

CV-11-433278

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOHN DOE

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.

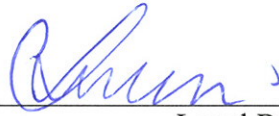
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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 19, 2011 Issued by: 
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, John Doe (hereinafter referred to as "John"), was born September 19, 1939. He is currently living in Stratford, 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. John 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. John was born to a family of devout Catholics that cherished and celebrated their religious beliefs, so much so that, growing up, John's family was active and engaged with their faith, attending Mass services every Sunday and Holy Day of Obligation.

7. In or around the fall, 1954, when John was approximately fifteen years old, John began high school at St. Michael's College School in Toronto as a day student.

8. At some point over the course of that school year, the defendant Marshall came to the Doe home for dinner. This event was very prestigious and John's parents were very pleased with the status and privilege associated with having a priest visit the home socially.

9. In or around John's time in grades 9 and 10, the defendant Marshall sexually assaulted John at St. Michael's College school approximately five to ten times. The assaults consisted of removing John's clothing and fondling John's genitals.

10. Marshall sexually assaulted John in various locations in and around St. Michael's College school. John endured sexual assaults in his home classroom, other classrooms and in other locations within the school.

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

THE DAMAGES

12. John 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.

13. John 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, John states that he was incapable of appreciating that his rights and equity in law had been violated.

14. John 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.

15. John 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.

16. John requires therapy and medical attention as a result of these damages.

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

18. John states that his suffering as herein described was foreseeable by the defendants.

THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT WILLIAM HODGSON MARSHALL FOR:

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

20. As particularized above, John was repeatedly sexually assaulted and abused by his teacher and priest. John 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.

21. The sexual assaults and battery by the defendant Marshall occurred while John was in his care or under his control. John 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 John. John states that Marshall knew or ought to have known that John 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 John would follow Marshall's instructions without resistance. John states that Marshall knew or ought to have known that he had John'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 John's trust in the priest and sexually assaulted him for his own benefit and to the detriment of John's.

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

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

23. John 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 John and as a result of Marshall's sexual abuse of John at the school under the control of the CSB, while the defendant Marshall was a priest under the control of the CSB.

24. John 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 John and all other people regarding their supervision of Marshall;
- (d) it failed to ensure the safety of persons, including John, who turn to the Church and clergy for sanctuary and guidance;
- (e) it failed to protect John;
- (f) it failed to recognize, or inadequately recognized, the risk that Marshall posed to John 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 John, 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 John;
- (l) it failed to exercise the degree of knowledge, skill and diligence which it ought to have possessed and exercised on behalf of John regarding its supervision of its priests, Marshall and specifically, Marshall's dealings with minors, including John;
- (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 John 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 John, in a timely, proper or adequate manner.

25. John states that the defendant the CSB is vicariously liable for the conduct of Marshall and the injuries arising therefrom. John 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 John 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.

26. John 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 John;

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

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

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

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

29. 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: *Friday*, the *19th* day of
August, 2011.

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Solicitor for the Plaintiff
John Doe

Doe

Plaintiff

and

The Congregation of St. Basil et al.

Defendants

Court File No.

CV-11-433278

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Solicitor for the Plaintiff
John Doe