

**C A N A D A**

**PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

NO.: 500-17-084103-145

**S U P E R I O R   C O U R T**

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**KEVIN KWASNY**, domiciled and residing  
at 24 Knotwood Crescent, in the City of  
Winnipeg, Province of Manitoba, R2V 4H1

and

**GREGG KWASNY**, domiciled and residing  
at 24 Knotwood Crescent, in the City of  
Winnipeg, Province of Manitoba, R2V 4H1

and

**GERALDINE KWASNY**, domiciled and  
residing at 24 Knotwood Crescent, in the  
City of Winnipeg, Province of Manitoba,  
R2V 4H1

Plaintiffs

v.

**BISHOP'S UNIVERSITY**, a legal person  
duly incorporated according to law and  
having a place of business at 2600  
College Street, in the City and District of  
Sherbrooke, Province of Quebec, J1M  
1Z7,

Defendant

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<p><b>MOTION INTRODUCTIVE OF PROCEEDINGS</b></p>
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**IN SUPPORT OF THEIR MOTION, THE PLAINTIFFS RESPECTFULLY DECLARE  
THE FOLLOWING:**

## I. INTRODUCTION

1. **THAT** on September 10, 2011, Plaintiff Kevin Kwasny ("KEVIN"), a Bishop's University student and member of the Bishop's Gaiters football team, suffered catastrophic and permanent physical and cognitive injuries while participating in a football game;
2. **THAT** at all relevant times prior to September 10, 2011, there was consensus among competent health professionals that:
  - a. Individuals who exhibit symptoms of a concussion during a sporting activity, particularly children and adolescents, must immediately cease participating in the sporting activity, must be medically evaluated, and must receive medical clearance to resume activities after concussion symptoms have resolved; and,
  - b. Failing to remove an individual complaining of or exhibiting symptoms of a concussion from a sporting activity exposes the victim to substantially increased risks of severe injury, including permanent brain damage and even death;
3. **THAT** following an international conference on concussion in sport held in Zurich in November 2008, world experts in concussions published a "Consensus Statement on Concussion in Sport" which sets forth important principles for concussion management, as appears from a copy of said "Consensus Statement on Concussion in Sport" produced herewith as **Exhibit P-1**;
4. **THAT** as of June 2009, various sports leagues, including the Canadian Football League and the CIS (which is the national governing body of Canadian university sports), adopted concussion guidelines based upon the above-mentioned "Consensus Statement" (Exhibit P-1), the whole as appears more fully from a copy of said concussion guidelines produced herewith as **Exhibit P-2**;
5. **THAT** the foregoing concussion guidelines (Exhibit P-2) constitute an elementary standard of care applicable to all Canadian universities, including the Defendant Bishop's University, and they are expressly designed to ensure the safety and well-being of all Canadian university football players;

6. **THAT** the guidelines provide, *inter alia*, as follows:

***“THINGS YOU NEED TO KNOW***

***CONCUSSION: Management & Rehabilitation***

***An athlete should never return to play while symptomatic.***

***When a player shows ANY SYMPTOMS or SIGNS of a concussion...***

<b>X</b>	The player should not be allowed to return to play in the current game or practice	<b>X</b>	The player should not be left alone, regular monitoring for deterioration is essential.	<b>✓</b>	The player should be medically evaluated.
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- *Medical Clearance by an appropriate physician is **mandatory** before return to play.”*

7. **THAT** the Plaintiffs claim damages resulting from the catastrophic and permanent physical and cognitive injuries sustained by KEVIN on September 10, 2011 due to the reckless and negligent conduct of the Defendant in disregarding the foregoing elementary standard of care, under the circumstances set forth below;

**II. KEVIN’s attendance at Bishop’s University**

8. **THAT** in 2008, KEVIN was recruited by Bishop’s University and was offered a full scholarship to attend said university on the condition that he become a member of their football team, namely the Bishop’s Gaiters, and that he maintain an academic average above 65%;
9. **THAT** KEVIN and his parents legitimately expected that Bishop’s University would:
- First and foremost, follow and respect the guidelines adopted to ensure the health and safety of KEVIN and his teammates;
  - Provide KEVIN with professional football coaching and instruction;
  - Provide KEVIN with reasonable and competent medical care and supervision at all Gaiters’ football practices and games; and,
  - Take all reasonable steps to ensure that KEVIN’s risk of and exposure to injury while playing Gaiters’ football were minimized;



10. **THAT** KEVIN began to attend Bishop's University in or about September 2008 as a full-time student in the Bachelor of Arts program, with a major in Psychology and a minor in Health & Sports Studies;
11. **THAT** KEVIN also began to participate as a member of the Bishop's Gaiters football team in 2008, and he played on said football team in 2008, 2009, 2010 and 2011 as a defensive lineman. During each of those years, KEVIN maintained an academic average above 65%, and maintained his scholarship;
12. **THAT** prior to September 10, 2011, KEVIN had never before suffered a concussion or complained to his coaches of an injury to his head;

