

Court File No.: CV-11-432350

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KENNETH HILLS

Plaintiff

and

THE CONGREGATION OF SAINT BASIL and FATHER WILLIAM  
HODGSON MARSHALL

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 plaintiffs' lawyer or, where the plaintiffs do 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 serving 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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed

by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs.

Date: August 8, 2011. Issued by: S. D. Souza  
Local Registrar

Address of 393 University Avenue, 10th Fl.  
Court Office: Toronto, ON  
M5G 1E6

TO:

The Congregation of Saint Basil,  
95 St. Joseph Street,  
Toronto, Ontario  
M5S 3C2

AND TO:

William Hodgson Marshall  
Attention Offender: William Hodgson Marshall  
Correction Services of Canada  
Regional Headquarters Ontario  
440 King Street West, PO Box 1174,  
Kingston, Ontario  
K7L 4Y8

## CLAIM

1. The Plaintiff claims:
  - (a) General damages for pain and suffering in the amount of \$300,000.00;
  - (b) Special damages in the amount of \$1,500,000.00;
  - (c) Aggravated damages in the amount of \$250,000.00;
  - (d) Pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C43 as amended;
  - (e) Costs of this action on a solicitor and client basis pursuant to the Victim's bill of Rights, 1995, S.O. 1995, ch. 6 plus Goods and Services Tax pursuant to the *Excise Act*, R.S.C. 1985, c.E-15 as amended; and
  - (f) Such further and other relief as counsel may advise and as this Honourable Court may deem just.
2. The Plaintiff, Kenneth Hills (hereinafter referred to as "Ken"), was born April 29, 1938. He is currently living in Guelph, Ontario.
3. The Defendant, the Congregation of St. Basil (hereinafter referred to as "CSB"), is a religious Order operating in, and under the laws of, Ontario that, at all material times, owned and operated St. Michael's College School located at 1515 Bathurst Street, Toronto, Ontario. CSB also had, at all material times, control and direction over the Defendant Father William Hodgson Marshall.
4. The Defendant Father William Hodgson Marshall (hereinafter referred to as "Marshall"), at all material times, belonged to or was otherwise directed by the Defendant CSB as a priest of the Order and in particular a priest and teacher at St. Michael's College School in Toronto.

## **THE FACTS**

5. Ken pleads that he was subjected to heinous sexual, physical, and emotional assaults at the hands of his priest, coach and teacher, the defendant Marshall, and that such assaults were allowed to commence and continue because of the negligence, breaches of fiduciary duties and/or breaches of non-delegable duties of the defendant, the CSB.

6. Ken was the youngest child born to a family of devout Catholics that cherished and celebrated their religious beliefs, so much so that, growing up, priests were consulted for any and all problems in the household. Mass was attended every week and Lent was fully participated in each day it lasted. With a deep sense of spiritual connection to his faith, Ken, as he grew up, weighed the priesthood as his calling in life.

7. Ken's father died when Ken was approximately 7 years old. Ken's mother was devoted and attentive to her children, however, lacking a male authority figure gave more reason for the family to involve and respect the authority of the Roman Catholic clergy.

8. In or around the fall, 1951, when Ken was approximately thirteen years old, Ken began high school at St. Michael's College School in Toronto, run by the CSB, as a day student. Ken had skipped a grade, hence his high school start at a younger than average age.

9. Ken participated in sports' teams at St. Michael's College. Marshall was also Ken's home league football and midget basketball coach at various times throughout high school.

10. In or around 1953, while on the midget basketball team, the defendant Marshall asked Ken to meet with him in the gym office of St. Michael's College school. There in the office, Marshall sexually assaulted Ken at least two separate times. The assaults consisted of wrestling Ken into submission and fondling Ken's genitals under his clothing.

11. The assaults continued over several weeks, in similar fashion, each assault in the same location.

12. Marshall maintained control over Ken and the situation by exploiting his position and authority and Ken's respect of the teachers and clergy. Marshall also specifically told Ken not to tell anyone of the sexual assaults.

