

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JEROME EDWARD BOYLE

Plaintiff

-and-

**WILLIAM HODGSON MARSHALL,
THE BASILIAN FATHERS OF TORONTO,
THE WINDSOR-ESSEX CATHOLIC DISTRICT SCHOOL BOARD,
THE ROMAN CATHOLIC EPISCOPAL CORPORATION
OF THE DIOCESE OF LONDON,
and BISHOP RONALD PETER FABBRO**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for service and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: NOV 22 2011

Issued by

JAN CAVERZAN
JAN CAVERZAN

Registrar,
 Ontario Superior Court of Justice
 Windsor Court House
 245 Windsor Avenue
 Windsor, ON N9A 1J2

TO: **William Hodgson Marshall**
 c/o 95 St. Joseph Street
 Toronto, ON M5S 3C2

AND TO: **The Basilian Fathers of Toronto**
 95 St. Joseph Street
 Toronto, ON M5S 3C2

AND TO: **The Windsor-Essex Catholic District School Board**
 1325 California Ave.
 Windsor, ON N9B 3Y6

AND TO: **The Roman Catholic Episcopal Corporation of The Diocese of London in Ontario**
 1070 Waterloo Street
 London, ON N6A 3Y2

AND TO: **Bishop Ronald Peter Fabbro**
 90 Central Street
 London, ON N6A 1M4

CLAIM

The Plaintiff claims:

1. The plaintiff claims damages as follows:
 - a) non-pecuniary damages for pain and suffering in the amount of \$300,000.00;
 - b) past and future pecuniary damages estimated in the amount of \$1,500,000.00;
 - c) special damages in the amount of \$100,000.00;
 - d) damages for mental and emotional distress in the amount of \$50,000;
 - e) aggravated damages in the amount of \$50,000.00
 - f) punitive and exemplary damages in the amount of \$1,000,000.00;
 - g) pre-judgment and post-judgment interest on the above-noted amounts pursuant to the terms and provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - h) his costs of this action on a substantial indemnity basis; and
 - i) such further and other relief as to this Honourable Court may seem to be as just.

Parties:

2. The plaintiff, Jerome Edward Boyle (the "Plaintiff"), was born on June 21, 1940 and presently resides in the City of Cambridge, in the Province of Ontario.

3. The Plaintiff was at all material times, a member of the Roman Catholic Church through the defendant, the Roman Catholic Episcopal Corporation of The Diocese of London in Ontario (the "Diocese"). Specifically, the Plaintiff was a member of Sacred Heart parish and a student at Assumption High School (the "School") all of which were located in Windsor, Ontario.

4. The defendant, William Hodgson Marshall ("Marshall"), is presently incarcerated in the Province of Ontario and was during all material times a priest of the Roman Catholic Church and was employed by the Basilian Fathers of Toronto (the "Basilians"). Marshall was also, for the majority of the material time, a priest and teacher at the School and thereby was also employed by a predecessor to The Windsor-Essex Catholic District School Board (the "School Board").

5. The Basilians is a non-profit or non-share corporation, incorporated on April 27, 1927. It is a legally incorporated subunit of The Congregation of St. Basil which is a religious order whose members are Roman Catholic priests whose first work and ministry is that of Catholic education through teaching. The Basilians also legally absorbed the assets and liabilities of the Basilian Fathers of Sudbury which was a non-profit or non-share capital corporation which was incorporated on September 15, 1953 and ceased to exist as of September 3, 1994.

6. The Windsor-Essex Catholic District School Board (the "School Board") is a public organization charged with the administration of schools within its jurisdiction pursuant to the *Education Act*, R.S.O. 1990, c. E.2 having its head office in the City of Windsor,

in the Province of Ontario. At all material times the School Board was responsible for, *inter alia*, the training, supervision and discipline of its teachers at the Schools. At all material times the School Board was responsible for, *inter alia*, the teaching and safety of students. The School Board is legally responsible for the liabilities of its predecessor Boards which includes the Board responsible for the School at the material time.

7. The Diocese is a diocese of the Roman Catholic Church charged with the administration of parishes of the Roman Catholic Church within their geographical jurisdiction, being South-western Ontario. The Diocese head office is located in the City of London in the Province of Ontario.

