

[REDACTED]
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

[REDACTED]
Plaintiff

- and -

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE
DIOCESE OF PEMBROKE IN ONTARIO

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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 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.

Date

September 3, 2014

Issued by

Local registrar

Address of Court office:
393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO:

THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF THE
DIOCESE OF PEMBROKE IN ONTARIO
188 Renfrew St P.O. Box 7
Pembroke, ON, K8A 6X1

CLAIM

1. The Plaintiff [REDACTED] ("[REDACTED]") claims:
 - (a) general damages for pain and suffering in the amount of \$250,000.00;
 - (b) general damages for future care costs in the amount of \$75,000.00;
 - (c) special damages including post income loss in the amount of \$500,000.00;
 - (d) aggravated damages in the amount of \$100,000.00;
 - (e) punitive damages in the amount of \$100,000.00;
 - (f) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (g) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
 - (h) the costs of this proceeding, plus goods and services tax; and
 - (i) such further and other relief as the Honourable Court deems just.
2. The Plaintiff claims the foregoing damages as against the Defendant The Roman Catholic Episcopal Corporation of the Diocese of Pembroke in Ontario ("the Diocese"):
 - (a) breach of duty of care and fiduciary duty owed to [REDACTED]
 - (b) breach of non-delegable duty owed to [REDACTED]
 - (c) negligence; and

- (d) vicarious liability.

THE PARTIES

3. The Plaintiff was born on [REDACTED] and is presently [REDACTED] () years old. He resides in the [REDACTED] of [REDACTED], in the Province of [REDACTED].

4. Father Henry Maloney ("Father Maloney"), now deceased, was, at all material times, a Priest and an employee and/or agent of the Diocese and was acting under the Diocese's supervision and authority. Father Maloney was employed as a Priest at the parish of St. James in Eganville, Ontario.

5. The Diocese was, at all material times, a Diocese of the Roman Catholic Church of Canada. The Diocese administered and operated various Catholic parishes in and around the area of Golden Lake, Ontario, including the parish of St. James in Eganville, Ontario, and employed and/or materially empowered Father Maloney.

THE ABUSE

6. The Plaintiff states that for a period of approximately two (2) years between approximately 1948 and 1950 when [REDACTED] was approximately nine (9) to eleven (11) years old, he was sexually assaulted and battered and/or psychologically abused by Father Maloney.

7. [REDACTED] states that he was sexually assaulted and battered and/or psychologically abused by Father Maloney at a building behind Our Lady of Nativity in Pikwākanagan Ontario and at the King Edward Hotel in Toronto, Ontario.

8. [REDACTED] states that he was an altar boy and served mass for Father Maloney on a regular basis. Because Father Maloney was a Priest, [REDACTED] father encouraged him to spend time with Father Maloney.

9. The abuse occurred over the approximately two (2) year period. Father Maloney would pick [REDACTED] up at his home and would then force [REDACTED] to spend nights with him in a one bedroom building behind the church in Pikwakanagan, Ontario. The sexual abuse included, but was not limited to:

10. On one occasion, Father Maloney took [REDACTED] with him on a trip to Toronto, Ontario where they stayed in a room at the King Edward Hotel. While in Toronto, Father Maloney took [REDACTED] out for dinner and a haircut and later in the night, sexually abused him.

11. The sexual abuse included, but was not limited to:

- (a) Father Maloney forcing [REDACTED] to strip nude in front of him;
- (b) Father Maloney stripping nude in front of [REDACTED];
- (c) Father Maloney forcing [REDACTED] to sleep with him while both Father Maloney and [REDACTED] were nude;
- (d) Father Maloney attempting to kiss [REDACTED];
- (e) Father Maloney performing oral sex on [REDACTED];
- (f) Father Maloney attempting to force [REDACTED] to perform oral sex on him;
- (g) Father Maloney measuring [REDACTED] penis with a wooden ruler;

- (h) Father Maloney attempting to anally penetrate [REDACTED]; and
- (i) such further and other abuse as will be advised prior to trial.

