

C A N A D A

**PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**

(Recours Collectif)
C O U R S U P É R I E U R E

NO ::

503
06-000362-067

**A.B.T. resident of the City of Vancouver,
British Columbia, herein electing domicile for
purposes of these proceedings c/o the
Prothonotary 1, Notre-Dame East, Montreal,
Quebec, H2Y 1B6**

Petitioner

-vs-

**BISHOP'S COLLEGE SCHOOL, legal entity,
carrying on business as "Bishop's College
School", at 80 Moulton Hill, Town of
Lennoxville, Province of Quebec, J1M 1Z8**

Respondent

**PETITION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND
TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 etc. C.c.p.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONERS
RESPECTFULLY SUBMIT THE FOLLOWING:**

BACKGROUND AND LEGAL CLAIMS

1. Petitioner A.B.T. (the "student representative Petitioner") on his own behalf and on behalf of all student class members (the "student class members"), hereby seeks authorization of the Superior Court to file the following claims against the Respondent:
 - (a) compensation and damages for breach of trust, breach of fiduciary duties, negligence, assault and damages for willful and wanton and vexatious intentional perpetration of mental distress resulting from the conduct of the employee of the Respondent, Rev. Harold Theodore

Gibson Forster ("Forster"), mental, emotional and sexual abuse of the student representative Petitioner and student class members in the sum of \$13 million;

- (b) Compensation for breach of trust, negligence for hiring, employing and inadequately supervising its personnel, including Forster, and in employing Forster, and more generally, in failing to protect the interests of the student representative Petitioner and other student class members and for the intentional, or, in the alternative, negligent infliction of mental distress occasioned as a result of Bishops College School's failure to assist and protect the student representative Petitioner and student class members from the abuse perpetrated upon them by Forster, in the amount of \$13 million;
 - (c) Damages for liability in hiring, employing and inadequately supervising Forster and failing to protect the interests of the student representative Petitioner and student class members in the amount of \$13 million;
 - (d) Damages for the Respondent's breach of duty of care in the amount of \$13 million;
 - (e) Punitive and exemplary damages in the sum of \$4 million;
 - (f) Aggravated damages in the amount of \$2 million;
 - (g) Special damages in a sum to be determined at the eventual trial after authorization;
 - (h) Interest and additional indemnity in virtue of the Quebec Civil Code.
2. The Petitioner, A.B.T., on behalf of himself and on behalf of other class members claims as follows:
- (a) Damages for loss of care, guidance and companionship and pecuniary loss;
 - (b) Interest and the additional indemnity in virtue of the Quebec Code Civile;
 - (c) Legal fees and costs to be assessed at trial;
 - (d) Such further and other relief as this Honourable Court may deem just and reasonable in the circumstances.

3. Petitioner A.B.T. currently resides in the City of Vancouver, in the Province of British Columbia and was a student at Bishops College School;
4. That the Respondent Bishop's College School, carrying on business as "Bishop's College School" (alternatively, "BCS" or "Bishops"), is a corporation incorporated pursuant to the laws of the Province of Quebec;
5. BCS was, at all material times, an independent college preparatory boarding school for boys in grade 4 through grade 12 in Lennoxville, Quebec;
6. That during all pertinent periods, Rev. Harold Theodore Gibson Forster ("Forster") was employed by the Respondent as a house master, school chaplain, teacher, choirmaster, employee, servant and agent of Respondent;
7. That the Respondent was founded in 1838 and claims to have a tradition of "achievement, vision and excellence";
8. The "Student Class Members" (represented by A.B.T.) are all persons who were sexually, physically and/or mentally abused by Forster and other employees, servants, agents of Respondent while attending BCS;
9. Forster, at all pertinent times, used and exploited his position of authority and supervisory capacity to cultivate an inappropriate and harmful relationship with A.B.T. in order to manipulate and lure A.B.T. and other Student Class Members, so as to perpetrate acts of sexual, physical and/or mental abuse on them;
10. Forster was employed by BCS from April 1953 to July 1962 except 1960. Forster was house master of School House and School Chaplain of BSC for several of those years;
11. School House was the building in which only first year boys in grade 8 were boarded. It was also the building in which Forster had a residential suite;
12. Petitioner A.B.T. resided in School House from 1960 to 1962;
13. Petitioner A.B.T. attended BCS as a student for grades 6 through 11, from September, 1958 to June, 1965;
14. Late one evening, in or about February 1962, when A.B.T. was 14 years old. Forster instructed A.B.T. to wake him in his private suite at 6:15 a.m. the next morning. A.B.T. did as Forster instructed. Upon arriving at Forster's suite, Forster told A.B.T. to come into his bedroom where Forster was still in bed. While A.B.T. was standing in front of Forster, next to Forster's bed, Forster removed A.B.T.'s pajama bottoms and put A.B.T. on his lap and proceeded to

repeatedly beat A.B.T.'s bare buttocks with a hairbrush or clothes brush, while making peculiar sounds with his mouth. Forster then put the brush down and massaged A.B.T.'s buttocks with his hand for a time. Without saying anything further, Forster suddenly told A.B.T. he could leave. Forster engaged in the same or strikingly similar conduct relative to the other Student Class Members;