13. In or around 1957, when Ken was approximately 19 years old, Ken felt a profound loss of spiritual direction. Ken joined the Basilians as a Novitate hoping to regain his spiritual life after the assaults by Marshall, however, he left after three days.

14. On June 9, 2011, Marshall was sentenced to two years in prison after pleading guilty to 17 counts of indecent assault, including assaults against Ken.

## THE DAMAGES

15. Ken pleads that the defendant Marshall's conduct and action in the circumstances caused him to develop certain psychological mechanisms in order to survive the trauma of sexual assault. These mechanisms include denial, repression, disassociation and guilt.

16. Ken states that the denial, self blame and disassociation associated with sexual abuse victims further barred any meaningful discovery of his injuries and/or the causal connection between later emerging injuries and the sexual assaults until only recently when he was able to begin to attribute his damages to the abuse, negligence and breaches of duty by the defendant Marshall and the defendant the CSB. As such, Ken states that he was incapable of appreciating that his rights and equity in law had been violated.

17. Ken states that as a result of the aforementioned sexual assaults, breaches and negligence by the defendants, he has experienced and will continue to experience psychological, physical and mental distress which include, *inter alia*:

- a. humiliation and indignity;
- b. impairment of his opportunity to experience a normal life;
- c. inability to trust others;
- d. low self-esteem and crisis in self-identity and sexuality;
- e. major depression;

- f. suicidal behaviour;
- g. anger and inability to control his anger;
- h. inability to concentrate;
- i. crisis of faith;
- j. sexual dysfunction;
- k. increased risk of cancer;
- l. inappropriate coping behaviours;
- m. panic attacks;
- n. flashbacks of the abuse;
- o. post-traumatic stress disorder;
- p. difficulty in developing and/or maintaining healthy and meaningful adult relationships;
- q. loss of control of his life;
- r. impairment of his mental health and well-being such that he has and will require medical treatment and counselling;
- s. delays in pursuit of meaningful educational or career opportunities;
- t. loss of income, loss of future income and loss of earning capacity;
- u. loss of enjoyment of life;
- v. loss of spiritual enhancement and enjoyment; and
- w. such further and other damages as may be advised prior to trial.

18. Ken states that he has suffered from the effects of the abuse to the extent that he has lost potential income as a result of being unable to function properly and has been unable to realize his career potentials.

19. Ken requires therapy and medical attention as a result of these damages.

20. Particulars of the actual pecuniary losses and special damages in connection with this claim will be provided during the course of this proceeding.

21. Ken states that his suffering as herein described was foreseeable by the defendants.

**THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT WILLIAM HODGSON MARSHALL FOR:**

22. Ken claims against the defendant Marshall for sexual assault, battery and infliction of mental distress, and breach of fiduciary duty.

23. As particularized above, Ken was repeatedly sexually assaulted and abused by his teacher and priest. Ken states that these injuries, losses, and damages were caused or contributed to by the wilful and intentional conduct of the defendant Marshall and that such conduct amounts to assaults and/or battery and/or intentional infliction of physical harm and emotional harm.



24. The sexual assaults and battery by the defendant Marshall occurred while Ken was in his care or under his control. Ken states that his teachers and priests were his caretakers when the sexual assaults and battery occurred and that Marshall was an authority figure and confidant to Ken. Ken states that Marshall knew or ought to have known that Ken would rely on him as an authority figure to give advice to him, to guide him, and to protect him from harm. Marshall knew or ought to have known that Ken would follow Marshall's instructions without resistance. Ken states that Marshall knew or ought to have known that he had Ken's absolute trust in all regards and that he would obey Marshall's instructions and follow his advice in all matters. As a result, Marshall took advantage of Ken's trust in the priest and sexually assaulted him for Marshall's own benefit and to the detriment of Ken's.

25. Ken states that his injuries, losses and damages were caused or contributed to by Marshall's *prima facie* breach of his fiduciary duties to Ken as a person standing *in loco parentis* to him.

**THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS THE CONGREGATION OF SAINT BASIL FOR:**

26. Ken claims against the defendant the Congregation of St. Basil for negligence, vicarious liability, breach of duty of care, breach of non-delegable duty and fiduciary duty owed to Ken and as a result of Marshall's sexual abuse of Ken at the school under the control of the CSB, while the defendant Marshall was a priest under the control of the CSB.

27. Ken states that his injuries, losses and damages were caused by or contributed to the negligence of the defendant the CSB and/or its agents, employees or servants. Particulars of such negligence include, but are not limited to, the following:

- (a) it failed to screen or inadequately screened Marshall's suitability as an agent, priest, and/or employee;
- (b) it failed to establish any or adequate protocols, policies, and regulations with respect to appropriate standards of conduct, supervision and control of its employees and agents, including Marshall;
- (c) it failed to exercise the degree of knowledge, skill, and diligence which it ought to have possessed and exercised on behalf of Ken and all other people regarding their supervision of Marshall;
- (d) it failed to ensure the safety of persons, including Ken, who turn to the Church and clergy for sanctuary and guidance;
- (e) it failed to protect Ken;
- (f) it failed to recognize, or inadequately recognized, the risk that Marshall posed to Ken and any other young males;

- (g) it failed to properly or adequately investigate allegations of abuse by many other former students and/or parishioners of Marshall's;
- (h) it failed to remove Marshall from situations in which he would come into contact with minors and youth after previous allegations of abuse were made by other students;
- (i) it failed to properly monitor Marshall after allegations of abuse were made by other students;
- (j) it failed to observe the damage occurring to Ken, at the hands of Marshall, and failed to take any adequate or timely steps to prevent further injury and damage;
- (k) it failed to take reasonable and appropriate steps, if any, to remove Marshall from a position in which he was a danger to Ken;
- (l) it failed to exercise the degree of knowledge, skill and diligence which it ought to have possessed and exercised on behalf of Ken regarding its supervision of its priests, Marshall and specifically, Marshall's dealings with minors, including Ken;
- (m) it knew or ought to have known that Marshall was a pedophile or a person with aberrant sexual tendencies who engaged in illegal and immoral sexual activities with young boys who attended St. Michael's College;

(n) it failed to recognize the risk to Ken inherent in having Marshall in the school;  
and

(o) it failed to remove Marshall from a position in which he was a danger to students,  
including Ken, in a timely, proper or adequate manner.

30. Ken states that defendant the CSB is vicariously liable for the conduct of Marshall and the injuries arising therefrom. Ken states that there is a significant connection between the conduct authorized by the defendant the CSB as the controlling agent of Marshall, as a priest and teacher, and the wrongs done by Marshall to Ken and that therefore, the defendant the CSB is vicariously liable for Marshall's sexual assaults, breaches of care, and breaches of fiduciary duty and assaults, as particularized above, and the injuries arising therefrom.

31. Ken further states that the vicarious liability of the defendant the CSB is indicated by such factors as, but not limited to, the following:

(a) it afforded Marshall the opportunity to abuse his power as the defendant the CSB encouraged a close personal relationship between priests and students in their care, including Ken;

(b) it created and fostered a relationship between itself and Ken that created intimacy between Ken and Marshall;

(c) it conferred power to Marshall over Ken as Ken was a student and Catholic.

31. Ken pleads that the defendant the CSB breached its non-delegable duties, including the duty to protect the best interests of Ken.

32. Ken states that the conduct of the defendants is morally reprehensible and was done with wanton, careless and wilful disregard for the consequences to Ken, and is conduct which should be deterred and he is therefore entitled to punitive, aggravated and exemplary damages.

33. The plaintiff pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1 and the *Occupier's Liability Act*, R.S.O., 1990.

The plaintiff proposes that this action be tried at Toronto.

Date: 2011.

, the 8<sup>th</sup> day of Aug.

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Solicitor for the Plaintiff  
Kenneth Hills

Hills

and

The Congregation of St. Basil et al.

Plaintiff

Defendants

Court File No.

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SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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