

Court File No. 12/680

ONTARIO  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MICHAEL JAMES FITZGERALD**

Plaintiff

-and-

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

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT:

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 Claims 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: July 4, 2012

Issued by

E. H. Stal  
Registrar,  
Superior Court of Justice  
Civil,  
PEMBROKE COURT HOUSE  
297 Pembroke St. E.  
Pembroke, ON K8A 3K2

AND 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

### The Plaintiff claims:

1. The plaintiff, Michael James Fitzgerald, 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 \$1,000,000.00;
  - c) special damages in the amount of \$100,000.00;
  - d) damages for emotional and mental distress in the amount of \$50,000.00;
  - e) aggravated damages in the amount of \$50,000.00; and
  - f) punitive and exemplary damages in the amount of \$500,000.00;
  - 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:

1. The plaintiff, Michael James Fitzgerald (the "Plaintiff"), was born October 5, 1955 and presently resides in the city of Oshawa, in the province of Ontario.



2. 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 Pembroke in Ontario (the "Diocese"). Specifically, the Plaintiff was a member of the St. Ignatius parish located in Maynooth, Ontario. He also played the organ at Our Lady of Mercy parish church (the "Church"), located in Bancroft, Ontario and at the mission church located in Haliburton (the "Mission").
3. The perpetrator, Henry Maloney ("Maloney"), now deceased, was during all material times a priest of the Roman Catholic Church and was employed by the defendant Diocese. Maloney was also, for the majority of the material time, a parish priest at the Church and the Mission.
4. 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 these rules and principles in their members; and
  - c) the recruitment, selection and training of priests to carry out their purposes.
5. The Diocese had a duty of care to its parishioners owing to the close proximity of its priests to the lives of the parishioners as well as the level of trust and faith which

the parishioners and others extended to the Diocese, its priests and employees. Maloney also owed a duty of care to the Plaintiff.

### **The Actions of Maloney**

6. Maloney was ordained to the priesthood by the Diocese following their recruitment, selection and training of him. He was granted the necessary spiritual rights and faculties to act as a priest and immediately posted to parish work within the Diocese.
7. In or about 1972, the Plaintiff met Maloney through the Church and Mission when he commenced playing organ for the choir at the Church and Mission. The Plaintiff was then, a young pious Catholic and he was impressed with Maloney.
8. During part of the material time in which Maloney was a parish priest at the Church, Maloney continued to minister to the Plaintiff. Not only did he minister to the Plaintiff but he also commenced a pattern of grooming of the Plaintiff.
9. Maloney engaged in activities with the Plaintiff in his capacity as a priest, counselling him in religion, Catholic education and other matters. His activities included providing spiritual guidance, hearing confessions and conducting Mass.
10. Through his position as a priest and representative of the Diocese, Maloney was in a position of trust and authority with respect to the Plaintiff.

11. The Plaintiff's parents wanted very much for one of their sons to become a priest. In early 1973 Maloney convinced the Plaintiff's father that the Plaintiff should move into the Church rectory with Maloney as preparation for the priesthood. In March 1973 the then seventeen year old Plaintiff moved in with Maloney. At that time Maloney, in addition to his role as a priest, took on a quasi-parental capacity with respect to the Plaintiff.

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

13. Commencing in or about March 1973, when the Plaintiff was approximately seventeen years old, and on numerous occasions over the next year, Maloney repeatedly sexually abused, assaulted and molested the Plaintiff, exposed him to prurient sexual behaviour, encouraged him to engage in deviant and prurient sexual behaviour and taught him how to be rewarded from doing so. The particulars of same include, but are not limited, to the following:

- a) fondling the clothed body of the Plaintiff; not limited to his penis, scrotum and buttocks;
- b) fondling the naked body of the Plaintiff, not limited to his penis, scrotum and buttocks;
- c) exposing his naked body to the Plaintiff;



- d) directing the Plaintiff to fondle the naked body of Maloney, including but not limited to his penis, scrotum and buttocks;
- e) masturbating the Plaintiff;
- f) anally penetrating and sodomizing the Plaintiff;
- g) engaging in other sexual activities with the Plaintiff;
- h) in order to facilitate the abuses Maloney engaged in a pattern of behaviour which was intended to make the Plaintiff feel that he was special in the eyes of Maloney, the Church and God; and
- i) in order to facilitate the abuses Maloney also engaged in a pattern of behaviour which was intended to make the Plaintiff feel that his soul was in jeopardy.