15. A few weeks later, in or about February or March of 1962, Forster again assaulted A.B.T. in the same manner as above;
16. A.B.T. specifically states that Forster seized upon his and other Student Class Members' vulnerability, which included their small stature, inexperience and young age and his position of dominance as a teacher, administrator and school master of School House, and employee of BCS, with authority to dispense favours, benefits, inducements, punishment, including corporal punishment and discipline, thereby creating an environment in which sexual assault, physical and/or mental abuse of A.B.T. and other Student Class Members prevailed on a regular basis. The time during which this abuse was occurring was one of fright, shock, confusion, shame and frustration. A.B.T. feared that others would discover the abuse. A.B.T. states that he was unable to disclose the abuse at an earlier time, given his fear, embarrassment and denial. He also felt alone, awkward and confined to secrecy, given the situation. At the time the abuse was occurring, A.B.T. feared ridicule and embarrassment from his friends and peers and, as such, he attempted to hide same from persons around him. It was very painful for him to think about, let alone speak of the abuse;
17. A.B.T. maintains that Forster's conduct and actions in these circumstances has caused him to develop certain psychological mechanisms in order to survive the trauma of the abuse, including denial, disassociation and guilt. A.B.T. has repressed some, but not all, of the memories of the sexual abuse and the emotions associated with it. Even to this day, he partly blames himself for the occurrence of the abuse;
18. Subsequently, in or about March, April or May of 1963, A.B.T. was approached by two younger students who were aware of a third younger student whom had been assaulted by Forster in much the same fashion as Forster had assaulted A.B.T. A.B.T. reported to a school official and to his father, Forster's assault of the third younger student. A.B.T. was too embarrassed to report Forster's assaults on him. As a consequence of A.B.T.'s reporting Forster's assault of the younger student, BCS terminated Forster's employment with the school but not until 6 to 8 weeks later at the end of the school year - leaving A.B.T. to have to daily confront Forster and be subject to his humiliation including being the subject of his Sunday sermons. These were the most intimidating and frightening weeks of A.B.T. life;

19. As a chief consequence of the abuse, A.B.T. did not initially undergo any therapy or other psychiatric treatment. He still does not understand/appreciate the full extent of the damage caused to him by the assaults committed by Forster and the damages caused by the same;
20. As a direct result of the relationship that developed between Petitioner A.B.T. and other Student Class Members, on the one hand, and Forster, on the other hand, they became dependent on Forster and vulnerable to Forster to such an emotional extent that Forster owed A.B.T. and the other Student Class Members a special duty of care and fiduciary duties as follows:
 - (a) Not to be sexually, physically, or emotionally abusive;
 - (b) Not to use the relationship to satisfy his own sexual desires;
 - (c) Respect and dignity and privacy of their person;
 - (d) Such further and other duties as may be advised to the Court at or prior to trial;
21. That Petitioner A.B.T. and the other Student Class Members maintain that Forster's aforesaid actions constitute a breach of trust, negligence and assault upon their person. The conduct of Forster was intentional, malicious and was done with the knowledge that it would cause them to suffer humiliation, indignity, physical, emotional and mental distress and injury and general damages to their person;
22. Further, Forster's conduct was done with the knowledge that A.B.T.'s and all other Student Class Members' emotional and physical anguish would increase, and was done in wanton, careless and willful disregard to the consequences to them. Forster's conduct was harsh, vindictive, malicious and reprehensible. Such conduct is offensive to, and in violation of the ordinary standards of decent conduct in the community which ought to be deterred, and is deserving of full condemnation, punishment and compensation;
23. Petitioner claims and pleads that BCS is responsible for the acts and conduct of its employees, in this case Forster and others, and BCS is negligent in that:
 - (a) Forster was an employee, servant or agent of BCS, and by placing him in a position of trust and authority, BCS facilitated Forster's capacity to do wrong, and without that position and authority, that wrong could have been prevented against Petitioner A.B.T. and all Student Class Members;

- (b) Forster was a teacher, housemaster and Chaplain at BCS from 1953 to 1962 except 1960;
 - (c) Forster inflicted the abuse during the course of his employment;
 - (d) Forster's position with BCS was such that BCS could foresee that occupying that position could result in Forster exercising control of the youths in the school, and provide him with an opportunity to commit sexual, physical and emotional abuse;
 - (e) BCS knew, or ought to have known, of Forster's actions involving A.B.T. and other male youths, including the Student Class Members. Prior to the attack upon A.B.T. BCS was aware, or should have been aware, that Forster and other pedophiles had engaged in illegal and abhorrent sexual and physical and mental practices with male youths at BCS. Forster had exhibited a similar pattern of behaviour, with other male youths, and this pattern was known to, or should have been known by, Forster's superiors and fellow employees at BCS;
 - (f) BCS failed to adopt proper or adequate hiring practices to ensure that persons such as Forster would not be hired;
 - (g) BCS knew, or ought to have known of Forster's conduct relative to A.B.T. and the other Student Class Members;
 - (h) BCS did not provide proper, adequate or effective training or monitoring, initially, or on an ongoing basis, to ensure that Forster was suitable and fit to act as an employee of BCS;
 - (i) BCS did not adequately, or at all, monitor the performance and behaviour of Forster to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of BCS would exhibit;
24. In addition to the foregoing, Petitioner claims that BCS is liable for the acts and conduct of Forster, and/or negligence by reason of:
- (a) Forster's status as a Chaplain, administrator, teacher and employee of BCS constituted a deemed acceptability and suitability and fitness of Forster for those positions, upon which A.B.T. and each Student Class Member relied, and had every reason to rely on;
 - (b) BCS knew, or ought to have known, that Forster was not suitable or fit to be employed at BCS, given the presence of males of an impressionable age;

