

SUPREME COUR OF QUEENSLAND

REGISTRY: BRISBANE
of 2002
NUMBER: ~~3738/01~~

Plaintiff:

BQP

AND

Defendant:

THE BOARD OF TRUSTEES OF THE BRISBANE
GRAMMAR SCHOOL

STATEMENT OF CLAIM

This Claim in this proceeding is made in reliance upon the following facts::

The Parties:

1. At all material times the Defendant:

- 1.1 was and is a body corporate pursuant to Section 7 of the *Grammar Schools Act* 1975, and capable in law of being sued;
- 1.2 was a corporation within the meaning of Section 4 of the *Trade Practices Act* 1974 ("the TPA");
- 1.3 conducted, by its servants or agents, a school known as the Brisbane Boys Grammar School, situated at Petrie Terrace, Brisbane in the State of Queensland ("the School") where it:
 - 1.3.1 provided, to enrolled students, for reward, education and school services;
 - 1.3.2 acted in trade or commerce as a provider of education and school services;
 - 1.3.3 was in the business of providing education and school services.



STATEMENT OF CLAIM
Filed on behalf of the Plaintiff

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Our Ref: SJJ:BAX:md:020698
020698 BQP Statement of Claim 270502

- 1.4 employed one Kevin Lynch ("Lynch") as a counsellor and or alternatively a teacher, whose duties included providing:
 - 1.4.1 counselling;
 - 1.4.2 personal guidance, to enrol students attending the School;
 - 1.5 was a in a position of trust, control and relative strength vis a vis the Plaintiff in relation to education and schooling including counselling and personal guidance.
2. The Plaintiff:
- 2.1 is a male;
 - 2.2 was born in or about 1963;
 - 2.3 enrolment of school from the beginning of 1976 until the end of 1980;
 - 2.4 at all material times intended to complete high school and pursue a professional career;
 - 2.5 and, or alternatively his parents were consumers of education and schooling services, within the meaning of Section 4 of the TPA;
 - 2.6 in the course of his education at the School in 1979 and/or 1980, whilst enrolled in either Grade 11 and/or 12, attended counselling sessions with Lynch;
 - 2.7 left the School on completing senior in 1980;
 - 2.8 is currently employed as an actor.

The Factual Background:

3. Lynch ordinarily conducted counselling sessions with students:
 - 3.1 alone;
 - 3.2 in a locked room;
 - 3.3 for periods of up to approximately an hour;
 - 3.4 using techniques of hypnotism and relaxation of the student.
4. The Defendant, by its servant or agent:
 - 4.1 knew of each of the matters in paragraph 3;
 - 4.2 alternatively knew nothing of such matters but:



- 4.2.1 laid down no format for, or prohibitions in respect of such counselling sessions;
 - 4.2.2 made no enquiry nor undertook any audit, review or student enquiry as to the format or content of such counselling sessions.
5. Lynch, during a number of counselling sessions with the Plaintiff, in the course of his employment, assaulted, and or alternatively trespassed upon, deprived the liberty of, sexually abused, and or alternatively indecently behaved, and or alternatively indecently touched, and or alternatively indecently gestured to the Plaintiff ("the incidents").
6. On the occasions of each of the sessions Lynch:
 - 6.1 consulted with the Plaintiff alone in a locked room for periods of up to approximately one hour;
 - 6.2 performed hypnosis or hypnotic techniques on the Plaintiff without the consent of the Plaintiff or the Plaintiff's parents, the effects of which were the Plaintiff would effectively 'lose time' and not be able to recall the entirety of what happened to him whilst in the counselling session;
 - 6.3 rubbed the Plaintiff's arms, legs, chest, stomach and groin;
 - 6.4 took steps to undress the Plaintiff;
 - 6.5 spoke to the Plaintiff in indecent language;
 - 6.6 touched and fondled the Plaintiff's genitals;
7. There were other incidents, concerning Lynch, reported to teachers and other students at the School including prefects, which the Plaintiff is presently unable to particularise, of which the Defendant knew or ought to have known.

The Assumed Obligation of the Defendant:

8. At all material times the Defendant in conducting the School, intended and purported to act in relation to each of the students at the School, including the Plaintiff to:
 - 8.1 take care for his safety and wellbeing;
 - 8.2 provide him with a reasonable standard of education;
 - 8.3 provide him with a reasonable standard of care with respect to his physical, emotional and intellectual development;



- 8.4 protect him from physical and emotional harm;
 - 8.5 counsel, guide, educate and/or treat him for problems and/or difficulties for which he sought assistance and/or help.
- ("the obligations").

