

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

LORNE P. WHALEN

Plaintiff

(Court seal.)

-and-

THE OTTAWA SUN, a division of Sun Media Corp.,
SYLVIA MacEACHERN and JACKI LEROUX

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). 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(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), 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

ONTARIO COURT (GENERAL DIVISION)

BETWEEN:

LORNE P. WHALEN

Plaintiff

(Court seal.)

-and-

THE OTTAWA SUN, a division of Sun Media Corp.,
SYLVIA MacEACHERN and JACKI LEROUX

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). 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(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), 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.

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 \$100.00 for costs and have the costs assessed by the court.

Date:

Issued by:

Local Registrar

Address of court office:

TO: **THE OTTAWA SUN**
A Division of Sun Media Corp.
380 Hunt Club Road
Ottawa, Ontario
K1G 5H7

AND TO: **SYLVIA MacEACHERN**



AND TO: **JACKI LEROUX**
c/o The Ottawa Sun
A Division of Sun Media Corp.
380 Hunt Club Road
Ottawa, Ontario
K1G 5H7

CLAIM

THIS ACTION IS BROUGHT AGAINST YOU UNDER
THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76
OF THE RULES OF CIVIL PROCEDURE

1. The Plaintiff, Lorne P. Whalen ("Whalen"), claims as against The Ottawa Sun, a division of Sun Media Corp. ("The Sun"):

- (a) general damages in the amount of \$1,000,000.00;
- (b) aggravated damages in the amount of \$1,000,000.00;
- (c) punitive damages in the amount of \$1,000,000.00;
- (d) special damages in the amount of \$500,000.00;
- (e) pre and post judgment interest pursuant to Section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (f) costs of this proceeding on a solicitor and client basis; and
- (g) such further and other relief as this Honourable Court may deem just.

2. Whalen claims as against Sylvia MacEachern ("MacEachern"):

- (a) general damages in the amount of \$1,000,000.00;
- (b) aggravated damages in the amount of \$1,000,000.00;
- (c) punitive damages in the amount of \$1,000,000.00;

- (d) special damages in the amount of \$500,000.00;
- (e) pre and post judgment interest pursuant to Section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (f) costs of this proceeding on a solicitor and client basis; and
- (g) such further and other relief as this Honourable Court may deem just.

3. **Whalen claims as against Jacki Leroux ("Leroux"):**

- (a) general damages in the amount of \$1,000,000.00;
- (b) aggravated damages in the amount of \$1,000,000.00;
- (c) punitive damages in the amount of \$1,000,000.00;
- (d) special damages in the amount of \$500,000.00;
- (e) pre and post judgment interest pursuant to Section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (f) costs of this proceeding on a solicitor and client basis; and
- (g) such further and other relief as this Honourable Court may deem just.

**Whalen is an ordained Roman Catholic Priest, resident at all material times at 105
Brimley Street, Suite 610, Toronto, Ontario. At all material times, Whalen was a priest in**

good standing with the diocese of Pembroke. Whalen was born in the Province of Newfoundland.

5. The Sun is a division of Sun Media Corp., a corporation incorporated pursuant to the laws of Ontario, which carries on business from the premises located at 380 Hunt Club Road, Ottawa, Ontario.

6. MacEachern resides at [REDACTED]. MacEachern is not a member of the congregation of St. Brigid's Church in Ottawa. MacEachern is, however, the publisher of an unauthorized newsletter entitled Orator and a member of the St. Brigid's Association.

7. Leroux is a newspaper reporter in the employ of The Sun and author of the article referred to below.

8. On or about Sunday, November 23, 1997, Leroux and The Sun published an article entitled "Sins of the Fathers" at page 19 of the final edition for that date. The Sun and Leroux did, by publishing that article, publish the following defamatory words:

"MacEachern, a member of St. Brigid's Church, recalls how two years ago her parish council learned they were getting a new priest.

After doing a little digging, they learned that priest was stripped of his position as military chaplain at CFB Cold Lake Alta.

Although the Department of National Defence confirmed the priest was stripped of his priestly duties, it refused to divulge to the Sun the nature of the charges against him.

