

Broad Findings of Systemic Negligence and Institutional Abuse in *Cavanaugh et al. v. Grenville Christian College*

David Rogers and Andrew Yolles
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In the recent decision in [*Cavanaugh et al. v. Grenville Christian College*](#), 2020 ONSC 1133, Justice Leiper found that Grenville Christian College, a boarding school in Brockville, Ontario, breached both the duty of care and the fiduciary duty it owed to its students as a result of the unreasonable and abusive lifestyle the school imposed on its students between 1973 and 1997.

Justice Leiper also found that it would be appropriate to award punitive damages against the school as a result of this conduct.

Justice Leiper's decision follows a five week trial on the common issues in this class proceeding. The matter was certified as a class action by the Divisional Court in 2014 ONSC 290, with the aim of streamlining the claims advanced against the school by its former students by permitting a single determination of the issues common to all such claims.

The Divisional Court felt the common issues would include the practices and policies of the school, and whether those practices and policies constituted a systemic breach of the school's duties to its students.

Background of School

Grenville Christian College was founded in 1969, and operated as a boarding school for primary and secondary school students. In 1973, the school's founders, Alastair Haig and Charles Farnsworth, introduced a new program of strict discipline for the school, which was derived from the principles and practices of a Christian community in the United States known as the "Community of Jesus".

Grenville's new programming consisted of very strict discipline, the use of corporal punishment, and tight control over the lives of its students in order to ensure compliance with the school's values.

After extensive evidence from former students and staff members of the school, as well as expert evidence on the standard practices of Ontario schools during the relevant time period, and the effect those practices would have had on students, Justice Leiper concluded that a number of Grenville's practices were abusive and systemically negligent.

"Discipline Status"

First, Justice Leiper held that the school's practice of placing students on "discipline status" fell below the standard of care. Students of Grenville would be placed on discipline status for breaking the school's rules, or for having a bad attitude. While "on discipline", students were separated from their peers, taken out of class, not permitted to wear their regular uniform, and were assigned chores to carry out around the school.

Discipline status lasted a variable amount of time from days to weeks. The chores they carried out were often regular work, like cleaning dishes, but would sometimes be extremely punitive, such as having to cut grass with small scissors. Being "on discipline" carried an element of social ostracism as well, as other students were not permitted to speak with students on discipline.

Justice Leiper found that this practice of discipline by enforced isolation and sometimes excessively degrading or dangerous work duties was systemic and fell below the standard of care for a school during that time period.

Corporal Punishment

Justice Leiper also found that Grenville's use of corporal punishment fell below the applicable standard of care. Paddling was the primary method of corporal punishment used by Grenville.

While corporal punishment, including paddling, was used by other schools in Ontario during the same time period, the standard of care required the school to mete out corporal punishment consistently in accordance with an established policy, and without resulting in significant injury or bodily harm.

At Grenville, however, Justice Leiper found that paddling was applied arbitrarily and inconsistently, there was no established policy for or records kept about its use, and it was applied with sufficient force that students were injured on numerous occasions.

Other Findings of Abuse

Another practice Justice Leiper found to be abusive and systemically negligent was the use of school correction assemblies, or “light sessions,” to correct misbehaviour. These sessions essentially consisted of specific students being singled out and publicly shamed in front of the whole school.

A further practice of the institution found to be negligent was the practice of bringing children to the school’s boiler room and showing them the furnace flames, which were used to instill a fear of going to hell for bad behaviour in the children.

Justice Leiper also took issue with Grenville’s teachings regarding sexuality. She felt that many of Grenville’s practices in this regard constituted sexualized abuse of the students, including requiring students to make sexual confessions, berating students for inciting lust, using derogatory terms for women and girls, humiliating students over expressing romantic or sexual feelings, vilifying homosexuality, and providing an unbalanced view of sexuality as sinful.

Conclusions of Trial Judge

Justice Leiper held that all of this conduct on the part of Grenville represented systemic harm that fell below the standard of care for an educational institution during the time period in which these events occurred, and was therefore negligent.

Her Honour further found that Grenville owed a fiduciary duty to its students, and that this fiduciary duty had been breached by the same impugned conduct. She held that by imposing its abusive and unreasonable lifestyle on its students, Grenville had acted contrary to its students’ best interests.

Finally, Justice Leiper held that this same conduct on the part of Grenville warranted an award of punitive damages.

Conflicting Evidence

There are many other interesting features of this judgment, in addition to the foregoing findings of the trial judge. One of the more interesting issues the trial judge dealt with is the evidence led at trial that many students had an overall positive experience at Grenville, and attributed their success in life to the education and discipline they received there.

The defendants argued that this evidence is inconsistent with the plaintiffs’ depiction of Grenville as an institution where students were systemically abused and oppressed.

Justice Leiper addressed this apparent contradiction by finding that the students' differing experience and outcomes can be explained by their individual resiliency, which she held can mitigate the impact of abuse and lead different students to experience the same events differently.

Thus, Her Honour found that it was possible for the school to have been systemically negligent and abusive in its student programming, but nevertheless produce numerous alumni who had a positive experience with and good outcomes as a result of that same programming.

Punitive Damages

Another noteworthy feature of this decision is that punitive damages were found to be warranted, despite the fact that the school is no longer operating, and despite the historical context in which the impugned behaviour occurred.

As the trial judge herself noted, punitive damages are an extraordinary remedy intended not to compensate the plaintiff, but to deter, denounce, and punish a defendant whose behaviour has offended the Court.

Justice Leiper held that the fact that Grenville no longer exists does not interfere with the policy objectives of denouncing conduct that affects the health and emotional well-being of young students.

However, Justice Leiper did not appear to consider the fact that these events occurred many years in the past. There does not seem to have been evidence before Her Honour that there remained today a serious concern about institutions operating as Grenville did. In the absence of such evidence, it is unclear how the Court can be confident that this kind of denouncement of such behaviour today is at all needed.

Questions About Decision

It is worth noting that Grenville itself, and the very conduct that Justice Leiper found to be systemically negligent and abusive, were based on the principles and ideals of a particular sect of the Christian faith.

The parents of Grenville's students would have chosen Grenville with full knowledge of its values and attitudes towards discipline, sexuality, and religion. Presumably, they did this because they shared those values and attitudes, and wanted them instilled in their children.

While there was evidence at trial that students may have been prevented from complaining about the treatment they received at the school, the evidence did not seem to establish that Grenville deceived its students' parents about what kind of institution it was.

Grenville was certainly not a mainstream institution by any means, and its practices and attitudes may well have deviated from the norm at the time. However, the fact that the parents of Grenville's students chose to send them to Grenville, and why, is completely absent from Justice Leiper's analysis.

Taking Justice Leiper's analysis further, one wonders whether the parents who enrolled their children in Grenville, or whether religious institutions and programs with similar attitudes towards discipline and sexuality, can be said to be negligent, abusive, and worthy of punitive sanction, as Justice Leiper felt Grenville is. The absence of consideration of this key part of the context in which Grenville operated is certainly an interesting issue raised by this decision.

Next Steps

In any event, it will now be up to the individual claimants to establish that they suffered actual damages as a result of the conduct for which Justice Leiper found Grenville to be liable to the class of its students as a whole.

That is, of course, only if Justice Leiper's decision is upheld on appeal. The authors understand an appeal is likely forthcoming, and we look forward to yet another interesting decision in this matter.