

CANADA

SUPERIOR COURT  
(CLASS ACTIONS)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-06-000362-067

**U.T.C.**

Petitioner

v.

**BISHOP'S COLLEGE SCHOOL**

Respondent

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## SETTLEMENT AGREEMENT

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### PART I: PREAMBLE

**WHEREAS** on or about October 18, 2006, a *Petition for authorization to institute a class action and to obtain the status of representative* (hereinafter "**Petition**") was filed against Bishop's College School (hereinafter "**BCS**") by former students of BCS who alleged that they had been the object of Abuse by Reverend Harold Theodore Gibson Forster (hereinafter "**Forster**") while he was employed by BCS as well as by other employees, servants, agents or representatives of BCS;

**WHEREAS** the petitioner was A.B.T. who attended BCS from 1958 to 1965;

**WHEREAS** A.B.T.'s Petition was scheduled to be heard from April 28, 2008 to May 2, 2008;

**WHEREAS** on or about April 14, 2008, Class Counsel informed this Court that A.B.T. no longer wished to be the petitioner. A new petitioner was to be found by Class Counsel;

**WHEREAS** on December 10, 2008, a Motion was filed by U.T.C., who was a student at BCS from 1961 to 1965 (hereinafter, the "**Petitioner**"), to, amongst other things, be substituted to A.B.T. as petitioner and to seek leave to amend the Petition (hereinafter "**Motion to be Substituted**");

**WHEREAS** an agreement was further reached between the Parties herein regarding the Motion to be Substituted and U.T.C. became the Petitioner. U.T.C. filed an *Amended Petition for authorization to institute a class action and to obtain the status of representative* dated November 28, 2008 against BCS (hereinafter "**Amended Petition**");

**WHEREAS** the Amended Petition was scheduled to be heard on February 25 and 26, 2010;

**WHEREAS** negotiations were conducted between Class Counsel for U.T.C. and BCS's Legal Counsel;

**WHEREAS** these negotiations were undertaken in light of the inherent risks and uncertainties in litigation and, in particular, class actions, for all Parties;

**WHEREAS** the prospects of success of the Parties and the Class Members in either prosecuting or defending an authorization to commence a class action, and the class action if authorized, are furthermore always in doubt;

**WHEREAS** there is almost always a question about a Plaintiff's ability to enforce any judgment that might be obtained in any civil litigation;

**WHEREAS** BCS has no insurance coverage relative to the allegations made in the Petition and the Amended Petition;

**WHEREAS** subject to the approval of the Court, the Parties agree that the present case shall be resolved as set forth in this Settlement Agreement (hereinafter "**Agreement**");

**WHEREAS** U.T.C. and Class Counsel have concluded that the Agreement includes a fair, financially effective, and assured method of resolving the Claims of the Class Members;

**WHEREAS** this Agreement is entered into by and between, on the one hand the Petitioner on behalf of himself and the Class Members, and on the other, the Respondent, to settle the litigation 500-06-000362-067 and without limitation of the foregoing, resolve and discharge all claims, past, present and future by the Petitioner and the Class Members he proposes by his Amended Petition in accordance with the Agreement;

**WHEREAS** the Parties agree that this Agreement and the Court approval thereof do not constitute an acknowledgement of fault or liability on the part of BCS;

**WHEREAS** BCS, notwithstanding its consent to the Agreement, continues to deny any legal liability arising out of the present litigation;

**WHEREAS** the Petitioner and Class Counsel have concluded that, based on the facts, on the evidence that would have been adduced and heard, and on the law applicable to the issues defined and described in the Amended Petition, and considering the burden

of proof, the time and cost of carrying the proceedings through to completion and any possible appeals, this Agreement provides acceptable benefits to Class Members and is in their best interests.

**NOW THEREFORE, THE PARTIES AND THEIR COUNSEL HEREBY AGREE AS FOLLOWS:**

The Preamble forms part of the Agreement.

**PURPOSE OF THIS AGREEMENT**

The purpose of this Agreement is to compensate the Class Members in accordance with, and subject to, the terms and conditions set forth herein.

**PART II: DEFINITIONS**

**“Abuse”**: means abuse of a sexual nature and any physical, mental or psychological abuse, directly or indirectly related thereto.

**“Administrator”**: means the administrator appointed by the Court under Part XI below, a specialized company in the administration of class action settlements to be chosen by mutual consent of the Parties

**“Agreement”**: means the present Settlement Agreement and its Schedules A, B, C, D and E.

**“Amended Petition”**: means *Amended Petition by U.T.C. for authorization to institute a class action and to obtain the status of representative* dated November 28, 2008.

**“BCS”**: means Bishop’s College School.

**“BCS’s Legal Counsel”**: means Borden Ladner Gervais LLP.

**“Claim”**: means a duly completed, signed and sworn Claim Form, and the supporting documents as per paragraphs 27 and its sub-paragraphs and 28 of the Agreement submitted by a Class Member who is seeking compensation according to the Claims Administration Process set out at Part XI of this Agreement.

**“Claim Form”**: means the form as set out in Schedule D.

**“Claimant”**: means a Class Member who submits a Claim on or before the Opt-Out Deadline.

**“Claims Administration Process”**: means the process set out at Part XI of this Agreement, by which the Claims are processed.

**“Class Action”**: means the Amended Petition once authorized by the Court for the sole purpose of this Agreement as per paragraphs 1, 2, 3 and 56 of this Agreement.

**“Class Counsel”**: means the law firms of McPhadden Samac Tuovi and Liebman & Associés.

**“Class Member”**: means a former student of BCS who alleges he was the victim of Abuse between any of the years 1953 up to 1962 perpetrated by or with the participation of Forster and/or any other of BCS’s employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration.

**“Completion of the Claims Process”**: means the point at which all Claims have been either accepted by the Administrator, rejected by the Administrator with no appeal to the Court or after the appeal process has been completed and the Claims are no longer subject to any challenge or contestation, whichever occurs later.

**“Court”**: means the Quebec Superior Court for the District of Montreal.

**“Fee Agreement”**; means the agreement between U.T.C. and Class Counsel with respect to Class Counsel fees.

**“Forster”**: refers to Reverend Harold Theodore Gibson Forster who was employed by BCS from 1953 to 1962.

**“Opt-Out”**: means, with respect to any Class Member, the valid submission of a duly completed and signed Opt-Out Form on or prior to the Opt-Out Deadline as provided in Part VIII hereof.

**“Opt-Out Deadline”**: means the date sixty (60) days following the Settlement Order Notice Date.

**“Opt-Out Form”**: refers to the form as set out at Schedule C.

**“Parties”**: mean U.T.C. and BCS.

**“Petition”**: refers to A.B.T.’s *Petition for authorization to institute a class action and to obtain the status of representative* dated June 28, 2006.

**“Petitions”**: refers to the Petition, the Amended Petition and the contents of the Court record in the file bearing number 500-06-000362-067, including without limitation of the foregoing, the examination of U.T.C. held on February 11, 2009 and the undertakings provided thereafter, all proceedings, exhibits and expert reports filed into the Court record.

**“Petitioner”**: means U.T.C. as referred to in the Amended Petition bearing Court file number 500-06-000362-067.

**“Pre-Approval Hearing”**: is the hearing on April 30, 2010 at which the Court will decide whether to accept the Pre-Settlement Hearing Notice in view of the Settlement Hearing.