**III. The football game of September 10, 2011**

13. **THAT** KEVIN participated, as a defensive end, in the football game held on September 10, 2011 between the Gaiters and Concordia University, which game was held at Bishop's University's home field;
14. **THAT** early in the first half of the game, KEVIN was hit helmet to helmet in the chin/head area by an opposing player;
15. **THAT** when KEVIN came off the field after the foregoing hit, KEVIN informed his Defensive Coordinator, coach Ray Gagnon, that he had been hit in the head, that he had a headache, that he felt like he had his bell rung, and that he was not feeling well;
16. **THAT** any properly trained, caring and prudent university coach/employee would have known or ought to have known that KEVIN was complaining of symptoms of a concussion, and ought to have immediately removed KEVIN from the game so that he could be medically evaluated for neurological and concussion-related problems, and not permitted KEVIN to return to the game until he received medical clearance to do so;
17. **THAT** Coach Gagnon, an employee of Bishop's University, did not inform a trainer or medical staff, did not tell KEVIN to rest, did not send KEVIN for evaluation, and instead ordered KEVIN to return to the game;
18. **THAT** Coach Gagnon thereby exposed KEVIN to the very risks of serious injury that the consensus statement (Exhibit P-1) and the concussion guidelines (Exhibit P-2) were adopted to prevent;
19. **THAT** KEVIN accordingly returned to the field of play, despite the fact that he was unwell;

20. **THAT** as KEVIN continued to play, he sustained additional impacts to the head, and it was clear and/or ought to have been clear to Coach Gagnon that KEVIN was feeling even worse than after the initial hit;
21. **THAT** at half-time, while in the locker room, KEVIN was taken to the trainers' room where he collapsed, suffered a seizure and required emergency medical care as his life was in danger;
22. **THAT** KEVIN was urgently taken to the CHUS-Fleurimont Hospital, where he was diagnosed as having a subdural hematoma (bleeding around the brain). Physicians at said hospital were able to save KEVIN's life by performing an emergency craniectomy operation on September 10, 2011, in order to evacuate the subdural hematoma, following which he was in a coma-like state for approximately 2 weeks;
23. **THAT** an employee of the Defendant (name unknown) informed the medical staff at CHUS-Fleurimont Hospital that KEVIN had been dazed as a result of helmet-to-helmet contact early on in the game, but that KEVIN continued to play for at least thirty (30) more minutes. The foregoing constitutes an admission by the Defendant that:
  - a. KEVIN had informed a coach/employee of the Defendant that he had been hit in the head, and that he was experiencing symptoms of a concussion;
  - b. The coaches/employees of the Defendant did not remove KEVIN from the game, did not monitor KEVIN, did not send KEVIN for evaluation by a trainer or a physician, and did not seek or obtain medical clearance before allowing KEVIN to return to play; and, therefore,
  - c. The Defendant blatantly disregarded the elementary standards of care set forth in the concussion guidelines applicable to Bishop's University (Exhibit P-2);

#### **IV. KEVIN's injuries, hospitalizations and rehabilitation**

24. **THAT** KEVIN remained at the CHUS-Fleurimont Hospital until September 30, 2011. While at said hospital, he was diagnosed as having suffered significant injuries, including: an acute right-sided subdural hematoma with midline shift and herniation; cerebral vasospasms; right posterior cerebral artery distribution infarcts; ischemia in multiple brain sites; multi-focal lesions in the brain; and diffuse brain injury with more specific right hemispheric changes;
25. **THAT** KEVIN underwent a tracheostomy placement on or about September 21, 2011, and his stay in the intensive care unit was complicated by pneumonia;



