

# STATEMENT OF CLAIM

CANADA, )  
PROVINCE OF SASKATCHEWAN )

Q.B.G. No. .... of 2012

## IN THE COURT OF QUEEN'S BENCH JUDICIAL CENTRE OF REGINA

BETWEEN:

JOE BASARABA

PLAINTIFF

- and -

ROMAN CATHOLIC DIOCESE OF PRINCE ALBERT  
and THE PRINCE ALBERT SEPARATE SCHOOL BOARD

DEFENDANTS

### NOTICE TO DEFENDANT

- (1) The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court unless  
  
within 20 days if you were served in Saskatchewan  
within 30 days if you were served elsewhere in Canada or the United States of America  
within 40 days if you were served outside Canada and the United States of America  
  
(excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.
- (2) In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.
- (3) This Statement of Claim is to be served within 6 months from the date on which it is issued.
- (4) This Statement of Claim is issued at the above named judicial centre the 30th day of March, 2012.

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Local Registrar

## STATEMENT OF CLAIM

1. The Plaintiff, Joe Basaraba whose date of birth is May 30, 1964, resides in the Saskatoon, in the Province of Saskatchewan, and at all material times was a student at St. Mark's Catholic School ("**the Catholic School**") located at or near Prince Albert, Saskatchewan.
2. The Defendant, The Roman Catholic Diocese of Prince Albert ("**the Diocese**"), is a Roman Catholic Archdiocese and has a registered office at 1415- 4<sup>th</sup> Avenue West, Prince Albert, Saskatchewan, S6V 5H1, and was at all material times, responsible for the operation and administration of the Catholic School.
3. The Defendant, The Prince Albert Separate School Board ("**the School Board**"), is a Catholic School Board with a registered address located at 118-11<sup>th</sup> Street E., Prince Albert, Saskatchewan, S6V 1A1, and was at all material times responsible for the operation and administration of the Catholic School.

### PHYSICAL AND SEXUAL ASSAULTS

4. The Catholic School mandated that all students attend St. Mark's Church ("**the Church**") at or near the Town of Prince Albert, Saskatchewan as often as 12 times every week during the Monday to Friday period.
5. The Plaintiff was a student at the Catholic School for approximately nine years from Grades 1 through to 6. During this time, the Plaintiff was employed by two priests to do chores at the Church right after school and on Saturday mornings. The Plaintiff could not specifically recall the names of the two priests, but they may be known through church records or photographs.
6. The Plaintiff would enter through the back door of the Church. His work duties included cleaning up and throwing out the garbage. While working at the Church, the Plaintiff never saw anyone else working at the Church, including nuns, students, or neighbours.

7. During the time that the Plaintiff worked at the Church, the two priests intentionally assaulted the Plaintiff multiple times, the particulars of which, *inter alia*, are as follows:

- a. Taking off the Plaintiff's clothes;
- b. Groping the Plaintiff's penis and testicles;
- c. Forcing the Plaintiff to touch them;
- d. Forcing the Plaintiff to masturbate them;
- e. Forcing the Plaintiff to perform oral sex on them;
- f. Hitting the Plaintiff when he resisted doing the sexual acts;
- g. Talking dirty to the Plaintiff;
- h. Kissing the Plaintiff's penis;
- i. Licking the Plaintiff's penis; and
- j. Other assaults which will be proven at trial.

8. While the Plaintiff worked at the Church, the Plaintiff was subject to physical abuse by the two priests on numerous occasions, including but not limited to the following:

- a. Spanking the Plaintiff on the bare buttocks;
- b. Slapping the Plaintiff with a yard stick; and
- c. Other assaults which will be proven at trial.

9. The physical and sexual assaults took place on a regular basis in the basement of the Church. The two priests would take turns with the Plaintiff on alternating days.

10. The two priests exercised authority at the Catholic School and were regularly at the Catholic School.

11. The Plaintiff was kept from informing anyone about the abuse by the two priests, who threatened the Plaintiff that he would be kicked out of the Catholic School if he told anyone. The ability of the two priests to exercise this psychological control of the Plaintiff flowed from the positions of power and influence which the priests were given by the Diocese, the Catholic School and through it, the School Board.

12. Because of the actions of the two priests in sexually abusing and physically assaulting him, the Plaintiff lived in perpetual terror while at the Catholic School.

13. Additionally, while the Plaintiff was a student at the Catholic School, the Plaintiff was subject to physical abuse by the nuns at the Catholic School on numerous occasions, including but not limited to the following:

- a. Pulling the Plaintiff's ears;
- b. Strapping the Plaintiff with a belt;
- c. Hitting the Plaintiff with a stick; and
- d. Other assaults which will be proven at trial.

14. The physical abuse by the Nuns of the Catholic School impacted the Plaintiff more significantly because of the conjunction of that abuse with the physical, sexual, and psychological abuse and control exercised upon the Plaintiff by the two priests.

#### NEGLIGENCE AND BREACH OF FIDUCIARY DUTY

15. At all material times the School Board operated the Catholic School and selected, employed and supervised the supervisors, teachers, laypersons, and other staff who worked in the Catholic School.

