

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MICHAEL ZENKER**

Plaintiff

-and-

**THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF  
THE DIOCESE OF HAMILTON IN ONTARIO,  
THE DELEGATURE WEST OF THE PROVINCE OF THE SACRED  
HEART OF THE SOCIETY OF CATHOLIC APOSTOLATE and THE  
ASSUMPTION OF THE BLESSED VIRGIN MARY PROVINCE OF THE  
SOCIETY OF CATHOLIC APOSTOLATE**

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:

Aug. 22/11

Issued by

[Signature]  
 Registrar,  
 Superior Court of Justice  
 Civil  
 Hamilton (John Sopinka) Court House  
 45 Main Street East  
 Hamilton, Ontario L8N 2B7

TO: **The Roman Catholic Episcopal  
 Corporation of The Diocese of  
 Hamilton in Ontario**  
 700 King Street West  
 HAMILTON, ON L8P 1C7

AND TO: **The Delegation West of the Province of the Sacred Heart  
 of the Society of Catholic Apostolate**

AND TO: **The Assumption of the Blessed Virgin Mary Province of the  
 Society of Catholic Apostolate**

## **CLAIM**

1. The plaintiff, Michael Zenker, 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 distress in the amount of \$50,000.00;
  - 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) her costs of this action on a substantial indemnity basis; and
  - i) such further and other relief as to this Honourable Court may deem just.

### **The Parties:**

2. The plaintiff, Michael Zenker, was born on September 8, 1968 and presently resides in the municipality of Waterloo Region, in the Province of Ontario.
3. The Plaintiff was at all material times a Christian and was raised with a strong respect for religion and religious leaders. During the material time the Plaintiff also commenced Catholic studies under the tutelage of Father Wilfrid Systemann.

4. Father Wilfrid Systermann ("Systermann") now deceased, was, during all material times, a priest of the Roman Catholic Church and was employed by The Roman Catholic Episcopal Corporation of the Diocese of Hamilton ("Diocese") at St. Agnes Roman Catholic parish (the "Church") located in Waterloo, Ontario. He was specifically a priest of the Trinity Province of the Society of Catholic Apostolate at the material time which was assumed fully by the Delegature West of the Province of the Sacred Heart of the Society of Catholic Apostolate (the "Order") in 2007.

5. The Diocese is an incorporated body in the Province of Ontario charged with carrying out the activities of the Roman Catholic Church within its geographical region.

6. The Diocese, during all material times, had the following purpose and responsibility:

- (a) the establishment and maintenance of a uniform set of rules and principles which collectively define the ideology of the Roman Catholic religion;
- (b) the establishment of churches and schools to teach and inculcate the rules and principles in their members;
- (c) the conversion of non-Catholics to the one truth faith, being the Holy Roman Catholic Church; and
- (d) the training and employment of priests to carry out their purposes.

7. The Diocese had a duty of care to its parishioners and others to whom it ministered owing to the close proximity of its priests to the lives of those parishioners and others engaged with the Church, as well as the level of trust and faith which those



parties extended to the Diocese, it's priests and employees. Systermann also owed a duty of care to the Plaintiff.

8. The Order is a Roman Catholic Religious Order of men The Order is a Roman Catholic Religious Order of men founded in 1835 as *SAC, societas apostolatus catholici*, by the Roman priest St. Vincent Pallotti and are otherwise known as the Pallottines. The Order is part of the Union of Catholic Apostolate. The Order is made up of both ordained Roman Catholic priests and lay persons. The Order provides priests to serve the needs of parishes, missions and other religious facilities in Canada. The Order's operations are presently based out of Alberta but during the material time, it or its predecessor, for whom actions it is responsible, had operations or activities in Ontario.

9. The defendant The Assumption of the Blessed Virgin Mary Province of the Society of the Catholic Apostolate (the "Province"), being a similar Catholic Organization which is headquartered out of India, was transferred responsibility, in whole or in part, for the Order, on December 3, 2009. As such they are in part or in whole the legal successor of the Order and adopt any and all legal liabilities of the Order, particularly those outlined herein.