26. **THAT** on September 30, 2011, KEVIN was transported by air ambulance to the Winnipeg Health Sciences Centre, where he remained until December 20, 2011. During his stay in this hospital, KEVIN was treated for seizures, brain infarcts, pneumonia, and sepsis; he underwent a procedure in which a feeding tube was installed to ensure proper nutrition; he required assistance for bathing, dressing, eating, and toileting; he underwent a tracheostomy change procedure on November 26, 2011, and the tracheostomy was removed on December 15, 2011; and he had extensive physiotherapy and occupational therapy;
27. **THAT** on or about December 20, 2011, KEVIN was transferred to the Riverview Health Centre in Winnipeg, and then, on May 2, 2012, to the Acquired Brain Injury Unit at the Selkirk Mental Health Centre in Selkirk, where he underwent treatment for severe neurological and neuropsychological effects of his brain injuries, where he partially regained the ability to speak and to walk, and where he was rehabilitated with the goal of eventually returning to his parents' home;
28. **THAT** KEVIN remained at the Selkirk Mental Health Centre until June 20, 2014, at which time he finally returned to his parents' home, almost three (3) years after the events of September 10, 2011;
29. **THAT** despite having undergone operations and extensive therapy and rehabilitation, KEVIN remains with permanent, severe bodily and cognitive injuries. In addition to the brain injuries described above, KEVIN has been diagnosed as having *inter alia* adjustment disorder with mixed disturbance of mood and conduct; diffuse cognitive disorder secondary to very severe brain injury; personality change; visual deficits; memory deficits; urinary and bowel incontinence; difficulty moving his right hand and foot; and difficulty moving the fingers on both hands. KEVIN also requires and takes daily anti-depressant medication;
30. **THAT** prior to September 10, 2011, KEVIN was in outstanding physical condition and excellent health. KEVIN expected and intended to obtain his university degree from Bishop's in April 2012, and to then move back to Winnipeg to play two years of football at the University of Manitoba while obtaining his Masters in Education. A bright future lay ahead for KEVIN;
31. **THAT** due to the severe physical and cognitive injuries that KEVIN sustained as a result of the events of September 10, 2011, KEVIN is unable to live by himself or take care of himself, he will require permanent care and assistance for the rest of his life, he has not obtained his university degree, and he will not be able to be gainfully employed;

## **V. Fault and liability of the Defendant**

32. **THAT** KEVIN's severe physical and cognitive injuries, and his damages resulting therefrom, are due to the fault, negligence and inexcusable conduct of the Defendant in that, without limiting the generality of the foregoing:
- a) Bishop's University is responsible to educate its employees and staff as to the existence and importance of respecting policies and guidelines that are designed to ensure the well-being of its students and athletes;
  - b) Bishop's University is legally responsible for the faults and negligence of its employees and coaches while in the performance of their duties;
  - c) On September 10, 2011, after KEVIN had been hit in the head/chin area in the first quarter, KEVIN informed an employee and coach of the Defendant, namely Defensive Coordinator Ray Gagnon, that he had been hit in the head, had a headache, and felt like he had his bell rung and was not feeling well;
  - d) Although Coach Gagnon knew or ought to have known that KEVIN was describing symptoms of a concussion or worse, and that KEVIN was therefore at greater risk of suffering severe injuries, disability and death if he remained in the game, Coach Gagnon ordered KEVIN to continue playing;
  - e) Coach Gagnon failed to follow accepted concussion guidelines, which required him to remove KEVIN from the game, have him medically evaluated by a physician and/or by the athletic trainers to assess signs and symptoms of a concussion or neurological injury, and to prevent KEVIN from returning to the football game until he was medically cleared to do so;
  - f) Coach Gagnon was in the performance of his duties as a coach/employee of Bishop's University at the time;
  - g) Bishop's University either failed to educate Coach Gagnon about the existence and importance of the accepted guidelines in the face of students exhibiting symptoms of a concussion (Exhibits P-1 and P-2) and/or failed to instruct Coach Gagnon that he was required to respect said guidelines, and/or Coach Gagnon blatantly disregarded said guidelines;



- h) Given the foregoing, Bishop's University and its employees showed a wanton and reckless disregard for KEVIN's health, safety and well-being, in violation of the most elementary standards of care, and in breach of the legitimate expectations of every student and every student's parents who agree to have their child participate in university sports;
33. **THAT** KEVIN's catastrophic physical and cognitive impairment are the direct result of the foregoing faults of Bishop's University and its coaches;

## **VI. DAMAGES**

### **a) KEVIN's damages**

34. **THAT** KEVIN has suffered severe and permanent physical and cognitive injuries for which he is entitled to claim, and hereby claims, the following damages:

a) Loss of earnings and earning capacity:	\$2,500,000.00
b) Cost of care, assistance and equipment, past, present and future:	\$2,500,000.00
c) Gross-up for taxes on cost of future care and assistance:	\$1,500,000.00
d) Management fees:	\$1,000,000.00
e) Cost of adaptations to present and future homes:	\$ 500,000.00
f) Non-pecuniary damages including pain, suffering, inconvenience, depression, frustration, and overall loss of enjoyment of life:	\$ 350,000.00
g) Miscellaneous expenses:	\$ 50,000.00

**TOTAL: \$8,400,000.00**

### **b) Damages suffered by KEVIN's parents Gregg Kwasny and Geraldine Kwasny**

35. **THAT** at the time of the events of September 10, 2011, KEVIN had a close and loving relationship with his parents Gregg and Geraldine Kwasny, who are married and reside in Winnipeg;
36. **THAT** following the events of September 10, 2011, KEVIN's parents have had to deal with the shock and tremendous worry upon learning that their son was severely injured and almost died, and then gradually with the reality that their son has severe and permanent physical and cognitive injuries which will greatly affect the rest of his life, as well as theirs;
37. **THAT** while KEVIN was hospitalized between September 10, 2011 and June 20, 2014, Gregg and Geraldine Kwasny provided KEVIN with extensive care, assistance and moral support, and they participated actively in his rehabilitation;