8. The defendant, Bishop Ronald Peter Fabbro (the "Bishop") was professed to the Basilians in 1975 and was ordained a priest on May 3, 1980. From 1997 to 2002 he was the Superior General of the Basilians. He was ordained as a Bishop of the Diocese on August 15, 2002 and presently holds that appointment and resides in the City of London, in the Province of Ontario.

The Actions of Marshall

9. In 1951 Marshall was ordained to the priesthood by the Basilians following their recruitment, selection and training of him. He was immediately posted to ministry as a priest and teacher at St. Michael's College in Toronto. In 1954 he was transferred to the School.

10. In or about September 1954 the Plaintiff met Marshall through the School where he attended as a student. Marshall was one of the priests on staff, acting as a priest, teacher and coach.
11. Marshall engaged in activities with the Plaintiff in his capacity as a priest, teacher and coach counselling him with respect to mathematics, physical education, religion, and other matters. His activities included instructing class, supervising physical education, providing religious and moral guidance and generally mentoring the young catholic students.
12. Through his position as a priest and teacher, Marshall was to the Plaintiff the ultimate ecclesiastical and educational authority.
13. Marshall used his position as a priest and teacher, which were positions of authority and trust, to develop a close personal relationship with the Plaintiff when he was young. The relationship that Marshall developed with the Plaintiff, under the guise of a priest-parishioner and/or student-teacher relationship, allowed Marshall an opportunity to be alone with the Plaintiff and to exert total control over him, prey upon him and sexually abuse him.
14. Commencing in approximately September 1954, when the Plaintiff, was 14 years old and on many occasions over the following two school years, Marshall sexually abused, assaulted and molested the Plaintiff. The particulars of same are as follows:

- a) Marshall fondled the clothed body of the Plaintiff, including but not limited to his penis, scrotum and buttocks;
- b) Marshall fondled the naked body of the Plaintiff, including but not limited to his penis, scrotum and buttocks;
- c) Marshall engaged in other sexual activities with the Plaintiff;
- d) In order to facilitate the abuse Marshall engaged in a pattern of behaviour which was intended to make the Plaintiff feel that he was special in the eyes of Marshall, the Church and God; and
- e) In order to facilitate the abuses Marshall also engaged in a pattern of behaviour which was intended to make the Plaintiff feel that his soul was in jeopardy.

15. As a result of Marshall's actions, the Plaintiff intentionally failed Grade 11 at the School so that he could transfer to another school in order to avoid Marshall and the sexual abuse. The Plaintiff was an exceptional student prior to Marshall abusing him.

16. The aforementioned behaviours occurred on premises, which were owned or controlled by the School, the Basilians and/or the Diocese, specifically being the classrooms and showers of the School and the residence of Marshall at the School.

17. The aforementioned behaviour occurred on a repeated basis. All of the aforementioned behaviours were related to priest/parishioner and/or student-teacher activities.

18. Throughout the period of time that the aforementioned behaviour was occurring, Marshall used his position of authority and trust, as well as the dependency relationship that he had fostered with the Plaintiff, to ensure that the Plaintiff did not tell anyone about the behaviours they had engaged in. Marshall continued to minister and teach the Plaintiff during this time.

19. In 2011 Marshall was convicted with respect to his abuse of the Plaintiff and other misconduct similar to the aforementioned behaviour with 15 other victims. Marshall received a two year sentence.

20. Marshall's behaviour constituted sexual abuse and assault. It was also a breach of the duty of care that he owed to the Plaintiff in that, *inter alia*, he did wilfully and/or negligently inflict pain and suffering, mental suffering, humiliation and degradation upon the Plaintiff, assaulted the Plaintiff and interfered with his normal upbringing and childhood solely for the purpose of his own gratification.

The Actions of the Basilians

21. The Basilians taught the Plaintiff as well as other members of the Catholic Church the following:

- a) that the Roman Catholic Church is the one true religion and is the representation of God's true teachings on earth;
- b) that the authority of the Roman Catholic Church is supreme;

- c) that by following the rules, principles and ideologies of the Roman Catholic Church one will gain the right to go to Heaven and that by failing to follow same one will not go to Heaven and will go to Hell;
- d) that parents must bring their children up in the ways of the Roman Catholic Church and that children must attend at Catholic schools so that they can be educated with respect to the ways of the Church;
- e) that you must go to church at least once a week and attend Catholic schools where the rules, principles and ideologies of the Roman Catholic Church and religion are taught;
- f) that the rule of God is supreme and that to disobey the rule of God is a mortal sin which will cause one to go to Hell;
- g) that God's representation on earth and the teaching of God are done through priests;
- h) that priests are the chosen representatives on earth of God and have special powers; and
- i) that priests are to be viewed with special reverence, power, respect, honour and authority.

