

CI 16-01-04341

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

[REDACTED]

Plaintiff

- and -

**THE ROMAN CATHOLIC ARCHDIOCESE OF WINNIPEG, FATHER ERNEST ARCHIBALD,
SISTER CLARA, LES OBLATS de MARIE IMACULEE du MANITOBA and THE PROVINCE
OF MANITOBA**

Defendants

STATEMENT OF CLAIM

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FILED
QUEEN'S BENCH
OCT 14 2016
LAW COURTS
WINNIPEG

APPVD
S.V.

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:



Plaintiff

- and -

THE ROMAN CATHOLIC ARCHDIOCESE OF WINNIPEG, FATHER ERNEST ARCHIBALD,
SISTER CLARA, SISTERS LES OBLATS de MARIE IMMACULEE du MANITOBA and THE
PROVINCE OF MANITOBA

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.

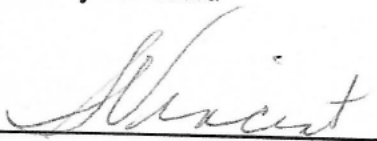
IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the Plaintiff's lawyer or where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 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 Plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

October 14, 2016
Date

Issued 
Deputy Registrar

To: The Roman Catholic Archdiocese of Winnipeg
1495 Pembina Highway
Winnipeg, MB R3T 2C6

And To: Les Oblats de Marie Immaculee du Manitoba
206 - 474 Aulneau Street
Winnipeg, MB R2H 2V2

And To: The Province of Manitoba
510 - 405 Broadway
Winnipeg, MB, R9A 1K4

CLAIM

1. The Plaintiff claims as against the Defendants as follows:

- a) a declaration that the Defendants breached their fiduciary, statutory and common law duties to the Plaintiff through their failure to take all reasonable steps to protect the Plaintiff from criminal or tortuous acts to which the Plaintiff was victim;
- b) a declaration that the Defendants were negligent in their failure to take reasonable care to protect the Plaintiff from criminal or tortuous acts to which the Plaintiff was victim;
- c) a declaration that the Defendants are liable to the Plaintiff for the damages caused by their breach of fiduciary, statutory and common law duties;
- d) general damages for negligence and breach of fiduciary duty in such amount as this Honourable Court may find appropriate;
- e) an award on account of the loss of opportunity to invest non-pecuniary damages at the rate of 3% per annum, pursuant to Part XIV of The Queen's Bench Act, C.C.S.M. Cap C280, and the amendments, rules and regulations thereto;
- f) special damages including medical costs, costs for past and future care, loss of income, and any other special damages, past present and future to be proved at the trial of this action;

- g) punitive damages and exemplary damages;
- h) pre and post-judgment interest pursuant to Part XIV of The Queen's Bench Act, C.C.S.M. Cap C280, and the amendments, rules and regulations thereto;
- i) costs on a solicitor and client basis; and
- j) such further and other interim and permanent relief as the nature of this case may require and this Honourable Court deems necessary.

THE PARTIES

2. The Plaintiff is of Metis origin and resides at [REDACTED]
3. The Defendant, THE ROMAN CATHOLIC ARCHDIOCESE OF WINNIPEG (hereinafter referred to as "the Archdiocese") is an Archdiocese of the Roman Catholic Church and maintains its head office at: 1495 Pembina Highway, Winnipeg MB
4. The Defendant, FATHER ERNEST ARCHIBALD (hereinafter referred to as "Father Archibald") was a priest supervised by the Archdiocese and is believed by the Plaintiff to have passed away.
5. The Defendant, SISTER CLARA (hereinafter referred to as "Sister Clara") was a member of the Les Oblats de Marie Immaculee du Manitoba (hereinafter referred to as "the Order") and is believed by the Plaintiff to have passed away. The Order is an Order of nuns whose head office is located at 206 - 474 Aulneau Street, Winnipeg, Manitoba.
6. The Defendant, THE PROVINCE OF MANITOBA (hereinafter referred to as "the Province"), through its Department of Education, had the responsibility to supervise and inspect schools in Manitoba and in particular the Vogar Church Day School located in the Municipality of Siglunes, in the Province of Manitoba.

