleged disciplinary practices were systemic and a breach of the school’s duties to its students.

[27] 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: *Cavanaugh* at para. 24; *Cloud* at para. 58.

[28] In order to determine whether there was systemic negligence I must consider the evidence of Grenville's duties to the class. The individual claims of harm and differences in impact on members of the class are for the individual issues stage, if necessary: *Rumley*, 2001 SCC 69 at para. 39; *White v. Canada (Attorney General)*, 2002 BCSC 1164 at paras. 46-48.

[29] In order to determine whether the plaintiffs have proved on a balance of probabilities that the defendants breached their duty of care to the class, the evidence of the applicable standard of care during the class period, and then the practices of the school must be considered. The sequence of these questions will be:

- A. What was the standard of care for boarding schools in Ontario during the class period?
- B. Does the evidence establish that Grenville's practices and policies fell below the standard of care for boarding schools?
 - i. The History of Grenville Christian College
 - ii. What Kind of Institution was Grenville Christian College?
 - iii. Was Grenville Systemically Negligent Because of its Practices?

[30] Before the evidence can be applied to these questions, I must first address the defendants' submissions challenging the credibility and reliability of certain witnesses called by the plaintiffs.

The Credibility and Reliability Challenges to the Trial Evidence

[31] The plaintiffs called evidence from two expert witnesses, 12 former students and 3 former staff at Grenville. The defendants called no expert evidence. They called 10 former students and 3 former staff members. In many respects, the witnesses for all parties testified consistently about the operations of Grenville. In other ways, different students had markedly different experiences at the school. For several of the plaintiff's witnesses, the defendants submitted their evidence was not credible or reliable. I address these arguments first, beginning with some general comments about assessing credibility.

Patterns, Cross-Corroboration and Documentary Corroboration

[32] There were many areas of agreement among the witnesses. The former staff and students tended to agree about the routines at Grenville, the rules and expectations and the disciplinary methods that the staff used to enforce those rules and expectations. The areas of disagreement fell into areas of individual experience, perception, atmosphere, and details of what was said and done to individual students.

[33] As an example, two students described injury and trauma related to excessive paddling (Richard Blacklock and Richard Van Dusen), while two other students described being paddled

in lighter, less painful ways (Liam Morrison and Lenny Newell). However, the fact that paddling was used as a disciplinary measure was fully corroborated by multiple former students who attended Grenville during the class period, and by letters in 1973-74 sent by Charles Farnsworth to parents to say that their children had been paddled for certain infractions. The defendants conceded that these injuries happened and that certain uses of the paddle fell below the standard of care.

[34] Some incidents took place outside of the general view of students, either because they were done privately or because the students not “on discipline” would have been in school or other activities. These measures included corporal punishment, individual correction sessions with staff or headmasters, and certain discipline work assignments. In those cases, opportunities for direct corroboration of the individual events are less likely. However, for each type of disciplinary response, multiple witnesses for both the plaintiffs and the defendants confirmed that these techniques were used during the class period.

[35] The corroborative evidence is important because the defendants submit that virtually no weight should be applied to certain of the plaintiff witnesses despite consistencies in their accounts about the nature of their experiences at Grenville. This includes plaintiff witnesses Andrew Hale-Byrne, Kathy Smart, Francois Lukawecki and Tim Blacklock (except for his description of being paddled, which the defendants did not challenge).

[36] The other aspect of the credibility analysis that is urged as a source of caution relates to the demeanor of Hale-Byrne, Smart and Lukawecki. I turn next to some general principles concerning the use of demeanor in assessing credibility.

Demeanour and Credibility

[37] The defendants made submissions about the demeanor of several of the plaintiff witnesses. They asserted that Andrew Hale-Byrne was argumentative and had “an agenda.” They also characterized Kathy Smart as argumentative and “way over the top.” The defendants submitted that Heather Bakken consistently seized opportunities to argue her case. Finally, they described Francois Lukawecki as “strident, melodramatic and argumentative.” The defendants submitted that in each case, these witnesses were not credible, in part because of their testimonial demeanor.

[38] The law accepts that the “demeanour” of a witness can assist in evaluating credibility.¹ However as noted by Schreck, J. of this court in *R. v. C.C.*, 2018 ONSC 1262, at para. 62, there is a need for caution in using testimonial demeanor to determine credibility:

One particularly poor indicator of credibility is a witness's demeanor when testifying. While once relied on routinely by courts, there is now a growing body of appellate authority signaling the need for caution in considering demeanor as an indicator of credibility: *R. v. Hemsworth*, 2016 ONCA 85, 334 C.C.C. (3d) 534, at paras. 44-45; *R. v. Rhayel*, 2015 ONCA 377, 324 C.C.C. (3d) 362, at paras. 85-89; *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193, 99 O.R. (3d) 1, at para. 66.

[39] Drawing inferences from the demeanor of a witness risks applying amateur psychology because their manner of giving evidence may reflect matters unrelated to credibility, including personality, culture, or the impact of testifying about a traumatic event.²

[40] A more dependable source of credibility is the specific testimony offered, rather than the source or manner of presentation.³ Testimony can be assessed through the following non-exhaustive list of factors: (a) the plausibility of the evidence, (b) independent supporting evidence, (c) the external consistency of the evidence, (d) the internal consistency of the evidence, and (e) the “balance” of the evidence.⁴

[41] I have assessed the evidence of the witnesses not only through their demeanor, but also through an analysis of the testimony itself using the factors listed above.

The Failure to Complain and Student Witness Credibility

[42] The defendants challenge the credibility of certain witnesses for failing to complain about the treatment they received at Grenville. The defendants submit that common sense dictates that if the school was as harsh as many of the plaintiff witnesses described, the children would have informed their families and they would not have returned to Grenville. They point out that there were opportunities to complain about Grenville during breaks and holidays. As a general matter, does a failure to complain or to complain to a greater extent mean that these things did not happen or weigh against the credibility of the plaintiff witnesses as submitted by the defendants?

[43] Dr. Rosemary Barnes opined about the barriers to communication experienced by children who have been maltreated by adults in authority. These barriers include:

¹ *R. v. S(N)*, 2012 SCC 72, see also Paciocco J.A., “Doubt about Doubt: Coping with *R. v. W. (D.)* and Credibility Assessment” (2017) 22 Can. Crim L. Rev at p. 37.

² Paciocco at 37.

³ Paciocco at 38.

⁴ Paciocco at 38.

- Self-blame or fear of punishment;
- Adults may have instructed the child not to disclose;
- Fear of loss of a relationship that provides care at the same time as the maltreatment;
- Guilt over parents having spent significant sums of money to send the child to the place where the maltreatment occurs;
- Fear of not being believed;
- Fear of failing to meet parental expectations;
- A lack of language to communicate the psychological impact of abuse.

[44] There was evidence that some of these barriers were in place at Grenville. There were skits at the start of the school year with the message that parents would not want to hear complaints about the school. There was the threat of discipline for complaining about the school or its rules. Students could fairly believe there could be risks to them if the school discovered they had complained. There were mandatory letters to be written home which were handed over to staff for mailing. Joan Childs and Ken MacNeil testified to instances of interfering with student communications home about disciplinary matters. Joan Childs testified that sometimes she was required to monitor calls home by students on discipline in order to prevent them from telling their parents what was going on.

[45] Several students described feeling like they had to participate in “mandatory fun” (Tyler Stacey-Homes) and that students could not be introverts, or “pensive,” as this would be a problem to be “rooted out.” (Richard Van Dusen).

[46] There were also examples of students who unsuccessfully complained to their parents to avoid returning to Grenville. Heather Bakken testified that she told her parents about the discipline she had received but her mother did not believe her and her father asked if she could “tough it out” because he had paid a full year’s worth of tuition and he could not receive a refund. Francois Lukawecki wrote to his father and asked to be removed from the school. He was told there was no option.

[47] Some students ran away from the school as a result of their experiences, including Mark Vincent and Tim Blacklock. Kathy Smart called her mother and was picked up outside the school gates. Tim Blacklock reported that his father threatened legal action if corporal punishment was inflicted on his son again.

[48] Finally, there was evidence that suggested parents provided feedback to the school asking Grenville to change some of its practices when a survey was sent to some families. Joan Childs testified that she was involved in circulating that survey. The administration team sent it to families who they believed would provide favourable feedback. The survey responses included

positive feedback about the school with some critical responses about the use of all school assemblies with discipline components as follows:

- “Basically humiliating students is again appalling. If one of your staff members does something is that person put in front of others and humiliated? Not likely.”⁵
- Feel children should be able to share their feelings without being told they are rebellious (when they get sick of the rules);
- More acknowledgement for positive behaviour rather than punishment for negative behaviour;
- Don’t think group should be punished for the misdemeanours of a few;
- When a student or group of students do something wrong the student body as a whole should not be chastised or made to feel they are to blame.

[49] The parents surveyed on that occasion also expressed concerns with the “honour code:”

- “[Y]ou have a so called ‘honour’ or ‘caring’ system, which is a polite name for encouraging children to ‘tell tales.’ This is simply horrific and it has to be stopped; it is one of the worst features of all totalitarian societies that rewards are offered for denouncing non-conformists”;
- Don’t understand reasoning behind having children “tattle”;
- Since when is telling a student that you have a certain code of ethics and unless that child discloses information about others, he/she can pack his/her bags: Is this a Christian way? This is blackmail;
- Don’t approve of one student informing on another—no mercy.

[50] Having considered these matters of general application to the question of credibility, I turn now to the defendants’ arguments on witness credibility.

Joan Childs (Staff member, 1972-2004)

⁵ In fact, the evidence established that staff members at Grenville were subject to this kind of correction, except for the headmasters.

[51] Ms. Childs taught high school before moving to Grenville in 1972, where she worked for over 30 years as a teacher. The defendants list the following issues with Joan Childs' credibility:

- i) She had a motive for "bashing" Grenville because she was bitter about Charles Farnsworth's treatment of her;
- ii) She is the type of person who seeks approval;
- iii) Her admission that she thought the students were happy does not accord with her conclusion that Grenville had been a place of abuse where harm was done to students.

[52] The defendants suggest that Ms. Childs has had a late acceptance of what happened at Grenville. They submit that her evidence should be taken with a "grain of salt." This general submission did not describe which parts of her evidence should be rejected. Other witnesses, and the school's records aligned with Ms. Child's description of Grenville's operations, structure and values.

[53] I found that Ms. Childs and her family were part of a submissive group of adults that accepted the authority of the Grenville hierarchy, including the use of punishment and correction. In retrospect, and after leaving the community she concluded that it was painful and damaging to her. She heard the complaints of many former students and believed that she had a role for which she needed to apologize. Her evidence was consistent and corroborated by documents, admissions of the headmasters, and other staff and students. She testified that she was "not proud of herself." I found her evidence precise and internally consistent. She made admissions that did not minimize her role at the school. I found Ms. Childs to be a credible and reliable witness.

Margit Mayberry (Staff member, 1980-1999)

[54] The defendants acknowledged that Ms. Mayberry had a difficult life at Grenville. The defendants submitted that she seemed to be a credible, honest witness who did her best to give a balanced presentation of what she saw there. I agree with this submission.

Andrew Hale-Byrne (Former student, 1988 to 1990)

[55] Mr. Hale-Byrne was a student at Grenville from the fall of 1988 until June of 1990. He was 17 when he started at the school. He had a negative experience at Grenville. One of his first disciplinary experiences was being subjected to a correction session with four male staff members, including Donald Farnsworth and Charles Farnsworth, for owning an "Iron Maiden" band t-shirt. When he defended himself on the basis that his parents had purchased the shirt and packed it for him, he was told that his parents were "immoral people, not Christian, evil Liberals, and that I wasn't to be like them." He was told that his father was not a "real man" and that his mother was a prostitute. Hale-Byrne described other derogatory terms directed at him during this session including being told that he carried himself like "a queer." At other times, Hale-Byrne heard staff use epithets about female students including "sluts, whores, and bitches in heat".

[56] Mr. Hale-Byrne described being put “on discipline” for having been found with the Iron Maiden t-shirt. This included work assignments, being separated from other students, sleeping in separate quarters, and being silent during the discipline period. His description of discipline practices that included isolation, social ostracism and singling out was confirmed by witnesses called by both parties, including Byron Gilmore, Philip Mailey, Margit Mayberry, Joan Childs, Mark Bergeron, Simon Best, Donald Farnsworth and Tyler Stacey-Holmes. The defendants accept the credibility of Mayberry. Best, Farnsworth and Bergeron testified for the defendants. I accept Hale-Byrne’s evidence of these features of discipline.

[57] Mr. Hale-Byrne also testified that he was berated by staff during choir practices for not smiling enough or not singing perfectly. His account of choir practice was confirmed by Philip Mailey who attended Grenville between 1991-1993. The defendants submitted that Mr. Mailey endeavoured to give accurate perceptions of the events at Grenville, and they did not challenge his evidence as exaggerated or false.

[58] The defendants argue that “nearly all” the other witnesses denied hearing demeaning terms used by staff, and that this aspect of Mr. Hale-Byrne’s evidence should be rejected. He was said to have grossly exaggerated his evidence because he testified in cross-examination that all of the students saw and heard the use of derogatory terms by staff against other students (such as “pig, pervert, faggot, filth, stupid, trash and the like”). Three other students who were at Grenville during the same years as Hale-Byrne described the use of derogatory terms, including gendered terms: this evidence came from Francois Lukawecki, Mark Bergeron and Margaret Granger. Former staff members Joan Childs and Margit Mayberry who were there during Hale-Byrne’s attendance at Grenville also confirmed that gendered derogatory terms were used to refer to girls at Grenville. I accept the evidence of students who attended during different periods, such as Emma Postlethwaite, Lucy Postlethwaite, and Julie Lowe, that they did not hear these terms. It may be true that not all students heard all of the same words and perhaps some heard none of this kind of talk. However, I accept Mr. Hale-Byrne’s evidence of what he heard. I accept his evidence that he was addressed in harsh and derogatory ways at Grenville by some staff and by Charles Farnsworth.

[59] The defendants argue that nearly every other witness denied receiving the type of demeaning work assignments that Mr. Hale-Byrne testified happened to him. Mr. Hale Byrne said he was assigned to fill buckets with rocks taken from the fields with his bare hands, including on one occasion in the winter, which caused his hands to bleed. In considering whether to reject Hale-Byrne’s evidence about work duties on discipline, I have considered the fact that his evidence was consistent with much of the evidence given by other witnesses. This included the Grenville philosophies, the use of public “shaming” of students as a disciplinary technique, disciplinary work assignments that were humiliating and/or unpleasant, and the requirement of silence while on discipline. Although different work assignments were meted out to those students, other students also described being assigned painful or humiliating work duties as disciplinary measures. For example:

- cleaning floors with toothbrushes

- picking up leaves on hands and knees being supervised by a younger student
- scrubbing pots and pans while having an asthmatic reaction
- cleaning dumpsters of refuse and an animal carcass
- polishing wheel wells on plate carts
- boys being required to cut grass with small scissors
- a student with a prosthetic leg being required to clean the chapel with a small hand-held vacuum on hands and knees: required to repeat the chore after asking for a vacuum cleaner
- pounding rebar into the ground for snow fencing, pain from prosthetic leg experienced by student, who left Grenville due to this incident
- being held to unrealistic standards of perfection and being made to repeat the chore if such standards were not met.

[60] The defendants submit that Mr. Hale-Byrne's evidence should be given no weight because he was argumentative and exaggerated the impact of his experience at Grenville. The defendants noted that Mr. Hale-Byrne was cautioned during his evidence: a review of the transcript reveals that he was reminded on a couple of occasions during his cross-examination to await the question. I do not draw any negative conclusions about his credibility from these reminders. The nature of his evidence and his overall responsiveness to questions posed to him are the context for this finding.

[61] The defendants also say that Mr. Hale-Byrne's credibility suffers because he compared Grenville to "like waking up in a horror film" and described the all-student assemblies where students were humiliated as our "breakfast, lunch and dinner theatre."

[62] Mr. Hale-Byrne testified that the public assemblies with elements of discipline and public shaming of students took place a couple of times a semester, or 4-6 times during the year. His description of these as being like "theatre" must be read along with his evidence of the frequency. His evidence did not deviate from that of others, which was that these sessions took place a few times during each semester he was there. I did not take him to be saying that these assemblies happened daily or at every meal. He described the assemblies as like "theatre" when they happened. This analogy was apt given this evidence:

- Margaret Granger testified that these assemblies involved the headmaster singling out students who were shamed, yelled at and that students were invited to join in—these assemblies could last for hours or days;

- Margit Mayberry testified that every couple of months Charles Farnsworth would assemble the student body and stand up students and accuse them of “whatever he had on his mind” in front of their peers—these sessions could last for hours;
- Joan Childs testified that whole school assemblies happened about 5-6 times during the year;
- Lisa Cavanaugh testified that she and 12 other students were stood up before the whole student body in the dining room: she had been caught smoking and was told by Charles Farnsworth that “you little girl, the city street are lined with whores like you.”
- Mark Bergeron testified that he could not recall specifics, yet he remembered people being called up and publicly shamed;
- Francois Lukawecki testified that when the whole school was in a session, students were encouraged to say something about the singled-out person in order to “save” them.