22. The Basilians employed Marshall to carry out the purposes and teachings referred to above in dealing with the Plaintiff. They provided Marshall with the opportunity and means to come into contact with the Plaintiff. They fostered a relationship between Marshall and the Plaintiff. They provided Marshall with a position of respect and trust which the Plaintiff was bound by the rules set out above to follow and honour. They

provided Marshall with authority at the School and access to its students and facilities which further added to his position of power and respect.

23. The Plaintiff pleads that, at all material times, Marshall was acting in the course of his duties as a priest of the Roman Catholic Church and specifically one whose ministry is that of education, and was using the aforementioned authority, rules, principles and ideologies to further his attempts to manipulate the Plaintiff and engage in deviant activities.

24. The Plaintiff pleads that the aforementioned authority, rules, principals and ideologies of the Basilians created an opportunity for Marshall, to exert power and authority over the Plaintiff. This power and authority allowed Marshall, to engage in the aforementioned behaviour and to continue to engage in same without resistance or question of the Plaintiff without risk of getting caught and thereby put the Plaintiff at risk of being abused by Marshall.

25. The Plaintiff pleads that Marshall was, as a result of his position with the Basilians, which allowed him to access the School and to gain access to the Plaintiff affording him an opportunity to foster a trusting relationship with the Plaintiff and engage in the aforementioned behaviours for a considerable period of time without getting caught and thereby put the Plaintiff at risk of being abused by Marshall.

26. As a result, the Basilians are vicariously responsible and liable for the actions of Marshall.

27. The Plaintiff pleads that the Basilians was negligent and failed in it's duty to the Plaintiff, the particulars of which are set out below:

- a) it failed to recognize that a certain percentage of the priests would become sexually deviant and would make sexual advances to young persons;
- b) it failed to instruct priests in training and ordained priests about the possibilities of becoming sexually deviant and/or making advances to young persons;
- c) it failed to properly investigate Marshall's background, character and psychological state prior to accepting him into the seminary and later the priesthood;
- d) it failed to document, discipline or expel Marshall for his shortcomings as a seminarian;
- e) it failed to follow its own internal policies in ordaining Marshall to the priesthood;
- f) it failed to warn Marshall's immediate supervisors, parishioners, students and others who may come into contact with Marshall of his difficulties as a seminarian;
- g) it failed to educate members of the Roman Catholic Church about the possibilities of such deviant behaviours;
- h) it failed to have any, or a proper, system of self-reporting, other-reporting or counselling in place for priests who engage in such behaviour;

- i) it fostered a system, based on the rules, principles and ideologies of the church, in which deviant sexual practices were bound to develop among a percentage of the priests;
- j) it fostered a system, based on the rules, principles and ideologies of the church, in particular, the rule that priests have absolute authority, whereby the reporting of such deviant sexual behaviour of a priest by its members would be considered to be "wrong";
- k) it denied the existence, or alternatively was wilfully blind to the existence of the behaviours described herein;
- l) it implemented and maintained a system which was designed to cover-up the existence of such behaviour if such behaviour was ever reported;
- m) it failed to protect the Plaintiff from Marshall when it knew or ought to have known that he was vulnerable to the attentions and influence of Marshall;
- n) it failed to properly supervise, control and give guidance to its employee Marshall;
- o) it failed to screen and/or monitor the character, sexual orientation and sexual activity of Marshall;
- p) it failed to warn the Plaintiff and others of the propensities of Marshall;
- q) it failed to remove Marshall from his duties upon learning of the allegations of sexual and other inappropriate conduct thereby leaving the Plaintiff exposed to Marshall and his actions without protection;
- r) it failed to protect the Plaintiff;

- s) it failed to take steps to investigate the activities of Marshall once it was fully aware of his shortcomings in an effort to locate and assist any victims; and
- t) it failed to identify, counsel and assist the Plaintiff once it knew of Marshall's prior behaviour.