- (c) BCS knew, or ought to have known, that Forster was a pedophile or a person with abhorrent tendencies who engaged in illegal and immoral sexual and other activities with young boys who were under his supervision or otherwise;
 - (d) BCS knew, or ought to have known, of Forster's actions and took no steps to have him removed;
 - (e) BCS failed to provide the leadership and due care by not implementing or enforcing guidelines on sexual, physical and mental abuse, thereby causing to Petitioners and the Class Members damages, inclusive of the continuation and exacerbation of said damages. BCS failed to warn potential victims of sexual, physical and mental abuse, such as A.B.T. and the other Student Class Members, that there was a risk that Forster might commit sexual assault and battery and cause mental distress;
25. In addition to the foregoing, Petitioner claims liability against BCS on the following basis:
- (a) BCS did not provide regular, proper or effective training, teaching guidelines or monitoring of Forster adequately or at all, to ensure that BCS was operating in accordance with an institution holding itself out as a Private Boy's Boarding School;
 - (b) BCS failed to respond properly or in a timely fashion, nor did it take appropriate steps to protect potential victims, such as A.B.T. and the other Student Class Members, when information was obtained that Forster might be committing sexual assault, battery and emotional abuse. Furthermore, when sexual assaults, battery and emotional abuse of other complainants by employees, servants or agents of BCS were discovered, BCS failed to undertake an investigation, or otherwise ensure that there were no victims or perpetrators;
26. Your Petitioner A.B.T. states that as a result of the relationship between him and the other Student Class Members, on the one hand, and Forster, on the other hand, A.B.T. and the other Student Class Members became dependent upon, and vulnerable to Forster, to the extent that BCS owed A.B.T. and the other Student Class Members a special duty of care and of a fiduciary duty to:
- (a) Ensure that its teachers and employees and agents were effectively and adequately monitored and trained;
 - (b) Ensure that its teachers, employees and agents were not sexually, physically or mentally abusing its students;

- (c) Ensure that that students were adequately protected from those in positions of authority;
 - (d) Not to employ Forster and the other employees and agents;
 - (e) Such further and other breaches as may be advised in the future;
27. That your Petitioner states that the action, inaction and omissions of BCS as aforesaid, constitute breach of trust and negligence, in hiring, employing and inadequately monitoring Forster and in failing to protect A.B.T. and the other Student Class Members' interests;
28. Petitioner maintains that the conduct of Forster and BCS, in general, is reprehensible and is conduct which should be deterred and the Petitioner A.B.T. and the other Student Class Members are, therefore, entitled to punitive and exemplary damages;
29. Your Petitioner pleads that BCS owed a duty to Petitioner A.B.T. and all other Student Class Members to ensure that they were reasonably safe while on the premises and in the presence of Forster, and that BCS breached its duty of care, the particulars of which have been detailed hereinabove;
30. That as a result of the abuse, Student Class Members have encountered difficulty with females sexually. They have become alienated from their family members, and their relationships with them have been adversely affected because of the said sexual, physical and emotional abuse;
31. As a result of Forster's actions as aforesaid, A.B.T. and/or the other Student Class Members have suffered serious and permanent injuries and general and special damages for which the Respondent is at law responsible, including, though not limited to, the following:
- (a) Ongoing, severe emotional and psychiatric hospitalization and professional counseling which continues to this day;
 - (b) Numerous attempts at suicide;
 - (c) Inability to sleep;
 - (d) Recurring nightmares;
 - (e) Difficulty in developing and maintaining healthy and meaningful interpersonal relationships;
 - (f) Inability to trust other individuals;

- (g) Emotional and mental distress;
 - (h) Low self-esteem;
 - (i) Major depression;
 - (j) Failed relationships;
 - (k) Problems with authority figures, leading to conflicts with employers;
 - (l) Lack of self-confidence;
 - (m) Inability to complete formal education;
 - (n) Loss of faith in organized religion;
 - (o) Substance abuse;
 - (p) Loss of income;
 - (q) Such further and other damages as may be advised in the future;
32. That as a result of the assault upon their childhood innocence, physical safety, integrity and mental well-being, the experiences have left A.B.T. and/or Student Class Members emotionally and mentally scarred with the inability to properly function as a person, man, husband, parent and son or brother;
33. Petitioner A.B.T. and the other Student Class Members as a result of the above-described acts and omissions, have a general anxiety disorder and have suffered post-traumatic stress disorder;
34. As a consequence of these experiences, A.B.T. and other Student Class Members have been put to medical expense and will require therapy and medical attention;

CLASS ACTION

35. The Petitioner A.B.T. wishes to institute a class action on his own behalf and on behalf of all Student Class Members forming part of the group comprised as follows:
- (a) "All students of Bishops College School who were the victims of the breach of trust, sexual assault, physical assault and mental abuse

perpetrated by the Respondent's employee Harold Forster and damaged therefrom",

36. The personal claims of the Petitioner against the Respondent are based on the following facts:
- 36.1 Petitioner A.B.T. currently resides in the City of Vancouver, Province of British Columbia and was a student at Bishops College School;
 - 36.2 Respondent Bishop's College School, carrying on business as "Bishops College School" ("BCS"), is a corporation incorporated pursuant to the laws of Quebec;
 - 36.3 BCS was, at all material times, an independent College preparatory school for boys in grade 4 through grade 12, located in Lennoxville, Quebec;
 - 36.4 At all material times, Harold Forster ("Forster") was a teacher, housemaster, Chaplain, choirmaster, employee, servant or agent of the Respondent;
 - 36.5 The Respondent was founded in 1838, and claims to have a tradition of "achievement, vision and excellence";
 - 36.6 The Student Class Members are all persons who were sexually, physically and/or mentally abused by Forster and other employees, servants or agents of BCS while they were students at BCS;
 - 36.7 Forster used his position of authority and supervisory capacity in order to cultivate an inappropriate relationship with A.B.T. in order to manipulate and lure A.B.T. and the other Student Class Members for the sole purpose of furthering his relationship with A.B.T. and the other Student Class Members, so as to perpetrate acts of sexual, physical and/or mental abuse on them;
 - 36.8 Petitioner A.B.T. attended BCS as a student for grades 6 to 11, from 1958 to 1965. Starting in or about 1962 when A.B.T. was 14 years old, Forster assaulted A.B.T. by purporting to impose corporal punishment on A.B.T. in Forster's private suite at BCS by beating A.B.T. using an hairbrush or clothes brush on A.B.T.'s bare buttocks. Forster also massaged A.B.T.'s buttocks with his hand. While engaged in such conduct, Forster was sexually aroused;
 - 36.9 In addition to the sexual assault by Forster, Petitioner A.B.T. was also sexually assaulted by a head boy when A.B.T. was in grade 8:

- a) Petitioner A.B.T. reported the sexual assault by the head boy to school authorities;
 - b) Despite such report, the Respondent did not expel the head boy and, in fact, permitted said head boy to continue in his position of head boy. He also was allowed to return the following year with more authority and influence as a prefect. The said head boy/prefect continued his sexual activities;
 - c) Petitioner A.B.T. maintains that Forster seized upon A.B.T.'s and other Student Class Members' vulnerability, which included their small stature, inexperience and young age, and Forster's position of dominance as housemaster, teacher and employee of BCS, with authority to dispense favours, benefits and inducements, thereby creating an environment in which to sexually, physically and mentally abuse A.B.T. and the other Student Class Members;
- 36.10 Petitioner A.B.T. maintains that Forster seized upon A.B.T.'s and other Student Class Members' vulnerability, which included their small stature, inexperience and young age, and Forster's position of dominance as housemaster, teacher, Chaplain, and employee of BCS, with authority to dispense favours, benefits and inducements, thereby creating an environment in which to sexually, physically and mentally abuse A.B.T. and the other Student Class Members;
- 36.11. The time during which this abuse was occurring was a time when A.B.T. felt scared, shocked, confused, disoriented, frustrated and ashamed. He was afraid that others would find out about the abuse. A.B.T. states that he was unable to disclose the abuse at an earlier time given his fear, embarrassment and denial, which was part of his medical problem arising from the wrongdoing of Forster. A.B.T. felt alone, awkward and confined to secrecy given the situation. At the time the abuse was occurring, A.B.T. feared ridicule and embarrassment of his friends and peers and, as such, he attempted to hide same from persons around him. It was very painful for him to think about, let alone speak about the abuse. A.B.T. pleads that Forster's conduct and actions in these circumstances, have caused him to develop certain psychological mechanisms in order to survive the trauma of the sexual, physical and mental abuse, including denial, repression, disassociation and guilt. A.B.T. has repressed some, but not all, of the memories of the sexual, physical and mental abuse and the emotions associated with such conduct. Even to this day, A.B.T. partly blames himself for the occurrences of sexual, physical and mental abuse. It was impossible for A.B.T. to act sooner given his medical condition and the traumatic impact of the events that happened to him;

- 36.12. As a direct consequence of the said abuse, A.B.T. did not initially undergo any therapy or any other psychiatric treatment. He still does not understand/appreciate the full extent of the damages caused to him by the assaults committed by Forster and other employees or agents of BCS;
- 36.13 As a result of the relationship that developed between the Petitioner A.B.T. and the other Student Class Members, on the one hand, and Forster on the other hand, they became dependent upon Forster and vulnerable to Forster to such an emotional extent, that Forster owed A.B.T. and the other Student Class Members a special duty of care and fiduciary duties as follows:
- (a) Not to be sexually, physically or mentally abusive;
 - (b) Not to use the relationships to satisfy his own desires;
 - (c) Respect and dignity and privacy of their person;
- 36.14 Petitioner A.B.T. and the other Student Class Members state that Forster's aforesaid actions constitute a breach of trust, negligence and assault upon their person. Forster's conduct was intentional, malicious and was done with the knowledge that it would cause them to suffer humiliation, indignity, physical, emotional and mental distress and injury. Further, Forster's conduct was done with the knowledge that A.B.T.'s and the other Student Class Members' emotional and physical anguish would increase, and was done with wanton, careless and willful disregard to the consequences to them. Forster's conduct was harsh, vindictive, malicious and reprehensible. Such conduct is offensive to the ordinary standards of decent conduct in the community which ought to be deterred, and is deserving of full condemnation and punishment;
- 36.15 Petitioner claims that BCS is responsible for the acts and conduct of its employees and agents, including Forster, and BCS is negligent in that:
- (a) Forster was an employee, servant, or agent of BCS, and by placing him in a position of trust and authority, BCS facilitated Forster's capacity to do wrong, and without that position and authority, the wrongs against Petitioner A.B.T. and the other Student Class Members could have been prevented;
 - (b) Forster inflicted the abuse during the course of his employment;
 - (c) Forster's positions with BCS were such that BCS could foresee that occupying those positions could result in Forster exercising control over youths in the school, and provided Forster with the opportunity to commit sexual, physical and mental abuse;

- (d) BCS knew, or ought to have known, of Forster's actions involving A.B.T. other male youths, including Student Class Members. Prior to the attacks upon A.B.T., BCS was aware, or should have been aware, that Forster and other employees, servants and agents had engaged in illegal and abhorrent practices with male youths at BCS. Forster had exhibited a similar pattern of behaviour with other male youths and his pattern was known to, or should have been known by, Forster's superiors and fellow employees at BCS;
 - (e) BCS failed to adopt proper or adequate hiring practices to ensure that persons such as Forster would not be hired;
 - (f) BCS knew, or ought to have known, of Forster's relationship with A.B.T. and the other Student Class Members;
 - (g) BCS did not provide proper, adequate or effective training or monitoring, initially, or on an ongoing basis, to ensure that Forster was suitable and fit to be an employee of BCS;
 - (h) BCS did not adequately, or at all, monitor the performance and behaviour of Forster to ensure that his performance and behaviour were such as a qualified, reasonable and prudent employee of BCS would exhibit;
- 36.16. In addition to the foregoing, Petitioner claims that BCS is liable for the acts and conduct of Forster and/or negligent by reason of:
- (a) Forster's status as an employee, servant or agent of BCS constituted a reconfirmation and public acknowledgment of suitability and fitness of Forster for his positions, upon which A.B.T. and each Student Class Member relied;
 - (b) BCS knew, or ought to have known, that Forster was not suitable or fit to be employed at BCS, given the presence of males of an impressionable age;
 - (c) BCS knew, or ought to have known, that Forster was a pedophile or a person with abhorrent tendencies, who engaged in illegal and immoral activity with young boys who were under his supervision or control;
 - (d) BCS knew, or ought to have known, of Forster's above noted actions and took no steps to have him removed;