[63] I do not reject Mr. Hale-Byrne’s evidence about the public sessions for disciplining students in front of the whole student body because he described this practice as “theatre.”

[64] Mr. Hale-Byrne’s analogy to Grenville being “like a horror film” while dramatic, is no basis to reject his evidence. He described the physical beauty of the school setting, in contrast to his description of treatment about abusive, frightening and painful practices. The notion that a beautiful exterior conceals fearful and hidden aspects of a place is a common feature of the horror genre. Given the nature of his evidence this analogy is not so out of place as to require caution in accepting his evidence.

[65] Another criticism of Mr. Hale-Byrne’s credibility arose from out of court writings that the defence claimed were grandiose or exaggerated. These included:

- 1) comments in his correspondence to another student in 2008 in which he took credit for exposing the scandals at the school;
- 2) comments about his credentials with British intelligence and as a media officer at the United Nations; and
- 3) a statement about his role in exposing Grenville in an unpublished draft of a book he wrote about Grenville.

[66] In cross-examination, Mr. Hale-Byrne provided explanations for the way he described his former job positions. He explained that these comments came from an unpublished draft of a book he wrote about Grenville. Defendant counsel put a line to Hale-Byrne from this unpublished draft: “on my last day at Grenville, I walked out of the school and said that I would someday expose this school for being a cult.” Hale-Byrne acknowledged this was not accurate.

He removed this sentence from the final published work. I accept his explanations for these various statements. They do not cause me to find his evidence about his experiences at Grenville to which he testified at the trial was not credible.

[67] Finally, the defendants submitted that Mr. Hale-Byrne should be disbelieved because in the late 1990s, he recommended the school to another family who considered sending their son to the school. Mr. Hale-Byrne was cross-examined on this point. He testified that at the time of his recommendation, he had “normalized” what had happened to him at Grenville and had likely repressed his experiences. He was cross-examined at length about being in denial after he left Grenville and how he had come to his present understanding of what he had experienced there. This exchange is illustrative of how he described his thinking and how his views changed:

Q. So, the bottom line with respect, is that you either considered all these things at Grenville normal for many years or you forgot about and or repressed them, am I right?

A. Yes.

Q. And one of the things you forgot about for example, was the practice of dragging people out of bed at night and with this light and confronting them after, you convinced yourself that had not happened, right?

A. I don't think if I convinced myself it didn't happen. I went back to the United Kingdom. I was geographically separate from Canada for many years. I had totally new people in my life and I didn't contact Grenville people. And over time these things become distant. And when you have - I would have flashbacks and you would try to repress them. I was very conflicted about this place for many years and I didn't have anyone to talk to about it until 2006, when this was all being exposed on FACTNet and Joan Childs apologized.

Q. Well, that may be, but you may well have separated yourself geographically and didn't have people to talk to about it, but I am suggesting to you that you started to convince yourself that it did not happen, didn't you?

A. Or I repressed it or I was not thinking about it or - I mean I certainly remember the place and the incidences and got very angry, upset and had nightmares for - for years after Grenville. And then you wake up and you sort of just try to put it behind you and say, oh, well, it wasn't that bad, or I was just, you know, a bad kid, I deserved it. I mean those voices that they gave me at Grenville are still in my head.

Q. Well, that may be, but do you agree that with respect to the pulling out of bed at night, you started to convince yourself that it did not happen?

A. When?

Q. No, you don't agree or yes, you do?

A. Well, those are huge spans of time we're talking about.

Q. Mr. Hale-Byrne, all the years...

A. Mm-hmm.

Q. ...up until you went on FACTNet, that's what I'm talking about, 2006. Now did you or did you not?

A. I'm sure I remembered it from time to time.

Q. Okay. And do you agree with me that with respect to that experience, it was only after you went on FACTNet that you realized it wasn't just you who had had that experience?

A. When we went on FACTNet, people were talking about all sorts of experiences. I don't think I was just - I mean, I don't think you can just pick one little experience and say was I emphasizing just being dragged out of bed. FACTNet brought all this information flooding out, and it just - it was hugely validating. It was just, oh, my gosh, this is all coming back to me and all these people who some before I've never met before, most of them, from different years of school, are saying the exact same thing.

Q. And all these repressed memories of your experience at Grenville were coming back to you, were they?

A. They were coming back to me and flooding back to me. And I was...

Q. Flooding back?

A. ...and I was trying to and - great difficulty...

Q. Yeah.

A. ...focusing on so much.

Q. And it was only after you started to converse with people on FACTNet, that you realized these experiences did not just happen to you, correct?

A. Certainly over the years, I obviously must have remembered this happening to me or happening to others, but it was reading FACTNet brought it all together and the final validation that this was wrong.

Q. I'm not asking what brought it all together and I'm not asking about final validation.

A. Mm-hmm.

Q. The proposition I am putting to you, sir, is it wasn't until you went on FACTNet that you realized the experiences you had didn't just happen to you, correct? Yes or no?

A. I got a full realization of it in - in - in 2006.

Q. Well, you got a realization of it, right?

A. Yes - yeah.

Q. All right. Now, so notwithstanding the fact that all these practices were habitual and widely known according to you, and happened to lots of people and if they weren't on the receiving end all kinds of people knew about it, you'd forgotten all that, right?

A. I had gone on with my life and did other things, yes.

Q. Yeah. So, the...

A. Tried to.

Q. ...answer to my question is, yes then, is it?

A. Yes.

Q. Thank you. And in fact, you went to the point where you were a nay-sayer, weren't you?

A. Yes, I went through periods of - of nay-saying, yes indeed.

Q. I didn't say you went through periods of nay-sayer, I said for all those years up until FACTNet, you were a nay-sayer?

A. No, I wouldn't agree with that.

Q. I see.

A. I said - I specifically did say, that I went through periods of being conflicted and wavering back and forth from side to side. I was very conflicted.

Q. I don't care how conflicted you were. A nay-sayer is someone we talked about earlier, who denied the abuse and I'm suggesting to you, sir, that up until you started reading the experiences of others, you were a nay-sayer?

A. I was not consistently a nay-sayer from 1990 up until 2006. I went through periods of being a nay-sayer and being in denial.

[68] I accept Mr. Hale-Byrne's description of how he came to terms with how his feelings about Grenville. His description of being a naysayer and feeling conflicted about his experiences

is consistent with his having made the recommendation to another family in the late 1990s. This is not inconsistent with his having suffered trauma: there is sufficient unchallenged evidence about Grenville founding itself on tough treatment, high expectations, and the use of harsh punishments that corroborate Mr. Hale-Byrne's evidence. The fact that Hale-Byrne was inconsistent about criticizing his former school does not mean he is not to be believed about the facts to which he testified. His feelings about the school are not the same thing as what happened to him there. There is a risk that this submission about his demeanour is an invitation to engage in "amateur psychology" unsupported by evidence that such behaviour is inconsistent with credibility. I accept his evidence in cross examination that for a time he "normalized" his experience there, but once he learned about the experiences of others, he felt validated that what happened to him was wrong.

[69] I found Mr. Hale-Byrne to be a credible and reliable witness. I accept his account of his experiences at Grenville.

Margaret Granger (Former student and staff member, 1970-1999)

[70] Margaret Granger was born to staff members at Grenville in 1970 and grew up living on campus with her birth family and other Grenville staff families. By the age of 12 and until her final year of high school, Ms. Granger lived as a boarding student at Grenville in the girl's dormitory. After her graduation she became a member of staff until she left to take her teaching degree at age 29.

[71] The defendants conceded it is undeniable that Ms. Granger suffered greatly during her life at Grenville. She was taken away from her parents at a young age, her mother was sent to the Community of Jesus for prolonged periods of time and she herself was sent there for months as a form of discipline. She was subject to demeaning light sessions frequently, subjected to discipline of various types, both as a student and later as a member of staff. She was taken to the boiler room by Charles Farnsworth to be shown the heat from the flames to instil the fear of hell into her. She was disciplined for being haughty, for friendship with a boy and on one occasion, she received 29 days of discipline when she admitted she had shoplifted from a store and stolen from a woman in town whose house she had been assigned to clean.

[72] Ms. Granger described the hours-long public shaming sessions with students held in front of the student body as "terrifying." She frequently heard and was subjected to gendered insults from members of the Grenville administration, including "Jezebel" "temptress" and "slut." She suffered from eating disorders and at times was required to eat more under threat of discipline or at other times, to diet to control her weight.

[73] Ms. Granger was also denied certain opportunities to grow and to celebrate her own accomplishments. She did well academically in Grades 7 and 8 but in her high school years, she was no longer able to see her grades to avoid her becoming too "haughty." She tried out for roles in school plays and was awarded parts that were later taken away from her for the sin of being too "haughty" or other misbehaviour.

[74] In cross-examination, Ms. Granger admitted to some inconsistencies between her evidence on prior occasions and at trial, including:

- a. Recalculating the number of months she was sent to the COJ in Massachusetts as discipline from 6 to 7 months;
- b. Failing to include herself in a list of girls who were deemed too pretty and forced their hair cut short: at trial, she testified this also happened to her and she felt humiliated by this;

[75] The defendants also characterized Ms. Granger as a “serious discipline problem” because she had shoplifted as a teenager and misbehaved in other ways. They suggest her actions then should reflect negatively on her credibility at trial.

[76] I concluded that the differences between Ms. Granger’s trial evidence and discovery transcripts were inconsequential. The practice of children being sent away to the COJ was confirmed by other witnesses. There was a photo of Ms. Granger’s hair which matched her description. There was plenty of evidence that any number of the secondary school students at Grenville tested limits and legal norms including smoking, taking food from the kitchen, purchasing alcohol for underage peers or taking a vehicle without permission. Ms. Granger admitted her theft as a teenager, apologized to all concerned and testified that she was remorseful. I accept her evidence of deeply felt remorse at the time. I also accept her evidence that she wanted to be a good student and excel.

[77] The defendants submit that the central problem with Ms. Granger’s evidence is the impossibility of separating out the events that happened to her as a member of the “community” rather than as a boarding student at Grenville. This submission assumes two distinct communities: the school and the Grenville community. This is a false distinction. There was ample evidence from former staff and students to confirm that the community existed to run a school. The community was the physical and spiritual home to the school. Its values, practices, hierarchy and beliefs were applied to the operations of the school. The two were interwoven. Ms. Granger experienced Grenville during the entire year and many witnesses agreed that she (and other children of members of staff) suffered more as a result of her uninterrupted exposure to the COJ way of life at Grenville. I conclude that this did not present any credibility issue.

[78] I found Ms. Granger to be a credible and reliable witness. I accept her evidence of what happened to her during her life at Grenville.

Tyler Stacey-Holmes (former student, 1993-1995)

[79] The defendants submitted that Tyler Stacey-Holmes appeared to be a “rather forthright, candid, witness.” The defendants concede that the sessions in which Charles Farnworth attempted to change Mr. Stacey-Holmes’s homosexuality were inappropriate but that otherwise, Mr. Stacey-Holmes had positive experiences at Grenville.

[80] Mr. Stacey-Holmes gave evidence that was internally consistent. His evidence about the expression of negative attitudes at Grenville towards homosexuality was corroborated by other witnesses, including Francois Lukawecki, Margaret Granger, Simon Best, Joan Childs and Richard Van Dusen.

[81] Mr. Stacey-Holmes was a credible and reliable witness. I accept his account of what happened to him at Grenville.

Francois Lukawecki (former student, 1987-1991)

[82] Mr. Lukawecki described himself as an academically inclined, fun-loving boy when he arrived at the school. His first impression of the school was that something was “off.” He felt as though he had stepped back in time. The staff seemed friendly, and all of the students behaved. The staff women wore long skirts and short hair. Early on, he was told by another student that gay is evil and that the school would not put up with [gay students]. Students were not permitted to decorate their dorm rooms with anything personal. They could not use their own bedspreads or put up music posters. Dorm room assignments for some students were changed throughout the year.

[83] Mr. Lukawecki asked his parents to take him out of Grenville, but he was told there was no option. He stayed four years. He described the contrast between the lighter times, some of them captured in yearbooks, such as banquets, performances and other events. He became a senior leader at one point and then decided he did not want to be “one of them.” He described having to constantly monitor his behaviour to make sure he did not walk in a way that was not masculine enough or having to be careful as to how he held his coffee cup. He developed a saying that he repeated to himself as he walked from class to class: “The only place I’m safe is in my head.” Mr. Lukawecki described the daily schedule which began at 6:30 a.m. and went through to 10:00 p.m. Napping was not permitted. He testified that he felt “tired all the time” when he was Grenville.

[84] Mr. Lukawecki testified about the overall impact of his time there:

I -- I emerged from Grenville with PTSD. Just constant fear. Incapable of trusting people. Incapable of building relationships. You know I’m 46 now and I have a career but trust me, I went through bloody hell and I’m talking bloody hell. I -- I actually -- I tried to commit suicide.

Well, I got to the point of plunging a knife in my chest and just because of the experience stayed with us. It’s -- you know, I -- everybody was looking forward to -- to graduation, graduation, graduation. I’m going to get out. I’m going to get out. I’m going to get out. And it didn’t work that way.

It stayed with you. I don't know the tentacles and the -- the programming they did into our brains, I still have it to this day. I still have these -- this horrible sense of no worth. Of being evil. Being disgusting. But anyway, I'm no longer answering your question.

[85] Mr. Lukawecki gave detailed evidence about being put on discipline or "On D":

1. Refusing to eat liver at dinner: He was confronted about being required to submit to authority in a private session with staff and a prefect, told he was "trash" and called other names until he cried. He was put "on discipline" which required him to sleep in a room above the gym, speak to no one, not attend classes. He was made to rise in the night, sometime between midnight and sunrise to run track with other boys who were on discipline. As they ran, Mr. Lukawecki described staff telling them:

"You're going -- you're going to run, we're going to make you run Satan out of your mind."

"[Come on], you lazy ass, you're running like a faggot. Don't be a fag. You're so lazy. If you're -- you're so good at your bad attitude how can you be so bad at running?"

"Put the energy of your attitude, put it in your running."

You know, something along the lines of "you don't pray enough." You know, "you're evil."

During this stint on discipline which lasted 3-4 days, Mr. Lukawecki said he and the others were assigned kitchen work, yard work, cleaning staff apartments or washing cars. Sometimes they were wakened in the night to pray or to yelled at for their faults. On the nights they were made to run, these sessions lasted 45 minutes to an hour.

Mr. Lukawecki felt angry that he was being punished for refusing to eat something that was not palatable, and that he had been pushed to by staff to break down into tears. He felt he did not deserve this treatment. It was not in line with his family's values or the treatment he received in his family home.

2. Bringing pop music cassettes to school: Mr. Lukawecki testified that he realized he could get in trouble for having music at the school. He hid the boxes of cassettes he brought from home in his dirty laundry bag and put it in his locker. Staff found the music, confronted him over this. He testified that he was told words to the effect:

Do you know Satan is the root of popular music? We don't allow this here. You're defiant. We thought you had gotten better but clearly you're still evil, you're still being a defiant boy. You have -- you're

ungrateful ... You're making us do this. You brought it as -- on purpose.

He was put on discipline status again, taken out of class, not permitted to wear the school uniform, told to pray and sometimes made to run in the early mornings as before.

3. Being upset about not getting a part in a play: After he told the staff directors (Margit Mayberry, Dan Ortolani and Don Farnsworth) that he did not want to accept a smaller part but instead wanted to play French horn in the pit for a performance, Mr. Lukawecki was told that he was “haughty” and ungrateful. He was told to apologize for his haughtiness. He did. Then he was told to apologize for his pride. He did. They laughed and kept telling him he was not apologizing properly. Eventually, he was told that since he did not know how to apologize, he would spend time on discipline and pray and work until Jesus came back into his heart. He spent another four days on discipline as before.

Lukawecki also described private questioning by Charles Farnsworth over a letter he had written to another boy which formed a significant part of the credibility challenge. This, and the other submissions on credibility are discussed next.

[86] Mr. Lukawecki’s credibility was challenged because:

1. His demeanor in giving evidence was “strident, melodramatic and argumentative”;
2. He seemed to be testifying from a “script” and did not deviate from that script; and,
3. He lied about being touched sexually by Charles Farnsworth.

1. *Analysis: Mr. Lukawecki’s Demeanour in Giving Evidence*

[87] Mr. Lukawecki gave detailed evidence about maltreatment at the hands of authority figures at Grenville. His evidence included sexual messaging and intrusive questioning that conveyed to him that he was evil, sinful and dirty. Like other witnesses during this trial, he talked about the difficulty of talking about private and painful matters. At one point in his evidence he moved from one topic to another and noted that he was “frazzled.” He talked in detail about the impact of being shown the “yearly satan video”, a television program by Geraldo Rivera. In the video, students were shown frightening images of animals being killed, discussions of child molestation and ritual abuse. Mr. Lukawecki refreshed his memory of this program by finding it in advance of his evidence and watching a portion of it. He said that he could not watch the whole thing again, but that it accorded with his memory that it was not an appropriate program for children to watch. Other witnesses also recalled Geraldo Rivera programs being shown to the students at the school.