28. In addition to, and in the alternative to, the above the Plaintiff pleads that the Basilians knew that Marshall had the propensity to engage in such deviant behaviours and that he was, in fact, engaging in such deviant behaviour because of the following:

- a) Marshall's difficulties as a seminarian;
- b) Marshall's difficulties with alcohol;
- c) Marshall's difficulties with his sexuality;
- d) The state of Marshall's emotional, psychological and physical health;
- e) The concerns of other clergy, parishioners, students and others;
- f) The frequency with which the Plaintiff and other young males were involved with Marshall;
- g) The unusual interest that Marshall took in young males, particularly the Plaintiff;
- h) The duration of time in which the Plaintiff and other young males spent regular time alone with Marshall;
- i) The fact that parents and/or staff at Marshall's previous posting had complained about his actions with young males;

- j) The fact that Marshall had been reported to Basilian officials for sexual misconduct;
- k) The fact that other Basilian priests at the School witnessed Marshall in sexually situations with the Plaintiff and others; and
- l) The fact that Marshall would have, in accordance with the rules of the Roman Catholic Church, confessed about these deviant sexual behaviours (i.e. sins) from time to time to one or more of the other Basilian priests.

29. Despite its knowledge of same, the Basilians took no steps to stop the behaviour or to protect the Plaintiff and, instead, took steps to attempt to cover-up the behaviour.

30. In the alternative, if the Basilians did not have direct knowledge of the aforementioned behaviours, the Plaintiff pleads that the Basilians ought to have known about same because of the circumstances, as detailed above, surrounding the acts.

31. If the Basilians did not know of the aforementioned behaviour, it was because of the existence of its own rules, principles and ideologies which allowed Marshall to conceal his activities and cover up his deviant behaviour.

32. The Plaintiff pleads that the Basilians and their Superiors owed a special duty to the Plaintiff by virtue of their relationship with him to identify the Plaintiff and counsel and render assistance to the Plaintiff once they became aware of the behaviour of

Marshall. Furthermore, they should have sought out Marshall's victims upon learning of his prolific sexual activities following specific allegations brought forward in or about 1998 by another victim. Finally, following the 2009 charges against Marshall they effectively did nothing to identify and assist victims.

33. The Basilians knew or ought to have known that Marshall had engaged in deviant behaviour while ministering and failed to investigate such. In failing to investigate and identify any past failings of Marshall, they also failed to identify any victims who may have been in need of counselling, assistance and support because of the actions of Marshall. Such assistance would be necessary in order to minimize the consequences of Marshall's actions and the effect of same on the Plaintiff. They have failed, to this day, to investigate the extent of Marshall's past behaviour and have failed to render any meaningful assistance to the Plaintiff, contrary to their own internal policies and the policies of the Canadian Catholic Conference of Bishops.

34. The Plaintiff states that the relationship between him, the Basilians and Marshall commenced when the Plaintiff was a young person, as such, the defendants owed to the Plaintiff a high duty/standard of care and, in particular, a duty to protect him from harm by its employees (i.e. priests) and specifically sexual abuse.

35. The Plaintiff says that the Basilians, for the aforementioned reasons, failed in their duty of care to him and were thereby negligent.

36. In addition to the above and in the alternative, the Basilians were in partnership with the School Board and the Diocese in the establishment and operation of the School during the material time and thereby share in the Boards liability as per the pleadings below in paragraph 37-45.

The Actions of the School Board

37. The School Board appointed and employed Marshall as a teacher and priest at the School.

38. The School Board encouraged the teachings outlined in paragraph 21 above.

39. The School Board employed Marshall to carry out the purposes and teachings referred to above in dealing with the Plaintiff. It provided Marshall with the opportunity and means to come into contact with the Plaintiff. It fostered a relationship between Marshall and the Plaintiff. It provided Marshall with a position of respect and trust which the Plaintiff was bound by the rules set out above to follow and honour. It provided Marshall with authority at the Schools and access to their students and facilities which further added to his position of power and respect.

40. The Plaintiff pleads that, at all material times, Marshall was acting in the course of his duties as a priest and teacher and was using the aforementioned authority, rules, principles and ideologies to further his attempts to manipulate the Plaintiff and engage in deviant activities.

41. The Plaintiff pleads that the aforementioned rules, principles and ideologies encouraged by the School Board created an opportunity for Marshall to exert power and authority over the Plaintiff. This power and authority allowed Marshall to engage in the aforementioned behaviour and to continue to engage in same without resistance or question of the Plaintiff without risk of getting caught and thereby put the Plaintiff at risk of being abused by Marshall.