16. At all material times the School Board was responsible for the Catholic School in a supervisory and oversight capacity upon which the Plaintiff was entitled to rely.

17. At all material times the Diocese operated the Church under the direction of the Roman Catholic Church. At all material times the Diocese was responsible for the conditions within the Church and the treatment of students who attended the Church.

18. At all material times the Diocese selected and supervised the priests, nuns, and members of religious orders at the Church.

19. The Defendants owed a duty of care to the students who attended the Catholic School and the Church to protect those students from any abuse – mental, emotional, physical, sexual or otherwise.

20. The Defendants owed the students a fiduciary obligation to act in the best interests of those students and to ensure that those students were treated fairly, respectfully, and in all ways consistent with the obligations of a parent or guardian to a child under his or her care and control

21. At all material times, the Plaintiff was entitled to and did rely upon the Defendants to fulfill their fiduciary and other obligations to his detriment.

22. The Defendants knew or ought to have known that the Plaintiff would suffer damages if the Defendants failed to carry out their fiduciary and other duties.

23. The Plaintiff worked at the Church as part of the school process and the Defendant School Board knew or ought to have known about the risks, injuries, and losses to the Plaintiff that resulted from the abuse perpetrated by the two priests.

24. The Defendants, through the two priests, were negligent and in breach of the fiduciary, moral, statutory, and common-law duties of care to the Plaintiff, particulars of which include, *inter alia*, the following:

- a. Failure to adequately observe the gross misconduct of the priests, nuns, and other members of religious orders;
- b. Failure to implement an adequate system of evaluation, monitoring, and control of their personnel;

- c. Failure to periodically reassess their regulations, procedures, and guidelines for the personnel when it knew, or ought to have known, of serious allegations of abuse;
  - d. Failure to protect the Plaintiff from physical and sexual abuse by the priests at the Church when they should have been alerted by the conduct within the Church;
  - e. Failure to protect the Plaintiff from harm;
  - f. Failure in general to take proper and reasonable steps to prevent injury to the Plaintiff's physical health and mental well-being and moral safety while the Plaintiff was working at the Church and while the Plaintiff was a student at the Catholic School;
  - g. Failure to protect the Plaintiff from sexual impropriety even though they knew the Plaintiff was a young student and was vulnerable to the attentions, dominance, and influence of others where the Defendants knew or ought to have known that such vulnerability would result in grievous physical, psychological and emotional harm to the Plaintiff; and
  - h. Such further and other particulars of negligence and breach of duty of care owed to the Plaintiff which shall be proven at the trial of this action.
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25. In addition, the Defendant School Board was negligent and in breach of trust and fiduciary duty to the Plaintiff, the particulars of which include, but are not limited to, the following:
- a. Permitting unqualified individuals to administer and operate the Catholic School;
  - b. Failure to adequately observe the gross misconduct of agents, servants or employees of the Catholic School;
  - c. Failure to implement an adequate system of evaluation, monitoring, and control of its personnel;
  - d. Failure to provide or to ensure a suitable environment for the education and training of students who attended the Catholic School;
  - e. Hiring instructors and other help who were not qualified to teach or to meet the needs of the students under their care; and
  - f. Such further and other particulars of negligence and breach of duty of care owed to the Plaintiff which shall be proven at the trial of this action.

26. The Diocese is vicariously liable for all sexual and physical assaults, and breaches of fiduciary duty which occurred at the Church. In particular, the Diocese is vicariously liable for the actions and negligence of the two priests and is also liable in its position as principal to the two priests, who at all times were acting as its servants, employees or agents.

27. By delegation from the Diocese, the priests at the Church assumed the responsibilities of parents and guardians with respect to the Plaintiff. The priests had the authority, duty and responsibility to provide for the care, mental and physical well being, moral guidance, counseling, discipline, instruction, safety, support and supervision of students at the School, including the Plaintiff.

28. Through delegations by the Diocese and by the School Board, the priests at the Church were able to exercise significant physical and psychological influence over the Plaintiff.

29. The Diocese knew or ought to have known about the risks, injuries, and losses to the Plaintiff that resulted from the abuse perpetrated by members of its religious orders.

30. In the alternative, the cause of the sexual and physical assaults and surrounding circumstances were within the knowledge and control of the Defendants, and the sexual and physical assaults would not have occurred but for the negligence of the Defendants, and each of them.

31. As a result of the breach of fiduciary duty and negligence on the part of the Diocese and the breach of fiduciary duty and negligence on the part of the School Board, the Diocese and the School Board are jointly and severally liable to the Plaintiff for:

- a. Sexual abuse done to him;
- b. Physical abuse visited upon him;
- c. Destroying or damaging the Plaintiff's sense of self and purpose; and
- d. Permitting the circumstances which resulted in the sexual and physical abuse to which the Plaintiff was subject.