[88] There was nothing in Mr. Lukawecki’s demeanor and his communication style that leads me to conclude that he was unreliable or not credible. The matters he testified about, including being on discipline, having to submit to authority on pain of discipline and being made to run

were corroborated by other witnesses called by both plaintiffs and defendants. His detailed memory of the taped Rivera program may have been aided by his recent watching of the same video but the fact that he refreshed his memory about this part of his experience does not alter my finding on credibility.

2. *Analysis: Allegation of Giving “Scripted” Evidence*

[89] I saw no evidence that Mr. Lukawecki was testifying from a prepared script. The defendants suggested to him that he memorized a letter to counsel. If he made a written account of his experience in order and was consistent with his prior statement, that does not mean his account is not credible. This is especially so where aspects of his account are corroborated by other students who attended Grenville during the class period, including defendant’s witnesses or plaintiff witnesses such as Mr. Stacey-Holmes, who the defendants conceded was a credible witness. Had he deviated from prior accounts; no doubt he would have been cross-examined (as were other witnesses) on those inconsistencies. I have considered his manner of giving evidence, the internal consistency of his evidence and corroboration by other witnesses. I find no basis to reject his evidence or accord it less weight because he testified consistently with prior statements that he made or wrote.

3. *Analysis: The Credibility of the Allegation of Sexual Touching*

[90] The defendants submit that Mr. Lukawecki should be found to have fabricated evidence that Charles Farnsworth touched him sexually and invited him to submit to additional sexual touching. There was evidence from both Mr. Lukawecki and Tyler Stacey-Holmes that they were separately subjected to private sessions in which Charles Farnsworth asked them questions about their sexual fantasies, prior sexual experiences and abuse by older males. The defendants do not challenge Mr. Stacey-Holmes’ account of such meetings and agree that these were inappropriate. The context of these meetings was Grenville’s views about homosexuality, and the teaching that it was sinful to be homosexual. The evidence from Mr. Stacey-Holmes and Mr. Lukawecki also suggests Charles Farnsworth’s inappropriate interest in learning details about the sexual habits of boys. The background to the event involving Mr. Lukawecki follows.

[91] Mr. Lukawecki testified that a chance contact with a student he admired after a school play took place. He misread the contact with the older student. This led him to write love letters and a song for the other student. The student eventually sent Lukawecki a pamphlet about gay conversion therapy, wished him well and revealed their correspondence to Charles Farnsworth.

[92] Charles Farnsworth brought Mr. Lukawecki to his office and questioned him in detail about his sexuality. This was close to graduation. Mr. Lukawecki was frightened that he would not be able to finish school: he insisted to Farnsworth that he had been confused at the time, but he knew that he was not gay and that this phase had passed. He then described Charles Farnsworth sitting next to him and moving his hand from his leg onto his genital area. Farnsworth asked Mr. Lukawecki if he wanted him to show him how Charles Farnsworth had been touched by a man on a park bench when he was a young boy. Lukawecki described his response to this unwanted touching:

So I jumped up. I jumped up, I was like no -- because he was asking me, "Do you want me to show you what happened?", that was -- that's the question -- that's the last question he asked me, that's the question he asked as his hand made contact with my genitals.

And I just got up and I was extraordinarily forceful and I said, "No, I don't want to know. I don't want to know your story. I pray to Jesus," and I was kind of like at this point I was trying to fuel the anger of like I've told you everything you need to hear, leave me alone.

[93] Mr. Lukawecki was cross-examined about why he had not told the police about Farnsworth touching him in the office. His police statement was read to him, which included Charles Farnsworth telling him the story of the man on the park bench. In the earlier version that Mr. Lukawecki told police, the next events were:

It became apparent where this was heading and I was panicked. FF asked me if [I] wanted him to show me how the man had touched him and I got up and tried to verbally wiggle my way out of the office.

Mr. Lukawecki agreed that he omitted an "important fact," that being that Farnsworth had contacted his genital area before he was able to talk his way out of the office. When he was asked why he did not tell the police about this, Mr. Lukawecki testified that he was not ready to reveal this fact and he could not deal with the idea of facing Charles Farnsworth in a courtroom. For a long time, he convinced himself that it had been his own fault for having written the letters to the other boy that led to this interaction with Charles Farnsworth.

[94] The defendants submitted that Mr. Lukawecki "clearly gave false evidence" in accusing Charles Farnsworth of sexually assaulting him at the trial. His evidence is only false if he either agreed that he had testified falsely or if I find that it was false by rejecting his explanation for not complaining to the police about the touching at the time he described the meeting in Charles Farnsworth's office. His account of being asked detailed questions by Charles Farnsworth was consistent with his statement to the police and he was not challenged on that aspect of his story.

[95] I concluded that the tone of the questions, the setting and the description of Charles Farnsworth moving to sit beside Francois Lukawecki and the invitation to tell him about something that had happened to him with an older man were features which lend veracity to Mr. Lukawecki's account that he was also touched by Charles Farnsworth. I also accept his reasons for why he did not disclose the touching to the police when he was younger. I found Mr. Lukawecki to be a credible and reliable witness.

Richard Van Dusen (Former student, 1979-1981)

[96] The defendants did not challenge Mr. Van Dusen's credibility. They agreed that his account of being paddled fell below the standards of the day.

[97] Mr. Van Dusen described chapel services at Grenville, including “heightened” services during Easter when some of the students “spoke in tongues” while others threw their hands in the air and called out “praise Jesus.” One student ran down the driveway of the school during one such chapel service. Mr. Van Dusen also recalled being taught that the devil was everywhere and that the students needed to let Jesus into their bodies to prepare for that. He said that the students were shown a television show hosted by Geraldo Rivera that explained that AIDS was a “weapon from God to eradicate the homosexuals for their sin.”

[98] I found Mr. Van Dusen to be a credible and reliable witness.

Lisa Cavanaugh (Former student, 1984-1989)

[99] Lisa Cavanaugh began attending Grenville in 1984, initially as a day student for Grades 5, 6, 7 and 8 and then as a boarding student in Grades 9 and 10. She and her mother lived 10 minutes away from the school, in Maitland, Ontario. Ms. Cavanaugh described the school schedules as a day student and as a boarding student in detail. She participated in debating club, chess club and track and field at Grenville. She testified that she did track for one year only: there was too much running and the coaches “yelled” at the students to keep running or to run faster. On one occasion she ran until she threw up.

[100] Ms. Cavanaugh also described the Grenville rules and how they were enforced. The discipline methods included the all school assemblies described by others, in which students were stood up before their peers for criticism. Ms. Cavanaugh experienced this treatment herself after she was caught smoking, plus five days of discipline. She was assigned to wash pots in the kitchen and taken out of school as a punishment. When she was in Grade 6 she saw students cutting the grass with small pairs of scissors. She also saw students on discipline over the years doing a variety of chores: “I’ve seen boys do yard maintenance, picking through the rocks, cleaning – I’ve seen boys and girls clean dumpsters, doing laundry duty, housekeeping duties.”

[101] Ms. Cavanaugh talked about a bedtime teaching session when she was in Grade 9 that was delivered by Charles Farnsworth in the girls’ dormitory. He accused the girls of behaving like “bitches in heat” and discussed how they should comport themselves. He suggested that if they did not dress with decorum, they would be responsible for any harm that came to them for tempting boys. They were lectured about chastity and AIDS for over two hours and when this was finished, several girls were asked to have private meetings with staff. She saw other girls cry and shake and described feeling ashamed of having a female body during this session.

[102] Ms. Cavanaugh described the dorm searches in which the underwear belonging to female students was examined for being “regulation.” She described being required to bend over in front of the Deans while wearing a bathing suit to ensure it covered enough of her body.

[103] Ms. Cavanaugh agreed that there were many good teachers and staff at Grenville who were interested in student well-being and believed when she was there that other students had a positive experience. Her experience included feeling anxious while she was at the school because:

You could walk through the hallways at any given time and be corrected for not smiling enough, bringing down the spirit of the school, you could be chastised for the way you walked, if your kilt swayed too much that would be not a good idea. Something even as simple as crossing your legs, if you were sitting in a chair – so, on the edge of your chair and you crossed your legs, you could be chastised for that because the boys would be able to see the slip from the bottom of the chair.

[104] The defendants did not suggest that Ms. Cavanaugh was deliberately exaggerating her evidence. They submitted that her teen years were “troubled,” and pointed to her relationship with her mother. They submitted that her evidence could have been influenced by reading the stories of others, although Ms. Cavanaugh denied this to be the case during cross-examination. Finally, the defendants submitted that her polite Christmas card to the Farnsworth’s in 2001 and her expression of sadness over Grenville closing sent to another former student should also be considered in assessing her evidence.

[105] As with other witnesses who attended Grenville during their teen years, Ms. Cavanaugh described events that troubled her, the school routines, and the rules. She also agreed she had participated in a variety of activities with peers that could not be said to have been “all bad.” Her evidence was detailed and internally consistent. It accorded with information found in school handbooks and with descriptions given by other former students, called by the parties. Her evidence was corroborated by the staff members who themselves had carried out dorm searches for underwear violations, and policed the clothing worn by the girls at Grenville.

[106] The general submission that Ms. Cavanaugh’s evidence should not be given much weight based on a difficult relationship with her mother is an invitation to make assumptions about the impact of formative relationships on testimonial credibility without any foundation. The same holds true for the defence submission about her Christmas card to the former headmaster and her message on Grenville’s closing. These notes are consistent with the mixed feelings that Ms. Cavanaugh’s evidence reveals. Instead, I have looked to the content of her evidence and the evidence of other witnesses to assess her credibility.

[107] Overall, I find Ms. Cavanaugh to be a reliable and credible witness.

Mark Vincent (1973-1975) David Shepherd (1977-1979) and Philip Mailey (1991-1993)

[108] The defendants submitted that these three former students tried to give accurate accounts of events they had experienced 35 years ago. Any individual issues in their evidence should be taken into account as a result of the length of time that has passed since the events they described.

[109] I find that all three of these plaintiff witnesses were credible and reliable.

Heather Bakken (Former Student 1981-1982)

[110] Ms. Bakken testified about her Grade 12 year at Grenville. She described a series of events that led her to ask her parents to take her out of the school by the Thanksgiving break of

her first semester at Grenville. She described punitive discipline and feeling humiliated at Grenville on a number of occasions. She also participated in plays, played basketball and badminton and went on trips out of town.

[111] Ms. Bakken was taken from her bed one night by another student, told to put on her uniform and taken to a late-night session with the Farnsworth's and the Haig's. They told her she was a disgrace to the school and accused her of stealing jewelry from another student. Ms. Bakken testified she believed they had been drinking prior to the meeting. They accused her of being the "haughtiest little bitch," and various other sins. She characterized this event as being like "psychological torture."

[112] Later in her evidence, Ms. Bakken described the school's control over the bodies of its students, including her own, as being like "animal husbandry." In cross-examination she agreed that maybe this was an exaggeration. She testified it felt like that to her at the time, with students suddenly appearing from the Community of Jesus, and other students disappearing from the school without explanation.

[113] Ms. Bakken received a stint on discipline and assigned washing pots and pans. The chemicals she was required to use triggered an asthmatic reaction. She was given fans, a mask for her mouth and nose and prescribed "Ventolin" to allow her to continue the job. She was out of class on discipline status for two weeks.

[114] The defendants submit that Ms. Bakken used her evidence to argue her "case" including her references to a banner that she testified was hung in the dining room at Grenville. She said the banner read, "Humiliation is a place of utter dependence upon God." She described being pulled out of the dining room by her ear because she had teased a student leader and noted the irony of the banner.

[115] Ms. Bakken also testified seeing another student being punished harshly:

I think I gave the example when I was in the dining hall and two people were passing an eraser in the library and then they're stood on chairs and completely humiliated to the point that the girl is, like, sobbing her heart out and the guy is just looking down on the floor. And I don't know if there was any additional punishment cause I didn't see it, but I'm telling you what I saw. And to me, that was just completely disproportionate.

[116] Given her evidence of what she believed to be humiliating treatment of herself and others, it is understandable that Ms. Bakken might recall that the banner read in the way she described it. Nevertheless, I find it highly unlikely that the banner really read "humiliation." It is more likely that the banner said "humility." Grenville's reputation and how it presented itself to the outside world would have been damaged by putting such a word on public display. "Humiliation" was not part of the Grenville lexicon. The language at Grenville focused on sins (haughty, proud, lustful) and its responses to those sins (admonishment, chastisement, correction, discipline, submissions and "yieldedness"). Although I found that the practices it used were humiliating, I saw no evidence that the school portrayed itself to the community outside its walls as a place that valued humiliation.

[117] Ms. Bakken's descriptions of discipline and her other experiences at Grenville which frightened her were aligned with the evidence of other witnesses, including Ms. Smart, Mr. Lukawecki and Mr. Hale-Byrne. Former staff members Ms. Mayberry and Ms. Childs confirmed that there were forms of discipline practiced at Grenville that they described as "humiliating."

[118] The defendants allege that Ms. Bakken exaggerated and dramatized some of the incidents she experienced. They characterized her evidence as being unclear as to whether she was speaking to events that happened to her or to others. The defendants gave the example of Ms. Bakken's statement that students were "hailed out of line, into a dark broom closet with lights being shined in the eyes by staff." Ms. Bakken testified:

So, it was, you know, I mean the rules were shaped around -- like again like I have to say I'm not a rule breaker. I didn't walk around swearing. I didn't -- I -- I did everything I was asked to do. If I was told to get up at a certain time, I got up at a certain time. If I was told to go to bed at a certain time, I would go to bed at a certain time.

But it's not that -- it was not even just the rules, it's just that this random singling out of you for doing nothing. Like just walking to your room, all of sudden someone comes out of a broom closet, or a, like a supply closet and pulls you in. And has -- there's a light shining on a chair and you're in pitch black and they tell you to sit down. And then you sit down and then they shine a light in your face, and you know there's someone in front of you -- one on each side of you, behind you and they're just yelling at you. Yelling at you calling you a temptress, a jezebel. You should be ashamed of yourself. Oh my god, these things happen and I -- to this today I don't even know who the people were who did things like that.

Q. Did that happen to you, were you pulled into a room and...

A. Yes.

Ms. Bakken was not cross-examined on this incident, and it was not put to her that this did not happen to her.

[119] Like Mr. Hale-Byrne, Ms. Bakken used metaphors to describe how she felt about her treatment at Grenville. She used personal, subjective descriptions, including comparisons to "drinking the Kool-Aid" (a reference to the Jonestown mass suicide in the U.S.), "animal husbandry" and "psychological torture." These characterizations, while dramatic, did not lead me to reject the factual elements of how she was treated at Grenville: her description of lengthy discipline, the negative and gendered characterizations of girls at Grenville, the policing of girls' attitudes and clothing, the late night accusations of wrongdoing (with or without foundation) are similar to incidents recounted by other students. I find that Ms. Bakken's account of what happened to her at Grenville was credible and reliable.

Kathy Smart (Former student, 1994-1996)

[120] Ms. Smart came to Grenville for school after she said she had been in four different cults as a teenager. She agreed that she had some fond memories of her time at Grenville. She also described being assigned humiliating work jobs on discipline including scrubbing floors in a submissive position while being told she was worthless, having to scrub a staff home with a toothbrush while a staff member tried to push her over and not being permitted to use the washroom facilities when needed. Most of her infractions related to being considered rebellious. On one occasion, she was in the woods with other students who were smoking. Ms. Smart testified about being confronted by staff after lights out:

I was woken up during the night a lot just dragged out of my bed and said, "You need to confess that you're rebellious. You have the spirit of rebellion and you're possessed by the demons of rebellion and evil", and I'm like, "This is nonsense, that's not how it works". But you're so tired. I did -- I'm just, "No, I'm not rebellious, you guys are wrong. This isn't God's love", but I would just say that over and over, basically.

[121] Andrew Hale-Byrne, whose evidence I accepted, also described being wakened at night and confronted by staff. Richard Van Dusen, whose evidence was not challenged, testified that a fellow student was wakened at night and taken to one of the rooms used for discipline. He testified that he was aware of similar discipline nighttime activities happening approximately a dozen times over his time at Grenville.

[122] During a private discipline session with two members of female staff, Ms. Smart was taken to the basement where she was told that she was “rebellious, disgusting, worthless and that they needed to “break her.” This was followed by three days of waking her at 4:00 a.m. to prepare breakfast.

[123] The defendants challenged Ms. Smart’s credibility on the following grounds:

- a) Being argumentative, confusing and “ridiculously over the top” in her evidence;
- b) Ms. Smart gave an interview in 2014 interview to the Ottawa Citizen and made no complaints about Grenville;
- c) Ms. Smart complimented Grenville in a 2010 social media post;

[124] Ms. Smart said that the newspaper article was “not her platform.” She also testified that she described some of the milder forms of discipline at Grenville to family members who told her that this was “nonsense.” I accept her explanation. I do not regard Ms. Smart’s compliment in a social media post or her failure to complain to the media in an article about Grenville detrimental to her credibility: this would require me to make assumptions about what a person in Ms. Smart’s position would or would not do or what they would consider the appropriate venue to describe personally humiliating experiences.