42. The Plaintiff pleads that Marshall was, as a result of his position with the School Board which allowed him to use the premises owned by the School Board where the aforementioned behaviours and activities occurred and to gain access to the Plaintiff, afforded an opportunity to foster a trusting relationship with the Plaintiff and engage in the aforementioned behaviours for a considerable period of time without getting caught and thereby put the Plaintiff at risk of being abused by Marshall.

43. As a result, the School Board is vicariously responsible and liable for the actions of Marshall.

44. The Plaintiff pleads that the School Board was also negligent and failed in its duty to the Plaintiff, the particulars of which are set out below:

- a) it appointed Marshall as a teacher and priest at the School without having undertaken any investigation or having in place any method of investigation of his sexual propensities or propensity to assault young person or to act in disregard of the well being of young people;

- b) having appointed him, it did not supervise his behaviour nor conduct any investigations of his behaviour on an ongoing basis, or after allegations of inappropriate behaviours were made to it;
- c) its teachers and other staff failed to react appropriately to information or knowledge they had concerning Marshall's inappropriate behaviours with male students both on and off the school grounds;
- d) it taught and caused to be taught to its students, including the Plaintiff, that they should trust, obey and not question the actions of priests and teachers in general and Marshall in particular;
- e) it encouraged or permitted the Plaintiff, a minor, to attend with Marshall on its property without additional supervision and even allowed Marshall to take the Plaintiff into the priest's residence area;
- f) it failed to supervise properly, or at all, the conduct of its employees on their property, and in particular the conduct of Marshall;
- g) it failed to teach the Plaintiff or any of its children the fallibility of priests;
- h) it failed to allow an atmosphere that would permit the disclosure of inappropriate or sexual assaults by priests in general and Marshall;
- i) it knew or ought to have known that Marshall was or might be assaulting the Plaintiff and failed to take any steps to prevent such assaults;
- j) it failed to supervise properly, or at all, the conduct of Marshall;
- k) it fostered a system based on the rules, principles and ideologies of the church, in particular, the rule that priests have absolute authority, whereby reporting of such deviant sexual behaviour by a priest would be considered "wrong";

- l) it denied the existence, or alternatively were wilfully blind to the existence of sexual abuse when the sexual abuse was reported;
- m) it perpetuated a system which was designed to cover-up the existence of sexual abuse if the sexual abuse was ever reported;
- n) it failed to screen and/or monitor the character and sexual activity of Marshall;
- o) it failed to monitor, train and/or discipline its employees including its teachers about granting Marshall unsupervised access to its students; and
- p) it failed to monitor, train and/or discipline its employees including its teachers, about sending its students off school premises to attend with Marshall without any School Board personnel supervision.

45. The Plaintiff says that the School Board, for the aforementioned reasons, failed in their duty of care to him and were thereby negligent.

46. In addition to the above and in the alternative, the School Board was in partnership with the Basilians and the Diocese in the establishment and operation of the School during the material time and thereby share in the Basilian's liability as per the pleadings above in paragraph 21-36.

The Actions of the Diocese

47. The Diocese encouraged the teachings outlined in paragraph 21 above.

48. The Plaintiff was, during the material time, a member of Sacred Heart parish, a parish of the Diocese. He attended there for amongst other things spiritual and moral guidance.

49. During the time in which the abuse was occurring, the Plaintiff spoke with Monsignor Dillon ("Dillon"), a priest and employee of the Diocese who was the pastor of Sacred Heart parish. The Plaintiff disclosed to Dillon that he was being abused by a Roman Catholic priest to which Dillon condemned rather than aided the young Plaintiff. The Plaintiff was emotionally and psychologically unable to disclose the abuse to anyone else for years as a result of Dillon's behaviour, thereby aggravating his damages and prolonging his healing.

50. As a priest and employee of the Diocese, Dillon was required pursuant to the Diocese's own internal procedures and rules, to report allegations of sexual abuse of a minor by a priest, or at the minimum to encourage the Plaintiff to report such crimes to others, religious or secular authorities.

51. Dillon did not report the allegation or investigate the matter further, nor did he encourage the Plaintiff to do so. Dillon also failed to provide spiritual or pastoral care to the ailing Plaintiff. Dillon's response was designed to deter the Plaintiff from disclosing this information further and was pursuant to a culture of secrecy and silence in the Diocese and the greater Roman Catholic Church concerning matters of priestly misconduct.