Tortious Duty of Care of the Defendant:

- 9. At all material times the Defendant, and its servants or agents, including Lynch, owed the Plaintiff a duty of care to:
 - 9.1 employ and retain teachers and counsellors at the school who:
 - 9.1.1 were capable of achieving and did so achieve the obligations;
 - 9.1.2 were trained in caring for the safety and wellbeing of the students;
 - 9.1.3 were capable of establishing and maintaining, and who did so establish and maintain a reasonable standard of care with respect to the physical, emotional and intellectual development of the students;
 - 9.1.4 were capable of protecting and did so protect the students from physical and emotional harm;
 - 9.2 supervise teachers and counsellors in the conduct of their duties and their dealings with the Plaintiff and other students of the School;
 - 9.3 devise and implement audit procedures, monitoring and quality assurance measures in relation to the provision of education and school services and the conduct of their employees;
 - 9.4 devise and implement a confidential and secure complaint and follow up system whereby the Plaintiff and other students could report relevant incidents to the Defendant;
 - 9.5 investigate all reports or complaints about and or alternatively against teachers and other employees of the Defendant.

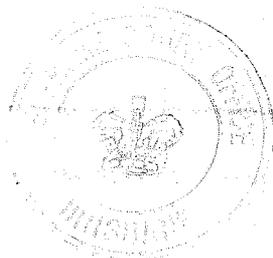
Contract Obligation of Defendant:

- 10. In or about 1976 and in each year thereafter until 1980 the Plaintiff's parents entered into an agreement with the Defendant that, in consideration of the Plaintiff's parents paying or promising to pay the requisite school fees, the Defendant promised to



provide education and school services to the Plaintiff (the agreement in each successive year hereinafter referred to as "the agreement").

11. The Defendant's promises under the agreement ("the promises") were made for the benefit of the Plaintiff.
12. The Plaintiff:
 - 12.1 accepted the benefit of the promises by attending the School as a student each year from 1976 to 1980;
 - 12.2 in the premises of this paragraph, was a "beneficiary" of the promises within the meaning of Section 55 of the *Property Law Act* 1974;
 - 12.3 in the premises of this paragraph, was and is entitled to the benefit of a statutory duty by the Defendant in terms of the promises.
13. Prior to entering into the agreement the parents expressly or impliedly made known to the Defendant that a desired result of the agreement was that the Plaintiff complete junior and then high school education, or otherwise attain a standard of education capable of providing him with reasonable academic skills and, subject to his aptitude, access to tertiary education.
14. the agreement was a contract to supply services in the course of the Defendant's business within the meaning of Section 74 of the TPA.
15. The implied promises under the agreement, so implied by Section 74, by dint of the relationship or alternatively business efficacy, were that the Defendant and its servants and agents would:
 - 15.1 carry out the obligations;
 - 15.2 exercise reasonable care in and about safeguarding the physical and mental wellbeing of the Plaintiff during attendance at the said School;
 - 15.3 carry out the duties referred to in paragraph 9 hereof;
 - 15.4 exercise the services provided with due care and skill and fit for the purpose described in paragraph 13 herein.



Fiduciary Duty of Defendant:

16. The Plaintiff was in a position of having to rely upon and trust the Defendant to discharge the obligations.
17. By accepting and maintaining the enrolment and education of the Plaintiff as a student the Defendant thereby undertook to act for, and in the best interests of, the Plaintiff in the discharge of the obligation.
18. At all material times the exercise of power or discretion by the Defendant in discharging the obligations impacted, in fact and potentially, upon the interests of the Plaintiff in a legal, practical or alternatively an economic sense.
19. In the premises the Defendant owed a fiduciary duty to the Plaintiff.
20. Under such fiduciary duty the Defendant was obliged to ensure that the Plaintiff was not disadvantaged by the conduct of the Defendant, or its employees, including:
 - 20.1 being financially disadvantaged, by hindering or failing to advance the Plaintiff's opportunities for tertiary and further education and thereby his access to a financially viable career;
 - 20.2 being physically, emotionally or mentally abused and impaired to the extent that it potentially impacted on his earning capacity and ability to advance or maintain himself financially.

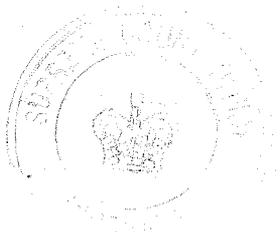
Misleading and Deceptive Conduct:

21. The Defendant expressly or impliedly represented to the Plaintiff, and or alternatively to his parents, from time to time with each annual enrolment, that:
 - 21.1 the School was a suitable place to educate the Plaintiff in that it provided:
 - 21.1.1 for a student's safety and wellbeing;
 - 21.1.2 a reasonable standard of education;
 - 21.1.3 a reasonable standard of care with respect to a student's physical, emotional and intellectual development;
 - 21.1.4 protection of a student from physical and emotional harm;
 - 21.1.5 the obligations.