[125] As for her demeanor while testifying, it is true that Ms. Smart tended to anticipate questions at times which confused the order of questions and answers. The comparison to be a

“prisoner of war” could fairly be described as dramatic. I did not take this as intended literally. This extract from her cross examination illustrates how Ms. Smart testified:

Q. All right. Now, I'm going to suggest to you that you were a very rebellious young woman during your time at Grenville, weren't you?

A. No, I wasn't, because your definition of rebellious and what the definition of rebellious is at Grenville, in fact, when you're defined as rebellious at Grenville you're normal.

Q. And you were a self-described bad kid, weren't you?

A. I wasn't a -- a bad kid in Grenville, if I were -- it's funny. I'm known as the good kid so the bad kid in Grenville, you have to understand what their definition of bad is, David.

Q. No, I'm saying those are your words?

A. Yeah, absolutely, I was...

Q. And....

A. ...because I would listen to music if I wanted and....

Q. ...and you chafed against the strict rules?

A. I did.

Q. And you thumbed your nose at them?

A. Yes, because the rules...

Q. You gave....

A. ...were not based on truth. They weren't even correct.

Q. You gave the rules the middle finger, as you described it?

A. Absolutely.

Q. And you owned the discipline...

A. Yes.

Q. ...that came upon you for your known wrongs...

A. I even admitted to it.

Q. ...at the school? Right.

A. I didn't want my friends to be put on discipline if I had done the exact same thing and I didn't want them to be in that alone.

Q. You intentionally wore your hair down when you were supposed to wear it up during class time, right?

A. No, it wasn't during class time. That's, actually, -- you could wear it down like after class.

Q. That's I thought what I said but okay, you were...

A. That's okay. It's cause you don't know the rules I do.

Q. You wore your hair down knowing that it was against the rules?

A. Not at the time that I wore them but, put my hair down, no. During class, yes; during breakfast prep, yes, that all makes sense. During sports, yes, but on my off time I can do as I please.

Q. All right. And you told us how you would roll up your kilt...

A. Yeah.

Q. ...up to an inappropriate length, right?

A. No, it wasn't at inappropriate length. I still kept it below the knee, but they liked it at mid-calf and I didn't find it very fashionable.

Q. Okay. And you -- you laughed at the discipline you were given at the time and you still....

A. Laughed?

Q. And you still do to this day, don't you?

A. It's a way to cope.

Q. Hmmm.

A. Basically, I was like a prisoner of war, David.

Q. Right.

A. Oh, awesome. Oh, yes. I totally did that because it was gluten free granola and I could eat it. Q. I haven't....

THE COURT: Let's wait for the question.

THE WITNESS: Oh -- oh, I'm -- I am sorry.

THE COURT: It's all right. You will get documents. You may get more than one.

THE WITNESS: Okay, thank you.

[126] I exercise caution in making assumptions from Ms. Smart's manner of testifying that this made her account of discipline at Grenville less credible. During her cross-examination, she testified:

A. I'm just tired because I'm -- I know I'm smiling and I seem fine but it's not an easy thing for me.

[127] Ms. Smart testified that she coped with the rules, the disciplines and name calling from staff in a variety of ways including citing scripture, hiding from the all class sessions to sleep and by stealing peanut butter and granola from the kitchen because of a celiac condition. She talked about humming to herself to drown out the negative messages and telling staff that "Jesus was love." Ms. Smart's evidence of demeaning disciplinary methods was similar to the experiences of Margaret Granger and Andrew Hale-Byrne. Further, the use of humiliation and difficult work duties for disciplinary purposes at Grenville to correct children was corroborated by both Joan Childs and Margit Mayberry. I accept Ms. Smart's descriptions of the discipline she was subjected to at Grenville. I found her to be a credible and reliable witness.

Tim Blacklock (Former student, 1976-1977)

[128] Tim Blacklock died in the fall of 2019, a few days after the trial started. His evidence was filed on consent. He went to Grenville for Grade 9 and left as a result of a brutal beating with a wooden paddle by Charles Farnsworth. His out of court evidence, filed on consent, was that he did whatever he could to try and get expelled from the school, from smoking to fighting. He described feeling frightened, and intimidated, including when Charles Farnsworth whispered in his ear a month after the beating that he "would get the paddle again." He testified that he was suffering from post-traumatic stress disorder.

[129] The defendants accept Mr. Blacklock's evidence of the beating and concede that Charles Farnsworth's conduct in paddling Mr. Blacklock fell below the standard of care.

[130] The defendants submit that the balance of Mr. Blacklock's evidence reveals a "significant credibility problem" because in answer to a question in his cross-examination on a motion in 2008, he was asked to list the categories of practices that troubled him at Grenville and he described haircuts, a "lot of disciplinary," having to get permission to use the telephone and not being permitted to go to the mall with other students. The defendants suggest that his answer to the question "bordered on the trivial." The defendants also submitted that his answers included contradictions. They did not provide specific examples.

[131] I have reviewed the affidavit sworn by Mr. Blacklock on October 13, 2010 and his cross-examination transcript of September 13, 2011, as well as a transcript of examination for discovery. His affidavit described his beating in detail. He also described seeing other students being singled out and humiliated in public. He felt fear, recalled other students crying and remembered that he cried as well during the public humiliations.

[132] Mr. Blacklock described being wakened at night, taken to a brightly lit room and being told to “confess” by children of staff members.

[133] Mr. Blacklock’s evidence in 2010 and 2011 was consistent with the accounts of disciplinary methods given by other former students. His earlier cross-examination is said to affect his subsequent credibility, even though much of what he described later (the brutality of the beating, his running away when facing a second such paddling and fighting off students who tried to hold him down) was accepted by the defendants. In reviewing the impugned question and answer, I note that Mr. Blacklock was being asked about categories. He used a combination of general and specific responses to the question. I conclude there is no logic to the assertion that this answer should lead to discarding all of the rest of his subsequent evidence except for his evidence of being paddled.

[134] Mr. Blacklock complained to his father about his treatment, and later to the Archbishop of Kingston and to the police. His evidence aligned with much of the other evidence about Grenville’s discipline methods. I accept his description of what happened to him at Grenville as given in his affidavit and in his cross-examinations prior to the trial.

A. What Was the Standard of Care for Boarding Students in Ontario During the Class Period?

The Expert Evidence of Dr. Paul Axelrod: The Standard of Care

[135] Dr. Paul Axelrod was qualified without objection to give opinion evidence on the standard of care for private and public schools in Ontario during the class period in relation to:

- educational and disciplinary practices;
- laws, regulations and policies, and;
- the obligations of schools and teachers with respect to the health and welfare of students.

[136] The defendants called no responding expert evidence on the issue of the standard of care.

[137] Dr. Axelrod is a distinguished academic who has studied, published and taught the history of education in Ontario and Canada. Dr. Axelrod has studied progressive child-centred education and the ways in which those concepts were gradually adopted in Ontario.

[138] Dr. Axelrod gave opinion evidence that in the 1960s there were significant reforms to education in Ontario. The new standards, which were in place throughout the class period began with the 1968 Report of the Provincial Committee on Aims and Objectives in the Schools of Ontario (the “Hall-Dennis report”). The Ministry of Education developed guidance as a result of the Hall-Dennis report, including writing to all schools in Ontario in 1969, which set out the Ministry’s position including:

- abolishing all corporal and other degrading forms of punishment;
- creating engaging learning environments;
- emphasizing teaching in an atmosphere of respect and trust;
- describing the expectation that teachers serve as guides, advisers and facilitators, rather than authoritarian leaders.

[139] According to Dr. Axelrod, these were considerable reforms. Ontario was on the leading edge. Prior to the reforms of the 1960s, educators placed greater emphasis on the unquestioned authority of teachers and principals.

[140] The new standards of the 1960s continued forward throughout the class period. In the 1980s, the Ministry of Education published resource guides for behaviour and discipline. These resource guides included techniques to prevent disruptive behavior and facilitate effective learning. Another guide entitled “Adolescence Development,” explored the psychological and social development of youth, the complexity of the stage of adolescence and how young people might be understood by parents and educators. The Ministry also published a resource guide on discipline for intermediate and senior divisions in which it continued to reinforce its opposition to corporal punishment, and outlined the principles and practices of behavioral management, based on current theory.

[141] Dr. Axelrod opined that the standards during the class period were based on concepts that included:

Disciplinary policies and practices should be consistent with the basic assumptions underlying a democratic society.

They should:

- (a) reflect respect for the students' worth and dignity and the worth and dignity of others so that both students' rights and their responsibilities are equally emphasized;
- (b) ensure that student potential is developed within bounds that respect the needs and rights of others; and
- (c) reflect the legal principles of just cause, due process, including avenues of appeal.

[142] Although corporal punishment of children was a lawful form of correction and administered in Canada at the time of these events, the 1968 Hall Dennis report called for its abolition in schools. There were also limits on such practices. Corporal punishment was to be administered “without malice, arbitrariness, caprice or in bad humour.” Any correction was to be done in the manner of a “kind, firm, judicious parent.”

[143] Corporal punishment was banned at Upper Canada College in 1972, and at most private schools in Ontario by 1980. Where schools used corporal punishment, they developed protocols around where and how it would be administered. Its use was documented to provide accountability and to protect institutions from unfounded complaints of excessive use.

[144] Dr. Axelrod also described the high degree of autonomy accorded to private schools in Ontario under the *Education Act*. The Ministry of Education inspected curriculum delivery by private secondary schools, but not school rules, disciplinary practices or extracurricular teachings on religion, sexuality or values by private secondary schools.

[145] The next section of these reasons discusses Grenville as an institution, the evidence of its practices and whether these practices fell below the standard of care. I will also consider the question of whether the evidence establishes systemic negligence by Grenville in relation to the class.

B. Does the Evidence Establish that Grenville’s Practices and Policies fell below the Standard of Care for Boarding Schools?

i) The History of Grenville Christian College

1969-1973: The Early Years as Berean Christian School

[146] The evidence about Grenville as an institution came from an agreed statement of facts, documents and records filed on consent, as well as evidence from former staff and students who were at the school during the class period.

[147] In 1969, two married couples, Al and Mary Haig, and Charles and Betty Farnsworth founded the Berean Christian School (or “Berean”) on a former Catholic seminary property located east of Brockville Ontario. Al Haig was a university graduate and a former United Church Minister. Charles Farnsworth was a former pastor from Atlanta, Georgia and a former member of the Bereans in Dallas, Texas. Charles Farnsworth did not have any post-secondary education.

[148] The Berean staff and teachers lived on the school property, operated the school and ran a farm on the grounds. Secondary students boarded at the school. Al Haig was the first headmaster of the school.

1973: Cay Anderson and Judy Sorensen from the “Community of Jesus” Visit the Berean Christian School

[149] By 1973, the Berean Christian School was in debt. It looked rundown. The staff members were not working well together. Al Haig invited two founders of an unaffiliated religious community in Orleans, Massachusetts named the “Community of Jesus” (“COJ”) to visit Berean. The COJ founders, Cay Anderson and Judy Sorensen (who called themselves “Mother Cay” and “Mother Judy”), spent several days meeting with the staff of Berean to describe the COJ way of life and religious beliefs.

[150] According to the evidence of former school staff member Joan Childs, Anderson and Sorensen were charismatic speakers. They talked about the benefits of living honestly and openly, maintaining a clean and tidy school and the need for clear authority figures at the school. They also described how the staff could help correct each other’s sins.

The Community of Jesus: Its Influence and Relationship to the School

[151] The COJ described its philosophy of living as:

Covenanting together to live in openness and honesty and giving and receiving correction, allowing the power of the cross of Christ to transform many of our former ways of living and thinking and that to live in community is to live in obedience.

[152] The COJ believed it was important for its members to live “in the light.” They defined this state of being as follows:

Living in the Light is first being truthful with God about yourself and your relationship with Him, then being truthful in your relationship with other people who have agreed to walk in the Light with you. This necessarily involves being willing to listen to others, being aware that whatever they say could be what God intends for you to hear. [...] The truth heard or spoken can be admonishment, correction or loving encouragement. [...] The purpose of living in the Light is to come out of our own ways, opinions, will and understanding into the fullness of the truth which is Jesus Christ alone.

[153] In order to “live in the light,” Anderson and Sorensen taught the Berean staff they needed to confess and confront each other regularly by way of “light sessions” to correct each other from sinful ways of thinking and behaving.

[154] The parties agreed that the COJ defined these practices used by the school community:

Admonishment: To admonish means to warn, to indicate duties or obligations; to express warning or disapproval to, especially gently, earnestly and solicitously; to exhort;

Chastisement: To chastise, as used here, means to train through correction, to free from faults, excesses, etc.; to purify or refine; a training gracious and firm;

Correction: To correct means to lead straight; to make or set right; amend; to alter or adjust so as to bring to some standard or required condition;

Discipline: To discipline means to train or develop by instruction and exercise, specially in self-control primarily an admonishing or calling to soundness of mind or to self-control; teaching, learning, instruction; training that corrects, molds or perfects the mental faculties or moral character; to make the mind safe;

Submission: To submit is to subject oneself; to yield to another's advice or admonition; to place oneself under; to behave oneself submissively;

"Yieldedness": The act of yielding; state of being surrendered or of submitting to another; to give place or precedence.

These definitions had additional commentary (not included here) which continued the themes given in each of these definitions.

[155] The Berean school community adopted the COJ ideas and practices. Staff began to practice regular "light sessions" with each other. The authority for the school and its community was vested in its first headmaster Al Haig, a role later shared with Charles Farnsworth, then Farnsworth alone from 1983-1997. In line with the COJ teachings, school staff and their families were expected to submit to this authority.

[156] Many of the Berean school staff members took lifetime vows to join the COJ as "oblate" or non-resident members of the community. Their vows included expressions of obedience, "yieldedness" and submission to the COJ, to Jesus and to Cay Anderson and Judy Sorensen. Berean staff regularly travelled to the COJ to participate in retreats which involved prayer, teachings from Anderson and Sorensen and other services.

[157] The COJ provided tape recordings of their teachings to Berean staff: sample titles of their teachings included, "Be needy, be wrong, be alive" and "I Repent of Me."

[158] Former COJ member and Berean school staff member, Margit Mayberry described the COJ relationship to the school. Anderson and Sorensen were the spiritual leaders in Massachusetts. In Ontario, at the school, the headmaster was the spiritual leader in the field. The COJ culture of obedience meant that decisions made by the headmasters were not to be questioned. When Berean adopted the COJ way of life, staff members were also required to make a "life confession" to the headmaster, and ongoing regular confessions.

[159] The COJ doctrine became the foundation for the school's approach. As former staff member Joan Childs testified:

[W]e did the same things with the students that we did with ourselves. It was direct confrontation. So, if we felt a student had a bad spirit, if we felt that they were doing the same sins that we were learning to look at like, you know, being haughty, being jealous, trying to be the centre of attention. We would – we would speak to them about it. We

would use those terms. We would say, you know, you're full of yourself. You're – you're making this – yourself the centre and you shouldn't be. That's not good. That's not the way you're supposed to live. So, we incorporated that sense into our discipline with them. We – you know, I don't know that we would call it a light session, but we would – if there was a bad attitude in the student body, we'd call all the students together and we'd speak to that attitude and say there's something wrong here. You all need to look at yourselves and see how you're a part of the problem.

[160] “The “tough love” approach and obedience to authority was expected from all at the school. Ms. Childs said that the staff had come to believe from the COJ teachings that nobody is intrinsically good. To believe you were good would keep you from being with Jesus. The staff believed in this idea for themselves, their families and for the students in their care.

[161] There were also financial ties between Berean and the COJ. The staff members who joined the COJ paid a portion of their salaries to the COJ. Joan Childs described it as an obligation to “tithe” or pay 10% of one's salary to the COJ. Donald Farnsworth, former staff and son of Charles Farnsworth confirmed that the school made financial contributions to the COJ to pay for retreats and the purchase of a house in Rock Harbour, Massachusetts.

[162] Joan Childs testified, “We lived a hard life, but we thought we were living a life that was good and all had changed for the better.” She described the COJ way of living as “complicated and intense.” After it adopted the COJ ways of life and principles, the school began to publicize its new program and changed its name. This transition is described next.

1974: The Berean School Becomes “Grenville Christian College” and Headmaster Al Haig Publicizes its New Discipline Program

[163] In 1974, Berean Christian School changed its name to Grenville Christian College. Al Haig gave a speech to the Brockville Rotary Club about the new approach at the school. In his speech, which was reported in the local press, Haig talked about the big mistake that adults make when they take a “totally permissive attitude” toward their children. He talked about the new discipline program at the school that started in 1973. In an undated clipping filed at trial, Haig was quoted as follows:

We are not afraid of our students but today many parents are afraid of their children and because of this the child will not like or respect his parents.

[164] On March 25, 1974, Al Haig sent the article quoting from his speech along with other articles describing the school to the Director of the Education Records Branch at the Ministry of Education. Haig's cover letter discussed the change in the school's “philosophy.” He asked the Director if he could recommend the school to parents who would like to have their child educated in an atmosphere of Christian love and discipline. Haig wrote about the excellent results the school was seeing from its new program. He said:

- We have strong discipline in an atmosphere of straightforward love and concern for every student.;

- We have been able to cut through all teenage rebellion;
- There is an excellent spirit of cooperation and respect in our school this year;
- We have found that old-fashioned honesty in dealing with students is the best policy;
- The students not only accept this discipline, they respect and appreciate it.