38. **THAT** since KEVIN has returned to their family home on June 20, 2014, Gregg and Geraldine Kwasny have provided and will continue to provide KEVIN with extraordinary care and assistance which far exceeds what parents generally provide for their adult children;

39. **THAT** as a result of the devastating injuries that KEVIN sustained on September 10, 2011, Gregg and Geraldine Kwasny have also suffered and continue to suffer their own non-pecuniary damages including sadness, anxiety, frustration, and overall loss of enjoyment of life;

40. **THAT** Gregg Kwasny accordingly is entitled to claim, and hereby claims, the following damages:

- |   |                     |
|---|---------------------|
| a) Extraordinary care and assistance to KEVIN, past, present and future:                                    | \$250,000.00        |
| b) Non-pecuniary damages including anxiety, sadness, frustration, and overall loss of enjoyment of life:    | \$150,000.00        |
| c) Expenses incurred for KEVIN's physical therapy, past, present and future (roughly \$1,000.00 per month): | <u>\$100,000.00</u> |

<b>TOTAL:</b>	<b><u>\$500,000.00</u></b>
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41. **THAT** at the time of the events of September 10, 2011, Geraldine Kwasny was employed on a full-time basis as a secretary at the Seven Oak School Division, where she earned approximately \$34,000.00 per year. Due to the severity of KEVIN's injuries sustained on September 10, 2011, she was forced to take off work until November 2011, at which time she returned to work on a part-time basis so that she could spend time with KEVIN while he was in hospital. Geraldine only was able to return to work full-time in Spring 2012;

42. **THAT** Geraldine Kwasny accordingly is entitled to claim, and hereby claims, the following damages:

- |  |                     |
|--|---------------------|
| a) Extraordinary care and assistance to KEVIN, past, present and future:                                 | \$250,000.00        |
| b) Non-pecuniary damages including anxiety, sadness, frustration, and overall loss of enjoyment of life: | \$150,000.00        |
| c) Loss of income:   | \$ 14,000.00        |
| d) Cost of air ambulance that transported KEVIN to Winnipeg on September 30, 2011:                       | <u>\$ 21,000.00</u> |

<b>TOTAL:</b>	<b><u>\$435,000.00</u></b>
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43. **THAT** the Plaintiffs reserve their rights to claim additional damages pursuant to Article 1615 C.C.Q. if the course of KEVIN's physical condition cannot be determined with sufficient precision at the time of judgment;

**VII. Security for costs**

44. **THAT** the Plaintiffs, who are non-residents of Quebec, are spending their limited financial resources in order to provide KEVIN with as much care and treatment as possible, however they do not have sufficient resources to provide KEVIN with all of the care and treatment from which he might benefit;
45. **THAT** Kevin is not earning any income, and has no capacity to do so;
46. **THAT** if the Plaintiffs are required to furnish security for costs, they will have to do so at the expense of providing KEVIN with additional care and treatment;
47. **THAT** it would accordingly be manifestly unjust and unduly harsh for the Defendant to require the Plaintiffs to furnish security for costs;
48. **THAT** if the Defendant nevertheless requires security for costs, the Plaintiffs respectfully suggest that a nominal amount of \$500 is appropriate, in order to enable KEVIN and his family to seek justice before the Courts;
49. **THAT** the present Motion to Institute Proceedings is well-founded in fact and in law;

**WHEREFORE THE PLAINTIFFS PRAY FOR JUDGMENT OF THIS HONOURABLE COURT:**

**MAINTAINING** the present Motion to Institute Proceedings;

**CONDEMNING** the Defendant Bishop's University to pay to Plaintiff Kevin Kwasny the sum of \$8,400,000.00, plus interest and the additional indemnity provided by law;

**CONDEMNING** the Defendant Bishop's University to pay to Plaintiff Gregg Kwasny the sum of \$500,000.00, plus interest and the additional indemnity provided by law;

**CONDEMNING** the Defendant Bishop's University to pay to Plaintiff Geraldine Kwasny the sum of \$435,000.00, plus interest and the additional indemnity provided by law;



**RESERVING** the rights of the Plaintiffs to claim additional damages pursuant to Article 1615 C.C.Q. if the course of Kevin Kwasny's physical condition cannot be determined with sufficient precision at the time of judgment;

**THE WHOLE WITH COSTS**, including the costs of all exhibits, experts and expertise.

**MONTREAL**, September 4, 2014.

*Kugler Kandestin, LLP*

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**KUGLER KANDESTIN, LLP**

Attorneys for Plaintiffs