52. Accordingly Dillon's actions were negligent, in that he breached his standard of care to a young parishioner. Furthermore Dillon as a pastor to a parishioner failed in his fiduciary duty to the Plaintiff and also breached such a duty. The Diocese as Dillon's employer is vicariously liable for these failings which were carried out while Dillon was their employee functioning in his employment role as a pastor of the parish.

53. In addition to the above and in the alternative, the Diocese was in partnership with the Basilians and the School Board in the establishment and operation of the School during the material time and thereby share in the Basilians' and the School Boards' liability as per the pleadings above in paragraphs 21-36 and 37-45.

Actions of Fabbro

54. In or about 1998, Fabbro as the then Superior of the Basilians, learned of allegations of sexual abuse made against Marshall. This allegation was corroborated by other allegations made against Marshall which the Basilians were aware of earlier. In response to these allegations Fabbro took steps which failed to meet the standard of care required of him, and was thereby negligent, in that he knew or ought to have known that such actions would cause harm to other victims, such as the Plaintiff.

The particulars of Fabbro's negligent actions include, but are not limited to the following:

- (a) failed to inform, communicate with, or coordinate with the Children's Aid Society regarding these allegations as he was statutorily required to do;

- (b) failed to conduct a full and proper investigation, and if feasible take ecclesiastical action against Marshall, as he was required to do pursuant to Canon Law and other internal procedures of the Basilians;
- (c) failed to inform, communicate with, or coordinate with the secular police authorities with respect to the serious allegations made against Marshall in 1998, nor did he encourage, support or inform the victim at that time to do so;
- (d) during the 2009 criminal investigation and prosecution of Marshall, he failed to cooperate and coordinate with the secular police, specifically, he failed to inform them of the extent of his personal and corporate knowledge of the matter;
- (e) at the time of the 1998 allegation to the Basilians against Marshall he failed to inform the victim at that time that the Basilians had received at least one prior complaint of a similar nature, thereby denying the victim the credibility to seek further justice and/or healing and thereby denying the Plaintiff the opportunity for earlier justice and healing himself; and
- (f) failed to implement during his time as Superior, a plan to provide pastoral and/or psychological care to Marshall's victims, knowing that such victims likely existed and would require such care.

55. The abovementioned actions and omissions of Fabbro listed in paragraph 54, also constitute misprision of felony, in that he, while in a special position of authority and responsibility, failed to report his knowledge of the wrongful actions of Marshall to the appropriate authorities. The Plaintiff suffered damages as a result of said misprision.

56. Fabbro's tortious actions were not the result of any compulsion of duty to the Basilians nor were they bona fide within the proper scope of his authority, thereby eliminating any protection the Basilian corporate veil may offer him.

Damages:

57. The Plaintiff states, and the fact is, that as a direct result of the behaviour of the defendants he has suffered damages and losses the particulars of which are as follows:

- a) physical pain;
- b) mental anguish;
- c) nervous shock, humiliation, degradation;
- d) loss of enjoyment of faith;
- e) loss of religious life/beliefs;
- f) impairment of his opportunity to experience a normal adolescence and adulthood;
- g) impairment of his ability and opportunity to obtain and complete an education appropriate to his abilities/aptitude;
- h) impairment of his ability to earn an income and support himself and time off work due to emotional trauma;
- i) impairment of his physical health, mental health and emotional well being;
- j) depression and anxiety;
- k) symptoms of post traumatic stress disorder; and
- l) a loss of enjoyment of life.

58. The Plaintiff has suffered and will continue to suffer physical, emotional and mental pain and suffering and a loss of enjoyment of life. The Plaintiff was deprived of a normal healthy adolescence as a result of the actions or in-actions of the defendants. The life of the Plaintiff was fundamentally and forever changed by the above-noted behaviour.

59. The Plaintiff was so profoundly negatively affected by these behaviours and activities that he spent many of the formative years of his life struggling to deal with the physical, mental, psychological and emotional sequelae of these events. The Plaintiff has suffered the following:

- a) poor performance in school;
- b) inability to develop and engage in normal human relations, including severe difficulty in establishing relationships of intimacy;
- c) mistrust of authority figures;
- d) depressive disorder;
- e) alcohol misuse and abuse;
- f) anxiety and paranoia;
- g) general social phobia;
- h) personality disorder;
- i) sleep disorders with traumatic nightmares; and
- j) a propensity to engage in reckless and careless behaviour.

