

Form 10
[Rule 3.25]

COURT FILE NUMBER

1701-10572

COURT

COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

B.S.G.

DEFENDANT(S)

BASILIAN FATHERS OF TORONTO

DOCUMENT

STATEMENT OF CLAIM

Clerk's Stamp
CLERK OF THE COURT
FILED
AUG 09 2017
JUDICIAL CENTRE OF CALGARY

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

1. The Plaintiff, B.S.G., (the "Plaintiff"), was born on [REDACTED] 1964 and presently resides in [REDACTED]
[REDACTED] The Plaintiff was at all material

times, a student at Bishop Grandin High School ("the School") in Calgary, Alberta.

2. The perpetrator, Father Frederick Wallace Cahill ("Fr. Cahill") is deceased and was during all material times a priest of the Roman Catholic Church and was jointly employed by the Basilian Fathers of Toronto ("the Basilians"). Fr. Cahill was, during the material time a priest and teacher at the School.

3. The Basilians are a non-profit or non-share corporation, incorporated on April 27, 1927. It is a legally incorporated subunit of the Congregation of St. Basil which is a religious order whose member are Roman Catholic priests whose first work and ministry is that of Catholic education through teaching.
4. The Basilians 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 true faith, being the Holy Roman Catholic Church; and
 - (d) the training and employment of priests to carry out their purposes.
5. Through his position with the defendant, Fr. Cahill developed a relationship of close proximity with the Plaintiff and as such owed a duty of care to the Plaintiff. The Basilians also owed a duty of care to the Plaintiff owing to the close proximity of its priests to the lives of the children who come into contact with such priests as well as the level of trust and faith which young children and their parents extended to the Basilians, its priests, and employees.

The Actions of Fr. Cahill

6. Fr. Cahill was ordained to the priesthood on July 4, 1951 by the Basilians following their recruitment, selection and training of him.
7. In or about 1980, when he was 16 years old, the Plaintiff came to know Fr. Cahill in his capacity as a priest and teacher of the Roman Catholic Church through the defendant. Specifically, the Plaintiff met Fr. Cahill while he was employed by the defendant at the School. Through his position as a priest in the Basilians and a teacher at the School, Fr. Cahill was to the Plaintiff the ultimate ecclesiastical authority.

8. Fr. Cahill engaged in activities with the Plaintiff in his capacity as a priest and teacher, counselling him in religion, Catholic education and other matters. His activities included providing spiritual guidance, conducting mass, hearing confession and teaching the Plaintiff English at the School.

9. Fr. Cahill used his position as a priest of the Basilians, which was a position of authority and trust, to develop a close personal relationship with the Plaintiff when he was young. The relationship that Fr. Cahill developed with the Plaintiff, under the guise of a priest-parishioner and/or teacher-student relationship, allowed Fr. Cahill an opportunity to be alone with the Plaintiff and to exert total control over him, prey upon him, and sexually abuse him.

10. In or about 1981, when the Plaintiff was approximately 16 years of age, Fr. Cahill repeatedly sexually abused, assaulted and molested the Plaintiff, exposed him to prurient sexual behaviour and encouraged him to engage in deviant and prurient sexual behaviour. The particulars of same include, but are not limited to the following:

- (a) Fr. Cahill hugged and laid on top of the clothed Plaintiff;
- (b) Fr. Cahill spanked the clothed bottom of the Plaintiff;
- (c) Fr. Cahill fondled the clothed body of the Plaintiff, including but not limited to his penis, scrotum and buttocks;
- (d) Fr. Cahill fondled the naked body of the Plaintiff, including but not limited to his penis, scrotum and buttocks;
- (e) Fr. Cahill masturbated in the presence of the Plaintiff;
- (f) Fr. Cahill ejaculated in the presence of the Plaintiff;
- (g) Fr. Cahill masturbated the Plaintiff to the point of ejaculation;
- (h) Fr. Cahill engaged in other sexual activities with the Plaintiff; and
- (i) In order to facilitate the abuses Fr. Cahill engaged in a pattern of behaviour which was intended to make the Plaintiff feel that he was special in the eyes of Fr. Cahill, the Church and God.

11. The aforementioned behaviour occurred on a regular and repeated basis, increasing in frequency, nature and intensity as it progressed. All of the aforementioned behaviours were related to priest-parishioner and/or teacher/student activities.