- (e) BCS failed to provide the leadership by not implementing, or not enforcing guidelines on sexual, physical and mental abuse, thereby causing Petitioner's and Class Members' damages to begin, continue and to be exacerbated over time;
- (f) BCS failed to warn potential victims of sexual, physical and mental abuse, such as A.B.T., that there was a risk that Forster might commit sexual, physical and/or mental abuse;

36.17. That in addition to the foregoing, Petitioner claim liability as against BCS for the following reasons:

- (a) BCS did not provide regular, proper, effective training, teaching, guidelines or monitoring of Forster adequately, or at all, to ensure that BCS was operating in accordance with, and as, an institution holding itself out as a residential Private Boys' School;
- (b) BCS failed to respond properly, nor did it take appropriate steps to protect potential victims, such as A.B.T. and other Student Class Members, particularly when information was obtained that Forster might be committing sexual assault, battery and mental abuse. Furthermore, when the sexual, physical and mental abuse of other complainants by employees, servants or agents of BCS was discovered, BCS failed to undertake an investigation, or otherwise ensure that there were no other victims or perpetrators;

36.18. Petitioner A.B.T. states that as a result of the relationship between him and the other Student Class Members, on the one hand, and Forster, on the other hand, A.B.T. and the other Student Class Members became dependent upon and vulnerable to Forster to the extent that BCS owed Petitioner A.B.T. and other Student Class Members a duty of care of a fiduciary nature to:

- (a) Ensure that its teachers, administrators, employees, servants and agents were effectively and adequately monitored and trained;
- (b) Ensure that its teachers, administrators, employees, servants and agents were not sexually, physically or mentally abusing students;
- (c) Ensure that the students were adequately protected from those in positions of authority;
- (d) Not to employ Forster and other teachers, administrators, employees, servants and agents committing sexual, physical or mental abuse of students;

- 36.19 Petitioner maintains that the action or inaction of BCS as aforesaid, constitutes breach of trust and negligence, in hiring, employing and adequately supervising Forster and its other teachers, administrators, employees, servants and agents and in failing to protect the Petitioner A.B.T. and the other Student Class Members' interests;
- 36.20. Petitioner maintains that the conduct of Forster and BCS, in general, is reprehensible and is conduct which should be deterred and that Petitioner A.B.T. and the other Student Class Members are, therefore, entitled to punitive and exemplary damages;
- 36.21 Petitioner maintain that BCS owed a duty of care to Petitioner A.B.T. and all other Student Class Members to ensure they were reasonably safe while on BCS's premises or in the presence of BCS's employees, servants or agents, and that BCS breached its duty of care, and the particulars of the breaches and the damages that resulted are particularized herein above;
- 36.22 That as a result of the abuse, Petitioner A.B.T. and/or the other Student Class Members have encountered difficulty with females sexually, they have difficulty dealing with authority, they have become alienated from their family members, and their relationships with family members have been adversely affected because of the subject abuse;
- 36.23. As a further result of Forster's actions as aforesaid, A.B.T. and/or the other Student Class Members have suffered serious and permanent injuries and general and special damages, for which the Respondent is at law, responsible, including:
- (a) On-going severe emotional and psychiatric hospitalization and professional counseling which continues to this day;
 - (b) Numerous attempts at suicide;
 - (c) Inability to sleep;
 - (d) Recurring nightmares;
 - (e) Difficulty in developing and maintaining healthy and meaningful interpersonal relationships;
 - (f) Inability to trust other individuals;
 - (g) Emotional and mental distress;
 - (h) Low self-esteem;

- (i) Major depression;
 - (j) Failed relationships;
 - (k) Problems with authority figures, leading to conflicts with employers;
 - (l) Lack of self-confidence;
 - (m) Substance abuse;
 - (n) Inability to complete formal education;
 - (o) Loss of income;
- 36.24. That as a result of the assault upon their childhood innocence, physical safety, integrity and mental well-being, the experiences have left A.B.T. and each Student Class Member emotionally and mentally scarred and with the inability to properly function as a person, man, husband and parent;
- 36.25. The Petitioner A.B.T. and the other Student Class Members have a general anxiety disorder and have suffered post-traumatic stress disorder;
- 36.26. As a consequence of these experiences, A.B.T. and the other Student Class Members have been put to medical expense and will require therapy and medical attention into the future;
- 36.26. The Petitioners' damages and the damages of other Class Members have been suffered, and continue to be suffered in Quebec, and elsewhere;
37. Many of the assaults perpetrated by Forster and the other employees, servants and agents of BCS were committed in the Province of Quebec;
38. The personal claims of each of the Class Members are based on similar facts fully described hereinabove;
39. **THE COMPOSITION OF THE GROUP MAKES THE APPLICATION OF ARTICLE 59 AND 67 C.C.P. DIFFICULT AND/OR IMPRACTICABLE FOR THE FOLLOWING REASONS:**
- 39.1 Did the Respondent owe a special duty of care or fiduciary duty to prevent its students from being victims of sexual, physical and mental abuse at the hands of its employees, servants and agents upon the persons of its students?

- 39.2 Did the Respondent violate the dignity and the right to privacy of its students?
- 39.3 Is the Respondent responsible for the breach of trust, negligence and assaults of its employees, servants and agents, including Forster, upon the person of its students?
- 39.4 Was the conduct of its employees, servants and agents, including Forster, vis-à-vis the abuse of BCS students intentional, malicious and done with the knowledge that it would cause the students harm, prejudice, humiliation, indignity, physical and emotional distress and injury?
- 39.5 Was Respondent aware of the above described actions of its chaplain, administrator, teacher and employee Forster and, if so, when did it become aware?
- 39.6 If not aware, should Respondent have been aware of the above described wrongful actions of Forster?
- 39.7 Was the conduct of Forster harsh, vindictive, malicious and reprehensible?
- 39.8 Was the conduct of Forster offensive to the ordinary standards of decent conduct in the community which ought to be deterred?
- 39.9 Was Respondent negligent in placing Forster in a position of trust and authority, thereby facilitating Forster's capacity to do wrong against Petitioner A.B.T. and all Student Class Members?
- 39.10 Did Forster inflict the abuse during the course of his employment with the Respondent?
- 39.11 Could or should have the Respondent foreseen someone in Forster's position in Respondent's type of school could result in Forster exercising undue control of youths in the school and provide Forster an opportunities to commit sexual, physical and mental abuse?
- 39.12 What steps did the Respondent take to screen and monitor Forster and its other employees, servants and agents, particularly in respect of sexual and physical practices pertaining to male youths at the Respondent's educational institution?
- 39.13 What background checks did the Respondent carry out prior to and during the employment of Forster and the engagement of its other employees, servants and agents?