**“Pre-Approval Order”**: is the order by which the Court approves the Pre-Settlement Hearing Notice, without costs.

**“Pre-Settlement Hearing Notice”**: refers to the notice (Schedule A) that will be provided in accordance with Part V of the Agreement.

**“Pre-Settlement Hearing Notice Date”**: means the date at least thirty (30) days before the Settlement Hearing by which the Pre-Settlement Hearing Notice must be published in accordance with Part V of the Agreement pursuant to the Pre-Approval Order.

**“Professional”**: means doctor, psychologist or psychotherapist.

**“Releasees”**: means individually and collectively, Forster, BCS and all of its past, present or future employees, agents, legal assigns, servants, representatives, principals, directors, officers, lawyers, officials, insurers, consultants, advisors, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised, currently exercises or will exercise any administrative, educational or disciplinary function at BCS with or without remuneration.

**“Respondent”**: refers to BCS.

**“Settlement Amount”**: means the aggregate amount of \$1,000,000 CDN that BCS offers as full and final settlement of the present case in virtue of the Agreement.

**“Settlement Hearing”**: means the hearing before the Court which will take place on August 24 and 25, 2010, where the Parties will seek the Court’s authorization of the Amended Petition as a Class Action and the approval of this Agreement.

**“Settlement Notice”**: refers to the notice (Schedule B) that will be provided in accordance with Part VII of the Agreement.

**“Settlement Order”**: means the order of the Court which authorizes without costs the Amended Petition as a Class Action for the sole purpose of this Agreement and which approves this Agreement.

**“Settlement Order Notice Date”**: means the date within thirty (30) days after the Settlement Order by which the Settlement Notice (Schedule B) must be published in accordance with Part VII of the Agreement.

**“Successful Claimant”**: means a Claimant whose Claim is accepted.

**“Truth and Reconciliation Process”**: means a process to be held by BCS in consultation with the BCS Truth and Reconciliation Association without prejudice and without any admission of liability as set forth in paragraphs 1, 2, 3 and 56 of the Agreement with respect to the alleged Abuse of the Class Members.

The Parties agree as follows:

**PART III: CONSENT TO AUTHORIZATION**

1. BCS consents to the Amended Petition being authorized by the Court as a class action, to the appointment of the Petitioner as representative and to the appointment of McPhadden Samac Tuovi and Liebman & Associés as Class Counsel, the whole without costs, for the sole purpose of implementing the present Agreement and without any admission of liability whatsoever as set forth in the Agreement.

**PART IV: NO ADMISSION OF LIABILITY**

2. BCS denies the legal claims asserted in the Petitions, including any and all charges of liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Petitions. Nonetheless, BCS has concluded that further contestation of the Amended Petition before the Court would be protracted and expensive, and that it is desirable that the present case be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.
3. If the Agreement is not approved by the Court in accordance with its terms as set out in the present document, or if the Settlement Order does not become final following its entry for one of the reasons set out at paragraphs 12 and 13 herein:
  - ii) The Agreement is null and void;
  - iii) The Agreement and all negotiations leading thereto have been on a without prejudice basis, the Parties and the Class Members are restored to their previous position;
  - iv) The Agreement and the negotiations shall not constitute an admission of liability and shall not be used in any proceedings;
  - v) The judgment granting authorization is null and void and shall be expunged from the Court record; and
  - vi) The Amended Petition between the Parties will continue.

**PART V: PRE-SETTLEMENT HEARING NOTICE**

4. The Pre-Settlement Hearing Notice shall be published by the following means:
  - (a) by publication by BCS of the Pre-Settlement Hearing Notice for one day in the "notice" section of the Saturday edition of the Globe & Mail (nationwide edition), on or before forty-five (45) days before the Settlement Hearing.

The size of the Pre-Settlement Hearing Notice shall be one quarter (1/4) of a page;

- (b) by BCS and Class Counsel establishing a hypertext link from the Home Page of BCS's and Class Counsel's website to an independent website with a notice titled : "Notice to Class Action Members/Avis aux membres du recours collectif- Bishop's College School", to be maintained until the date of the Settlement Hearing. The said hypertext link and posting of the Pre-Settlement Hearing Notice shall be established by BCS and Class Counsel within ten (10) business days of the Pre-Approval Order.
  - (c) by ordinary mail or e-mail if the e-mail is known to BCS, to former BCS students who attended the school from 1953 up to 1962, at the last known address or e-mail address in BCS's possession or control, if so ordered by the Court to prevent any breach of privacy laws. The mailing will be done by BCS on or before the Pre-Settlement Hearing Notice Date. The Settlement Notice shall be deemed to be received five (5) days after mailing.
5. All expenses associated with the Pre-Settlement Hearing Notice shall be deducted from the Settlement Amount before payment to the Successful Claimants as per paragraph 19 of this Agreement.

**PART VI: MOTION FOR SETTLEMENT ORDER**

6. The Settlement Order will, subject to the Court's approval:
- (a) declare that this Agreement is fair, reasonable and in the best interests of the Class Members;
  - (b) approve this Agreement and declare and order that the Parties and the Class Members who do not Opt-Out shall be bound by and shall comply with it;
  - (c) require that the Settlement Notice be provided to the Class Members by the Settlement Order Notice Date;
  - (d) declare the deadline for filing a Claim is the "Opt-Out Deadline";
  - (e) declare that the Petitions and Class Action are settled out of Court in accordance with this Agreement;
  - (f) order that all expenses to be incurred as per the present Agreement shall be deducted from the Settlement Amount before payment to the Successful Claimants as set forth in Part IX;
  - (g) make such further and other orders as to the approval, implementation and administration of this Agreement as the Court may deem just.

**PART VII: NOTICE OF SETTLEMENT ORDER**

7. Notice of the Settlement Order to the Class Members shall be given by the following means:
  - (a) by publication by the Administrator of the Settlement Notice for one day in the "notice" section of the Saturday edition of the Globe & Mail (nationwide edition), on or before the Settlement Order Notice Date. The size of the Settlement Notice shall be one quarter (1/4) of a page;
  - (b) by posting the Settlement Notice on an independent website, with a hypertext link to same on the Home Page of BCS's and Class Counsel's websites which shall be maintained there until the end of the Opt-Out Deadline. The said hypertext link of the Settlement Notice shall be established by BCS and Class Counsel within ten (10) business days of the Settlement Order;
  - (c) by ordinary mail or e-mail if the e-mail is known to BCS, to former BCS students who attended the school from 1953 up to 1962, at the last known address or e-mail address in BCS's possession or control, if so ordered by the Court to prevent any breach of privacy laws. The mailing will be done by the Administrator on or before the Settlement Order Notice Date. The Settlement Notice shall be deemed to be received five (5) days after mailing.
8. All expenses associated with the Settlement Notice shall be deducted from the Settlement Amount before payment to the Successful Claimants as per paragraphs 19 and 20 of the Agreement.

**PART VIII: OPTING OUT**

9. Class Members who wish to exclude themselves from the terms of this Agreement shall send a duly completed and signed Opt-Out Form as set out in Schedule C to BCS's Legal Counsel by the Opt-Out Deadline. BCS's Legal Counsel shall, forthwith upon receipt provide a copy of any and all Opt-Out Forms to Class Counsel. Such Opt-Outs shall not be effective unless the Opt-Out Form is received by BCS's Legal Counsel by the Opt-Out Deadline or postmarked no later than the Opt-Out Deadline and received by BCS's Legal Counsel no later than fourteen (14) days after the Opt-Out Deadline.