12. Throughout the period of time that the aforementioned behaviour was occurring, Fr. Cahill 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 in. Fr. Cahill continued to minister the Plaintiff, teach him English and hear his confessions.

13. Fr. Cahill'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. Fr. Cahill also breached the fiduciary duty which he owed to the Plaintiff.

The Actions of the Basilians

14. The Basilians taught the Plaintiff as well as others 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.

15. The Basilians employed Fr. Cahill to carry out the purposes and teachings referred to above. They provided Fr. Cahill with the opportunity and means to come into contact with the Plaintiff. They fostered a relationship between Fr. Cahill and the Plaintiff. They provided Fr. Cahill with a position of respect and trust which the Plaintiff was bound by the rules set out above to follow and honour. They provided Fr. Cahill with authority at the School and access to those who entered the premises which further added to his position of power and respect.

16. The Plaintiff pleads that, at all material times, Fr. Cahill was acting in the course of his duties as a priest of the Roman Catholic Church and specifically one whose ministry is that of education, and was using the aforementioned authority, rules, principles and ideologies to further his attempts to manipulate the Plaintiff and engage in deviant activities.

17. The Plaintiff pleads that the aforementioned authority, rules, principals and ideologies of the Basilians created an opportunity for Fr. Cahill, to exert power and authority over the Plaintiff. This power and authority allowed Fr. Cahill, to engage in the aforementioned behaviour without resistance or question of the Plaintiff without risk of getting caught and thereby put the Plaintiff at risk of being abused by Fr. Cahill.

18. The Plaintiff pleads that Fr. Cahill was, as a result of his position with the Basilians, allowed to access the School to gain access to the Plaintiff, affording him an opportunity to foster a trusting relationship with the Plaintiff and engage in the aforementioned behaviours without getting caught and thereby put the Plaintiff at risk of being abused by Fr. Cahill.

19. As a result, the Basilians are vicariously responsible and liable for the actions of Fr. Cahill.

20. The Plaintiff pleads that the Basilians were negligent and failed in their 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 persons;
- (b) it failed to instruct priests in training and ordained priests about the possibilities of becoming sexually deviant and/or making advances to young persons;
- (c) it failed to properly investigate Fr. Cahill's background, character and psychological state prior to accepting him into the seminary and later the priesthood;
- (d) it failed to document, discipline or expel Fr. Cahill for his shortcomings as a seminarian;
- (e) it failed to follow its own internal policies in ordaining Fr. Cahill to the priesthood;
- (f) it failed to warn Fr. Cahill's immediate supervisors, parishioners, students and others who may come into contact with Fr. Cahill of his difficulties as a seminarian;
- (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 was 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 Fr. Cahill when it knew or ought to have known that he was vulnerable to the attentions and influence of Fr. Cahill;
- (n) it failed to properly supervise, control and give guidance to its employee Fr. Cahill;
- (o) it failed to screen and/or monitor the character, sexual orientation and sexual activity of Fr. Cahill;
- (p) it failed to warn the Plaintiff and others of the propensities of Fr. Cahill;
- (q) It failed to remove Fr. Cahill from his duties upon learning of the allegations of sexual and other inappropriate conduct thereby leaving the Plaintiff exposed to Fr. Cahill and his actions without protection;
- (r) it failed to protect the Plaintiff;
- (s) it failed to take steps to investigate the activities of Fr. Cahill 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 Fr. Cahill's prior behaviour.

21. In addition to, and in the alternative to the above, the Plaintiff pleads that the Basilians knew that Fr. Cahill 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) Fr. Cahill's difficulties as a seminarian;
- b) Fr. Cahill's difficulties with alcohol;
- c) Fr. Cahill's difficulties with his sexuality;
- d) The state of Fr. Cahill's emotional, psychological and physical health;
- e) The concerns of other clergy, parishioners, students and others;
- f) The frequency with which the Plaintiff and other young males were involved with Fr.

Cahill;

- g) The unusual interest that Fr. Cahill took in young males, particularly the Plaintiff;
- h) The duration of time in which the Plaintiff and other young males spent regular time alone with Fr. Cahill;
- i) The fact that parents and/or staff at the School and at Fr. Cahill's previous posting had complained about his actions with young males;
- j) The fact that Fr. Cahill had been reported to Basilian officials for sexual misconduct;
- k) The fact that Fr. Cahill 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 Basilian priests.