7. At all material times hereto the Archdiocese supervised and maintained a Catholic School located in the Municipality of Siglunes, in the Province of Manitoba.
8. At all material times hereto Father Archibald was the Parish Priest supervised by the Defendant, the Archdiocese and ministered to the population of the Municipality of Siglunes, in the Province of Manitoba and in particular to the students attending the Vogar Church Day School
9. At all material times hereto Sister Clara was employed by the Defendant, the Archdiocese as a teacher at the said Vogar Church Day School located in the Municipality of Siglunes, in the Province of Manitoba.

THE PLAINTIFF'S EXPERIENCE AT THE VOGAR CHURCH DAY SCHOOL

10. In or about the years 1937 to 1942, the Plaintiff states that he was a student at the Vogar Church Day School.
11. In or about the years 1937 to 1942, the Plaintiff was assaulted at the Vogar Church Day School by Sister Clara when for no reason she pulled the Plaintiff by the ears and hair and gave him the strap in front of other children.
12. Sister Clara would, in front of the Plaintiff, pull up her dress to about the middle of her thighs, with her legs spread apart, and in doing so she displayed her vaginal area to him.
13. The Plaintiff states that Sister Clara would continually assault him with a strap on about 4 or 5 occasions throughout his years at Vogar Church Day School.
14. In or about the years 1937 to 1942, the Plaintiff states that Father Archibald would touch his genitals under his clothes during confession and tell him to pray at the same time. This occurred 1 to 2 times per month. Father Archibald would also have anal intercourse with the Plaintiff. This would occur every 4 to 5 months over 5 years.
15. Father Archibald committed the following sexual assaults on the Plaintiff:

- (a) anal intercourse;
- (b) fondling the Plaintiff's penis; and
- (c) masturbating the Plaintiff.

16. The Plaintiff states that he did not complain to his parents or any authorities because his grandmother was the head of the family and she said he needed to be a good Catholic.

DUTY OF CARE OWED BY THE DEFENDANTS TO THE PLAINTIFF

17. Father Archibald owed a fiduciary duty to the Plaintiff based on the following:
- a) it was reasonably foreseeable that the Plaintiff would rely on Father Archibald as an authority figure to give advice to him, guide him, and to protect him from harm;
 - b) Father Archibald knew or ought to have known that the Plaintiff would follow Father Archibald's instructions without resistance; and
 - c) Father Archibald knew or ought to have known that he had the Plaintiff's absolute trust and the Plaintiff would follow his advice on all matters.
18. At all material times, the Defendants owed duties to the Plaintiff which include, but are not limited to, a duty to ensure that their acts and omissions did not result in the harm of the Plaintiff.
19. The Order, the Archdiocese and the Province owed a fiduciary duty of care to the Plaintiff as a result of their exercise of power and control over members of the Roman Catholic Church, and their vicarious liability for the actions of Father Archibald and Sister Clara will be explained fully herein.
20. The reasonable standard of care expected in the circumstances required that Father Archibald and Sister Clara protect the Plaintiff from harm and ensure that his/her acts and/or omissions did not result in the harm of the Plaintiff.

The reasonable standard of care expected in the circumstances required the Archdiocese, the Order and the Province to:

- a) have in place policies, procedures and manuals concerning the protection of students' safety, security and well-being;
- b) follow and enforce policies, procedures and manuals concerning the protection of students' safety, security and well-being;
- c) establish adequate protocols, policies and regulations with respect to appropriate standards of conduct, supervision and control of its employees and agents, including Father Archibald and Sister Clara;
- d) exercise reasonable knowledge, skill and diligence regarding their supervision of Father Archibald and Sister Clara;
- e) ensure the safety of individuals, including the Plaintiff who turn to the Church and clergy for sanctuary and guidance;
- f) establish adequate protocols, policies and regulations to assess and recognize risk of agents, including Father Archibald and Sister Clara, to members of the community, including the Plaintiff;
- g) take steps to prevent physical, sexual and emotional abuse of students;
- h) respond to claims of physical, sexual and emotional abuse suffered by a student within a reasonable time; and
- i) have in place policies, procedures and manuals for disciplining teachers that fail to adhere to the policies, procedures and manuals concerning the protection of students' safety, security and well-being.

22. The Defendants knew or ought to have known of its duties described herein.

BREACH OF STANDARD

23. Father Archibald breached his fiduciary duty by abusing the trust of the Plaintiff by sexually assaulting him for his pleasure and to the detriment of the Plaintiff. Father Archibald knew or ought to have known that such assaults would cause the Plaintiff to suffer from both immediate and long-term harm.