LIABILITY OF THE DIOCESE

12. At all material times Father Maloney was an employee, servant or agent of the Diocese and, as such, the Diocese is vicariously liable for the acts Father Maloney committed in the course of his employment, service or agency.

13. The Diocese is vicariously liable for the actions of Father Maloney since:

- (a) the Diocese knew or ought to have known of the abusive relationship between [REDACTED] and Father Maloney;
- (b) there was a significant connection between the creation or enhancement of the risk to [REDACTED] and the sexual assault and battery that accrued therefrom;
- (c) the Diocese created or enhanced the risk of harm to [REDACTED] by materially empowering Father Maloney;
- (d) the sexual assault and battery was related to the intimacy inherent in the Diocese's enterprise;
- (e) the children who were members of the St. James Parish, including [REDACTED], were vulnerable to the wrongful exercise of the power granted to Father Maloney by the Diocese;
- (f) the Diocese can effectively compensate [REDACTED]; and

- (g) the Diocese will be deterred from employing and empowering Priests and other clergy like Father Maloney who are paedophiles and/or predators.

14. [REDACTED] states that the Diocese knew or ought to have known that the trust and reliance placed on Father Maloney by [REDACTED] would be the view taken by any young boy towards a Priest of the Church.

15. As a result of the relationships between [REDACTED] Father Maloney and the Diocese, [REDACTED] became dependant on the Diocese and vulnerable to the extent that the Diocese owed [REDACTED] a duty of care and or fiduciary duty to:

- (a) ensure that its employees and agents were effectively and adequately monitored and trained;
- (b) ensure that its employees were not sexually abusing children who they supervised;
- (c) ensure that children were adequately protected from those in position of authority at the Diocese;
- (d) ensure that children were adequately protected while on its property;
- (e) not to employ or otherwise empower Father Maloney; and
- (f) such further and other breaches as may be advised prior to trial.

16. The Diocese breached its fiduciary duties and/or non-delegable duties owed to [REDACTED], and was negligent in its hiring and supervision of Father Maloney in that it knew or ought to

have known that Father Maloney was not a suitable employee, agent and/or clergyman for the following reasons:

- (a) it failed to prevent the abuse against [REDACTED];
- (b) it failed to remove Father Maloney from the Church, and from the employ of the Diocese, even though it knew or ought to have known him to have tendencies toward paedophilia;
- (c) it failed to conduct a reference check with respect to Father Maloney, or, if it conducted a reference check, it failed to adequately and properly do so in accordance with accepted and/or reasonable personnel procedure;
- (d) it did not provide proper, adequate or effective training or monitoring, initially or on an ongoing basis of Father Maloney to ensure that he was suitable and fit to act as a Priest of the Diocese, being in the presence of and having relationships with children such as [REDACTED];
- (e) it failed to properly train staff and/or have in place a system which might detect and respond to sexual assault and battery by clergy, employees, servants or agents such as Father Maloney;
- (f) it failed to adequately supervise Father Maloney such that he would not be able to commit sexual assault and battery upon children such as [REDACTED];
- (g) it knew or ought to have known that Father Maloney was a paedophile or a person with aberrant sexual tendencies who engaged in illegal and immoral sexual activities with children who were under his supervision or otherwise;

- (h) it knew or ought to have known that placing Father Maloney in a position of trust and authority would facilitate his capacity to do wrong and without that position and authority the wrong could not have been perpetrated against [REDACTED];
 - (i) it knew or ought to have known that Father Maloney inflicted the abuse and breaches during the course of his employment and/or agency;
 - (j) it knew or ought to have known of Father Maloney's actions involving [REDACTED] and it knew or ought to have known of his relationship with [REDACTED];
 - (k) it failed to appreciate the significance of and/or was wilfully blind to the unusual amount of contact between Father Maloney and [REDACTED];
 - (l) it failed to make any inquiry concerning Father Maloney's activities when one ought to have been made under the circumstances; and
 - (m) it failed to render assistance to [REDACTED] when it became aware or ought to have become aware of the abuse.
17. The Diocese benefited by the omissions described herein because , for example:
- (a) it desired to cover up Father Maloney's abuse of [REDACTED];
 - (b) it desired to avoid negative attention;
 - (c) it desired to avoid negative publicity that would hurt their reputations; and
 - (d) it was more concerned with cost saving measures than with ensuring proper protections were in place to care for vulnerable individuals such as [REDACTED].