Particulars of Breach:

28. The Defendant breached its tortious duty, the agreement, and its fiduciary duty, and, or alternatively engaged in unconscionable conduct in that it:
- 28.1 acted, by Lynch, in the incidents;
 - 28.2 failed to carry out any or any proper supervision of Lynch, at any material time, in and about his counselling;
 - 28.3 failed to carry out any or any proper supervision of the Plaintiff at any material time;
 - 28.4 failed to take steps to reduce the likelihood of abuse by Lynch of the Plaintiff at any material time;
 - 28.5 failed to take steps to reduce the likelihood of abuse by Lynch occurring towards the Plaintiff at any material time;
 - 28.6 failed to take due and proper care in selecting persons to carry out and or alternatively deliver counselling or guidance to the Plaintiff;
 - 28.7 failed to have audit or monitoring procedures, or student feedback procedures in place;
 - 28.8 once it knew or ought to have known that the abuse were occurring in the School in counselling, failed to take any steps to protect the Plaintiff from further injury;
 - 28.9 once it knew or ought to have known that abuse was occurring at the School in counselling, failed to take any steps to protect the Plaintiff from further abuse occurring;
 - 28.10 once it knew or ought to have known that deprivation of liberty was occurring within the School in counselling, failed to take any steps to protect the Plaintiff from further deprivation of liberty occurring;
 - 28.11 permitting the Plaintiff to undergo counselling with Lynch when it knew or ought to have known that such action was likely to result in injury to the Plaintiff;
 - 28.12 failing to act on reports of abuse by Lynch;
 - 28.13 failing to report acts of abuse, assault and deprivation of liberty to appropriate authorities;
 - 28.14 failing to make rules with respect to the management and control of the School in particular rules with respect to the use of hypnosis or relaxation techniques



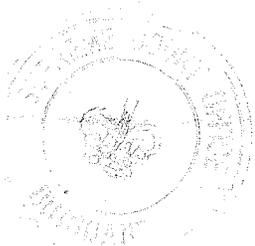
- used on students by employees of the School including a published prohibition on hypnosis;
- 28.15 failing to adequately supervise the said Lynch or inform itself of the methods of counselling or guidance used by him;
- 28.16 exposed or caused the Plaintiff to be exposed to:
- 28.16.1 deprivation of liberty by being in a room which was locked by Lynch to the exclusion of others, the Plaintiff not being given any opportunity to remove himself from the counselling session;
- 28.16.2 deprivation of liberty by being forced or misled into counselling;
- 28.16.3 deprivation of liberty by being subject to hypnosis;
- 28.16.4 abuse of a sexual nature by the:
- 28.16.4.1 rubbing of arms, legs, chest, stomach and groin;
- 28.16.4.2 touching and fondling of genitals;
- 28.16.4.3 masturbation of the Plaintiff;
- 28.16.4.4 masturbated himself in front of the Plaintiff;
- 28.16.4.5 other inappropriate gestures, touching or behaviour.
- 28.17 permitted the use of hypnosis on the Plaintiff:
- 28.17.1 without informing the parents of the Plaintiff or obtaining their consent;
- 28.17.2 without informing the Plaintiff of the nature and effect of same;
- 28.17.3 without advising the Plaintiff of the material adverse risks of hypnosis;
- 28.17.4 without affording the Plaintiff an opportunity to have a third party present whilst the technique was being used;
- 28.17.5 in circumstances where the Plaintiff could not give his consent to undergo such technique because of age or infirmity.

Damages:

29. As a result of the abovementioned breaches the Plaintiff failed to achieve his vocational aspirations and underwent psychiatric and physical injury which will be further particularised.
30. The Plaintiff claims against the Defendant as a result of the said breach by the Defendant:



- 30.1 General damages for Pain and Suffering and Loss of Amenities of Life - \$100,000.00.
- 30.2 Past economic loss in the amount of \$120,000.0.
- 30.3 Interest on past economic loss at the rate of 5% of the total \$120,000.00. This amounts to \$6,000.00.
- 30.4 Loss of past superannuation in the amount of \$7,200.00, calculated at the rate of 6% of the past economic loss. This amounts to $6\% \times \$120,000.00 = \$7,200.00$.
- 30.5 Future economic loss in the amount of \$200,000.00.
- 30.6 Loss of future Superannuation in the amount of \$14,000.00, calculated at 7% of future economic loss. This amounts to $7\% \times \$200,000.00$. This amounts to $7\% \times \$200,000.00 = \$14,000.00$.
- 30.7 Special Damages and Out of Pocket Expenses in the amount of \$58,500.00, calculated as follows:
- | | | |
|--------|--|-------------|
| 30.7.1 | Medical Expenses | \$1,000.00 |
| 30.7.2 | Psychiatric Treatment | \$5,000.00 |
| 30.7.3 | Future Medical Expenses (global figure) | \$15,000.00 |
| 30.7.4 | Future Psychiatric Treatment | \$30,000.00 |
| 30.7.5 | Past Travelling Expenses (global figure) | \$500.00 |
| 30.7.6 | Future Travelling Expenses (global figure) | \$5,000.00 |
| 30.7.7 | Total | \$56,500.00 |
- 30.8 Interest on Special Damages and Out of Pocket of Expenses actually paid by the Plaintiff.
31. The Plaintiff claims as against the Defendant:
- 31.1 damages for breach of contract or alternatively duty pursuant to Section 55 of the *Property Law Act* 1974, negligence, breach of fiduciary duty, unconscionable conduct, and or alternatively under Section 82 of the *Trade Practices Act* 1974 for contravention of such Act;
- 31.2 Costs and interest under the *Supreme Court Practice Act* 1995.



The Plaintiff requires a jury.

Signed: *Baker Johnson*

Baker Johnson Solicitors

Description: Solicitors for the Plaintiff

Date: *6 June 2002*