FAILURE OF DUTY TO EDUCATE

32. In this atmosphere of fear within the Catholic School and also because of the inadequacies of the Catholic School as a place of learning, the Plaintiff was deprived of a meaningful education. The School Board was responsible for providing an appropriate and suitable environment for the Plaintiff to be educated and grow up in.

33. During the time the Plaintiff was a student at the Catholic School, he was subjected to constant emotional and mental abuse by agents of the School Board, as aforesaid, who were administering and operating the Catholic School.

34. The Plaintiff had speech difficulties and was not given any assistance or special treatment to learn to communicate.

35. The Plaintiff was held back for three years in Grade 1, two years in Grade 2, and two years in Grade 3. He was sidelined and parked.

36. The Plaintiff was denigrated, and through the combination of psychological, physical, and sexual abuse, was depreciated and made to feel meaningless and without capacity or worth.

37. As a result, the Plaintiff has lost his self-worth and was deprived of the communication skills that he would have acquired had he been assisted with his speech difficulties. The School Board owed a duty to the Plaintiff to provide him with an adequate education and to help him develop appropriately. The School Board breached this duty and is consequently liable to the Plaintiff for:

- a. Destroying or damaging the Plaintiff's sense of self-worth;
- b. Destroying or damaging the Plaintiff's earning capacity;
- c. Failing to make efforts to deal with the Plaintiff's speech difficulties;
- d. Holding the Plaintiff back for three years in Grade 1;
- e. Holding the Plaintiff back for two years in Grade 2;
- f. Holding the Plaintiff back for two years in Grade 3;



- g. Mishandling the Plaintiff with regards to his inability to communicate well; and
- h. Failing to provide an appropriate education and creating an atmosphere which was not conducive to the Plaintiff acquiring a proper education in preparation for his adult life. The Plaintiff cannot even read and never learned anything notwithstanding many years in school.

### DAMAGES

38. As a direct and foreseeable consequence of the physical and sexual assaults, and the emotional and mental abuse, the Plaintiff sustained serious, lasting and permanent injuries, which included, but are not limited to, the following:

- a. nervous shock;
- b. anxiety;
- c. depression;
- d. emotional trauma;
- e. psychological trauma;
- f. sexual trauma;
- g. personality change;
- h. traumatic neurosis;
- i. loss of confidence;
- j. lack of self-worth;
- k. decreased social ability;
- l. insomnia;
- m. fatigue;
- n. no substantial or adequate education;
- o. pain and suffering; and
- p. loss of enjoyment of life.

39. As a result of the breach of fiduciary duty and negligence of the Defendants, the Plaintiff suffered and continues to suffer damages and losses including, *inter alia*, as follows:

- a. inability to undergo normal and proper peer development;
- b. inability to undergo normal and healthy sexual development;
- c. impaired ability to trust other people and form and sustain intimate relationships;

- d. impairment in academic performance;
- e. impairment of his ability and opportunity to obtain an education appropriate to his abilities and aptitude;
- f. impaired ability to fully develop career alternatives resulting in lost income and loss of income earning capacity;
- g. impaired ability to deal with persons in authority;
- h. impaired ability to express emotions in a normal and healthy manner;
- i. impaired ability to control or express his anger and rage;
- j. fear, humiliation and embarrassment; and
- k. alcohol and drug abuse and addiction.

40. The Plaintiff has sustained and will continue to sustain pain and suffering, loss of enjoyment of life, and loss of amenities. The Plaintiff is unable to participate in those recreational, social, athletic, educational, and employment activities to the extent to which the Plaintiff would have participated in such activities had the sexual, physical, mental and emotional assaults not occurred.

41. The Plaintiff will also incur further expenses, including expenses for medication, therapy, counseling, hospitalization, rehabilitation, and other forms of medical treatment and care, the particulars of which expenses will be proven at trial.

42. The Plaintiff has sustained a loss of income and will continue to sustain a loss of income, a loss of competitive advantage in the employment field, a loss of income earning potential, and a diminution of income earning capacity.

43. The sexual, physical, mental, and emotional abuse was perpetrated in humiliating and terrifying ways by individuals who were in a position of trust over the Plaintiff, and therefore, due to the nature of the injuries sustained by him, he is entitled to aggravated damages from the Defendants.

44. The Plaintiff further claims that as a result of the actions and negligence of the Defendants, the Plaintiff has suffered damages and losses which are not yet known to him.

45. The Plaintiff therefore claims against the Defendants, jointly and severally:

- a. General damages;
- b. Special damages in an amount to be proven at trial;
- c. Damages for past and future loss of income in an amount to be proven at trial;
- d. Aggravated, exemplary and punitive damages;
- e. Damages for breach of fiduciary duty;
- f. Interest pursuant to *The Pre-Judgment Interest Act*, S.S. 1984-85-86, c.P-22.2 and the amendments thereto;
- g. Costs; and
- h. Such further and other relief as this Honourable Court may allow.

DATED at Regina, Saskatchewan, this 30<sup>th</sup> day of March, 2012.

MERCHANT LAW GROUP LLP



E.F. Anthony Merchant, QC

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