60. The Plaintiff has suffered a tremendous loss of enjoyment of life and ongoing pain and suffering. His ability to carry on in a normal life has been extinguished or impaired.

61. The Plaintiff has suffered physical, mental, psychological and emotional stress, shock and suffering which will continue forever.

62. The Plaintiff has been required to undergo medical treatment and psychological counselling and will continue to require same indefinitely throughout his lifetime.

63. The Plaintiff has sustained out-of-pocket expenses the particulars of which will be provided prior to the trial of the within action.

64. The Plaintiff has suffered and will continue to suffer economic losses, including, past income loss, future and ongoing income loss, and various other out-of-pocket expenses the particulars of which will be provided.

65. The Plaintiff pleads that the conduct of Marshall described herein was harsh, high-handed, and malicious and, as such, should be punished with aggravated and/or punitive damages. Furthermore due to the complicity of the Basilians and the School Board, they will be vicariously liable for such damages.

66. The Plaintiff further pleads that the conduct of the Basilians described herein was harsh, high-handed, and malicious and, as such, should be punished with aggravated

and/or punitive damages, including but not limited to:

- a) failing to appropriately react to reports of Marshall's sexual misconduct and instead transferring him to new postings where further unsuspecting victims awaited;
- b) consciously and deliberately suppressing information concerning his sexual misconduct in an effort to protect the reputation of the Basilians over the safety of children; and
- c) promoting a culture of secrecy with respect to the sexual misconduct of clergy which was intended to benefit the Basilians rather than stop the misconduct or assist the victims.

67. The Plaintiff has only recently been able to face these effects and still to this day has not fully realized the extent of his victimization. The Plaintiff became sufficiently capable of appreciating the impact of Marshall's actions in late 2010 and relies upon the principle of discoverability. Prior to this time the Plaintiff was incapable of proceeding due to the mental and psychological impact of the abuse.

68. With respect to the breach of fiduciary duty to which the Diocese is vicariously liable, the Plaintiff relies upon the doctrine of fraudulent concealment. The parties were in a special relationship with each other, and given that relationship, the abovementioned actions of Dillon and the Diocese amount to an unconscionable thing. Both Dillon and the Diocese conducted themselves in a manner so as to mask the wrongful nature of their actions and have thereby prevented the Plaintiff from realizing

the wrongful nature of their actions and commencing an action earlier. With respect to this particular loss the Plaintiff claims, in the alternative to damages, compensation.

69. The Plaintiff relies on the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, and the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, the *Victims Bill of Rights*, 1995, S.O. 1995, c.6, the *Education Act*, R.S.O. 1990, c.E2 and the *Limitations Act 2002*, S.O. 2002, c.24 Schedule B, and any and all predecessor legislation.

70. The Plaintiff also relies upon the 1917 Code of Canon law and the 1983 Code of Canon Law and related canonical and papal pronouncements as the internal policies and procedures of the Basilians and Diocese.

71. The Plaintiff proposes that this action be tried in the City of Windsor, in Essex County.

Date of Issue:

R.P.M. TALACH (LSUC# 45130J)
Ledroit Beckett
Litigation Lawyers
630 Richmond Street
London ON N6A 3G6
Tel: (519) 673-4994
Fax: (519) 432-1660

Solicitors for the Plaintiff

BOYLE

-- and --

W H MARSHALL ET AL

Cv-11-17116

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

STATEMENT OF CLAIM

LEDROIT BECKETT
Litigation Lawyers
630 Richmond Street
London ON N6A 3G6

R.P.M. Talach (LSUC #45130J)

Tel: (519) 673-4994

Fax: (519) 432-1660

E-Mail: rtalach@ledroitbeckett.com

Solicitors for the Plaintiff

RPT/ci

File No. 100657

ONTARIO
SUPERIOR COURT OF JUSTICE

Court file number

Cv-11-17116

BETWEEN:

JEROME EDWARD BOYLE

Plaintiff

-and-

WILLIAM HODGSON MARSHALL,
THE BASILIAN FATHERS OF TORONTO,
THE WINDSOR-ESSEX CATHOLIC DISTRICT SCHOOL BOARD, THE
ROMAN CATHOLIC EPISCOPAL CORPORATION
OF THE DIOCESE OF LONDON,
and BISHOP RONALD PETER FABBRO

Defendants

INFORMATION FOR COURT USE

This proceeding is an:

☒ action

☐ application

Has it been commenced under the Class Proceedings Act, 1992?