Any and all disputes as to whether any particular Opt-Out Form was received as above or postmarked by the Opt-Out Deadline are subject to resolution by the Court.

10. Class Members who Opt-Out shall be excluded from the terms of this Agreement and from any and all rights and obligations under this Agreement and shall, as provided by law, retain the right to commence and/or continue individual proceedings against BCS, but shall be barred from commencing any proceedings



as a class representative or participating in a class proceeding as a class member against the Releasees or any other parties who could claim contribution or indemnification from the Releasees.

11. Class Members who do not Opt-Out in the manner prescribed shall be deemed to have elected to participate in this Agreement, and shall be bound by this Agreement and all related Court orders, and shall be forever barred from commencing any proceeding, including but not limited to, initiating a proceeding as a class representative or participating in a class proceeding as a class member, against the Releasees or any other parties who could claim contribution or indemnification from the Releasees.
12. Notwithstanding the above, if the Petitioner Opts Out, BCS has the right to annul the Agreement notwithstanding the Settlement Order. BCS shall exercise this right no later than thirty (30) days after the Opt-Out Deadline, failing which, this right shall terminate.
13. Moreover, notwithstanding the above, if five (5) or more Opt-Out Forms are received by BCS's Legal Counsel, BCS has the right to annul this Agreement, notwithstanding the Settlement Order. BCS shall exercise this right no later than thirty (30) days from the Opt-Out Deadline, failing which, this right shall terminate.

## **PART IX: EXPENSES AND MANAGEMENT OF SETTLEMENT AMOUNT**

### **Legal Costs**

14. Subject to the Court's approval, the aggregate amount of two hundred and twenty thousand dollars (\$220,000) plus the applicable taxes, drawn from the Settlement Amount before payment to the Successful Claimants shall be paid to Class Counsel as judicial and extrajudicial fees and disbursements. This is equal to approximately 20% of the Settlement Amount for judicial and extrajudicial fees plus disbursements not to exceed twenty thousand dollars (\$20,000), the whole in accordance with the Fee Agreement entered into between the Petitioner and Class Counsel.
15. The said lump sum of \$220,000 plus the applicable taxes payable to Class Counsel shall be paid within forty-five (45) days from the Opt-Out Deadline on the condition that the rights set out in paragraphs 12 and 13 of the Agreement have not been exercised by BCS.
16. Class Counsel shall not otherwise have the right to receive compensation for fees, costs or disbursements from the Releasees and/or the Claimants and for greater certainty, in no event shall the Releasees have any liability for fees or costs, extrajudicial or judicial, whether to Class Counsel, other legal counsel for Claimants, or otherwise.

17. Notwithstanding the above, Claimants may, entirely at their own cost, retain legal counsel to act on their behalf in respect of any or all aspects of this Agreement or their Claims on such terms as they see fit.

#### **Payment to the *Fonds D'aide aux Recours Collectifs***

18. The amount payable to the *Fonds d'aide aux recours collectifs* in accordance with section 42 of the *Act Respecting the Class Action*, R.S.Q., Chapter R-2.1 shall be paid within ninety (90) days from Completion of the Claims Process and taken from the Settlement Amount and deducted therefrom before payment to the Successful Claimants.

#### **Costs Relating to the Notices**

19. The costs of the Pre-Settlement Hearing Notice and the Settlement Notice to the Class Members as provided for in Parts V and VII shall be paid from the Settlement Amount and deducted therefrom before payment to the Successful Claimants.

#### **Costs of Implementing the Agreement**

20. The costs of implementing this Agreement, including, without limitation of the foregoing, the fees, expenses and/or disbursements of the Administrator, shall be paid within ninety (90) days from Completion of the Claims Process and shall also be taken from the Settlement Amount and deducted therefrom before payment to the Successful Claimants.

#### **Truth and Reconciliation**

21. BCS will hold in consultation with BCS Truth and Reconciliation Association, a Truth and Reconciliation Process in relation to the alleged Abuse to the Class Members. An amount of fifty thousand dollars (\$50,000) will be allowed to BCS within ninety (90) days from the Opt-Out Deadline, which amount will also be deducted from the Settlement Amount before payment to the Successful Claimants in order to cover the costs relating to the Truth and Reconciliation Process.

#### **PART X: COMPENSATION TO SUCCESSFUL CLAIMANTS**

22. The Successful Claimants will equally share the balance of the Settlement Amount once all amounts payable pursuant to the present Agreement and set forth in Parts V, VII and IX herein will have been paid. Each Successful Claimant shall therefore receive a lump sum payment as indemnification, based on the number of Successful Claimants. Class Counsel and Petitioner estimate the number of potential Class Members to be between 20 to 40. Based on this assumption, the lump sum payable to each Class Member would be approximately and respectively from \$14,000 to \$28,000. These estimates shall

not be construed as a guarantee as to the amount of the Compensation to be paid to the Successful Claimants as the Settlement Amount is the total amount payable by BCS in virtue of the Agreement.

23. Any payment made to a Successful Claimant will be made by BCS within thirty (30) days from Completion of the Claims Process "in trust" to the Administrator. Said Administrator shall then obtain the signature of the Receipt, Release, Discharge and Transaction in Schedule E prior to remitting payment to the Successful Claimant and shall forthwith provide BCS's Legal Counsel with the original. The Administrator shall then make payment to the Successful Claimants forthwith.

## **PART XI: CLAIMS ADMINISTRATION PROCESS**

### **A. Appointment of the Administrator**

24. Subject to the Court's approval, the Parties will mutually agree on the choice of an Administrator who shall be designated as such to process all Claims and distribute all amounts payable in virtue of the present Agreement.
25. Subject to the Court's approval, all Administrator's fees and disbursements shall be paid from the Settlement Amount, and deducted therefrom before payment to the Successful Claimants as set forth in paragraph 20 of the Agreement.
26. No suits, claims, actions, demands or other recourse shall be filed against the Administrator or the Releasees or any of the past, present and future Administrator's directors, officers, employees, agents, legal assigns, associates, representatives or successors in respect of any issue which is in any way related to the Agreement, and without limitation to the foregoing, the administration of the terms and conditions of the Agreement and the distribution of all amounts payable in virtue of the Agreement.

### **B. Claims**

27. Claimants shall, on or before the Opt-Out Deadline, confidentially submit to the Administrator a completed Claim Form in accordance with Schedule D attached hereto. Eligibility for compensation is premised on a Claimant being a Class Member. In the Claim Form, each Claimant shall provide a sworn affidavit with the following information and documentation:
  - i) his name and date of birth along with the dates which he attended BCS, including photocopies of two (2) identification cards, one of which must be a government issued picture identification (e.g. driver's license, passport, provincial health card, etc.) and the other may be, but is not necessarily,

another government issued picture identification, government issued non-picture identification or major credit card;

- ii) the name of the perpetrator(s) of the Abuse, and as best can be recalled, any person who was present or witnessed same;
  - iii) a description, as best can be recalled, of the acts comprised in the Abuse and the place where the Abuse occurred, the number of incidents and approximate dates of such acts;
  - iv) a detailed description of the damages suffered as a result of the Abuse;
  - v) provide copy of any supporting documentation, if available to the Claimant, including, without limitation, hospital or medical records and the file of any Professional consulted, if available to the Claimant, in relation to the Abuse;
28. To be a Successful Claimant, the Claimant has to provide all of the information and documentation required in paragraph 27 and its sub-paragraphs.