22. Despite its knowledge of same, the Basilians took no steps to stop the behaviour or to protect the Plaintiff and, instead, took steps to attempt to cover-up the behaviour.

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

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

25. The Plaintiff pleads that the Basilians 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 of Fr. Cahill. Furthermore, they should have sought out Fr. Cahill's victims upon learning of his sexual activities following specific allegations brought forward.

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

27. The Plaintiff states that the relationship between him, the Basilians, and Fr. Cahill commenced when the Plaintiff was a young person, as such, the defendant 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.

28. The Plaintiff says that the Basilians, for the aforementioned reasons, failed in their duty of care to him and were thereby negligent.

Damages:

29. The Plaintiff states, and the fact is, that as a direct result of the behaviour of Fr. Cahill and the defendant he has suffered damages and losses the particulars of which are as follows:

- (a) mental anguish;
- (b) nervous shock, humiliation, degradation;
- (c) shame, guilt, low self-esteem and feelings of worthlessness;
- (d) depression and anxiety;
- (e) drug and alcohol abuse;
- (f) a loss of faith;
- (g) a decrease of his religious life/beliefs;
- (h) impairment of his opportunity to experience a normal childhood, adolescence and

adulthood;

- (i) impairment of his ability and opportunity to obtain and complete an education appropriate to his abilities/aptitude;
- (j) impairment of his ability to earn an income and support himself;
- (k) impairment of his physical health, mental health and emotional well-being;
- (l) inability to develop and engage in normal human relations, including trust issues and severe difficulty in establishing relationships of intimacy;
- (m) the questioning of sexual identity, sexual dysfunction, sexual hyper-activity and other sexual problems;
- (n) symptoms of post-traumatic stress disorder;
- (o) mistrust of authority figures;
- (p) hyper-vigilance;
- (q) feelings of inadequacy and hopelessness;
- (r) sleep disturbance;
- (s) a propensity to engage in reckless and careless behaviour; and
- (t) a loss of enjoyment of life.

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

31. 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.

32. 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 impaired.

33. The Plaintiff has suffered physical, mental, psychological and emotional stress, shock and suffering which will continue forever.
34. The Plaintiff has been required to undergo medical treatment and psychological counselling and will continue to require same indefinitely throughout his lifetime.
35. The Plaintiff has sustained out-of-pocket expenses, the particulars of which will be provided prior to the trial of the within action.
36. The Plaintiff has suffered, and will continue to suffer, economic losses including past income loss, and future and ongoing income loss, and various other out-of-pocket expenses, the particulars of which will be provided.
37. The Plaintiff pleads that the conduct of Fr. Cahill as described herein was harsh, high-handed, and malicious, and as such, should be punished with aggravated and/or punitive damages, for which the Basilians are vicariously liable.
38. The Plaintiff further pleads that the conduct of the Basilians 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 Fr. Cahill'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 their reputations 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 them rather than stop the misconduct or assist the victims.

39. 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 Fr. Cahill's actions in early 2017 and relies upon the principle of discoverability. Prior to this time, the Plaintiff was incapable of commencing the proceedings because of his physical, mental and/or psychological condition which rendered him disabled.

40. The Plaintiff relies upon the doctrine of fraudulent concealment. The parties were in a special relationship with each other, and given that relationship the defendants' abovementioned actions amount to an unconscionable thing. The effect of the defendant's conduct has given rise to a concealment of the cause of action. The defendants have 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.

41. The Plaintiff relies on the *Criminal Code of Canada*, R.S.C. 1985, c. C-46, and the *Limitation Act*, RSA 2000, c L-12, and any and all predecessor legislation.

42. The Plaintiff also relies upon the 1917 Code of Canon law and the 1983 Code of Canon Law and related canonical and papal pronouncements.

Remedy sought:

43. The Plaintiff repeats the foregoing paragraphs of the Statement of Claim and states that the Plaintiff therefore claims damages from the Defendant 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 \$2,000,000.00;
- (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 \$500,000.00;
- (g) pre-judgment and post-judgment interest on the above-noted amounts pursuant to the terms and provisions of the *Judgment Interest Act*, RSA 2000, c J-1, as amended;
- (h) his costs of this action on a substantial indemnity basis; and
- (j) Such further and other relief as to this Honourable Court may seem to be as just.

44. The Plaintiff proposes that the trial of this action take place in Calgary, Alberta.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at ~~Edmonton~~ ^{Calgary}, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.