### **The Actions of Systermann:**

10. Following ordination, selection and training the Order and/or the Diocese granted Systermann the necessary spiritual rights and faculties to act as a priest within the Diocese. He was immediately posted to parish work and during the material time was working within the Diocese.

11. The Plaintiff met Systermann through the Church. Through his position as a priest and representative of the Diocese and the Order, Systermann befriended himself to the Plaintiff.

12. Systermann engaged in activities with the Plaintiff in his capacity as a parish priest, counselling him in religion, Catholic education and other matters.

13. Through his position as parish priest and representative of the Diocese and the Order, Systermann was to the Plaintiff an important ecclesiastical authority.

14. Systermann used his position as a priest of the Diocese and Order, which was a position of authority and trust, to develop a close personal relationship with the Plaintiff when he was young. The relationships that Systermann developed with the Plaintiff, under the guise of a friendship based on a priest-parishioner relationship, allowed Systermann an opportunity to be alone with the Plaintiff and to exert total control over him, prey upon him and sexually abuse him.

15. Commencing in approximately 1979, when the Plaintiff were approximately 11 years of age and for the following three years, Systermann repeatedly sexually abused, assaulted and molested the Plaintiff, exposed the Plaintiff to prurient sexual behaviour, encouraged the Plaintiff to engage in deviant and prurient sexual behaviour and taught him how to be rewarded for doing so. The particulars of same are as follows:

- (a) exposed his naked body to the Plaintiff;
- (b) fondled the clothed body of the Plaintiff, including but not limited to his

penis, scrotum and buttocks;

- (c) fondled the naked body of the Plaintiff, including but not limited to his penis, scrotum and buttocks;
- (d) directed the Plaintiff to fondle the naked body of Systermann, including but not limited to his penis, scrotum and buttocks;
- (e) masturbated the Plaintiff;
- (f) forcefully directed the Plaintiff to masturbate Systermann;
- (g) physically and forcefully directed the Plaintiff to provide oral sex to Systermann;
- (h) engaged in stimulated intercourse with the Plaintiff;
- (i) ejaculated on or in the presence of the Plaintiff;
- (j) engaged in other sexual activities with the Plaintiff; and
- (k) in order to facilitate the abuses, Systermann engaged in a pattern of behaviour which was intended to make the Plaintiffs feel that they were special in the eyes of Systermann, the Church and God;

16. The aforementioned behaviours occurred on premises which were owned or controlled by the Diocese and/or the Order, specifically the Church and the related rectory and a church facility in the city of Hamilton. Later, other incidents also took place in his car and at a cottage.

17. The aforementioned behaviour occurred on a regular and repeated basis. The abuse intensified in both frequency and nature as time progressed. All of the aforementioned behaviours were in the context of Systermann providing moral, religious and spiritual guidance to the Plaintiff.



18. Throughout the period of time that the aforementioned behaviour was occurring, Systemann 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.

19. Systemann 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 the Plaintiff's normal upbringing and childhood, solely for the purpose of his own gratification. Systemann's activities also constituted a breach of the fiduciary duty to which Systemann owed the Plaintiff.

### **The Actions of the Diocese:**

20. The Diocese 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 teachings 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.

21. The Diocese employed Systermann and other members of the Order to carry out the purposes and teachings referred to above in dealing with the Plaintiff. It provided Systermann with the opportunity and means to come into contact with the Plaintiff. It fostered a relationship between Systermann and the Plaintiff. It provided Systermann with a position of respect and trust which the Plaintiff were bound by the rules set out above to follow and honour. It provided Systermann with a residence at various rectories which further added to his position of power and respect.

22. The Plaintiff pleads that, at all material times, Systermann was acting in the course of his duties as a priest of the Roman Catholic Church, the Diocese and the Order, and was using the aforementioned rules, principles and ideologies to further his attempts to manipulate the Plaintiff and engage in deviant activities.