**C. Treatment of Claims by the Administrator**

29. i) The failure of the Claimant to provide the requested information in paragraphs 27 and its sub-paragraphs and 28, shall constitute a deemed withdrawal of his Claim and he shall be barred from submitting a Claim thereafter and shall be bound by this Agreement, including without limitation the release (Part XII herein) and will be held to have executed the Receipt, Release, Discharge and Transaction found at Schedule E.
- ii) Where the Administrator takes the position that a Claimant has failed to provide the required information, the Administrator shall advise, in writing, of the information it asserts has not been provided and state that it takes the position that the Claimant is in breach of paragraphs 27 and its sub-paragraphs and 28 hereof and is treating the said failure to provide the requested information as a deemed withdrawal of his Claim. The Administrator shall so advise within forty-five (45) days after the Opt-Out Deadline, failing which, the Administrator shall be deemed to have accepted the Claim as complete.
- iii) The Claimant shall have thirty (30) days within which to reply to the Administrator's advice as above, by either providing other or additional information and/or explaining the failure or inability to provide the information in issue.
- iv) The Administrator shall advise in writing if the Claim is accepted or still deemed withdrawn within thirty (30) days from receipt of the reply and/or additional information and/or explanation required in virtue of paragraph 29 iii). The Claimant whose Claim is deemed withdrawn shall be barred

from submitting a Claim thereafter and shall be bound by the Agreement, including without limitation, the release (Part XII herein) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraphs 23 and 42 of this Agreement and set out at Schedule E. The decision of the Administrator is final, unless it is appealed to the Court in accordance with Section D of the present Part.

- v) It is understood and agreed that a Claim is not to be deemed withdrawn by virtue of an inability, despite reasonable efforts, to recall or obtain the requested information.
- 30.
- i) Any false Claim by the Claimant with respect to when the Claimant attended BCS gives the Administrator the right to reject the Claim, and such Claimant shall thereafter be barred from submitting a Claim and shall be bound by this Agreement, including without limitation the release (Part XII) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraph 23 and 42 of this Agreement and set out at Schedule E.
  - ii) Where the Administrator takes the position that the Claimant has made a false Claim with respect to when he attended BCS, the Administrator shall so advise and provide particulars of its position within forty-five (45) days after the later of Opt-Out Deadline and the date upon which the student provided the information, failing which, the Administrator shall be deemed to have waived its right to rely on the provisions of this paragraph and the Claimant shall be at liberty to pursue his Claim.
  - iii) Upon receipt of the Administrator's written statement as above in paragraph 30 ii), the Claimant shall have thirty (30) days within which to correct the subject information and to explain why the information originally provided was incorrect. The Administrator shall deliver its reply to same, if any, within thirty (30) days. The Claimant whose claim has been rejected in accordance with the present paragraph and its subparagraphs shall be barred from submitting a Claim thereafter and shall be bound by the Agreement, including without limitation, the release (Part XII herein) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraphs 23 and 42 of this Agreement and set out at Schedule E. The decision of the Administrator is final, unless it is appealed to the Court in accordance with Section D of the present Part.
  - iv) It is understood and agreed that a Claim is not to be defeated by virtue of an inability to recall or ascertain exactly when the Claimant attended BCS or by any innocent or immaterial error.
- 31.
- i) For further clarity, all Class Members who have not submitted a Claim Form before the end of the Opt-Out Deadline and have not Opted-Out

shall be barred from submitting a Claim and from receiving any payment pursuant to this Agreement, but shall be bound by this Agreement without limitation, and the release (Part XII herein) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraphs 23 and 42 found at Schedule E. Where the Administrator takes the position that a Claim Form was not submitted before the end of the Opt-Out Deadline, the Administrator shall so advise the Class Member in writing, within forty-five (45) days of receipt of the Claim Form, failing which, it shall be deemed that the Claim Form was submitted before the end of the Opt-Out Deadline. Where the Administrator takes such a position, it shall provide particulars of same and copies of any documents on which the Administrator relies.

- ii) The subject Class Member shall have thirty (30) days after receipt of the Administrator's notice to reply to the Administrator's said advice, providing particulars of the Class Member's position, together with supporting documentation.
  - iii) The Administrator shall deliver its decision to maintain its position or not within thirty (30) days. The Claimant shall be barred from submitting a Claim thereafter and shall be bound by the Agreement, including without limitation, the release (Part XII) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraphs 23 and 42 of this Agreement and set out at Schedule E. The decision of the Administrator is final, unless it is appealed to the Court in accordance with Section D of the present Part.
32. Should paragraphs 29, 30 and 31 and their sub-paragraphs not apply to the Claim received, the Administrator, within sixty (60) days of the Opt-Out Deadline, shall advise the Claimant or the Claimant's legal Counsel and Class Counsel, in writing, whether:
- (a) it accepts the Claim as made; or
  - (b) it rejects the Claim as made.
    - i) If the Administrator rejects the Claim, the Administrator shall provide detailed reasons for so doing, identify the sources of the information upon which it relies and provide copies of any and all documents on which it relies.
    - ii) the Claimant may, within thirty (30) days of being advised of the Administrator's rejection of his Claim, reply to the same, stating, in detail, the Claimant's position relative to the rejection, together with copies of any and all additional documents on which the Claimant relies in support of his Claim.

- iii) following the receipt of the Claimant's reply referred to at paragraph 32 ii) above, the Administrator shall advise the Claimant and Class Counsel, in writing, within thirty (30) days of receiving the Claimant's reply, that:
  - (a) it accepts the Claim as made; or
  - (b) it rejects the Claim as made.
- iv) The Claimant shall be barred from submitting a Claim thereafter and shall be bound by the Agreement, including without limitation, the release (Part XII herein) and will be held to have executed the Receipt, Release, Discharge and Transaction referred to in paragraphs 23 and 42 of this Agreement and set out at Schedule E. The decision of the Administrator is final, unless it is appealed to the Court in accordance with Section D of the present Part.

**D. Appeal and continuing jurisdiction of the Court**

- 33. Within thirty (30) days following the Administrator's written decision under paragraphs 29 iv) , 30 iii), 31 iii) and 32 iii) and its sub-paragraphs (a) and (b) of the Agreement, a Claimant may appeal such decision by written notice to the Administrator stating such Claimant's disagreement with the decision and the grounds in support of the appeal.
- 34. The appeal of the Administrator's decision shall be heard by the Court and will pertain only to the interpretation or application of the Agreement by the Administrator, to the exclusion of the criteria for, and terms and conditions of, indemnification set forth in the Agreement and approved by the Court.
- 35. Upon receipt of the notice set forth in paragraph 33 above within the prescribed time, the Administrator shall deliver a copy thereof to Class Counsel and to the Court, to which copy of the following shall be attached:
  - ii) a copy of the Administrator's decision refusing the Claim;
  - iii) all written comments and any documentation in support thereof;
  - iv) such other proof relative to the Claim as the Administrator may have in his or her possession; and
  - v) all such other information or documentation as the Court may require.
- 36. The Court shall hear the Claimant contesting the Administrator's decision at a predetermined date, which date shall be communicated to the Claimant by the Administrator.