[165] The authenticity of the statements in these documents was conceded. They provide some evidence of how Al Haig was describing the school in its early years.

[166] Haig included an article for the Ministry of Education written by Father T.J. Raby who had visited the school. Father Raby said that at his visit to the school, girls and boys were neat, wearing school uniforms with nobody wearing jeans, and no boys had long hair. Al Haig was quoted in the article: “First day of school, off comes the long hair. It’s part of the discipline and the boys take it.”

[167] In 1979, six years into the “new program” at the school, Al Haig wrote a piece describing the change it had made in 1973-74. It was published in the school newsletter, the “Grenville Christian College News.” Haig wrote that Grenville was a special place where attitudes, habits, hearts, relationship, behaviour patterns and levels of achievement change. Haig attributed the changes to the teachings of Cay Anderson and Judy Sorensen on how to “live the changed life in the practical activities of every day.” Haig wrote that as a result of the COJ teachings, the whole school changed:

- its direction;
- its philosophy;
- its discipline;
- its spirit and atmosphere; and
- even its appearance changed.

[168] Joan Childs testified that the COJ ideology was that the school should “break down” its students to give them a mature Christian life. Kathy Smart testified that when she arrived at the school, Margit Mayberry and Judy James stripped her of her clothing, forced her to scrub off her makeup, and told her “We’re going to break you. Our job is to break you and we’re going to do that.” Kathy Smart also testified that after publicly debating with Charles Farnsworth about his interpretation of Scripture, she was put on discipline by Judy James. Judy James took Ms. Smart to the basement and told her “You’re disgusting. You’re worthless. You’re never going to amount to anything. Father [Farnsworth] and I need to break you.” Ms. Smart also testified that she was two minutes late for supper, which led to Donald Farnsworth grabbing her and telling her “We need to break you.”

The School Structure

[169] An understanding of the school structure in Al Haig's own words was available by way of tape recordings filed at the trial ("The Story of GCC" and "How I See It"). In these recordings, Haig described the history of the school and its student accomplishments in sports and theatre. He acknowledged that the Grenville "philosophy runs counter to the accepted philosophy of the day." Haig described the first four years of the school as being too "soft" and "permissive."

[170] Haig also described Grenville's structure. He said that school oversight was by way of a "pastoral committee" made up of himself and his wife, and Charles and Betty Farnsworth. Haig stated that they were "held by the others as their authority."

[171] Former staff members Joan Childs and Margit Mayberry confirmed that staff owed complete obedience to Al Haig and to Charles Farnsworth during their time as headmasters and senior pastors.

[172] The school had several senior administration staff, including principals of the primary and secondary schools, the dean of men, the dean of women and directors. The principals, deans and directors reported directly to the headmasters. The teachers in turn reported to the directors and principals. In turn, the "Fathers" (headmasters Haig and Farnsworth) were required to be obedient to the "Mothers" at the COJ.

[173] Grenville did not have a Board of Directors or other authority to which the "pastoral committee" was accountable. From 1973-2007, a board of patrons and an advisory board assisted with fundraising and gave advice. These boards did not have formal powers of oversight over the operations of the school.

[174] In 1983 when Charles Farnsworth succeeded Al Haig as headmaster, he assembled a senior administration team with which he met daily. Joan Childs was part of this team, along with Ken MacNeil, Dan Ortolani, Judy James, and Julie Case. Ms. Childs said that Farnsworth "watched everything and looked everywhere." He wanted information from light sessions held with staff. Farnsworth's leadership of the school was marked by "total control" (Margit Mayberry) and was "lacking flexibility" (Donald Farnsworth). Margit Mayberry described Charles Farnsworth as a person who could not be questioned.

[175] Grenville admitted 200-300 students annually. Most of these students were boarding students in grades seven to thirteen. The children of the Grenville staff lived along with the boarding students in the dormitories and are included as part of the class.

[176] Students could have additional responsibilities as student leaders and prefects. This gave them supervisory and reporting responsibilities over fellow students. It was considered an honour to be made a leader or prefect. Their status was marked by being given a "prefect pin."

[177] Sometimes prefects were assigned to oversee students who were being disciplined at the school. Prefects were also expected to report students for infractions. Prefects could also assess

demerit points against fellow students which could lead to discipline for those who accumulated too many demerit points.

The Use of “Light Sessions” and Correction Applied to Grenville Staff Members

[178] During their first meetings with Anderson and Sorensen, the school staff were shown how to confront each other about what they had done wrong and how they were sinning. These sins included being “full of oneself,” “idolatrous,” “jealous,” or “haughty.” It could include not submitting to authority, not keeping one’s house clean enough or putting one’s relationship with children before one’s relationship with God. Staff would take turns being in the “hot seat” and the others would tell them the things they had done wrong.

[179] Margit Mayberry described the impact of being corrected as an adult. The light sessions led her to feel that she could do nothing right. The headmasters were not to be questioned.

[180] The use of “light sessions” for staff happened throughout the class period. Ms. Mayberry described monthly sessions during the 1980s. Staff were organized into “light groups” for the purpose of conducting the sessions.

[181] In addition to regular and random light sessions, staff issued and received correction from each other. Joan Childs gave an example. She described being one minute late for a meeting because she had called to check on her child who was ill. She was told she should not have come to the meeting if her child was ill and told that she did not have a “mother’s heart.”

[182] In the aftermath of her late arrival at the meeting and the resulting light session, Ms. Childs was assigned to meet with other people for weeks to help her to understand that she was a bad mother and to seek forgiveness from God. Ms. Childs testified that she found this correction devastating and confusing. It appeared to be inconsistent with an earlier direction that happened when her infant was being treated in hospital. At that time, Ms. Childs had been forbidden by the school authorities to stay with her baby at the hospital.

[183] Other forms of correction applied to members of the staff for their various sins included:

- residence relocation
- staff children being sent to live with other families than their own
- ordered to clean out every drawer in the house
- required to gain 20 pounds
- pay cuts
- swimming laps of the pool at an exhausting pace
- observing silence

- being criticized in front of their children and other staff
- an incident of a person being slapped in the face
- having water thrown at them
- adult staff member being forbidden from drinking alcohol and placed on discipline for 6 months for having a mixed drink at dinner in a restaurant
- being directed to live in “boot camp” conditions without privacy for months
- being sent to work at the COJ for an indefinite period of time

[184] The staff members who experienced or witnessed such corrections agreed that these were “humiliating.” These “corrections” took place at the COJ in Massachusetts and at Grenville. Margaret Granger testified that the corrections she experienced as a Grenville staff member were “demoralizing.” She felt worried and intimidated. When she left Grenville in her late 20s, she described herself as “deeply unhappy.”

[185] Staff could also be corrected for conduct they revealed in their confessions to the headmaster. A staff member suffered from bulimia for a time when she was at Grenville. She confessed to overeating and was called to Charles Farnsworth’s office where he “yelled at her” for her sin of gluttony.

[186] Grenville staff families were subjected to separations from their children. Margaret Granger was the first child born to a Grenville staff couple. Her father was the music director at the school and her mother was a French teacher, who was later demoted to perform housekeeping. Ms. Granger was sent to live with another staff family when she was five years old.

[187] Other familial separations were ordered for Ms. Granger during her formative years. She was sent away from her family when she was 7, 8 and 10 years of age. These decisions were taken to help her parents avoid the sin of “idolatry” or of loving one’s own children more than God.

[188] Although paid modest salaries, Grenville staff were moved around and often expected to take on multiple roles. Both Margit Mayberry and Joan Childs recalled that the demands of their jobs led them to be sleep deprived.

[189] The staff and former students agreed that many members of staff were caring and compassionate people. The strict regimentation was believed to make them better Christians.

The Daily Schedule and Interactions Between Staff and Students at Grenville

[190] Many witnesses described the significant level of involvement between staff and the boarding students at Grenville. Staff were involved in the lives of students from waking at 6:30

a.m. until the end of the day at 10:00 p.m., or 11:00 p.m. for older students who needed extra study time. Staff taught, disciplined, supervised, coached and sang alongside students in the choir. On weekends, staff brought students into their homes for board games and other activities. They encouraged the students to refer to them as “mom” and “dad” during family nights.

[191] The schedule was highly structured. Students attended chapel, sometimes twice daily, classes, study hall and extracurricular activities. During mealtimes, students were assigned to tables which were supervised by staff members. The headmasters sat at the front of the room on a stage during mealtimes.

[192] Students were assigned chores which included kitchen duties, dormitory cleaning and weekend work jobs to maintain and clean the school.

The Rules at Grenville

[193] Grenville published rules for its students every year in a handbook. Like other schools, Grenville prohibited smoking, drinking and drug use. It had academic rules. There were rules about the manner and days for wearing the school uniform. There were rules about deportment at meals and in class and conforming to the schedule by being on-time for all activities of the day. There were also less precise expectations. For example, in the 1980 version of the handbook, students were required to “conform to the spirit of the Grenville family,” failing which, “appropriate disciplinary action will be taken.” The disciplinary actions were not spelled out in the rulebook.

[194] Grenville had lists of items that students were not to bring to school. These included music devices (clock radios or Walkman devices), rock and roll themed shirts, cigarettes or lighters, birth control devices or inappropriate personal clothing. Girls were subject to detailed clothing rules concerning skirt length, make up and type of underclothing to be worn including slips, camisoles and bras with padding in them, and underpants that were not “hip huggers” or “bikini style.” Boys’ haircuts were prescribed: short in style, tapered in the back with medium sideburns. A number of students described being helped to “unpack” and having items confiscated which were not permitted.

[195] There were social rules in the student handbook which included:

- a prohibition against girls and boys forming exclusive relationships while at Grenville
- prohibitions against physical contact between boys and girls
- boys and girls were to use separate staircases (87/88 handbook)
- chewing gum was not allowed at the school (87/88 handbook)
- students whose first language was not English were to use only English in daily speech (87/88 handbook)

[196] Participation in all aspects of the scheduled school life was mandatory, including school attendance, chapel sessions, study hall, family activities on weekends, and work duties. Former staff and students described a schedule that was rushed and difficult to complete on time.

[197] The rules were enforced by staff and prefects who could issue demerit points for breaches. Students who were late or misbehaved could receive demerit points leading to detention during study hall or extra work duties. Prefects would monitor students who were “on discipline.” This monitoring could include:

- following students wherever they went, including to class, to the bathroom eating with students
- watching fellow students run punishment laps outside
- participating in correction sessions and critiquing fellow students

[198] In addition to the written rules, there were unwritten rules at Grenville. Students expressed bewilderment over punishments for the unwritten rules, for example:

- David Shepherd testified he didn't believe he was breaking any rules and couldn't understand why he was being punished;
- Heather Bakken described it as being like “trial without a jury”
- Andrew Hale-Byrne described the attitudinal sins as moving targets that could not be pinned down;
- William Newell testified that attitude rules were unwritten and would warrant discipline if someone was bad.
- Margaret Granger confirmed there were many unwritten rules, which ranged from special clothing restrictions to attitudes.

[199] Failing to abide by these norms or unwritten rules could attract discipline or “correction” consistent with the practices that staff had learned from the COJ. As a result, students could find themselves on discipline even if they followed the written rules. The school valued and emphasized submission to all authority.

[200] If the Grenville authorities deemed a student to have a “bad attitude,” this could lead to discipline. A bad attitude could include having negative attitudes towards the school, staff or food at the school or not appearing to be sufficiently submissive.

[201] Although the school published the accomplishments of its students in its newsletter for parents and in its fundraising efforts, students who were proud of their own accomplishments could be disciplined for being “haughty.” Former student Andrew Hale-Byrne described seeing

a student be singled out after a win at track and field. The student was punished by being required to carry rocks in a bag while staff yelled at the student.

[202] Margaret Granger testified that she was chosen for a part in a school play. She was removed from the part after rehearsing because of her “haughtiness.” Similarly, David Shepherd (a boarding student from 1977 to 1979) was disciplined after a successful performance in a student play. The school authorities believed he was “too high on himself.” Mark Vincent was disciplined because he and another male student were “smiling too much.”

[203] Infractions of the written or unwritten rules often included public disciplinary sessions where students were called up in front of their peers. Students were present for punishments of others for breaches of the unwritten rules described the impact of these sessions in various ways:

- Lisa Cavanaugh described feeling terrified when she was stood up with a group of students: she did not know what she had done wrong;
- Margaret Granger described an instance of public discipline as being “terrifying,” “intimidating,” and “confusing”;
- Tim Blacklock saw other students being punished and he believed this was to embarrass and humiliate the student being disciplined;
- Francois Lukawecki felt a sense of injustice in watching Farnsworth pick on students without them being able to defend themselves;
- Mark Bergeron was glad not to be singled out and felt sorry for those who were stood up for discipline;
- Liam Morrison was glad not to be singled out and felt sorry for those who were stood up;
- David Webb recalled another student being stood up at school assembly, and thinking “yikes”: Webb did not want this to happen to him;
- William Newell agreed that the public discipline assemblies were humiliating, and he did not want to be a target;
- Robert Creighton agreed that being singled out for discipline was embarrassing.

[204] I accept the witnesses’ descriptions of how they felt in watching these disciplinary practices.

Limits on Autonomy

[205] There were few zones of privacy or personal autonomy for students at Grenville. Students’ personal belongings were subject to searches. Their faces and manner were monitored

for looking “cheerful” or displaying an appropriate attitude. Students were assigned to tables at meal- times. Their conversations, attitudes, clothing and relationships were monitored. Close friendships among students of the same gender could be discouraged. Their sleeping arrangements were subject to change from time to time.

[206] Former staff member, Gordon Mintz was asked questions about his brother-in-law, Andrew, a child of staff members at Grenville. Andrew described the school as a place where you had “toe the party line or be put on discipline” and a place where students lived in “survival mode.” Mr. Mintz agreed that he could see where Andrew was coming from, but that is not how it was “always.”

Boy-Girl Social Expectations

[207] There were unwritten rules arising from Grenville’s expectation that boys and girls would not form couples or engage in physical contact with one another. This included an expectation that boys and girls would stay six inches apart from one another. Some witnesses recalled an unwritten rule that any mixed group should have more girls than boys.

[208] Students who showed mild interest or friendship with members of the opposite gender (by taking steps such as writing a letter, touching the hand of a student for encouragement, hugging another student or accepting a gift) were subject to discipline. A student who had intimate contact with another adolescent during his summer break at home, led to discipline.

Ill Health as Sin or Misbehaviour

[209] Both former staff and students described occasions when physical or mental health concerns were ascribed to sin. Ms. Childs had a child who was moved from the family home because of a bad cough which the school authorities ascribed to attention-seeking behaviour. After three weeks, the child was diagnosed with whooping cough.

[210] On another occasion, staff member Margit Mayberry was suffering from bronchitis. Charles Farnsworth and his wife visited her in the hospital and told her that her illness arose from the fact that she had been “lustful.” Ms. Mayberry took this as a reference to a confession she had made to him about a relationship she had as a younger woman.

[211] Margaret Granger suffered from anorexia nervosa and bulimia as a teenager and young adult at Grenville. When she was a staff member at Grenville, she was told that her eating disorder was a sin and she was disciplined for six months by being required to work at the school providing childcare and cleaning services without being paid for her work.

[212] Former student, Andrew Hale-Byrne, was a student with dyslexia. In order to accommodate this, his parents asked the school to provide him with extra time to complete his tests. Mr. Hale-Byrne testified that Charles Farnsworth told him that dyslexia was “unconfessed sin” and performed what Hale-Byrne described as an “exorcism” on him to rid him of demons.

[213] One student who had troubles with bedwetting was required to wear a middle school smock which was not her assigned uniform and a sign that read, “I refuse to grow up.”

[214] A staff record concerned a student who confided to having suicidal thoughts. The note recorded that the student was told that people make choices and that suicide was against God. He was told he ought to make a life confession. There was no reference to any medical follow-up. The staff member testified that he hoped he referred the student to the nurse and agreed that should have been documented.

Sexuality and Gender Norms

[215] Grenville teachings for human sexuality emphasized student abstinence. Former staff members testified that there was a preoccupation at Grenville with concerns about boy-girl relationships and sexuality.

[216] Female staff and students were reminded by the Grenville rules and messaging that female students were to cover their bodies, seek to avoid being physically attractive and take responsibility for the “lust” of boys. Failure to do so could mean that a girl was asking to be raped or assaulted. Members of the pastoral committee (the Haigs and Farnsworths) used denigrating and gendered terms for girls and women who dressed or behaved “provocatively.” These terms included:

- Whores;
- Bitches in heat;
- Jezebels;
- Temptresses;
- Lustful;
- Sluts;
- Harlots;
- Prostitutes.

[217] I accept the evidence of the many witnesses who heard such terms used at Grenville to refer to girls and women.