- 39.14 Was the Respondent aware that Forster had a propensity and background for carrying out abhorrent practices with male youths and should it have known of said practices in the event it did not know?
- 39.15 Did the Respondent adopt proper and adequate hiring practices to ensure persons such as Forster would not be hired?
- 39.16 Did the Respondent provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that Forster and its other employees, servants and agents were suitable and fit to act as employees, servants and agents of the Respondent?
- 39.17 Did the Respondent fulfill its duty to monitor the performance and behaviour of Forster and that of its other employees, servants and agents to ensure that his and their performance were such as qualified, reasonable and prudent employees, servants and agents of BCS should exhibit?
- 39.18 Did the Respondent know of Forster's actions prior to his termination, and notwithstanding the same, take no steps to have him removed?
- 39.19. Did the Respondent fail to provide leadership and fulfillment of its legal and moral obligations by not enforcing or creating guidelines and policies on sexual, physical and mental abuse, thereby causing Petitioner(s) and Class Members damages to begin, to continue or to become exacerbated over time?
- 39.20 Did the Respondent fail to adequately protect students from those in positions of authority and power?
- 39.21 Is the Respondent liable for punitive damages in light of the wrongful behaviour of its employee Forster and its other employees, servants and agents and its wrongful behaviour as noted above?
- 39.22 If the Respondent is liable for punitive and exemplary damages, what amount of punitive damages, what amount of punitive damages should the Respondent be ordered to pay to Petitioner and to Class Members? What amount of exemplary damages should the Respondent pay?
- 39.23 Is the Respondent responsible for the damages caused to wives, including common law wives, parents and children of the Student Class Members?

The questions of law or fact which are particular to each of the members of the Group are as follows:

40. The questions of law or fact which are particular to each member of the Group are as follows:
- 40.1 Determining the amount of the claim of each member of the Group;
 - 40.2 Determining the amount of punitive and exemplary damages to which each Class Member is entitled to receive from the Respondent;
41. **It is expedient that the institution of a Class Action for the benefit the members of the Group be authorized for the following reasons:**
- 41.1 The class action is the best procedural vehicle available to the members of the Group in order to protect and enforce their rights herein;
 - 41.2 While the amount of damages sustained by each member of the Group may differ, the Respondent's wrongful behaviour and its liability therefore are identical for each member of the Group;
 - 41.3 Evidence to be adduced, on the merits of the Class Action, of the Respondent's wrongful behaviour will be the same for each and every member of the Group, and it would, therefore, be expedient and efficient for one judge to hear all of the evidence, rather than having numerous judges hearing evidence of the same wrongful behaviour on multiple occasions, which may, in turn, lead to contradictory judgments on questions of fact or of law, which questions are identical for each member of the Group;
 - 41.4 In the absence of a Class Action herein, there would be no viable recourse for any victim against the Respondent to sanction its wrongful behaviour due to the cost and difficulty that an individual recourse would entail, relative to the benefits one could hope to obtain;
42. **The nature of the recourse which Petitioner wish to exercise on behalf of the members of the Group is an action in damages, compensatory and exemplary, and punitive damages against the Respondent;**
- 42.1 To sanction the Respondent's breach of obligations and breach of trust;
 - 42.2 To sanction the Respondent's wrongful behaviour in tolerating and permitting sexual, physical and mental abuse of its students in elementary violation of the rights of the said students and their families; and not informing parents of victimized students of the said sexual, physical and mental abuse by its employee Forster and its other employees, servants and agents;

43. The conclusions sought by the Petitioner are as follows:
- (A) **GRANT THE** Action;
 - (B) **DECLARE** the Respondent liable to the members of the Group for the damages that the members have suffered at the hands of its employee Forster and its other employees, servants and agents and damages arising from Respondent's breach of obligation and failure to prevent or limit the on-going sexual, physical and mental abuse of its students by the said employees, servants and agents;
 - (C) **DECLARE** that the Respondent is liable for the cost of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioner(s) and the members of the Group;
 - (D) **CONDEMN** the Respondent to indemnify each and every member of the Group for all damages they have suffered as a result of the Respondent's wrongful behaviour, omissions and breach of obligations;
- AND TO THIS END:**
- (E) **CONDEMN** the Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by the Respondent's wrongful behaviour during the period of employment of Forster by the Respondent; and **ORDER** the collective recovery of this amount, the whole according proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;
 - (F) **ORDER** the individual liquidation in favour of the Petitioner of a sum equivalent to their share of the damages claimed and **ORDER** that the recovery of each of the members of the Group to be subject to individual liquidation or, if this process turns out to be inefficient or impracticable, **ORDER** the Respondent to perform any remedial measures that the Court may determine to be in the interests of the members of the Group or, if possible, **ORDER** the individual liquidation of the claims of the members of the Group together with whatever remedial measures the Court finds to be appropriate in the interests of the members of the Group;
 - (G) **CONDEMN** the Respondent to pay the costs of all investigation necessary in order to establish the liability of the Respondent in this matter, including the extra-judicial fees of counsel for the Petitioners and

the members of the Group and extra-judicial disbursements, including the costs of expertise;

- (H) **ORDER** the Respondent to advise the members of the Group of the present Class Action lawsuit at its cost;
- (I) **CONDEMN** the Respondent to any further relief as may be just and proper;

THE WHOLE WITH COSTS, INCLUDING COSTS OF ALL EXHIBITS, EXPERTISE AND PUBLICATION OF NOTICES.