☐ yes

☒ no

(If the proceeding is an action, answer all of the following:)

If the proceeding is an action, does Rule 76 (Simplified Procedure) apply?

☐ yes

☒ no

Note: Subject to the exceptions found in subrule 76.01(1), it is MANDATORY to proceed under Rule 76 for all cases in which the money amount claimed or the value of real or personal property claimed is \$100,000 or less

The claim in this proceeding (action or application) is in respect of:

(Select the one item that best describes the nature of the main claim in the proceeding.)

Bankruptcy or insolvency law	<input type="checkbox"/>	Motor Vehicle accident	<input type="checkbox"/>
Collection of liquidated debt	<input type="checkbox"/>	Municipal law	<input type="checkbox"/>
Constitutional law	<input type="checkbox"/>	Partnership law	<input type="checkbox"/>
Construction law (other than construction lien)	<input type="checkbox"/>	Personal Property Security	<input type="checkbox"/>
Construction lien	<input type="checkbox"/>	Product liability	<input type="checkbox"/>
Contract law	<input type="checkbox"/>	Professional malpractice (other than medical)	<input type="checkbox"/>
Corporate law	<input type="checkbox"/>	Real property (including leases, excluding mortgage or charge)	<input type="checkbox"/>
Defamation	<input type="checkbox"/>	Tort: economic injury (other than from medical or professional malpractice)	<input type="checkbox"/>
Employment or labour law	<input type="checkbox"/>	Tort: personal injury (other than motor vehicle accident)	<input checked="" type="checkbox"/>
Intellectual property law	<input type="checkbox"/>	Trusts, fiduciary duty	<input type="checkbox"/>
Judicial review	<input type="checkbox"/>	Wills, estates	<input type="checkbox"/>
Medical Malpractice	<input type="checkbox"/>		
Mortgage or charge	<input type="checkbox"/>		

CERTIFICATION

I certify that the above information is correct, to the best of my knowledge.

Date: November 17, 2011

Signature of lawyer

Court File No.

CV-11-17116

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

JEROME EDWARD BOYLE

Plaintiff

-and-

**WILLIAM HODGSON MARSHALL,
THE BASILIAN FATHERS OF TORONTO,
THE WINDSOR-ESSEX CATHOLIC DISTRICT SCHOOL BOARD,
THE ROMAN CATHOLIC EPISCOPAL CORPORATION
OF THE DIOCESE OF LONDON,
and BISHOP RONALD PETER FABBRO**

Defendants

JURY NOTICE

TAKE NOTICE that the Plaintiff requires that this action be tried by a Jury.

DATE: November 17, 2011

R.P.M. TALACH (LSUC# 45130J)
Ledroit Beckett
Litigation Lawyers
630 Richmond Street
London ON N6A 3G6
Tel: (519) 673-4994
Fax: (519) 432-1660

Solicitors for the Plaintiff

TO: **William Hodgson Marshall**
c/o 95 St. Joseph Street
Toronto, ON M5S 3C2

AND TO: **The Basilian Fathers of Toronto**
95 St. Joseph Street
Toronto, ON M5S 3C2

AND TO: **The Windsor-Essex Catholic District School Board**
1325 California Ave.
Windsor, ON N9B 3Y6

AND TO: **The Roman Catholic Episcopal
Corporation of The Diocese of
London in Ontario**
1070 Waterloo Street
London, ON N6A 3Y2

AND TO: **Bishop Ronald Peter Fabbro**
90 Central Street
London, ON N6A 1M4

BOYLE

- and -

W H MARSHALL ET AL

Case No. 17116

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Windsor

JURY NOTICE

LEDROIT BECKETT
Litigation Lawyers
630 Richmond Street
London ON N6A 3G6

R.P.M. Talach (LSUC #45130J)

Tel: (519) 673-4994

Fax: (519) 432-1660

E-Mail: rtalach@ledroitbeckett.com

Solicitors for the Plaintiff

RPT/ci

File No. 100657