18. [REDACTED] states that his suffering as herein described was foreseeable by the Diocese and was caused by the intentional and/or negligent acts referred herein.

19. [REDACTED] states that the Diocese knew or ought to have known and it was reasonably foreseeable that Father Maloney would commit sexual assault and/or battery upon [REDACTED].

20. The negligent hiring and/or supervision of Father Maloney by the Diocese, and the breach of fiduciary duty and/or non-delegable duty by the Diocese, materially contributed to the injuries sustained by [REDACTED] as a result of Father Maloney's acts of sexual assault and battery, insofar as these acts of negligence and breach of fiduciary duty and/or non-delegable duty allowed Father Maloney to continue his employment, service or agency and have access to children, such as [REDACTED].

21. As owner of the Church property where the assaults occurred, the Diocese was also negligent in failing to ensure that children like [REDACTED] were safe from harm on their property and in the Church premises.

LIMITATION PERIOD

22. To conceal the sexual and/or physical assaults and battery upon [REDACTED], Father Maloney used various threats and insidious measures to ensure that [REDACTED] did not disclose the sexual and/or physical assaults and battery. [REDACTED] pleads and relies upon the doctrine of fraudulent concealment.

23. At the time that the abuse occurred, [REDACTED] felt afraid, shocked, confused and ashamed. [REDACTED] was embarrassed and attempted to hide the abuse from the adults around him. [REDACTED] has repressed much of the anger and grief resulting from the abuse. It was, and continues to be, very painful for [REDACTED] to think about, let alone speak about the abuse.

24. The conduct of Father Maloney who was in a position of authority at all material times, was and is an extreme source of pain and suffering for [REDACTED] who was dependent on on him and the Diocese.
25. [REDACTED] pleads that Father Maloney's conduct and actions in the circumstances have caused him to develop certain psychological mechanisms in order to survive the horrors of the sexual assault and/or physical assault and battery and/or psychological abuse. These mechanisms include denial, repression, dissociation and guilt.
26. The conduct of Father Maloney prevented [REDACTED] from discovering the wrongfulness of his actions, the nature of his injuries and/or the nexus between his injuries and the abuse. [REDACTED] blames himself for the occurrence of the abuse.
27. [REDACTED] pleads and relies upon the presumption that, as a victim of sexual abuse, he is only now discovering the necessary connection between his injuries and the wrong done to him by Father Maloney and relies on the presumption with respect to same.
28. [REDACTED] pleads that at the time of the assaults, Father Maloney had charge of [REDACTED] and was in a position of trust or authority in relation to him. [REDACTED] was dependent upon the Defendant. [REDACTED] relies on the presumptions established in sections 16 of the *Limitations Act*, 2002, S.O. 2002, c-24, Sch. B with respect to same.

SIMILAR ACTS

29. The Plaintiff pleads that Father Maloney sexually and/or psychologically abused other children who were under his care or control. The Plaintiff pleads that Father Maloney's sexual abuse of the aforementioned children included, but was not limited to: being forced to strip nude; Father Maloney stripping nude in front of them; being forced to sleep nude with Father Maloney;

Father Maloney attempting to anally penetrate them; Father Maloney measuring the children's penises, being forced to perform oral sex on Father Maloney; and Father Maloney attempting to force them to perform oral sex. The Plaintiff also pleads that Father Maloney's psychological/emotional abuse of the aforementioned children included, but was not limited to: trusting and having their family's trust Father Maloney, and other similar acts of assault and exploitation. The Plaintiff pleads that Father Maloney's abuse of the aforementioned children was strikingly similar to the abuse perpetrated on the Plaintiff. The Plaintiff pleads that Father Maloney engaged in a pattern of conduct, system, scheme or modus operandi of abusing vulnerable children in his care.