[218] Some witnesses described feeling fear and shame about their bodies arising from these terms. From time to time, there were sessions in the girls’ dorm close to bedtime in which Charles Farnsworth lectured the girls about monogamy. During these sessions, girls were encouraged to confess to prior sexual activity and to have private sessions with Charles Farnsworth. Students who were seen to be crying during the group sessions were pulled into

private sessions. One former student described how these sessions made her feel dirty about herself, afraid of sex, and “just ashamed.”

[219] Not all former female students who testified recalled these teachings, including Julie Lowe, Emma Postlethwaite and Lucy Postlethwaite. Julie Lowe testified that she did not hear pejorative gendered terms used toward female students. I accept that these witnesses did not recall or hear these terms. This finding does not mean that the terms were not used. I accept, based on the evidence of the many more who did hear, them that they were used.

[220] Charles Farnsworth was privy to information about sexual experiences of female students. In a letter which he wrote to the parents of one female student when he was dean of men, Charles Farnsworth advised the parents that their daughter had been caught holding hands with a boy during a movie, “and I do believe their hands went to some of the private parts of their body in the darkness.” The letter also advised the student’s parents that “She has admitted that she’s had drugs of some sort and more sexual play with other boys prior to coming to school here.”

[221] Female students were told that if they had prior sexual intercourse they could be “sanctified” by Charles Farnsworth and receive a “second virginity.” Joan Childs testified that Charles Farnsworth was obsessed with girls and women. The sexuality of the boys at Grenville was also monitored and disciplined when Charles Farnsworth was the headmaster

[222] There was active “policing” of girls’ bodies, mannerisms and clothing. Girls could be chastised for swaying as they walked, or for crossing their legs and risking their slips becoming visible to boys. Clothing inspections could be accompanied by negative messages about the female form or sexuality including:

- If any attention was made to her body, it was her fault;
- Criticized for having “lustful demon flesh”;
- Told not to entice boys

[223] Joan Childs and Margaret Granger testified that in their staff roles they were directed to carry out regular dorm searches of girls’ personal effects for underwear that did not conform to the rules. Students who had non-regulation underwear were “spoken to and put on discipline.” Margit Mayberry testified that this happened several times annually.

[224] Female staff sometimes required girls to bend down in front them to check if their clothing or bathing suits were too revealing. This happened to Margaret Granger and to Lisa Cavanaugh. They described this practice as being demeaning and humiliating. After being inspected, they were required to cover their bathing suits with a t-shirt and shorts for swimming.

[225] Grenville taught boys that masturbation was wrong. There were sessions with boys in the dorm where Charles Farnsworth would lecture on the evils of masturbation and homosexuality. Some students would sleep with flashlights so they might catch breaches of this rule by fellow

students. If there was evidence of a boy having masturbated e.g. by the state of his bedding, these students could be exposed for having these sexual urges.

[226] A former staff member agreed that the administration view of boy-girl relationships was a “preoccupation.” He said that “I guess hindsight is 20/20. Fair to say there was a preoccupation with it, which isn’t as healthy as it should be.” I find this to be an understatement.

[227] The school administration taught that homosexuality was a sin. There were demeaning epithets and actions towards male students believed to be gay or conducting themselves in a way seen to be gay. Examples included:

- An assembly during the 1980s in which Charles Farnsworth spoke about the evils of homosexuality and described it as the worst sin
- The administration believed and taught that homosexuality was wrong
- The sin of homosexuality might not have been the worst sin, but it was “up there”
- Homosexuals were damned to hell
- A student suspected of being gay was singled out to read bible passages on homosexuality and interpret them
- A student being called a “faggot” like his dad because of the way he carried himself
- Charles Farnsworth personally conducted 20 sessions with a student he believed to be gay in which he prayed for the student's soul and made detailed inquiries of the student about the circumstances of prior sexual abuse he had been subjected to as a young child. Farnsworth suggested that the student had tempted his child molester. This led to the student feeling ashamed and isolated. He suffered weight loss, physical and psychological symptoms. The sessions ended after the student pretended that the “conversion” had worked.

[228] Not all former students who testified heard or recalled these teachings.

[229] Lucy Postlethwaite testified she was not present for any sermons where Charles Farnsworth condemned homosexuality and called it the worst sin in the Bible. She said she would have been disturbed if she heard this.

[230] Emma Postlethwaite testified she did not hear any sermons or lectures where homosexuality was discussed by Charles Farnsworth. She testified she did not hear him call out students for being homosexual or describe homosexuality as the worst sin in the Bible.

[231] Marc Bergeron agreed there was generally a negative understanding of homosexuality but did not recall specifics.

[232] Robert Creighton testified he never heard any sermons about homosexuality or bible passages being read about homosexuality. He agreed that Grenville would not have been a comfortable place for a teenager who was homosexual. He attributed that to the nature of it being a Christian school, rather than any specific teachings.

[233] I accept the evidence that homosexuality was believed to be sinful at Grenville. This message was conveyed in more than one way. Some students either were not present for, did not hear or recall some of the messages in the sermons or lectures that they heard about homosexuality being sinful. I do not take this evidence to mean that those lectures or teachings did not happen. I accepted the evidence of the students who heard these teachings.

AIDS Testing

[234] Former students and staff testified that the school communicated that the AIDS (acquired immune deficiency syndrome) was God's punishment for the sin of homosexuality. Between 1989 and into the mid-1990s all staff and boarding students were required to submit to annual testing of their blood for HIV. The school obtained an opinion from a physician that such testing was ineffective and there was not a medical basis for requiring such testing of the students. However, the policy continued until it became the subject of a human rights investigation and media attention. Donald Farnsworth testified that he suggested to his father Charles Farnsworth that the school drop the testing. By the mid-1990's, the policy came to an end.

[235] Dr. Axelrod testified that no other private or public school required annual HIV testing for its students.

The Honour Code: Duties to Report Breaches of the Rules

[236] Grenville described a "code of honour" in a writing filed in evidence and entitled the "Charles Farnsworth Life History Transcript." According to the transcript, the code of honour required students to report themselves for wrongdoing and to tell other students to report themselves. If they did not, students were to offer to go with them to confess and failing that, "I would have to go tell on him to keep order in the place." Students were encouraged to report on other students for transgressions and at time, disciplined for failure to do so.

[237] Former student David Shepherd testified that after the first semester "I started to realize this was a place that was big on surveillance." He began to speak to fewer people. Margaret Granger testified that students were expected to "spy on each other." As a "staff kid," she said this hindered her from developing friendships with other students.

[238] Former staff member Joan Childs testified that students were encouraged to report each other for rule breaches. If they failed to do so, they risked punishment for failing to report their fellow students. This expectation was discussed and confirmed by witnesses called by the plaintiffs and by the defendants, including Tim Blacklock, Francois Lukawecki, Julie Lowe, Gordon Mintz and Don Farnsworth.

[239] Margaret Granger, who was both a Grenville student and later a staff member, testified to her discomfort about the expectation that she “tell on” fellow students:

Q. You mentioned "negative speak" and "rebellious speak." Can you just give us some examples of what that might constitute?

A. Well, I mean, that was a huge infraction. You couldn't -- you couldn't speak ill of any staff or especially Farnsworth without having hell to pay. And anyone who thought ill of any of the rules or any of the - the kinds of policies that were happening or even if they thought it was crazy what was going on, they -- they better not speak it out loud because a staff member like in my position was supposed to report that to the deans.

Q. Okay. And so how did you feel carrying out this kind of supervision on the students?

A. I felt really uncomfortable, especially since I knew what it was like to be a student, and I wanted our students to actually like Grenville. So, I mean it was my living. I wanted enrollment to not drop off, so I - I did not.... -- on the other -- okay so I was uncomfortable. I did not like seeing kids getting in too -- into trouble, and I didn't like having to impose these kinds of rules that were really intense.

ii) What Kind of Institution was Grenville Christian College?

[240] The students' days were highly structured. Rules governed every part of the lives of the students, including what they wore, who they ate meals with, when they slept and woke and all their school activity and chores. The norms included elements of arbitrariness given that students could be disciplined for attitudes that were incapable of objective measurement or observation, such as being “haughty” or “proud.”

[241] Students were not consulted in the adoption of the rules at Grenville that governed their lives. The authority figures (headmasters Haig and Farnsworth) were not subject to challenge by students nor by the adult members of the staff, given their vows of submission. As Donald Farnsworth testified, “Grenville was not a democracy.”

[242] Many students attended the school as a result of recommendations from others and for years the school benefited from a positive reputation. Grenville's Board of Patrons included former Lieutenant Governors of Ontario, a Senator and other professionals. The Board of Advisors included parents, alumni, educators and other professionals. As seen by the package of material sent by Al Haig to the Ministry of Education, the school promoted itself as an authority in matters of respect and Christian values.

[243] In *Institutional Tortfeasors: Systemic Negligence and the Class Action*, Margaret Isabel Hall discusses the power imbalances and hierarchies which become “exaggerated where the entity in control of the institution (the Roman Catholic Church, for example) enjoyed virtually unquestioned authority and social respect.”⁶ This is an apt description of Grenville.

[244] Dr. Axelrod testified that Grenville’s operational philosophy was unlike other educational institutions in Ontario at the time.

[245] Dr. Axelrod gave opinion evidence about a document titled “How Do We Here at Grenville Nurture Christian Values?” dated March 27th, 1981 (“the 1981 Document”). Dr. Axelrod described the values expressed in the document as, “harsh”, “categorical” and “unusual.” He observed that the “black and white” descriptions in the methods at Grenville promised a severe experience for students.

[246] The school’s stated philosophy toward music, literature and art as expressed in the 1981 document was that:

Absolutes are stressed here. There is good music and bad music. There is good literature and bad literature. There is good art and bad art. It is not an anything goes philosophy. There is a right and wrong.

[247] Dr. Axelrod opined that that “no quality educational program in that era would -- that is interested in cultivating student’s individuality and creativity would assert such extreme views, let alone embed them in educational practice.”

[248] The following paragraph from the 1981 Document described the school’s approach to its students:

We start with the basics and start at the inside and work out. We start with an absolute and every aspect of life is molded by that standard. Social pressure used to keep people from doing things that were wrong. Now, it encourages and forces people to go against what they morally believe is right.

[249] Dr. Axelrod opined that the expressed philosophy was “repressive” and an “unsophisticated assertion about human behaviour.”

⁶ Hall, Margaret Isabel, “Institutional Tort Feasors: Systemic Negligence and the Class Action” (March 2006), online: ResearchGate\https://www.researchgate.net/profile/Margaret_Hall3/publication/228141080_Institutional_Tort_FEasores_Systemic>Negligence_and_the_Class_Action/links/5755cd0708aacf58341f/Institutional-Tort-Feasors-Systemic-Negligence-and-the-Class-Action.pdf?origin=publication_detail\ at p. 2.

The Expert Evidence of Dr. Rosemary Barnes and the Concept of the “Total Institution”

[250] The plaintiffs called expert evidence from Dr. Rosemary Barnes about psychology, and, the abuse of children, including institutional abuse and the impacts of childhood abuse, maltreatment and trauma.

[251] Dr. Barnes is a lecturer, researcher, teacher and clinician in the field of psychology. She has lectured on the long-term damage caused by childhood abuse. Dr. Barnes has treated patients in hospital on boundary violations and trauma-related issues, including sexualized assault and professional sexual misconduct. Dr. Barnes has conducted assessments on children involved with abuse in various institutional settings and those in care of the Children’s Aid Society. She has also provided clinical services to clients who were required to live in Indian residential schools.

[252] Dr. Barnes’ expertise was not challenged at the admissibility stage of her evidence. Counsel cross-examined Dr. Barnes’ about her direct experience with clients while they were resident within institutions. The defendants argued that Dr. Barnes’ evidence should receive reduced weight due to her alleged lack of experience working directly within institutional environments. The plaintiffs responded that Dr. Barnes has worked with many clients who have suffered abuse in institutional settings and has researched and written concerning abuse in Children’s Aid Society care, group homes, and in scouting and religious organizations. I accepted the plaintiff’s submissions on this point.

[253] The defendants called no expert evidence at the trial. They conceded that some of the conduct at Grenville fell below the standard of care. No relative weighing of expert evidence is necessary in circumstances where a party has tendered no countervailing evidence. I found Dr. Barnes to be qualified to provide expert evidence on the areas within her expertise.

[254] In her expert evidence, Dr. Barnes discussed the risks inherent in institutions where children live apart from their families for extended periods of time and are completely reliant on institutional staff for care, guidance, protection, instruction and discipline. Dr. Barnes referred to the Law Commission of Canada Report of 2000 *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* discussing certain characteristics of such institutions (also referred to as “total institutions”) including places where:

- Rules govern almost all aspects of daily life;
- Residents/students have little to say about how these rules are administered;
- There are arbitrary and/or unpredictable orders rather than established policy;
- Appeals or protests are inhibited.

[255] Where these circumstances are in play, Dr. Barnes testified that total institutions tend to impose conditions of disconnection, degradation and powerlessness upon the children in their care. This can lead to an atmosphere of insecurity and fear among those in the institution. If

punishment is imposed arbitrarily or excessively, children need not experience it directly to be affected by the fear that they may be next.

[256] The plaintiffs argue that based on Dr. Barnes’ description of the qualities of a total institution, Grenville functioned as such for its staff, their families and for the boarding students during the periods when the students lived at Grenville. The defendants draw a distinction between the community which operated the school and the school itself. They submit the community was stricter than the school. The defendants argue that decisions that involved the staff, their families and the Community of Jesus had “nothing to do with the operation of Grenville Christian College itself.” My findings about the relationship between the staff community and the school is described in greater detail below.

[257] I find that Grenville’s structure, practices, culture, rules and norms establish that during the class period, Grenville functioned as a “total institution” of the type discussed by Dr. Barnes.

[258] All four elements of “total institutions” described by Dr. Barnes existed at Grenville for the boarding students.

[259] Dr. Barnes identified the risk that children in the care of total institutions may find themselves subject to “disconnection, degradation or powerlessness.” These considerations form the next part of the analysis, to determine whether the boarding students at the school during the class period were treated in a way that fell below the standards of care for students at the time.

iii) Was Grenville Systemically Negligent Because of its Practices?

[260] The witnesses who participated in, or experienced discipline at Grenville agreed about the school’s disciplinary practices. In addition to suspension or expulsion, there were in-school punishments that:

1. Placing students on discipline status or on “D”;
2. Corporal punishment (paddling)
3. Public shaming and staff confrontations with students
4. The Boiler Room (“Flames of Hell”);
5. Grenville’s views and teachings regarding sexuality

[261] The impugned disciplinary methods used at Grenville and their relationship to the standard of care are described next.

1. Discipline Status: Being Put on “D”

[262] Students were put on discipline status, or on “D” for breaches of the rules or for having bad attitudes. Generally, this functioned like an on-site suspension. Students on “D” were taken

out of class, not permitted to wear their school uniforms and assigned extra work duties. The length of time on discipline varied and students did not know when their discipline status would end. There was evidence that being on “D” could last from several days to a week or longer.

[263] Discipline periods ended when the student’s attitude had changed, or the student showed enough “remorse.” There was no written policy concerning the implementation of this kind of discipline practice.

[264] Students on discipline were socially ostracized: they were not to speak or be spoken to by their fellow students and ate separately from the student body. They were supervised in their work duties by other staff or by prefects. At times, students were also required to sleep in a separate section of the school. This could be in the infirmary or in a makeshift room with bunkbeds above the gymnasium. Students placed on discipline had to make up their missed academic assignments later.

[265] Students were placed “on discipline” throughout the class period. However, at times, if the discipline involved the child of a donor from Brockville or if an important person complained about such discipline, the staff would apologize and treat certain students better than others.

[266] Discipline status could include being subject to “correction sessions” from staff either during the day or in the night. Andrew Hale-Byrne described such a session when he was put on discipline for wearing an “Iron Maiden” t-shirt.

[267] The additional work duties varied. The work assignments were often necessary work, such as extra dishwashing duties, pot scrubbing, shoveling snow or chipping ice off sidewalks. At other times, students on discipline were assigned tasks that were either meaningless, humiliating or painful. Other disciplinary activities included being made to run early in the morning before the other students were awake. One group of students subjected to this treatment were referred to as “Cold Grits” because they required warming up to be good.

[268] 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.

[269] Dr. Barnes gave opinion evidence that abuse arises where there is cruel and inappropriate treatment including menial and degrading work jobs for days at a time. Dr. Barnes testified that tasks such as scrubbing a dumpster with a toothbrush, cutting grass with scissors or picking up leaves by hand could also constitute cruel and inappropriate treatment.

[270] Dr. Barnes testified that the isolation of students from peers that accompanied being placed on discipline amounted to “spurning” and also falls within the definition of abuse.

[271] Students who were placed on extended discipline included:

- Margaret Granger: 29 days
- Richard Van Dusen: several weeks

- David Shepherd: 2 weeks
- Kathy Smart: summer break
- Heather Bakken: 2 weeks

[272] Examples of humiliating or painful/physically harmful forms of work discipline included:

Philip Mailey: He was required to vacuum the chapel with a small handheld vacuum, which was difficult and painful as a result of his prosthetic leg; being required to do the task a second time because he asked for a proper vacuum cleaner;

Margit Mayberry: As a staff member, she observed an older student picking up leaves on hands and knees while being supervised by a younger student);

Andrew Hale-Byrne: He was required to pick up rocks from a field, including in wintertime until his hands bled;

Margaret Granger: She was required to clean out a dumpster containing a dead animal carcass;

Kathy Smart: She was assigned to clean staff apartments while being verbally abused and without an adequate washroom break;

Heather Bakken: She was assigned to scrub pots with chemicals that triggered an asthmatic reaction: rather than be assigned other duties, she was given a mask, fans and prescribed inhaler medication to continue the job.