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

24. The Plaintiff pleads that Systemann was, as a result of his position with the Diocese, allowed to use the premises owned by that defendant where the aforementioned behaviours and activities occurred 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 many years without the risk of getting caught and thereby put the Plaintiff at risk of being abused by Systemann.

25. As a result, the Diocese is vicariously responsible and liable for the actions of Systemann.

26. The Plaintiff pleads that the Diocese was negligent and failed in its 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 children;
- (b) it failed to instruct priests in training and ordained priests about the possibilities of becoming sexually deviant and/or making advances to children;

- (c) it failed to properly investigate Systemann background, character and psychological state prior to allowing him to be a priest within the Diocese;
- (d) it failed to document, discipline, or expel Systemann for his shortcomings as a seminarian;
- (e) it failed to follow its own internal policies in ordaining Systemann to the priesthood and/or allowing him to work within the Diocese;
- (f) it failed to warn Systemann's immediate supervisors, parishioners and others who may come into contact with Systemann of his prior difficulties as both a seminarian and a priest;
- (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 were 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 Systemann when it knew or ought to have known that they were vulnerable to the attentions and influence of



Systermann;

- (n) it failed to properly supervise, control and give guidance to its employee, Systermann;
- (o) it failed to screen and/or monitor the character, sexual orientation and sexual activity of the defendant, Systermann;
- (p) it failed to warn the Plaintiff and others of the propensities of Systermann;
- (q) it failed to remove Systermann from his duties upon learning of the allegations of sexual and inappropriate conduct thereby leaving the Plaintiff exposed to Systermann and his actions without protection;
- (r) it failed to protect the Plaintiff;
- (s) it failed to take steps to investigate the activities of Systermann 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 these behaviours.

27. In addition to and in the alternative to the above, the Plaintiff pleads that the Diocese knew that Systermann 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) Systermann' difficulties as a seminarian;
- (b) Systermann' difficulties with his sexuality;
- (c) The concerns of other clergy, parishioners and others;
- (d) The concerns and reports of misconduct by Systermann from parishes and assignments prior to the material time, including those outside Canada;



- (e) The frequency with which the Plaintiff and other children were involved with Systermann;
- (f) The unusual interest that Systermann took in young male children, particularly the Plaintiff;
- (g) the frequency with which the Plaintiff and other young male children were at the churches and rectories where Systermann worked and resided;
- (h) the frequency of activities and outings in which Systermann would be alone with young boys;
- (i) the duration of time and the number of years in which the Plaintiff and other young male children spent regular time alone with Systermann; and
- (j) the fact that Systermann 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 priests.

28. Despite its knowledge of same, the Diocese took no steps to stop the behaviour or to protect the Plaintiff.

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

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

31. The Plaintiff pleads that the Diocese owed a special duty to the Plaintiff by virtue of its relationship with him to identify, counsel and render assistance to the Plaintiff once it became aware of the behaviour of Systemann.

32. The Diocese knew or ought to have known that the Plaintiff was in need of counselling, assistance and support because of the actions of Systemann, and that such assistance would be necessary in order to minimize the consequences of Systemann's actions and the effect of the same on the Plaintiff. It has failed to this day to investigate the extent and severity of the abuse and has failed to render any assistance to the Plaintiff. Furthermore the Diocese failed to act in 1990 to assist the Plaintiff when they were clearly aware of Systemann's actions and the impact of such actions.

33. The Plaintiff states that the relationship between them and the Diocese and Systemann, commenced when the Plaintiff was a child, as such, the Diocese 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.

34. The Plaintiff says that the Diocese for the aforementioned reasons failed in their duty of care to them and was, thereby, negligent.