IMPACT OF THE ABUSE

30. As a result of the breach of fiduciary duty and/or non-delegable duty and/or negligence of the Diocese, [REDACTED] has suffered damages and losses, some particulars of which are as follows

- (a) humiliation and indignity;
- (b) alcohol and substance abuse;
- (c) physical, emotional and mental pain;
- (d) guilt, shame and self-blame;
- (e) lack of self-confidence and self-esteem;
- (f) inappropriate coping behaviour;
- (g) problems with sexuality;
- (h) major depression and helplessness;

- (i) suicidal ideation and suicide attempts;
- (j) loss of enjoyment of life;
- (k) anger, aggressions, rage;
- (l) panic attacks;
- (m) anxiety;
- (n) insomnia, night terrors, nightmares of abuse ;
- (o) problems with memories and flashbacks;
- (p) avoidance of reminders of the abuse;
- (q) serious problems with intimacy;
- (r) inability to trust other individuals;
- (s) impairment of his opportunity to experience a normal childhood and development of his adolescence and adulthood;
- (t) impairment of his mental health and well-being such that he will require medical treatment and counselling;
- (u) distrust and resentment toward authority figures leading to conflicts with employers and educational institutions;
- (v) impairment of his ability and opportunity to obtain an education appropriate to his abilities and aptitude;

(w) loss of income; and

(x) such further and other damages as may be advised prior to trial.

31. As a result of the wrongful acts, negligence, breach of trust, breach of fiduciary duty and breach of non-delegable duty of the Diocese, [REDACTED] states that he has suffered from and continues to suffer from loss of youth, loss of education and the loss of ability to function as a normal adult.

32. [REDACTED] states that his schooling suffered as a direct result of the harm caused by the abuse. As a result, [REDACTED] has been unable to obtain a career that he may have otherwise obtained had he completed his education.

33. [REDACTED] states that as a direct result of the harm caused to him by the Diocese, he has difficulty interacting with authority figures. He also states that it has negatively affected his ability to maintain healthy relationships with both family and friends and with intimate partners.

34. [REDACTED] relationship with his parents subsequently deteriorated, resulting in him quitting school, moving out of the family home, and abusing alcohol.

35. [REDACTED] states that his suffering herein described was reasonably foreseeable by the Diocese and was a result of the intentional and/or negligent acts referred to herein.

36. As a result of the aforementioned abuse and negligence, [REDACTED] has suffered and will continue to suffer damages. [REDACTED] has incurred medical expenses and will continue to require therapy and medical attention.

37. The full particulars of the extensive damages suffered by [REDACTED] are not yet fully known and, therefore, he reserves the right to make such further and other claims for damages as the facts might disclose and are appropriate and to provide such details prior to trial.

38. [REDACTED] claims damages against the Diocese in their capacity as employers of Father Maloney, for injuries sustained as a result of Father Maloney's acts of sexual assault and battery and intentional infliction of emotional distress on him.

39. [REDACTED] further claims that the conduct of the Diocese in general is reprehensible and is conduct which should be deterred and he is therefore entitled to punitive and exemplary damages.

40. The Diocese subjected [REDACTED] to humiliating, oppressive and malicious conduct, and acted in reckless disregard towards him. [REDACTED] pleads that he is entitled to aggravated damages.

41. [REDACTED] pleads and relies upon the *Limitations Act* 2002, S.O. 2002, c. 24, Sched B, *Negligence Act* R.S.O. 1990 c N., and subsequent amendments thereto and its predecessor legislation.

42. [REDACTED] further pleads that the Diocese owed a duty of care to him to ensure that he was reasonably safe while on their premises and that the Diocese breached its duty of care. The particulars of the breach and the damages that resulted are particularized above and [REDACTED] pleads and relies on the *Occupiers' Liability Act*, R.S.O. 1990, C.O.2 and subsequent amendments thereto and its predecessor legislation and common law principles.

The Plaintiff proposes that his action be tried in Toronto, Ontario.

Sept 3rd 2014
Date: August 29, 2014

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

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Solicitors for the Plaintiff

 Plaintiff
-and- THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF
THE DIOCESE OF PEMBROKE IN ONTARIO
Defendant


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TORONTO

STATEMENT OF CLAIM

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RCP-E-4C (July 1, 2007)