It was only through MacEachern's network that she learned they were sex-related.

"We went to our parish priest and said 'You've got to get him out.' Then he was gone," she says.

Today, that priest is listed in the church directory as living in Toronto. His diocese in Pembroke refused to say what he was doing there."

The foregoing excerpt, while not naming Father Whalen, clearly identifies him to the parishioners of St. Brigid's Church as well as members of the church community at large and members of the Canadian Armed Forces. The inclusion of a reference to Father Whalen in the article, which deals throughout with individuals who have been charged and convicted of sex-related offenses is defamatory, through the words used, both in their natural and ordinary meaning and by innuendo. In particular, but without limiting the generality of their natural and ordinary meaning, the defamatory words constitute malicious fabrications which mean and were understood to mean that Father Whalen:

- (a) Was convicted of sex-related crimes;
- (b) Was charged with sex offences;
- (c) Was a paedophile;
- (d) Was stripped of his position as military chaplain as a result of sex related charges;
- (e) Was not permitted to become a priest of St. Bridger's Church because some members of the congregation insisted that they had to get him out;
- (f) Was not permitted to become a priest of St. Bridger's Church because the congregation insisted that they had to get him out;
- (g) Was a pervert;
- (h) Molested or abused children; and
- (i) Was sexually deviant;

- (j) Had sexual relations with children;
- (k) That for Whalen to serve the church "would insult Christ and the Laity";
- (l) That Whalen was to be a new parish priest at St. Brigid's Church and that he was a sexual abuser which was being deliberately concealed from the parish;
and
- (m) That the Roman Catholic Church is concealing Whalen.

9. The article entitled "Sins of the Fathers", by innuendo, defames Whalen by connecting him to the crimes attributed to the other priests named in the article. Whalen states and the fact is that the passage quoted above must be understood in the context of the entire article and that the reference therein is defamatory to him. Annexed hereto as Schedule "A" is the article entitled "Sins of the Father".

10. Whalen further states that the article, in its entirety, is an "expose" advertised by The Sun as "Ottawa Sun Reporter, Jacki Leroux, spent six weeks tracking 32 Catholic Priests charged or convicted of various sex crimes by courts across Canada." Whalen states and the fact is that the article was intended to expose priests convicted of sex crimes and that the reference to Father Whalen, is defamatory and has caused him damage.

11. Whalen states and the fact is that the publication of the reference to Whalen's brief appearance at St. Brigid's has prejudiced Father Whalen in his ability to obtain a parish and pursue his calling.

12. Whalen states and the fact is that MacEachern published the defamatory words set out at paragraph 8 herein to The Sun. Whalen states, and the fact is, that MacEachern's statement was false to her knowledge, in that: (i) Whalen was not to be the new priest for

not relevant

St. Brigid's Church, but merely assisted at one service while recovering from a back injury at National Defence Medical Centre; and (ii) MacEachern knows that Father Whalen has never been charged or convicted of any sex crime, but referenced his attendance at St. Brigid's Church when being interviewed by Leroux for the improper purpose of including Whalen in the expose.

13. Whalen states and the fact is that the publication of the article was intended to take advantage of the inflamed publicity surrounding the exposure of the criminal activity of some priests. Whalen states that The Sun was negligent in failing to properly verify the information provided to them by MacEachern.

14. Whalen states and the fact is that MacEachern intentionally and maliciously published the defamatory comments to The Sun.

15. Whalen states and the fact is that the publication of a reference to Whalen on November 23, 1997 has caused him damage by preventing his employment as a priest in a parish because of the stigma attached to him because of the defamatory publication. Whalen states that the inability to practice his calling has caused him mental anguish, depression and loss of income.

16. The Plaintiff proposes that this action be tried at Toronto.

AIRD & BERLIS
Barristers and Solicitors
BCE Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario
M5J 2T9

Philip P. Healey
Law Society No. 1-26925E
Joel D. Watson
Law Society No. 38520B
Solicitors for the Plaintiff
Tel: (416) 863-1500
Fax: (416) 863-1515