37. The decision of the Court shall be final and binding.
38. The Court shall retain its exclusive jurisdiction to hear any motion presented by Class Counsel or by BCS's Legal Counsel, including:
  - ii) as regards the Class Action;
  - iii) as regards this Agreement, to ensure that payments and disbursements are duly and properly made; and
  - iv) as regards the interpretation and enforcement of the conditions, stipulations and obligations set forth in this Agreement.

**E. Supplementary Delays for the Administrator during the Christmas period, as the case may be**

39. Notwithstanding the delays set out above as part of the Claims Administration Process, due to Christmas holidays, as the case may be, all of the Administrator's delays which fall between December 17, 2010 and January 4, 2011 will be extended by twenty (20) calendar days.

**PART XII: FINAL RELEASE AND DISCHARGE**

40. The Settlement Amount offered by BCS is made in consideration of a full and final release and discharge from any and all claims of any nature whatsoever against the Releasees in connection with the Petitions and/or the Class Action.
41. Upon the Settlement Order becoming final, the Petitioner and each of the Class Members who have not elected to Opt-Out, or are deemed to have not exercised their right to Opt-Out, and their heirs, successors and legal assigns will be deemed to have, and by operation of the Settlement Order will have, fully, finally and forever released, relinquished, and discharged the Releasees from and against any recourses, claims, suits, actions, demands, rights or rights of action of any nature or kind whatsoever directly or indirectly arising from or relating to the Petitions and/or the Class Action and without limitation of the foregoing:
  - a) any Abuse alleged or claimed to have been perpetrated at BCS between 1953 up to 1962 by or with the participation of Forster and/or any other of BCS's employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration;
  - b) any act or omission of any nature whatsoever by the Releasees arising out of the Petitions and/or the Class Action in relation to Forster and/or any other of BCS employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains,



choirmasters, head boys and/or any person who exercises or who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration;

- c) without restricting the generality of the foregoing, the facts and circumstances set out in the Petitions and/or Class Action or any similar fact or circumstance;
- d) any issue which is related to the Agreement, and without limitation of the foregoing, the administration of the terms and conditions of the Agreement, the distribution of all amounts payable in virtue of the Agreement.

42. Without prejudice to the foregoing, each Successful Claimant shall sign a Receipt, Release, Discharge and Transaction in the form set forth in Schedule E and as per paragraph 23 herein. Such releases shall be deemed null, void and of no effect in the event this Agreement is annulled by BCS exercising rights herein or otherwise, and the Parties shall then be put back into the position they were in prior to the Settlement Order and the Amended Petition shall continue.

### **PART XIII: PRESCRIPTION ARGUMENTS**

- 43. For the purposes of making a Claim under this Agreement, no Claimant shall be considered ineligible to receive any compensation set forth in this Agreement on the basis of any statute of limitation, prescription period or any other limitation or prescription defence.
- 44. Nothing in this Agreement shall constitute or be otherwise deemed to constitute a waiver by BCS of defences based on statutes of limitation, prescription periods or any other limitation or prescription defences with respect to any Class Member who Opts-Out or for any other reason or purpose whatsoever.

### **PART XIV: STATEMENT BY BCS**

- 45. As part of the Truth and Reconciliation Process, BCS shall express its regret to any former students who have presented claims asserting that they were the object of Abuse during their time at the school.
- 46. The content of this apology shall be in BCS's sole discretion.
- 47. The release of this apology shall not constitute any express or implied admission and/or acceptance of legal liability or responsibility on behalf of BCS.

### **PART XV: MISCELLANEOUS PROVISIONS**

- 48. In the event that BCS invokes any of its rights to annul the Agreement, as prescribed in this Agreement, said rights detailed in the present Agreement at

paragraphs 12 and 13, it may do so by advising Class Counsel and the Court in writing and said nullity shall take effect immediately upon receipt of notice.

49. In the event the Agreement is not annulled by BCS as provided for at paragraphs 12 and 13, the Parties shall file with the Court a report as regards financial compensation paid to Class Members by BCS. The report shall not identify any Class Member. The report shall include the following information:

- a) The number of Successful Claimants;
- b) The amount of the expenses as set forth in Parts V, VII and IX of the Agreement;
- c) The amount paid to each Successful Claimant;
- d) The number of Claims submitted by Claimants;
- e) The number of Class Members that specifically opted out of the Agreement (i.e. those Class Members that filed Opt-Out Forms).
- f) The number of potential Class Members that commenced separate legal proceedings against BCS;
- g) The number of Claims by Claimants which were resolved through the Claims Administration Process;
- h) The number of Claims by Claimants which were resolved through the Court.

50. Any notice that is to be sent to BCS's Legal Counsel pursuant to this Agreement shall be sent to:

Borden Ladner Gervais LLP  
1000 De La Gauchetière Street West  
Suite 900  
Montreal, Quebec  
H3B 5H4

Attention: Caroline Matte

Fax: (514) 954-1905

51. Any notice that is to be sent to Class Counsel pursuant to this Agreement shall be sent to:

McPhadden Samac Tuovi  
8 King Street East  
Suite 300  
Toronto, Ontario  
M5C 1B5

Attention: Bryan C. McPhadden

Fax: (416) 601-1721

52. With the sole exceptions of the notices referred to paragraphs 4 and 7 and their sub-paragraphs of this Agreement, any forms or notices that are to be provided under this Agreement shall be made by fax, mail or courier. For further clarity, any form or notice provided solely by way of e-mail shall be automatically rejected and the Claimant shall be barred from submitting the form or notice thereafter and shall be bound by this Agreement.
53. The plural of any defined term in this Agreement includes the singular, and the singular of any defined term in this Agreement, includes the plural, as the case may be.
54. The Parties acknowledge that it is their intent to complete this Agreement, and they agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.
55. The Parties agree that the consideration provided to the Class Members and the other terms of the Agreement were negotiated in good faith by the Parties and reflect an agreement that was reached voluntarily after consultation with competent legal counsel.
56. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the truthfulness of any facts alleged in the Petitions, the validity of any claims, or of any wrongdoing or liability of the Releasees, or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.
57. The Releasees may file this Agreement and/or the Settlement Order in any action that may be brought against them in order to support any defence or counterclaim, including without limitation, those based on the principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.

58. Each counsel or Party executing this Agreement or any of its Schedules on behalf of any Party hereby warrants that such person has the full authority to do so.
59. None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Schedules for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Schedules will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.
60. Where the date on which a particular action must be taken hereunder falls on a day which is not a business day, then such action shall be taken on the business day following.
61. The terms "herein", "hereof", "hereto", "hereunder" and similar terms refer not to a particular provision or any part of this Agreement but rather to the whole of this Agreement.
62. Unless the context requires otherwise, references in this Agreement to sections, paragraphs and schedules are references to sections, paragraphs and schedules of this Agreement.
63. This Agreement including the dates and time periods set forth herein shall not be modified except with the written consent of the Parties and the approval of the Court.
64. This Agreement, including the Schedules thereto, constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Quebec*; it is binding on all the Parties and Class Members and it shall prevail over any prior negotiations or agreement which may have been entered into between the Parties.

**PART XVI: LANGUAGE AGREEMENT**

65. The Parties hereby acknowledge that they have requested that this Agreement be drawn up in English. *Les parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais.*

**IN WITNESS WHEREOF**, the Parties have executed and cause this Agreement to be executed by their duly authorized attorneys, dated as of April 29 2010.