The Archdiocese, the Order and the Province breached the standard of care by;

- a) failing to have in place policies, procedures and manuals concerning the protection of students' safety, security and well-being;
- b) failing to follow and enforce policies, procedures and manuals concerning the protection of students' safety, security and well-being;
- c) failing to take steps to prevent physical, sexual and emotional abuse of students;
- d) failing to thoroughly investigate claims of physical, sexual and emotional abuse suffered by students;
- e) failing to respond to claims of physical, sexual and emotional abuse suffered by students within a reasonable time; and
- f) failing to have in place policies, procedures and manuals for disciplining teachers that fail to adhere to the policies, procedures and manuals concerning the protection of students' safety, security and well-being.

25. The Defendants knew or ought to have known that as a consequence of the above-documented failures, the Plaintiff would suffer both immediate and long-term harm.
26. By failing to take any of these steps, the Defendants were careless, reckless, willfully blind and negligent.

VICARIOUS LIABILITY OF THE ORDER AND THE DIOCESE

27. The Plaintiff says that the Order and the Archdiocese are vicariously liable for the actions of Father Archibald and Sister Clara, for reasons that:
- a) at all material times, Father Archibald and Sister Clara were employees of the Archdiocese and members of the Order, vested with the powers conferred on them by virtue of their position within the Order, the Archdiocese, and within the Roman Catholic Church;

- b) the overwhelming imbalance of power as between the Plaintiff and Father Archibald was such that it materially contributed to Father Archibald's ability to commit his sexual assaults on the Plaintiff;
- c) the positions within the Order and within the Archdiocese held by Father Archibald and Sister Clara provided them with a ready ability, excuse and justification for being able to demand that children come under their control under the guise of providing religious guidance, which 'guidance' was expected of them by the Order and the Archdiocese;
- d) the Order and the Archdiocese held out Father Archibald and Sister Clara as individuals that embodied the values of the Roman Catholic faith, such that it was implied that they could be trusted and that they would do no harm;
- e) at all material times, the Oblates and the Archdiocese promoted the teachings of the Roman Catholic faith, which included:
 - i. an emphasis on compelling obedience of the wishes of members of the clergy, such as Father Archibald;
 - ii. placing in the hands of clergy, such as Father Archibald, power over the immortal souls of members of the faith, and in particular, the immortal soul of the Plaintiff;
- f) the Order and the Archdiocese were aware that Father Archibald would, in the fulfillment of his duties, be in intimate contact with vulnerable individuals, including children, particularly while in First Nations communities where the power imbalance between a member of the Order and the Archdiocese and the general populace was increased;
- g) Father Archibald's position within the Order and within the Archdiocese, and his power over the Plaintiff, by virtue of his position, was such that it discouraged the disclosure of the abuse thereby facilitating the continued abuse of the Plaintiff;
- h) Father Archibald's position within the Order and within the Archdiocese significantly and materially contributed to the creation of opportunities for, and fostered the risk of, abuse such as that to which the Plaintiff was subjected to by Father Archibald; and

- i) Father Archibald's position within the Order and within the Archdiocese, and his employment with either of them, was not limited to certain times or places; wherever he went, and whatever he did, he did as a member of the Order and of the Archdiocese while enjoying the benefits of the powers inherent to his positions.

VICARIOUS LIABILITY OF THE PROVINCE OF MANITOBA

28. In the alternative to the liability of the Order and the Archdiocese, the Plaintiff states that the Province is vicariously liable to the Plaintiff, for reasons that:
 - a) at all material times, the Province was the employer of Father Archibald, who was, while present at Vogar Church Day School, acting at the direction of the Province; and
 - b) the actions of Father Archibald in fulfillment of his duties of employment with the Province were to the benefit of the Province.

DAMAGES

29. As a result of the assaults by Father Archibald and Sister Clara, the Plaintiff states that he has suffered psychological harms, the particulars of which are as follows:
 - (a) Anxiety
 - (b) Difficulty with interpersonal relationships
 - (c) Aggression
 - (d) Hypervigilance
 - (e) Nightmares
 - (f) Loss of self-esteem
 - (g) Depression
 - (h) Lack of trust

30. The Plaintiff states as a result of the harms that he has suffered at the hands of Father Archibald and Sister Clara, he has suffered special damages which are as follows:

- a) Inability to complete an education resulting in an inability to maintain employment at a reasonable level of income;
- b) Loss of employment;
- c) Medical and drug costs for treatment for above-mentioned harms;
- d) Particulars of the said special damages will be made available at Discovery.

_____, 2016

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