14. The aforementioned behaviours occurred on premises which were owned or controlled by the Diocese, specifically the Rectory of the Church.

15. The aforementioned behaviour occurred on a repeated basis, increasing in both frequency and intensity over time. All of the aforementioned behaviours were related to priest/parishioner activities.

16. The assaults of Maloney were without valid legal consent, nor would consent be possible under the law in the circumstances of a priest-parishioner and quasi-parental role.

17. Throughout the period of time that the aforementioned behaviour was occurring, Maloney 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 in which they had engaged. Maloney continued to minister to the Plaintiff during this time.

18. Maloney'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. Maloney's activities also constituted a breach of the fiduciary duty to which Maloney owed the Plaintiff.

#### **The Actions of the Diocese - Vicarious Liability**

19. 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 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.

20. The Diocese employed Maloney to carry out the purposes and teachings referred to above in dealing with the Plaintiff. They provided Maloney with the opportunity and means to come into contact with the Plaintiff. They fostered a relationship between Maloney and the Plaintiff. They provided Maloney with a position of respect and trust which the Plaintiff was bound by the rules set out above to follow and honour. They provided Maloney with the opportunity to conduct Mass at the Church, which further added to his position of power and respect.

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

22. The Plaintiff pleads that the aforementioned rules, principles and ideologies of the Diocese created an opportunity for Maloney to exert power and authority over the Plaintiff. This power and authority allowed Maloney 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 Maloney.

23. The Plaintiff pleads that Maloney, as a result of his position with the Diocese which allowed him to gain access to the Plaintiff, afforded him an opportunity to foster a trusting relationship with the Plaintiff and engage in the aforementioned behaviours without the risk of getting caught and thereby put the Plaintiff at risk of being abused by Maloney. As a result, the Diocese is vicariously responsible and liable for the actions of Maloney.

### **The Actions of the Diocese - Negligence**

24. The Plaintiff pleads that the Diocese was negligent and failed in their duty to the Plaintiff, the particulars of which are set out below:

- a) they failed to recognize that a certain percentage of the priests would become sexually deviant and would make sexual advances to young males;
- b) they failed to instruct ordained priests about the possibilities of becoming sexually deviant and/or making advances to young males;
- c) they failed to properly investigate Maloney's background, character and psychological state prior to accepting him as a priest of the Diocese;

- d) they failed to follow their own internal policies in allowing Maloney to serve as a priest within the Diocese;
- e) they failed to warn Maloney's immediate supervisors, parishioners and others who may come into contact with Maloney of his difficulties as a priest;
- f) they failed to educate members of the Roman Catholic Church about the possibilities of such deviant behaviours;
- g) they failed to have any, or a proper system of self-reporting, other-reporting or counselling in place for priests who engage in such behaviour;
- h) they 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;
- i) they 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";
- j) they denied the existence, or alternatively were wilfully blind, to the existence of the behaviours described herein;
- k) they implemented and maintained a system which was designed to conceal the existence of such behaviour if such behaviour was ever reported;
- l) they failed to protect the Plaintiff from Maloney when they knew or ought to have known that he was vulnerable to the attentions and influence of Maloney;



- m) they failed to properly supervise, control and give guidance to their employee Maloney;
- n) they failed to screen and/or monitor the character, sexual orientation and sexual activity of Maloney;
- o) they failed to warn the Plaintiff and others of the propensities of Maloney;
- p) they failed to remove Maloney from his duties upon learning of the allegations of sexual and other inappropriate conduct thereby leaving the Plaintiff exposed to Maloney and his actions without protection;
- q) they failed to protect the Plaintiff; and
- r) they failed to identify, counsel and assist the Plaintiff once they knew of Maloney's behaviour.