**McPHADDEN SAMAC TUOVI**

Per: \_\_\_\_\_



\_\_\_\_\_  
Petitioner's Attorneys and Class Counsel

**LIEBMAN & ASSOCIÉS**

Per: \_\_\_\_\_

Petitioner's Attorneys and Class Counsel

**BORDEN LADNER GERVAIS LLP**

Per: \_\_\_\_\_

Attorneys for BCS

## List of Schedules

- SCHEDULE A:** Notice of hearing for approval of proposed settlement of Bishop's College School Class Action concerning sexual and any physical, mental or psychological abuse
- SCHEDULE B:** Notice of settlement of Bishop's College School Class Action concerning sexual and any physical, mental or psychological abuse
- SCHEDULE C:** Opt-Out Form
- SCHEDULE D:** Claim Form
- SCHEDULE E:** Receipt, Release, Discharge and Transaction

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## SCHEDULE A OF THE SETTLEMENT AGREEMENT

### NOTICE OF HEARING FOR APPROVAL OF PROPOSED SETTLEMENT OF BISHOP'S COLLEGE SCHOOL CLASS ACTION CONCERNING SEXUAL AND ANY PHYSICAL, MENTAL OR PSYCHOLOGICAL ABUSE

#### TO CLASS MEMBERS:

All former students of Bishop's College School ("BCS") who allege that they were the victims of Abuse (Abuse means abuse of a sexual nature and any physical, mental or psychological abuse directly or indirectly related thereto), between any of the years 1953 up to 1962, perpetrated by or with the participation of Reverend Harold Theodore Gibson Forster and/or any other of BCS's employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration (collectively referred hereinafter as "BCS's Employees").

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

#### TO ALL POTENTIAL CLASS MEMBERS:

#### THE LEGAL PROCEEDINGS

An Amended Petition for authorization to institute a Class Action ("**Class Action**") has been filed in Quebec against BCS by former students of BCS relative to alleged Abuse by or with the participation of the above noted former BCS' Employees, bearing Superior Court file number 500-06-000362-067.

An agreement (the terms of which are set out in detail in the "**Settlement Agreement**") has been reached between the Petitioner (the individual who brought the Class Action) and BCS in the Class Action. In order for the Settlement Agreement to become effective, it must be approved by the Superior Court of Quebec.

#### SETTLEMENT APPROVAL HEARING

This Notice is to advise you of the Approval Hearing for the Settlement Agreement in the Class Action brought on behalf of Class Members, which will take place on August 24 and 25, 2010 at 9:30 a.m., before the Superior Court of Quebec at 1, Notre-Dame Street East, in Montreal, Quebec (the specific courtroom to be indicated by the office of Mr. Justice Kevin Downs, on the day before).

## **CONTENT OF THE PROPOSED SETTLEMENT**

Subject to Court approval and without any admission of fault or liability on the part of BCS, the proposed Agreement provides that BCS will pay an amount equal to \$1,000,000 in capital, interest and costs (the "**Settlement Amount**") in full and final settlement of any and all claims of the Class Members.

Subject to Court approval, the Settlement Agreement provides that once the fees of Class Counsel (\$200,000 plus taxes and disbursements (not to exceed \$20,000 plus taxes)), the cost of the Notices (approximately \$22,000 plus taxes), the costs of implementing the Proposed Settlement (the amount of these costs will depend on the number of Claimants; based on the assumption of a number of 20 to 40 Claimants, these costs would be between 1.5% and 4% of the Settlement Amount), the cost of the Truth and Reconciliation process (\$50,000) and of the amounts payable to the *Fonds d'Aide aux recours collectifs* have been paid from the Settlement Amount, a lump sum compensation based on the number of Claimants will be paid to the Class Members in equal shares. The lump sum will be paid to each Claimant whose Claim has been approved after having been duly submitted no later than November 23, 2010 to the Administrator appointed to process same. For this purpose, a form shall be filled and a sworn affidavit is to be provided accompanied by supporting documents. The Administrator will approve the Claim or not, subject, in the event of a refusal, to a right of appeal to the Court, whose decision shall be final.

**THE HEARING BEFORE THE COURT ON THE APPROVAL OF THE PROPOSED SETTLEMENT WILL TAKE PLACE ON AUGUST 24 AND AUGUST 25, 2010 AT 9:30 A.M. IN ROOM (THE SPECIFIC COURTROOM TO BE INDICATED BY THE OFFICE OF JUSTICE KEVIN DOWNS ON THE DAY BEFORE) OF THE MONTREAL COURTHOUSE LOCATED AT 1 NOTRE-DAME STREET EAST, MONTREAL.**

A copy of the proposed Agreement, including the complete Claims Administration Process, the compensation and the Schedules can be found on Class Counsel internet site at [www.msmt.ca](http://www.msmt.ca) or by calling Class Counsel (Bryan C. McPhadden) at (416) 363-5195.

It is proposed that the deadline for submitting claims shall expire sixty (60) days after publication of the Notice advising of the approval of the Agreement and the authorization of the Class Action by the Quebec Superior Court. Class Members are encouraged to start collecting and preparing all necessary documentation as soon as possible in order to file a timely Claim Form.

## **CLASS COUNSEL RECOMMENDATIONS**

Class Members are represented by proposed Class Counsel, McPhadden Samac Tuovi and proposed Quebec agent for Class Counsel, Liebman & Associates.



Class Counsel are highly experienced in institutional and sexual abuse class action litigation and recommend the Settlement.

### **CLASS MEMBER'S RIGHT TO OBJECT**

Members of the proposed class who do not oppose the Settlement Agreement need not appear at the hearing or take any other action at this time to indicate their desire to participate in the Settlement.

Members of the proposed class are entitled to object to the Settlement Agreement and have the right to appear at the hearing, in person or through a lawyer.

Members of the proposed class who wish to object to the Settlement Agreement are requested to send an objection in writing by mail or by fax, delivered on or before **August 13, 2010**, to Class Counsel by mail at McPhadden Samac Tuovi, attention: Bryan C. McPhadden, 8 King Street East, Suite 300, Toronto, Ontario M5C 1B5 or by fax at (416) 363-7485. All written objections will be forwarded to BCS' Legal Counsel upon receipt and presented to the Court for consideration. If a written objection is filed, it is requested that the written objection include the following information:

1. The individual's name, address, telephone number, fax number, and e-mail address. This information will be kept strictly confidential pursuant to an order of the Superior Court of Quebec.
2. A statement that the individual is a member of the proposed class.
3. A brief statement of the nature of and reasons for the objection.
4. Whether he intends to appear at the appropriate Court hearing in person or through a lawyer and if through a lawyer, the lawyer's name, address, telephone number, fax number and e-mail address.

### **QUESTIONS ABOUT THE SETTLEMENT**

Do not direct any questions about this notice or the Settlement to the Court. The Court cannot answer them. Any questions should be directed to Class Counsel: McPhadden Samac Tuovi at 8 King Street East, Suite 300, Toronto, Ontario, M5C 1B5 (416) 363-5195 or at [www.msmt.ca](http://www.msmt.ca) or to Quebec Agent for Class Counsel: Liebman and Associates at 1 Westmount Square, Suite 1500, Montreal, Quebec H3Z 2P9, (514) 846-0666 or at [www.liebman.org](http://www.liebman.org).