### **The Actions of the Order**

35. The Order, in partnership with the Diocese, engaged in the teachings referred to in paragraph 19, above.

36. The Order employed Systermann and other members of the Order to carry out the purposes and teachings referred to above in dealing with the Plaintiff. It provided Systermann with the opportunity and means to come into contact with the Plaintiff. It fostered a relationship between Systermann and the Plaintiff. It provided Systermann with a position of respect and trust which the Plaintiff was bound by the rules set out above to follow and honour. It provided Systermann with a residence at various rectories which further added to his position of power and respect.

37. The Plaintiff pleads that, at all material times, Systermann was acting in the course of his duties as a priest of the Roman Catholic Church, the Diocese and the Order, and was using the aforementioned rules, principles and ideologies to further his attempts to manipulate the Plaintiff and engage in deviant activities.

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

39. The Plaintiff pleads that Systermann was, as a result of his position with the Order, allowed to use the premises owned and/or controlled by that defendant where the aforementioned behaviours and activities occurred 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 many years without the risk of getting caught and thereby put the Plaintiff at risk of being abused by Systermann.



40. As a result, the Order is vicariously responsible and liable for the actions of Systemann.

41. The Plaintiff pleads that the Order was negligent and failed in its 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 children;
- (b) it failed to instruct priests in training and ordained priests about the possibilities of becoming sexually deviant and/or making advances to children;
- (c) it failed to properly investigate Systemann's background, character and psychological state prior to allowing him to be a priest of the Order;
- (d) it failed to document, discipline, or expel Systemann for his shortcomings as a seminarian;
- (e) it failed to follow its own internal policies in ordaining Systemann to the priesthood and/or allowing him to work within the Order;
- (f) it failed to warn Systemann's immediate supervisors, parishioners and others who may come into contact with Systemann of his prior difficulties as both a seminarian and a priest;
- (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 were 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 Systemann when it knew or ought to have known that they were vulnerable to the attentions and influence of Systemann;
- (n) it failed to properly supervise, control and give guidance to its employee, Systemann;
- (o) it failed to screen and/or monitor the character, sexual orientation and sexual activity of the defendant, Systemann;
- (p) it failed to warn the Plaintiff and others of the propensities of Systemann;
- (q) it failed to remove Systemann from his duties upon learning of the allegations of sexual and inappropriate conduct thereby leaving the Plaintiff exposed to Systemann and his actions without protection;
- (r) it failed to protect the Plaintiff;

- (s) it failed to take steps to investigate the activities of Systermann 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 these behaviours.

42. In addition to and in the alternative to the above, the Plaintiff pleads that the Order knew that Systermann 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) Systermann's difficulties as a seminarian;
- (b) Systermann's difficulties with his sexuality;
- (c) The concerns of other clergy, parishioners and others;
- (d) The concerns and reports of misconduct by Systermann from parishes and assignments prior to the material time, including those outside Canada;
- (e) The frequency with which the Plaintiff and other children were involved with Systermann;
- (f) The unusual interest that Systermann took in young male children, particularly the Plaintiff;
- (g) the frequency with which the Plaintiff and other young male children were at the churches and rectories where Systermann worked and resided;
- (h) the frequency of activities and outings in which Systermann would be alone with young boys;
- (i) the duration of time and the number of years in which the Plaintiff and other young male children spent regular time alone with Systermann; and

- (j) the fact that Systermann 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 priests.

43. Despite its knowledge of same, the Order took no steps to stop the behaviour or to protect the Plaintiff.

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

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

46. The Plaintiff pleads that the Order owed a special duty to the Plaintiff by virtue of its relationship with them to identify, counsel and render assistance to the Plaintiff once it became aware of the behaviour of Systermann.

47. The Order knew or ought to have known that the Plaintiff was in need of counselling, assistance and support because of the actions of Systermann, and that such assistance would be necessary in order to minimize the consequences of Systermann's actions and the effect of the same on the Plaintiff. It has failed to this day to investigate the extent and severity of the abuse and has failed to render any assistance to the Plaintiff. Furthermore the Diocese failed to act in 1990 to assist the

Plaintiff when they were clearly aware of Systermann's actions and the impact of such actions.