- 44. The Petitioner request that the Petitioner be ascribed the status of class representative;
- 45. That the Petitioner is in a position to represent the members of the Group adequately for the following reasons:
 - 45.1 The Petitioner is an intelligent, dynamic and decent individual;
 - 45.2 The Petitioner has been deeply affected and considers it the moral obligation to seek justice through the judicial system to bring closure and justice to himself/themselves and all members of the Group;
 - 45.3 That Petitioner understands and has been thoroughly advised as to the process involving this Class Action, particularly by his original solicitors with whom they have made contact in the Province of Ontario;
 - 45.4 That Petitioner has and will fully cooperate with his attorneys in the context of this action, and has answered intelligently and properly each and every question put to him by his attorneys, and will continue to do so;
 - 45.5 That Petitioner fully intends to fairly and adequately represent and protect the interests of the members of the Group; and considers this a solemn and irreversible obligation on their part;
 - 45.6 The Petitioner is prepared to take the necessary measures to uncover facts relating to this action;

The Petitioner suggest that the Class Action be brought before the Superior Court for the District of Montreal for the following reasons:

- 46. The Petitioner suggest that the Class Action be brought before the Superior Court for the District of Montreal for the following reasons:

- 46.1 To the best of the Petitioner's knowledge, many of the members of the Group are domiciled in the Province of Quebec and the district of Montreal;
- 46.2 The Petitioner's undersigned attorneys are practicing in the District of Montreal;
- 46.3 The allegations and violations described herein were mostly perpetrated near Montreal;
- 46.4 The Respondent has its principal place of business near the District of Montreal;
- 46.5 The District of Montreal would be the most convenient forum for the trial herein, particularly for witnesses, including experts;
47. The present Motion is well founded in fact and law;

WHEREFORE: YOUR PETITIONER PRAYS:

- (A) THAT the present Motion be granted;
- (B) THAT the institution of a Class Action in damages be authorized against the Respondent:
1. To sanction the Respondent's breach of obligations and breach of trust;
 2. To sanction the Respondent's wrongful behaviour in tolerating sexual and physical assaults and mental abuse of its students in elementary violation of the rights of said students and their families;
- (C) THAT Petitioner be ascribed the status of Representative for the benefit of the following group of persons, namely:

SUB-GROUP I

All students at Bishops College School who were the victims of breach of trust, sexual assault, physical assault, mental abuse and negligence and damaged therefrom as a result of the sexual, physical, emotional and mental abuse perpetrated by Respondent's employee Harold Forster and other of its employees, servants and agents of the Petitioner A.B.T. and the other Student Class Members;

(D) THAT the principle questions of law and of fact to be dealt with collectively be identified as follows:

1. Did the Respondent owe a special duty of care or fiduciary duty to prevent its students from being victims of sexual and physical assault and mental abuse at the hands of its employees, servants and agents?
2. Did the Respondent violate the dignity and right to privacy of its subject students?
3. Is the Respondent responsible for the breach of trust, negligence and assault of its chaplain, administrator, teacher, employee Forster, upon the persons of the subject students?
4. Was the conduct of its employee Forster vis-à-vis the sexual, physical and mental abuse of the Respondent's students intentional, malicious and done with the knowledge that it would cause the students harm, prejudice, humiliation, indignity, physical and emotional distress and injury? Did Forster act alone or with others employed by the Respondent?
5. Was the Respondent aware of the above described actions of its employee Forster and its other employees, servants and agents and, if so, when did it become aware?
6. If not aware, should Respondent have been aware of the above described wrongful actions of Forster and its other employees, servants and agents?
7. Was the conduct of Forster and the Respondent's other employees, servants and agents harsh, vindictive, malicious and reprehensible?
8. Was the conduct of Forster offensive to the ordinary standards of decent conduct in the community which ought to be deterred?
9. Was the Respondent negligent in placing Forster in a position of trust and authority, thereby facilitating Forster's capacity to do wrong against Petitioner A.B.T. and all Student Class Members?
10. Did Forster inflict the abuse during the course of his employment?
11. Could or should have the Respondent foreseen someone in Forster's position in the Respondent's type male school could result in Forster exercising control of youths in the school and provide Forster an opportunity to commit sexual, physical and mental abuse?
12. What steps did the Respondent take to screen and monitor Forster's and its other employees, servants and agents, particularly in respect of sexual practices

pertaining to male youths and to the administration of corporal punishment at the Respondent's educational institution?

13. What background checks did the Respondent carry out prior to and during the employment of Forster and its other employees, servants and agents?
14. Was the Respondent aware that Forster had a propensity and background for carrying out abhorrent practices, including sexual practices, with male youths and should it have know of said practices in the event it did not know?
15. Did the Respondent adopt proper and adequate hiring practices to ensure that persons such as Forster would not be hired or continue to be employed?
16. Did the Respondent provide proper, adequate and effective training or monitoring initially or on an on-going basis to ensure that Forster was suitable and fit to act as an employee of the Respondent?
17. Did the Respondent fulfill its duty to monitor the performance and behaviour of Forster and its other employees, servants and agents to ensure that his and their performance and behaviour were such as qualified, reasonable and prudent employees, servants and agents of BCS would exhibit?
18. Did the Respondent know of Forster's actions prior to his termination, and not withstanding the same, took no steps to have him removed?
19. Did the Respondent fail to provide leadership and fulfillment of its legal and moral obligations by enforcing or creating guidelines on sexual, physical and mental abuse, thereby causing Petitioner and Class Members damages to begin, to continue or to become exacerbated?
20. Did the Respondent fail to adequately protect students from those in positions of authority and power?
21. Is the Respondent liable for compensatory, exemplary and punitive damages in light of the wrongful behaviour of its employee Forster and its other employees, servants and agents and its wrongful behaviour as above noted?
22. If the Respondent is liable for punitive and exemplary damages, what amount of such damages should the Respondent be ordered to pay the Petitioner and to the Members of the Group?
23. Is the Respondent responsible for the damages caused to wives, including common law wives, parents and children of the individual student victims?