### **INTERPRETATION**

This notice is intended as a summary only. Should there be any conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

**PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC.**

## AMENDED SCHEDULE B OF THE SETTLEMENT AGREEMENT

### NOTICE OF SETTLEMENT OF BISHOP'S COLLEGE SCHOOL CLASS ACTION CONCERNING SEXUAL AND ANY PHYSICAL, MENTAL OR PSYCHOLOGICAL ABUSE

**TO: All former students of Bishop's College School ("BCS") who allege that they were the victims of Abuse (Abuse means abuse of a sexual nature and any physical, mental or psychological abuse directly or indirectly related thereto), between any of the years 1953 up to 1962, perpetrated by or with the participation of Reverend Harold Theodore Gibson Forster and/or any other of BCS's employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration (collectively referred hereinafter as "BCS's Employees").**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.

#### **TO ALL CLASS MEMBERS**

The Superior Court of Quebec has approved the Settlement Agreement reached in the Motion for authorization to institute a Class Action ("**Motion**") filed in Quebec against BCS bearing number 500-06-000362-067. The Motion has been authorized as a class action for the sole purpose of giving effect to the Settlement Agreement relative to alleged Abuse by or with the participation of BCS's Employees as defined hereinabove.

To make a Claim pursuant to this Settlement Agreement, Class Members **must file a Claim Form with the Administrator, Services de Recours Collectifs Crawford/Crawford Class Action Services, P.O. Box 233, Jean-Talon Branch, Montreal, Quebec, H1S 2Z2, by December 7, 2010**, in the manner described below.

#### **SUMMARY OF THE SETTLEMENT AGREEMENT**

Without any admission of fault or liability on the part of BCS, the Agreement provides that BCS will pay an amount equal to \$1,150,000 in capital, interest and costs (the "**Settlement Amount**") in full and final settlement of any and all claims of the Class Members.

The Settlement Agreement provides that once the fees of Class Counsel (\$200,000) and disbursements (not to exceed \$20,000), plus the applicable taxes, the cost of the Notices (approximately \$22,000 plus taxes), the costs of implementing the Settlement (the amount of these costs will depend on the number of Claimants; based on the assumption of a number of 20 to 40 Claimants, these costs would be between 1.5% and 4% of the Settlement Amount) and the cost of the Truth and Reconciliation process

(\$50,000) have been paid from the Settlement Amount, a lump sum compensation based on the number of Claimants will be paid to the Class Members in equal shares. The lump sum will be paid to each Claimant whose Claim has been approved after having been duly submitted no later than December 7, 2010 to the Administrator appointed to process same. For this purpose, a form shall be filled and a sworn affidavit is to be provided accompanied by supporting documents. The Administrator will approve the Claim or not, subject, in the event of a refusal, to a right of appeal to the Court, whose decision shall be final.

## **HOW TO MAKE A CLAIM**

To make a Claim under the Settlement Agreement, Class Members shall complete and submit the Claim Form set out in Schedule D of the Settlement Agreement by providing all the information requested and duly completing the affidavit required to submit this form. **The deadline to submit a Claim Form is December 7, 2010.** Claim Forms must be submitted to: the Administrator, **Services de Recours Collectifs Crawford/Crawford Class Action Services, P.O. Box 233, Jean-Talon Branch, Montreal, Quebec, H1S 2Z2** Re: Bishop's College School Class Action Settlement, **Attention: Stephanie Chreifi on or before December 7, 2010** by mail, postmarked on or before December 7, 2010 or received by fax to (514) 748-1736.

## **RIGHT TO OPT OUT**

All persons who fall within the class definition authorized by the Superior Court of Quebec will automatically be included in the class unless they exclude themselves from the class by Opting Out. Class Members shall have the right to exclude themselves from the Settlement, and in such event the Class Member who has opted out shall not be eligible for any of the payments set out the Settlement Agreement. To Opt-Out, Class Members will have to complete, sign and return an "**Opt-Out Form**" to Bishop's College Legal Counsel, Borden Ladner Gervais LLP, Attention: Me Caroline Matte, Re: Bishop's College School Class Action Settlement, at 1000 de La Gauchetière Street West, Suite 900, Montreal, Quebec, H3B 5H4 **on or before December 7, 2010.** If a Class Member does not timely and properly Opt-Out and does not timely and properly make a claim under the Settlement Agreement, he shall be bound by the terms of the Settlement Agreement and all related court orders and shall be forever barred from receiving any payment under the settlement, commencing any suit or proceeding or continuing any action in relation to Abuse perpetrated by or with the participation of Reverend Harold Theodore Gibson Forster or any other of BCS's Employees (as defined above).

## **CLASS COUNSEL FEES**

The Quebec Superior Court has awarded to counsel representing the class "Class Counsel" (McPhadden Samac Tuovi) (including Quebec Agent for Class Counsel Liebman & Associates) collectively the amount of \$200,000 for fees and an amount not to exceed \$20,000 for disbursements, plus the applicable taxes. This amount shall be deducted from the Settlement Amount as explained above. Claimants may, at their own

cost, but are not obliged to, retain their own lawyers to assist them in making their claims under the Settlement.

### **IMPORTANT DEADLINES**

**December 7, 2010 is the Deadline** to Opt-Out of the Settlement and the Deadline to file a Claim.

### **FURTHER INFORMATION**

A complete copy of the Settlement Agreement including the complete Claims Administration Process, the compensation , the Schedules and the Claim Form or Opt-Out Form, are available from Class Counsel's website at [www.msmt.ca](http://www.msmt.ca).

You may contact Class Counsel McPhadden Samac Tuovi at 8 King Street East, Suite 300, Toronto, Ontario, M5C 1B5 (416) 363-5195 or at [www.msmt.ca](http://www.msmt.ca) or Quebec Agent for Class Counsel: Liebman and Associates at 1 Westmount Square, Suite 1500, Montreal, Quebec H3Z 2P9, (514) 846-0666 or at [www.liebman.org](http://www.liebman.org).

This notice is intended as a summary only. Should there be any conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPERIOR COURT OF QUEBEC.

## SCHEDULE C OF THE SETTLEMENT AGREEMENT

### OPT-OUT FORM

**THIS IS NOT A CLAIM FORM. DO NOT FILL OUT THIS FORM IF YOU WANT TO APPLY FOR BENEFITS UNDER THE SETTLEMENT AGREEMENT** filed in the Quebec Superior Court record in *U.T.C. v. Bishop's College School*, Superior Court file number 500-06-000362-067 (hereinafter the "**Settlement Agreement**"). If you want to receive benefits under the Settlement Agreement, **DO NOT USE OR SEND THIS FORM.**

If you do not want to receive benefits and you wish to reserve your right to bring your own lawsuit against Bishop's College School ("**BCS**") for alleged Abuse [ (means abuse of a sexual nature and any physical, mental or psychological Abuse directly or indirectly related thereto), between any of the years 1953 up to 1962, perpetrated by or with the participation of Reverend Harold Theodore Gibson Forster and/or any other of BCS's employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration ] or any other party that could claim contribution or indemnification from them, then you must complete this form, fax or mail it to BCS' Legal Counsel at the address or fax number noted below.

As set out below, this form must be received by BCS' Legal Counsel or be post-marked no later than **December 7, 2010**. ***If you opt out of the class, note that all legal actions have strictly enforced time limits within which you must take formal legal action to pursue your claim, which time limits may have already expired in the present case.*** By opting out of the class, you take full responsibility for obtaining legal advice about the limitation or prescription period and for taking all steps necessary to protect any claim you may have.