48. The Plaintiff state that the relationship between them and the Order and Systermann, commenced when the Plaintiff was a child, as such, the defendant owed to the Plaintiff a high duty/standard of care and, in particular, a duty to protect them from harm by its employees (i.e. priests) and specifically sexual abuse.

49. The Plaintiffs say that the Order for the aforementioned reasons failed in their duty of care to them and were, thereby, negligent. The Province as the legal successors of the Order, in part or in whole, is thereby legally liable for the actions of the Order described herein.

**Damages:**

50. 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 mental health and emotional well being;
- (j) depression;
- (k) symptoms post traumatic stress disorder; and
- (l) a loss of enjoyment of life.

51. 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 normal healthy childhood and adolescence as a result of the actions or inactions of the defendants. The life of the Plaintiff was fundamentally and forever changed by the above-noted behaviour.

52. The Plaintiff was so profoundly negatively affected by these behaviours and activities that they 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) educational shortcomings;
- (b) misuse of alcohol;
- (c) distrust of authority figures;
- (d) inability to develop and engage in normal human relations, specifically including difficulties of intimacy with the opposite sex;
- (e) marital difficulties and dysfunction;
- (f) sexual confusion and sexual dysfunction;
- (g) suicidal thoughts and attempts; and

- (h) related medical difficulties, including but not limited to Irritable Bowel Syndrome; and
- (i) a propensity to engage in reckless and careless behaviour.

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

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

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

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

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

58. The Plaintiff pleads that the conduct of Systemann, the Diocese and the Order described herein was harsh, high-handed, malicious and, as such, should be

punished with aggravated and/or punitive damages, for which the Diocese and Order are vicariously liable.

59. The Plaintiff further pleads that the conduct of the Diocese and Order 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 Systermann'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 Diocese and Order over the safety of children;
- c) promoting a culture of secrecy with respect to the sexual misconduct of clergy which was intended to benefit the Diocese and Order rather than stop the misconduct or assist the victims; and
- d) facilitating Systermann's departure from Canada in the face of rumours, allegations and/or suspicions of Systermann's sexual misconduct instead of promptly notifying the secular authorities and administering the administrative or penal provisions of their ecclesiastical authority; and
- e) failing to fully cooperate with civil authorities during the early 1990's police investigation into Systermann's actions in Ontario and further failure to exercise their full ecclesiastical authority with respect to Systermann's flight from justice in the face of a Canada wide criminal arrest warrant and thereby directly or indirectly facilitating Systermann's avoidance of justice in Canada.

60. The Plaintiff claims, in alternative to damages, compensation for the above losses.

61. The Plaintiff relies upon the discoverability rule. 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 Systermann's actions in early 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.

62. 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 Systermann, the Diocese and the Order amount to an unconscionable thing. The effect of their conduct has given rise to a concealment of the cause of action. All the defendants conducted themselves in a manner so as to mask the wrongful nature of their actions and have thereby prevented the Plaintiff from commencing an action earlier.

63. The Plaintiff relies on the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, the *Victims Bill of Rights*, 1995, S.O. 1995, c.6, and the *Limitations Act 2002*, S.O. 2002, c.24 Schedule B, the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2, and any and all predecessor legislation.



64. 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 Diocese.

65. The Plaintiff proposes that this action be tried in the City of Waterloo, within the Regional Municipality of Waterloo, in the Province of Ontario.

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

**ZENKER**

**- and -**

**DIOCESE OF HAMILTON et al**

Court File No.

11-29602

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

**STATEMENT OF CLAIM**

**LEDROIT BECKETT**

Litigation Lawyers

630 Richmond Street

London ON N6A 3G6

**R.P.M. Talach (LSUC #451303)**

Tel: (519) 673-4994

Fax: (519) 432-1660

E-Mail: rtalach@ledroitbeckett.com

Solicitors for the Plaintiff

RPT/ci

File No. 100633