25. In addition to and in the alternative to the above, the Plaintiff pleads that the Diocese knew that Maloney 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) the frequency with which the Plaintiff and other young males were involved with Maloney;
- b) the unusual interest that Maloney took in young males, particularly the Plaintiff;
- c) the duration with which the Plaintiff and other males spend regular time alone with Maloney; and
- d) the fact that Maloney was taking young males on trips, including trips to Ottawa, where young males would visit his workplace, stay with him

for extended periods of time and/or overnight and generally accompany him;

- e) the frequency with which Maloney would have young males attending at and staying over at the rectory where he resided;
- f) The fact that Bishop Windle visited the Church Rectory in both 1973 and 1974 and was aware of the fact that the Plaintiff was living with Maloney;
- g) the fact that Maloney 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.

26. Despite their knowledge set out above, the Diocese took no steps to stop the behaviour or to protect the Plaintiff.

27. 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.

28. 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 Maloney to conceal his activities and cover up his deviant behaviour.

29. The Plaintiff pleads that the Diocese 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. The Plaintiff did in fact

inform Bishop Richard William Smith (the "Bishop") in 2005 at a meeting which took place at the Church. The Bishop and the Diocese took no action.

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

31. The Plaintiff states that the relationship between him and the Diocese and Maloney 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.

32. The Plaintiff states that the Diocese for the aforementioned reasons failed in their duty of care to him and was thereby negligent.

**Damages:**

33. 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) disruption of his relationship with his parents;
- k) impaired self-esteem;
- l) depression;
- m) anxiety;
- n) sexual dysfunction;
- m) symptoms of post traumatic stress disorder; and
- n) a loss of enjoyment of life.

34. The Plaintiff has suffered and will continue to suffer physical pain, 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.

35. 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) impaired performance in education and employment;
- b) inability to develop and engage in normal human relations, including trust issues and severe difficulty in establishing relationships of intimacy;
- c) the questioning of sexual identity, sexual abstinence, and other sexual problems;
- d) suicidal ideation, suicidal thoughts and attempts;
- e) symptoms of post-traumatic stress disorder;
- f) mistrust of authority figures;
- g) hyper-vigilance;
- h) feelings of self worthlessness, inadequacy and hopelessness;
- i) disassociation;
- j) anxiety and panic;
- k) sleep disturbance, including nightmares and "flashbacks";
- l) depression; and
- m) a propensity to engage in reckless and careless behaviour.

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

37. The Plaintiff has suffered mental, psychological and emotional distress, shock and suffering which will continue forever.

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

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

40. 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.

41. The Plaintiff pleads that the conduct of Maloney described herein was harsh, high-handed, and malicious and, as such, should be punished with aggravated and/or punitive damages, for which the Diocese is vicariously liable.

42. The Plaintiff further pleads that the conduct of the Diocese 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 Maloney'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 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 Diocese rather than stop the misconduct or assist the victims.

43. 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 Maloney's actions in mid 2010. The Plaintiff relies upon the discoverability rule.

44. 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.

45. 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.

46. The Plaintiff proposes that this action be tried in the City of Pembroke, in the County of Renfrew, in the Province of Ontario.

Date of Issue: *July 4, 2012*

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FITZGERALD

- and -

DIOCESE OF PEMBROKE ET AL

Court File No.  
12/680

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Pembroke

FILED SUPERIOR CRT OF JUSTICE  
PEMBROKE JUL 04 2012 20

**STATEMENT OF CLAIM**

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