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I, the undersigned, acknowledge that I am aware of the terms of the Settlement Agreement reached in the class action referred to above and I hereby opt out of the Class Action. I understand that in doing so I will be unable to obtain benefits provided to the Class Members by the Settlement Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Dates at which I attended Bishop's College School

\_\_\_\_\_  
Birth Date

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Apt.

\_\_\_\_\_  
City

\_\_\_\_\_  
Province/State

\_\_\_\_\_  
Postal Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness (Name and Signature)

**Submit completed form to Bishop's College School Legal Counsel by mail or facsimile by December 7, 2010 as follows:**

**By mail to: Borden Ladner Gervais L.L.P.  
Attention: Me Caroline Matte  
Re: BCS Class Action Settlement  
1000 De La Gauchetière Street West, Suite 900  
Montreal, Quebec H3B 5H4**

**By fax: (514) 954-1905**

If you have questions about this form you may contact, free of charge:

Class Counsel  
McPhadden, Samac, Tuovi  
8 King Street East  
Suite 300  
Toronto, Ontario M5C 1B5

Tel: (416) 363-5195  
Fax: (416) 363-7485

Quebec Agent for Class Counsel  
Liebman & Associés  
1 Westmount Square  
Suite 1500  
Montreal, Quebec H3Z 2P9

Tel: (514) 846-0666  
Fax: (514) 935-2314



4. Name of any person(s) who was present, should the case be, during or witnessed the Abuse:

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5. Detailed description of the damages suffered as a result of the Abuse [Please add additional pages as required]:

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6. Documents to be provided with Claim and Affidavit:

- a. Provide copy of any supporting documents, including, without limitation, hospital or medical records and the file of any Professional ["Professional" means doctor, psychologist or psychotherapist] consulted, if available to you, in relation to the Abuse;
- b. Photocopies of two (2) identification cards, one of which must be a government issued picture identification [e.g. driver's license, passport, provincial health card, etc.] and the other may be, but is not necessarily, another government issued picture identification, government issued non-picture identification or major credit card.



7. In the event your claim is accepted, please indicate if you accept to receive a **LESSER** amount than the amount which is provided for in the Settlement Agreement. No guarantees are given in the Settlement Agreement or herein as to the amount of the compensation that the Successful Claimants will receive. As such, there is no guarantee that you will receive the lesser amount you indicate.

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**AFFIDAVIT**

I, the undersigned \_\_\_\_\_ do hereby swear or solemnly affirm that:

1. The information contained in this Claim Form is true.
2. I am delivering this Claim Form in order to make a Claim as a Claimant against Bishop's College School in the class action commenced in Superior Court, Province of Quebec, District of Montreal in Court file number 500-06-000362-067.
3. I understand that providing false or inaccurate information in the present Affidavit and/or the supporting documents to my Claim Form shall result in the rejection and nullification of my Claim.
4. I understand that providing false or inaccurate information in the present Affidavit and/or the supporting documents to my Claim Form shall result in the rejection and nullification of my Claim and potential criminal charges for perjury.

AND I HAVE SIGNED ON \_\_\_\_\_

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Name of Claimant (print)

Sworn before me at \_\_\_\_\_  
on \_\_\_\_\_

\_\_\_\_\_  
Duly authorized commissioner of Oaths for  
\_\_\_\_\_  
(jurisdiction)

**SCHEDULE E OF THE SETTLEMENT AGREEMENT**

C A N A D A

(CLASS ACTIONS)  
SUPERIOR COURT

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-06-000362-067

**U.T.C.**

Petitioner

v.

**BISHOP'S COLLEGE SCHOOL**

Respondent

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**RECEIPT, RELEASE, DISCHARGE AND TRANSACTION**

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The undersigned Successful Claimant acknowledges by the present, having received from Bishop's College School (hereinafter "**BCS**") the global sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in capital, interest, additional indemnity, costs and all applicable taxes (the "**Payment**") in full, final and global settlement of all recourses, claims, suits, actions, rights or rights of action whatsoever that he had, has or may have against, individually and collectively, Reverend Harold Theodore Gibson Forster (hereinafter "**Forster**"), BCS and all of its past, present or future employees, agents, legal assigns, servants, representatives, principals, directors, officers, lawyers, officials, insurers, consultants, advisors, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised, currently exercises or will exercise any administrative, educational or disciplinary function at BCS with or without remuneration (hereinafter collectively referred to as the "**Releasees**"), directly or indirectly arising from or relating to any (a) Abuse ("Abuse" means abuse of a sexual nature and any physical, mental or psychological abuse directly or indirectly related thereto (hereinafter "**Abuse**") alleged or claimed to have

been perpetrated between the years 1953 up to 1962, by or with the participation of Forster and/or any other of BCS's employees, agents, legal assigns, servants, representatives, principals, teachers, prefects, house masters, chaplains, choirmasters, head boys and/or any person who exercised any administrative, educational or disciplinary function at BCS, with or without remuneration (collectively referred to hereinafter as "**BCS's Employees**"); (b) any act or omission of any nature whatsoever by BCS in relation to Abuse alleged or claimed to have been perpetrated between 1953 up to 1962 by Forster and/or any other of BCS's Employees; (c) without restricting the generality of the foregoing, the facts and circumstances set out in the Superior Court file bearing number 500-06-000362-067, District of Montreal or any similar fact or circumstance.

In consideration of the Payment, the Successful Claimant and his heirs, successors and legal assigns have fully, finally and forever released, relinquished and discharged the Releasees from and against any and all recourses, claims, suits, proceedings, actions, demands, rights or rights of action of any nature or kind whatsoever, including any claims in subrogation, now existing or which may arise in the future directly or indirectly from (a) Abuse alleged or claimed to have been perpetrated between the years 1953 up to 1962 by or with the participation of Forster and/or any other of BCS's Employees; (b) any act or omission of any nature whatsoever by BCS in relation to Forster and/or Abuse by any other of BCS's Employees between 1953 up to 1962; (c) without restricting the generality of the foregoing, the facts and circumstances set out in the Superior Court file bearing number 500-06-000362-067, District of Montreal or any similar fact or circumstance.

In consideration of the Payment, the Successful Claimant hereby renounces to later demand nullity and/or rescission of the Settlement Agreement and the present Receipt, Release and Discharge and Transaction for any possible cause, including an error of fact or law known or unknown at the present date and recognizes that the present Receipt, Release Discharge and Transaction covers all possible types of claims known or unknown at the present date.

The settlement formalized by the Receipt, Release, Discharge and Transaction intervenes without any admission of fault and/or liability whatsoever by BCS or any other person obtaining a release herefrom.

The Successful Claimant hereby recognizes that the transaction recognized and completed hereby in the Superior Court file bearing number 500-06-000362-067, District of Montreal, constitutes a transaction according to the terms of Articles 2631 and following of the *Civil Code of Quebec*.

I hereby acknowledge that I have requested that this Agreement be drawn up in English. *Je reconnais avoir exigé que la présente transaction soit rédigée en anglais.*

Signed at \_\_\_\_\_ 2010

Signed at \_\_\_\_\_ 2010

\_\_\_\_\_  
Witness to signature of Successful  
Claimant

\_\_\_\_\_  
Successful Claimant

Signed at \_\_\_\_\_ 2010

\_\_\_\_\_  
Class Counsel, Agent of Class Counsel  
or Legal Counsel of Successful Claimant