[273] On another occasion, Philip Mailey described being disciplined for failing to tell on another student who was caught with a Walkman for playing music. He described the assignment as follows:

I was grabbed by Father Farnsworth and marched down the hallway to his - to a room. I don't know if it was his room. I believe it was off the dining room, and it's a big table, and he interrogated me and yelled at me because he said that he knew I had knowledge that somebody had a Walkman and I didn't tell him, or didn't tell on him. The person had been caught, and - and he assumed that I knew about it. So I was taken out of school for five days and put on discipline and this was the hardest part - um - Steve Edmonds and I were - were made to pound in rebar, a lot of rebar in a snowstorm, well below zero, in the front of the school for hours in the morning, and put up a snow fence. And my leg was extremely sore. A blister had started, I could feel it and when Mark Rump was the one watching over us, I told him, and I had tears in my eyes, I said, could you please put me on something else. I can't bear this anymore, and he said he would talk to Father Farnsworth, Charles Farnsworth and when he did, he came - Charles Farnsworth said if I do the crime, I do the time. And I had to keep going, and that day was the day that my friends - my friends in my high school in my hometown were coming down for a

volleyball tournament and I was excited to see them, cause I was homesick and - and I saw their bus come in when I was pounding in the rebar, in pain. And I saw them, and I still thought I was going to get a chance to see them, because I knew they were coming. And we broke for lunch and were taken in, and Chuck Farnsworth took over walking me between whatever - lunch or whatever we were doing, and as we were coming down the hallway, my friends were walking in the door, and they all saw me, and they were calling to me by my last name, which is Mailey, “Mailey, Mailey” and trying to reach out and touch me and give me a hug. Jamie Black, Julian Bar, Blair Olsen, Blake Burgess, all my friends. And Chuck Farnsworth squeezed my arm, and told me, “Don’t you dare look up.” And I had to walk by them, and that was the most humiliating thing I’d ever experienced. And I had to go the rest of the day pounding rebar, knowing that my friends were there and I wasn’t going to see them. Twilight zone.

[274] Not all the witnesses who testified were subject to harsh discipline. Julie Lowe wore a jean jacket on a school trip. The jacket was confiscated, and she was assigned work duties over a weekend. As a result, she did not miss any classes. Robert Creighton was part of a late-night kitchen raid. He and his friends were required to chip ice from the sidewalks around the school and to eat standing up for four days. David Webb was required to chip ice for half day after racing down a ski hill on a school outing.

[275] I accept the expert evidence of Drs. Axelrod and Barnes that 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.

Were these Harms Systemic?

[276] I have concluded that 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.

2. Corporal Punishment

[277] The defendants conceded that the excessive use of the paddle at Grenville as a form of corporal punishment fell below the standard of care.

[278] The Grenville authorities used a paddle for corporal punishment during the class period from 1973 until the mid-or possibly into the 1990s. The witnesses were not certain. The Grenville publications did not mention the use of the paddle. Other than a handful of letters sent

to parents by Charles Farnsworth in 1973-74 as Dean of Men which informed them that their child had been paddled, there were no other records produced about the administration of the paddle during the class period.

[279] One such letter to parents, dated May 5, 1978 from Charles Farnsworth read:

I wanted to keep you up to date as to where we are with Glenn. Glenn came back and has been on special discipline since he returned. He says he has been trying much harder.

That
may be true; I am not sure of the entire situation and how he is doing academically. However, as his dean, there has been little improvement in his attitude. It has just come to light that the very weekend after he returned home he was holding hands with a girl and putting his hands and hers on private parts of their bodies in the darkness of the theatre. I have given him a spanking and a strong lecture for this.

We find Glenn to be a very willful and angry boy. He screamed and yelled when he thought he was going to receive a spanking. He has been very, very dishonest. I like Glenn very much, but I feel I must let you know that unless there is a marked improvement in his attitude, honesty, and behaviour, that he will have to be expelled and his application for next year cannot be accepted. I am in hopes that our last approach to him will be successful.

[280] According to Joan Childs, Charles Farnsworth “loved his paddle.” Childs recalled Farnsworth remarking to other staff members about a particular student, “this calls for a paddle.” She testified that paddling was applied depending on how Charles Farnsworth felt about a student.

[281] There was no written policy or protocol as to when the paddle would be used, how it would be administered, or the number of strokes given to the student. Both Joan Childs and Byron Gilmore testified that the paddle was used for breaches of the written rules or for having a bad attitude.

[282] Tim Blacklock described the paddle in his evidence that was filed at trial. It was 1 ½ to 2-inch-thick piece of hardwood with a handle like a baseball bat. Holes were drilled into the wood of the paddle.

[283] Some students described injury, pain and bleeding from the strokes given to them by the paddle. Some were paddled pants-down or pants and underwear off. Others were paddled over their clothes without enough force to cause them injury.

[284] There were examples of boys being paddled hard enough to cause them to suffer for days:

David Shepherd: Received 6-8 strokes with the paddle. He was bent over a chair in Charles Farnsworth’s office and paddled by staff member Bob Phelan. After the first

stroke, Farnsworth said “Come on Bob, you have a bigger arm than that.” Farnsworth smiled throughout the punishment. Shepherd said that he walked with a limp for several hours afterward and was required to clean horse stalls in the barn for 2-3 weeks on discipline.

Unnamed male student: David Shepherd described seeing welts and bruises on the backside of another male student who had been paddled: he said the student was limping and had yellow, purple and dark blue bruises on his buttocks;

Mark Vincent: Paddled for not telling on a friend who was believed to have smoked off campus. Told to drop his pants and underwear, bent over a chair before two staff members, Mr. Ortolani and Mr. Childs. He dropped to the floor after the first two swings and was held up to receive six more licks. Vincent had difficulty walking after this punishment. He testified that this beating was one of the scariest things he could remember. He ran away shortly after, and later showed the bruises to his father which were visible two weeks after he was beaten;

Unnamed male student: Mark Vincent testified that he heard another male student being beaten in the room next to his on a school trip to Lake Placid: Afterwards, he saw that student was “black and blue.”

Richard Van Dusen He was paddled for assisting another student (buy alcohol) off campus and making a false confession about an incident that happened before he was at Grenville. He was required to drop his pants, was bent over a chair and held down by Mr. Phelan while Mr. Ortolani struck Mr. Van Dusen until he was bruised and bleeding. He received no medical treatment for his injuries.

Tim Blacklock: He was paddled for smoking. He was struck so hard that he feared for his life, stopped breathing and was unable to cry. He received between 10 and 20 strokes with the paddle. He described black and blue bruising from his knees to his lower back. He could not sit without pain for weeks. He ran away out of fear of being paddled again. When he returned, Charles Farnsworth called on other students to restrain Mr. Blacklock in order to paddle him again. Blacklock fought off 3-4 students to avoid being paddled again. The discipline and threat of paddling ended after Mr. Blacklock’s father came to the school and met with Charles Farnsworth. Mr. Blacklock did not return to the school the following year.

Other students received the paddle but with fewer strikes and without the suffering described by others:

Liam Morrison: A group of students were paddled for ruining the ceiling tiles in the dormitory. Mr. Morrison received approximately 10 strokes with the paddle for being part of the group that damaged the ceiling.

William Newell: He drove a car without permission onto the front driveway at Grenville. He was paddled three times for doing this by Al Haig. He testified that his paddling was “light” or “moderate” in force. He was not troubled by his paddling.

[285] Dr. Axelrod gave expert evidence about the use of corporal punishment in Ontario. Upper Canada College eliminated this practice in 1972. Most other private schools ended the practice by 1980. Schools replaced physical punishment with classroom management techniques and other behavioral management practices. These techniques included taking the student out of the classroom, hearing the student’s side, contacting parents, using after school detention, more frequent reporting, peer counselling and other resources. The most serious disciplinary responses available were suspension or expulsion. The standards in which corporal punishment played no role in the discipline process was recommended in the late 1960’s and school practices followed this recommendation during the 1970s. Grenville was an exception.

[286] Counsel provided hypothetical examples to Dr. Axelrod of the use of the paddle to inflict bruising, bleeding and/or prolonged pain to students. 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.

[287] Dr. Barnes stated that physical abuse or maltreatment includes overdoing physical punishment by using excessive force or repeatedly striking a student and causing bleeding and or bruising.

[288] I accept the evidence of Dr. Axelrod and Dr. Barnes 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.

[289] Former students and staff described other forms of physical discipline at Grenville. Lisa Cavanaugh witnessed staff member Dan Ortolani throw a student to the ground. Francois

Lukawecki described Mr. Ortolani elbowing him in the stomach and shaking the chairs of students to intimidate them.

[290] Kathy Smart was prohibited from calling her parents. She attempted to call her brother, and Donald Farnsworth caught her doing so. He took her by the ear into a room where she was accused of various misdeeds and told she would not amount to anything. Ms. Smart overturned a table, called her mother and ran from Grenville. She was picked up by her mother.

[291] Heather Bakken was pulled into the kitchen from the dining room by her ear to apologize to a prefect for not submitting to her authority. Philip Mailey was pushed up against a wall, restrained and (falsely) accused of pulling the fire alarm.

[292] Dr. Barnes opined that other forms of physical contact, including slapping, pushing against a wall, or dragging a child into a room would constitute assault. This falls below the standard of care.

[293] I accept the uncontradicted expert evidence of Dr. Barnes. I find that the instances of assault described by Ms. Smart, Ms. Bakken and Mr. Mailey fell below the standard of care.

Were these Harms Systemic?

[294] The evidence was that 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.

[295] 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.

3. All School Assemblies and Correction Sessions

[296] Just as staff held "light sessions" with each other, the school corrected students either in small groups of staff and/or students for misbehaviour 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.

[297] The witnesses testified to the following behaviours that led to such sessions:

- Being perceived to be in a boy/girl relationship or touching between boys/girls

- Having a bad attitude
- Too much jewellery/acting like whores and prostitutes
- Not smiling enough
- Smiling too much
- Failing to say good morning/disrespectfulness
- Being “haughty” or “self centred”
- “Lustfulness”
- Being “rebellious”
- A girl who did well in track and field after receiving awards at a student brunch, was called out by Charles Farnsworth for being “proud and haughty,” that it was not “lady-like to be a good athlete” and told she was “disgusting,” causing her to cry.

[298] 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.

[299] Margaret Granger described how fellow students were encouraged to shame their peers at these assemblies:

If you joined in with the staff who were publicly shaming someone, you kind of got brownie points with the leaders, and so therefore, people learned to -- to join in.

[300] She described how students reacted:

People would cry. I could see people looking with big eyes to each other, trying not to be noticed, trying to slump in their seats. It -- it was really scary.

[301] 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.

[302] The defendants conceded this point in their submissions.

[303] Dr. Barnes gave opinion evidence that the public humiliation sessions amounted to a category of abuse known as “spurning.” This includes a category of caregiver behaviour in

which children are belittled, degraded, shamed, singled out for punishment or exposed to public humiliation.

[304] Dr. Barnes described the impact of involving other students in this type of conduct toward their fellow students. She described this type of involvement as a form of heightening the domination of those in control by forcing others (in this case the prefects and students encouraged of humiliating their fellow students) to violate their values or their significant human attachments. By exposing students to this type of coercion for extended periods, this can cause shame and self-loathing.

[305] I accept Dr. Barnes' expert evidence that these public sessions in which students were stood up in front of their peers to be shamed, amounted to abusive treatment and fell below the standard of care.

[306] Other forms of correction sessions were described by students, either during activities, or at night after other students were asleep. Some examples of this evidence included:

- The choir director taking students aside to a private room for correction- students returned crying;
- Charles Farnsworth personally conducted 20 sessions with a student he believed to be gay in which he prayed for the student's soul and made detailed inquiries of the student about prior sexual abuse. He blamed the student for having tempted his child molester. This led to the student feeling ashamed and isolated. He suffered weight loss, physical and psychological symptoms. The sessions ended after the student pretended that the "conversion" had worked.;
- Students being awakened at night and ordered to confess to sins;
- Being yelled at for being haughty; and
- A student being accused of being too high, confident, angry and lusting after girls.

Were these Harms Systemic?

[307] 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.

[308] The defendants also argued that the alleged harms done in the correction sessions and all-school assemblies were not systemic because they were in response to rule breaches by the students and when the punishment sessions crossed the line, they were “one-off” acts that were not common to the class and therefore not designed for relief by way of a class action. This submission blends two ideas: the first being the assertion that the students affected had done something wrong to deserve a consequence for their behaviour, and second, that in only certain instances did the punishment stray from the standard of care, thus removing it from a common issue worthy of a class action. I do not accept either assertion. The first suggests that some students deserved harsh treatment. This does not accord with the expert evidence about the standard of care during this period, as it related to discipline. The second assertion that this practice only affected some students making these individual or “one-off” harms, seeks to undermine the findings of commonality when this action was certified. In *Cloud*, the systemic breach of duty was in the way the school was run. Here, as in *Cloud*, the commonality existed among students who were exposed to school policies and practices which fell below the standard of care. This commonality is not undermined by the former students who will have varying responses or outcomes as a result of the school’s substandard practices.

[309] The leaders at Grenville created a community that submitted to these types of corrections. They applied the same practices to operate the school and mould 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.

4. The Boiler Room and the “Flames of Hell”

[310] 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.

[311] Margaret Granger described her experience with this form of discipline as follows:

Then we had harsh disciplines. Those came right from the Community of Jesus. And they extended to the students at Grenville, they extended to the staff kids, and I have lots of that to talk about. And then there was the fear of hell and the fear of evil in the world that they focused on -Farnsworth focused on continually. He even brought the students and myself down to the wood chip boiler to view the fires of hell. He would open the boiler and make us get as close as possible to feel the heat.

[312] Dr. Axelrod testified that the practice of taking children to the boiler room to show them the flames and comparing this to going to hell was a practice that would fall below the standard of care for students at that time. Dr. Barnes testified that a form of abuse known as “terrorizing” involves placing a child in unpredictable or chaotic circumstances; setting rigid or unrealistic expectations with the threat of loss, harm or danger if they are not met; and threatening or perpetrating violence against a child. Dr. Barnes testified that showing students the boiler room flames would meet the criteria for terrorizing a child. I accept the uncontradicted evidence of Dr. Axelrod and Dr. Barnes. This practice fell below the standard of care.

5. Grenville’s Views and Teachings Regarding Sexuality

[313] Although not used directly for rule-breaking or attitudinal breaches, the institution’s views and practices concerning gender and sexuality informed the rules and form part of the claim in negligence. The plaintiffs submit that 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.

[314] Dr. Barnes described the phenomena of “sexualized abuse” (not the same thing as sexual abuse) which can cause emotional trauma. 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.

[315] The defendants concede there was evidence of the preaching against homosexuality and the use of gendered epithets concerning girls. The Grenville policies and practices concerning clothing, hair, manners of walking, music, separation of boys and girls, denigrating language, and discipline in multiple forms for breaches of these norms, all these features amounted to a practice applied to the class of students. There were public prayers for students thought to be homosexual and intense “conversion” sessions with Charles Farnsworth that frightened and

harmed gay students. Former students testified to physical and emotional impacts: shame, humiliation, isolation, fear and anxiety, weight loss, weight gain. Although all were not necessarily affected in the same way, this was the culture at Grenville and the governing belief system.

[316] 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. I accept Dr. Axelrod's uncontradicted opinion evidence in this regard.

[317] The defendants submit that while the epithets used against women were "deplorable" and "inappropriate" these do not rise to harm that is actionable, as it is not foreseeable that this could cause harm. They also submit that while homosexuality was a sin that Charles Farnsworth condemned regularly in his teachings, having done so does not fall below the standard of care.

[318] The standards of the 1970's and throughout the class period recognized, as do the defendants, that the school owed duties to its students to keep them safe from both physical and emotional harm. The uncontradicted expert evidence is that Grenville's practices, attitudes and policies posed a real risk of emotional harm concerning the sexuality of boys and girls. The standards recognized theories of child and adolescent development which the administration at Grenville explicitly rejected.

[319] There was no countervailing expert opinion to suggest that emotional harm from distorted teachings on sexuality during adolescence was an unknown or unforeseeable result or that it would have been acceptable to treat students in other schools as Grenville. The school had care and direct control over the emotional integrity of its students. I consider and apply the proximity considerations discussed by the Supreme Court of Canada in *Saadati v. Moorehead*, 2017 SCC 28 at paras. 23-24 as follows:

... As to that first necessary element for recovery (establishing that the defendant owed the claimant a duty of care), it is implicit in the Court's decision in *Mustapha* that Canadian negligence law recognizes that a duty exists at common law to take reasonable care to avoid causing foreseeable mental injury, and that this cause of action protects a right to be free from negligent interference with one's mental health. That right is grounded in the simple truth that a person's mental health — like a person's physical integrity or property, injury to which is also compensable in negligence law — is an essential means by which that person chooses to live life and pursue goals (A. Ripstein, *Private Wrongs* (2016), at pp. 87 and 252-53). And, where mental injury is negligently inflicted, a person's autonomy to make those choices is undeniably impaired, sometimes to an even greater degree than the impairment which follows a serious physical injury (*Bourhill v. Young*, [1943] A.C. 92 (H.L.), at p. 103;

Toronto Railway, at p. 276). To put the point more starkly, “[t]he loss of our mental health is a more fundamental violation of our sense of self than the loss of a finger” (*Stevens*, at p. 55).