(E) **THAT** the conclusions sought by the Petitioner in relation to such questions are as follows:

1. **GRANT** the Action;

2. **DECLARE** that the Respondent is liable to the members of the Group for the damages that the members have suffered during the subsequent to the period of employment of Forster by the Respondent, resulting from the wrongful behaviour of Forster and the Respondent;

3. **DECLARE** that the Respondent is liable for the cost of judicial and extra-judicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of the Petitioner and the members of the Group;

4. **CONDEMN** the Respondent to indemnify each and every member of the Group for all damages that they have suffered as a result of the Respondent's wrongful behaviour;

AND TO THIS END:

5. **CONDEMN** the Respondent to deposit with the Clerk of the Superior Court for the District of Montreal an amount equal to the total compensatory and punitive and exemplary damages caused by the Respondent's wrongful and illegal behaviour during the Class Period; **and ORDER** the collective recovery of this amount, the whole according to proof to be made at trial, the whole with interest and the additional indemnity provided by law calculated from the date of service of the present Motion;

6. **ORDER** the individual liquidation in favour of the Petitioner of a sum equivalent to their share of the damages claimed, minimally estimated at \$1 million each, and **ORDER** that the recovery of each of the members of the Group be subject to individual liquidation or, if this process turns out to be inefficient or impracticable, **ORDER** the Respondent to perform any remedial measures that the Court may determine to be in the interests of the members of the Group or, if possible, **ORDER** the individual liquidation of the claims of the members of the Group together with whatever remedial measures the Court finds to be appropriate in the interests of the members of the Group and **RESERVE** rights of the **Petitioner(s)** to claim damages beyond \$1 million each, taking into consideration deterioration in their health and any other prejudice resulting from the wrongful acts of Forster and the Respondent;

7. **CONDEMN** the Respondent to pay the costs incurred for all investigation necessary in order to establish the liability of the Respondent in this matter, including the extra-judicial fees of counsel for Petitioner and the members of the Group and extra-judicial disbursements, including the costs of expertise;

8. **ORDER** the Respondent to advise the members of the Group of the present Class Action lawsuit at its costs;

9. **CONDEMN** the Respondent to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, experts, expertise and publication of notices.

(F) **THAT** it be declared that any member of the Group who has not requested his or her exclusion from the Group be bound by any judgment to be rendered in the Class Action, in accordance with law;

(G) **THAT** the delay for exclusion from the Group be fixed at ninety (90) days from the date of notice to the members, and at the expiry of such delay the members of the Group who have not requested exclusion be bound by any such judgment;

(H) **THAT** it be ordered that a Notice to the members of the Group be published on a date to be determined by this Honourable Court in the following manner:

I. By transmission of a Media Release, accompanied by the Notice to Members, to the principal written and electronic media outlets published or broadcast in Canada;

II. By publication of a Notice to Members on the Internet sites of the Respondent with a hypertext link entitled "Avis aux Membres du Recours Collectif/Notice to the Class Action Members" prominently displayed on the Respondent's Internet site and to be maintained there until the Court orders publication of another Notice to Members by final judgment in this instance or otherwise;

III. By publication in the Montreal Gazette, the Globe & Mail, the Vancouver Sun and the New York Times, on two separate dates during the same week;

IV. By ordinary mail to the last known address(es) for Student Class Members in the possession or control of the Respondent BCS

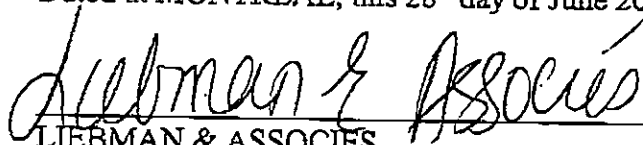
V. By email to the last known email address(es) for Student Class Members in the possession or control of the Respondent BCS;

(I) **THAT** the record be referred to the Chief Justice so that he may fix the district in which the Class Action is to be brought and the judge before whom it will be heard;

(J) **THAT** in the event that the Class Action is to be brought in another district, the Clerk of this Court be ordered, upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated;

THE WHOLE with costs, including the publication of notices;

Dated at MONTREAL, this 28th day of June 2006.



LIEBMAN & ASSOCIES
COUNSEL FOR PETITIONER

AVIS AUX DÉFENDEURS
(Article 119 C.p.c.)

PRENEZ AVIS que la partie demanderesse a déposé au greffe de la Cour Supérieure du district judiciaire de Montréal la présente demande.

Pour répondre à cette demande, vous devez comparaître par écrit, personnellement ou par avocat, au palais de justice de Montréal situé au 1, rue Notre-Dame est, dans les 10 jours de la signification de la présente requête.

À défaut de comparaître dans ce délai, un jugement par défaut pourra être rendu contre vous sans autre avis dès l'expiration de ce délai de 10 jours.

Si vous comparez, la demande sera présentée devant le tribunal le **1^{ère} décembre 2006** en la salle 2.16 du palais de justice et le tribunal pourra, à cette date, exercer les pouvoirs nécessaires en vue d'assurer le bon déroulement de l'instance ou procéder à l'audition de la cause, à moins de convenir par écrit avec la partie demanderesse ou son avocat d'un calendrier des échéances à respecter en vue d'assurer le bon déroulement de l'instance, lequel devra être déposé au greffe du tribunal.

Au soutien de sa requête introductive d'instance, la partie demanderesse dénonce les pièces suivantes :

DATÉE À MONTRÉAL, ce 28^{ième} jour de juin 2006.


LIEBMAN & ASSOCIÉS

Attorneys for Petitioner