It is also implicit in *Mustapha* that the ordinary duty of care analysis is to be applied to claims for negligently caused mental injury. With great respect to courts that have expressed contrary views, it is in my view unnecessary and indeed futile to re-structure that analysis so as to mandate formal, separate consideration of certain dimensions of proximity, as was done in *McLoughlin v. O’Brian*. Certainly, “temporal”, “geographic” and “relational” considerations might well inform the proximity analysis to be performed in some cases. But the proximity analysis as formulated by this Court is, and is intended to be, sufficiently flexible to capture all relevant circumstances that might in any given case go to seeking out the “close and direct” relationship which is the hallmark of the common law duty of care (*Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537, at para. 32, citing *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.), at pp. 580-81). As the Court has said, that analysis focuses on factors arising from the relationship between the plaintiff and the defendant. . . .

...

As this Court stated in *Hercules Managements Ltd. v. Ernst & Young*, 1997 CanLII 345 (SCC), [1997] 2 S.C.R. 165, at para. 24, per La Forest J.:

The label “proximity”, as it was used by Lord Wilberforce in [*Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.)], was clearly intended to connote that the circumstances of the relationship inhering between the plaintiff and the defendant are of such nature that the defendant may be said to be under an obligation to be mindful of the plaintiff’s legitimate interests in conducting his or her affairs.

(*Cooper*, at paras. 30 and 33 (emphasis in original))

[320] There was close proximity between the school and its boarding students. They were separated from their families while at boarding school. The ordinary duty of care analysis applies to emotional injury. No formal diagnosis is needed to establish emotional harm can be caused by abusive treatment. This conclusion is well supported by the uncontradicted expert evidence.

[321] I conclude that 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. This harm was reasonably foreseeable given the standards of the times.

Were the Harms Systemic?

[322] The defendants submit that any wrongs done to students at Grenville were not systemic in nature but instead, were isolated incidents for which there could be individual claims, but not on a class-wide basis. In the case of the use of gendered language to refer to girls, they refer to the evidence from Lucy Postlethwaite, Emma Postlethwaite and Julie Lowe that they did not hear such language used to refer to girls. None of these witnesses heard any teachings condemning homosexuality.

[323] The finding of sexualized abuse at Grenville includes but is broader than the use of epithets to denigrate girls and gay students. These are a part of the list of broader instances of sexualized abuse stemming from the beliefs at Grenville that sex outside of marriage is sinful, homosexuality is sinful, and sexual assault is a result of girls or boys inciting lust by being “too cute” or “tempting” men.

[324] Grenville’s own documents confirm the practice of inquiring into and disciplining students for sexual contact. This can be seen in the letters sent home to parents about their children’s sexual activity.

[325] Further, the three students who did not hear these teachings and denigrating words came from a narrow slice of time at Grenville: their terms overlapped during the mid-80’s. They cannot speak for the entire class. In contrast, the balance of the evidence, including from former teachers, male and female students, and witnesses who were called by both the defence and the plaintiffs confirmed the use of such terms.

[326] Grenville chose practices for the treatment of adolescents during their sexual development that were out of step with those of other educational institutions.

[327] 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.

The Issue of Differences Among Students About Their Experiences at Grenville

[328] The defendants argue that different students had different experiences, depending on their behaviour and ability to “toe the line.” Several defence witnesses attributed their success in life to their education and the strict expectations at Grenville. This group included Robert Creighton, Simon Best, Lucy Postlethwaite and Emma Postlethwaite. As seen in the discussion of the discipline methods, the defence witnesses either were not bothered by these or did not see or experience the harsher forms of discipline. The defendants ask how could it be said that the school fell below the standards if a credible body of former students believed they thrived as a result of their education at Grenville?

[329] First, 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. There was evidence of differential application. Some students either figured out how to avoid this or had other protective characteristics, either emotionally, socially or financially. In addition, there was expert evidence on the phenomena of the impact of maltreatment on development which assists with the question of differential impacts.

[330] Dr. Barnes opined on the impact of maltreatment on the development of adolescents. Exposure to maltreatment and abuse can disrupt or delay the successful completion of age-appropriate developmental tasks. If these tasks are not completed, this can jeopardize a person's ability to function adequately in adult life. In the case of students who were already vulnerable on arrival at Grenville, their exposure to maltreatment there placed them at higher risk of maladaptive attachment styles characterized by mistrust or negative perceptions of the self. Adolescents exposed to this type of harm are also at risk of impaired intellectual functioning, and of developing an impaired sense of self that can lead them to being unable to control extreme emotions such as helplessness or grandiosity.

[331] Yet, not all adolescents will suffer the same outcomes from maltreatment. Dr. Barnes testified that there are "resiliency factors" which can mitigate the impact of abuse. These factors include:

- Good self control;
- A positive sense of self;
- Motivation to be effective in school; and
- Strong peer relationships.

[332] The former student witnesses were not unified as to how they framed their experience at Grenville. They experienced different outcomes in their lives. As the defendants said in their opening statement, the court will "wonder whether the two sides went to different schools." They contrast the plaintiff's picture of Grenville as a "house of horrors" with other witnesses who said that although strict, the rules were well known and Grenville was a place of much joy and happiness offering excellent education, social interaction and a wide range of activities.

[333] There were many examples of the differences on display in the content and way the former students testified. Some broke down in tears, others smiled and laughed. Former students ranged from testifying about suffering post-traumatic stress disorder, to other who appreciated the mentorship and education they received at Grenville.

[334] These examples demonstrate that different students had different reactions to their experiences at Grenville. This is consistent with the evidence from Dr. Barnes about resiliency. Differently situated people will have different reactions to the same conditions. It also intersects with the question of "atmosphere," raised by the defendants.

[335] 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 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.

[336] I have also relied on the expert evidence as to how different people can experience the same milieu in different ways. There was no defence evidence to suggest that all people in one abusive milieu can be expected to be affected identically or even similarly to one another. This would be at odds with Dr. Barnes' evidence about resilience and the spectrum of evidence from the former Grenville students.

[337] Finally, there was evidence, which I accept, that some students may have had the benefit of additional protective factors, relative to their family's contributions and status. There was evidence that family status could play a part in how some students were treated. Most of the defendant witnesses were either from families who made financial contributions (over and above the tuition paid) to the school, or they had some element of professional prominence or other relationships with the school. These witnesses appear to have avoided the worst of the excessive or harsh discipline conduct which took place at Grenville.

[338] I find that the evidence of the harmful acts is not diminished or weakened because not all students experienced such harms. Partiality in treatment and individual resilience accounts for the differences in impact and experience. This is the logical boundary between the common issues and the individual issues trials. To the extent that only a percentage of students were harmed by practices that fell below the standard, the defendants will only be liable to those damages.

The Defence Submissions on Scale, Reputation and Return

[339] The defendants argue that Grenville's practices are nothing like those in *Cloud*, in which the purpose of the school was to "eradicate native culture" thus creating an environment in which "all students suffered." *Cloud* involved an Indian residential school in which all students had a perceived common characteristic: they were indigenous and thus the homogenous target of the abuses described in that case.

[340] While Grenville was not an Indian residential school, it had its own culture and aims for the students who depended upon it for education and care while living there. Its mission was different than in *Cloud* but clear: to apply the philosophies of the COJ and to enforce a way of living among its students using the COJ practices which have been described as including violence, shame and humiliation of students who were insufficiently obedient, too haughty, or proud according to those precepts.

[341] Grenville applied its philosophies in a hierarchical milieu, enlisting its staff and other students as part of the enforcement of those precepts. In so doing, it involved all members of the school community in an abusive, arbitrary environment that lacked policies or controls on the application of its various forms of discipline to ensure that students would not suffer harm. The number of students who testified about harm and of teachers who described this as a part of the culture, rather than as one-off incidents that were addressed by the headmasters, supports a finding that Grenville engaged in systemic negligence.

[342] The defendants submit that the plaintiffs tried and failed to portray Grenville as a dark, terrifying and repressive place which is completely inconsistent with other established facts, including the school's longstanding good reputation, its location in Southern Ontario, the fact that day students came and went back and forth, that students with siblings chose to attend Grenville after knowing of it and the parental survey in which it is clear parents knew about some of the impugned disciplinary practices. Further, there were virtually no public complaints for over 30 years and the police investigation led to no charges.

[343] The evidence establishes ongoing attempts to manipulate, control and monitor the information sent home to parents. The staff learned to ease off on the children of prominent families, particularly where there was a complaint. There was a single survey which revealed parental opposition to some of the school's practices. Rather than end some of the problematic practices, the single survey appears more likely to have ended the practice of surveying parents for feedback.

[344] Dr. Barnes gave expert evidence about barriers for students in making complaints. They would have had far less power than Grenville publications that presented the student experience as industrious, disciplined and positive. Grenville was not at all transparent about its more insidious forms of discipline. Despite the barriers, a few students managed to complain, run away or write letters home describing their fears. I accept this evidence.

[345] Finally, over time and once Charles Farnsworth and Al Haig had both departed, the complaints arose. Grenville was simply not able to sustain the reputation that it built for itself. I find that the plaintiffs have established on a balance of probabilities that the practices at Grenville fell below the standard of care and that the defendants breached their duties of care to the class.

VI. ISSUE #3: DID THE DEFENDANTS OWE A FIDUCIARY DUTY TO THE STUDENTS?

[346] The defendants concede that they owed a fiduciary duty to its students. The Supreme Court of Canada has said, "The hallmark of a fiduciary relation is that the relative legal positions are such that one party is at the mercy of the other's discretion." *M. (K.) v. M. (H.)*, [1992] 3 S.C.R. 6 at para. 73.

[347] The finding that Grenville owed a fiduciary obligation to its boarding students is clear from the relationship between those students and the school administration. All control was

handed over to the school by the parents of both the paying students and the parents on staff of Grenville.

[348] A fiduciary relationship requires three components, which are satisfied here:

- i) the fiduciary undertakes to act in the best interests of the beneficiary;
- ii) the beneficiary must be vulnerable as a result of the fiduciary having discretionary power over him/her/them; and,
- iii) the use of the fiduciary's power must affect the legal or substantial practical interest of the beneficiary:

(Elder Advocates of Alberta Society v. Alberta, 2011 SCC 24 at paras. 27-36.)

[349] Where a party alleges that a school or government authority with responsibilities for children has breached its fiduciary relationship to those in its care, the courts will examine whether the authority's acts or omissions sanctioned harmful conduct, failed to report, or investigate allegations of abusive or harmful conduct or was wilfully blind to abuse being perpetrated by others against students: *B. (K.L.) v. British Columbia*, 2003 SCC 51 at para. 49; *Slark (Litigation Guardian of) v. Ontario*, 2010 ONSC 1726 at paras. 146-148; *Seed v. The Queen in Right of Ontario*, 2012 ONSC 2681 at para. 105.

[350] The fiduciary duty owed by parents, and those who stand in the parental role to children includes a positive obligation to protect the child's health and well-being: *M. (K.) v. M. (H.)* at para. 80.

VII: ISSUE #4: DID THE DEFENDANTS BREACH THEIR FIDUCIARY OBLIGATIONS TO THE STUDENTS?

[351] The plaintiffs submit that in addition to the harmful disciplinary practices used at Grenville, the school failed to have any policies or procedures in place to report or investigate abuse of its students. As a result, the plaintiffs allege that the defendants breached their fiduciary obligations to the students. They rely on *Slark* and *Seed* for this proposition of law.

[352] 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.

[353] 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.

[354] 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.

[355] The plaintiffs submit that Grenville acted contrary to the interests of its students in imposing its idiosyncratic lifestyle on students to whom it owed fiduciary responsibilities. Elements of this lifestyle were abusive and beyond the limits of reasonable parental discipline. It did so as part of its stated aim of “Living in the Light” using techniques of “admonishment, chastisement, correction, discipline, submission and yieldedness.”

[356] I conclude that the defendants breached their fiduciary duties to the boarding students at Grenville.

VII. ISSUE #5: DOES THE CONDUCT OF THE DEFENDANTS MERIT AN AWARD OF PUNITIVE DAMAGES?

The Law

[357] *Whiten v. Pilot Insurance*, 2002 SCC 18, the leading case on punitive damages, establishes that punitive damages are an exceptional award. They are used to deter and denounce bad conduct.: *Whiten* at paras. 36-43, 100-105.

[358] Punitive damages are intended to punish a defendant who has engaged in misconduct that is a “marked departure from ordinary standards of decent behaviour.” *Whiten* at para. 36.

[359] In deciding whether to award punitive damages, the court should ask whether there is a rational connection between the facts found in the case and the decision to award punitive damages: *Whiten* at para. 71. In other words, what is it about the facts of a given case that establish a “marked departure” from standards of decent behaviour? Less serious deviations may not merit punitive damages. It will be a question of degree.

[360] The purpose of punitive damages includes deterring others and denouncing particularly bad conduct by a defendant. There should be a rational connection between the facts of the case and any decision to award punitive damages: *Whiten* at para. 71.

[361] The defendants submit that if compensatory damages achieve objectives of retribution, deterrence and denunciation, punitive damages may not be warranted: *Performance Industries v. Sylvan lake Golf and Tennis Club*, 2002 SCC 19 at para. 87.

[362] The defendants submit that the connection between compensatory damages and punitive damages should be left to the consideration of a judge at the individual issues trial. They argue this is the better process to follow because:

- i) At this stage the extent of the harm caused to class members is unknown;

- ii) There was no malicious, high-handed or reprehensible conduct toward the class, but only toward certain individuals
- iii) Grenville did not cover up or conceal its misconduct;
- iv) Grenville's motives and intention were commendable because the school wanted to produce successful young people who lived according to high moral standards;
- v) Grenville did not profit from its misconduct; and
- vi) Grenville is no longer in existence—therefore specific deterrence does not apply.

[363] The plaintiffs submit that it is appropriate to determine the question of punitive damages at the common issues stage because the inquiry involves whether there has been systemic negligence. As noted in *Rumley* at para. 34, where there is negligence alleged that applies to a group or class of victims, “the appropriateness and amount of punitive damages is ... amenable to resolution as a common issue.”

Analysis

[364] 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 mould students using the precepts and norms of 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. The hidden cost for many students came the form of lack of privacy, physical and emotional stability, autonomy, and well-being.

[365] 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.

[366] 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.

[367] The school sent a survey on one occasion to a limited subset of parents for their views. This led to some pointed criticism of the school's practice of publicly humiliating students and the school "honour code." Grenville knew about the parental disapproval of these practices. Its practices did not change until Charles Farnsworth retired.

[368] The finding of systemic negligence is a finding that the defendants' conduct deviated from established standards on a class-wide basis. I need not know with precision the number of students affected to make a finding that punitive damages are appropriate in law in this case. The principles drive that conclusion. Questions of quantum of punitive and any other damages fall to be determined at the next stage of the litigation.

[369] Finally, the fact that Grenville is no longer in existence does not remove the policy aims of applying punitive damages. These policies include denunciation and general deterrence in the public interest. This goes beyond sending a specific message to the administration of the school. Given the findings in this case I conclude that it is important to denounce conduct which can affect the health and emotional well-being of individuals throughout their life. The duties owed to developing children by educational institutions must be upheld: the failure to abide by the standards can assess a tremendous social cost to individuals, their families and to other institutions. Such failures can also erode public trust in private educational institutions which must meet the standards and abide by fiduciary obligations and duties of care toward students.

[370] In these circumstances, I conclude that punitive damages are appropriate.

IV: CONCLUSION

[371] I answer the common issues questions as follows:

1. Did the defendants owe a duty of care to the plaintiff class? Yes.
2. Did the defendants breach the duty of care owed to the plaintiff class? Yes.
3. Did the defendants owe a fiduciary duty to the plaintiff class? Yes.
4. Did the defendants breach their fiduciary obligations to the plaintiff class? Yes.
5. Does the conduct of the defendants merit an award of punitive damages? Yes.

[372] The next steps in this litigation will involve a determination of the individual issues in accordance with s. 25 of the *Class Proceedings Act*, 1992. For that purpose, I am remitting the case to the class action case management judge.

[373] If the parties are unable to agree as to costs, written submissions as to the costs of the common issues trial are to be delivered on or before March 21, 2020.

Leiper J.

Released:

February

26,

2020

CITATION: Cavanaugh et al. v. Grenville Christian College et al., 2020 ONSC 1133
COURT FILE NO.: CV-08-347100CP
DATE: 20200226

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

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

Plaintiffs

– and –

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

Defendants

REASONS FOR JUDGMENT

Leiper J.

Released: February 26, 2020