

IN THE SUPREME COURT
OF NEW SOUTH WALES
SYDNEY REGISTRY
COMMON LAW DIVISION

NO. 20893/1996

STATEMENT OF CLAIM

Filed for: ACU

ACU

GREGORY SUTTON

First Defendant

**JOHN STEVEN
SATTERSTHWAITE A.B,
BISHOP OF THE DIOCESE OF
LISMORE**

Second Defendant

BROTHER ALEXIS TURTON
Third Defendant

**TRUSTEES OF THE MARIST
BROTHERS**

Fourth Defendant

**TRUSTEES OF THE
PRESENTATION SISTERS**

Fifth Defendant

R.J. BENJAMIN & COMPANY

Solicitors

50 Connells Point Road

SOUTH HURSTVILLE 2221

DX 11327, HURSTVILLE

Tel: (02) 547 1733

Ref: SB:LH:10588

1. Being in doubt as to from whom to seek redress the Plaintiff sues the Defendants jointly and in the alternative to the extent that the question as to which of any of the Defendants is or are liable and if so to what extent may be determined as between all parties.

2. AS TO THE FIRST DEFENDANT
(GREGORY SUTTON)

The plaintiff was born on 26 September 1975 and was baptised and confirmed as a member of the Roman Catholic Church.

3. From 1982 to 1987 the Plaintiff was a primary school student at St. Carthages Primary School, a Roman Catholic School in the Diocese of Lismore in the State of New South Wales (hereafter called "St. Carthages School").

4. At all material times the First Defendant was a member of the Roman Catholic religious order known as the Marist Brothers of the Schools, (hereafter "the Marist Brothers") resided at the Marist Brothers Monastery in Lismore and was employed as a full time member



of teaching staff at St. Carthages School.

5. The First Defendant repeatedly sexually abused and assaulted the plaintiff from some time in and about February 1986 until around Easter 1987.

PARTICULARS OF UNLAWFUL SEXUAL ASSAULTS ON THE PLAINTIFF

- a) The Plaintiff was first sexually touched by the First Defendant in the classroom during class time some time around Easter, 1986. The First Defendant called the Plaintiff to come to his desk at the front of the classroom, had the Plaintiff stand behind the desk next to him and ran his hand up the Plaintiff's leg outside the Plaintiff's underpants and in between the Plaintiff's legs.
- b) The First Defendant repeated this behaviour from time to time throughout 1986.
- c) About a week after the First Defendant first sexually touched the Plaintiff the First Defendant drove the Plaintiff to the Marist Brothers Monastery after school, took the Plaintiff to a room where a train set was set up, lifted the Plaintiff onto a table and touched the Plaintiff on the vagina outside her underpants. He then drove the Plaintiff from the Marist Brothers Monastery to bushland where he parked the vehicle, kissed the Plaintiff's mouth and inserted his tongue into the mouth of the Plaintiff, removed the Plaintiff's underwear and dress, placed his hand on the Plaintiff's vagina, masturbated the Plaintiff, inserted a finger into the Plaintiff's vagina and continued to masturbate the Plaintiff.
- d) The First Defendant repeated this pattern of behaviour towards the Plaintiff about a week thereafter in the same vehicle at which time he further required the Plaintiff to masturbate his penis until he ejaculated.

- e) The First Defendant repeated this behaviour several times a week thereafter throughout 1986. The First Defendant also commenced performing oral sex on the Plaintiff and required the Plaintiff to perform oral sex upon him.
 - f) From time to time in 1986 and at some time between 1st February 1987 and 31 March 1987 the First Defendant also had sexual intercourse with the Plaintiff.
6. The aforesaid assaults occurred whilst the Plaintiff was aged between 10 years and 11 years. The Plaintiff did not consent to the assaults but acquiesced to the authority of the First Defendant.
7. Before the assaults the Plaintiff had never touched another person's genitals nor had she been touched sexually on her genitals by another person.

8. AS TO THE SECOND DEFENDANT
(BISHOP OF THE DIOCESE OF LISMORE)

At all material times the Second Defendant was the Bishop of the Diocese of Lismore for the Roman Catholic Church, and in that capacity was entitled to and did in fact authorise and oversee the appointment of all clergy and religious Brothers to positions within the Diocese of Lismore.

9. At all material times the Second Defendant had a duty as the Senior Church Officer in the Diocese of Lismore to care for children within the Roman Catholic School system, including pupils of St. Carthages School, including the Plaintiff. This duty of care encompassed a duty to take all reasonable care in relation to the appointment of and the conduct of teachers at St. Carthages School, such as the First Defendant.
10. The Second Defendant was in breach of his duty of care in relation to the appointment of the First Defendant and in and about his failure to act to prevent the First Defendant from continuing to teach at St. Carthages School and to have contact with and access to pupils of the school such as the plaintiff.

PARTICULARS OF NEGLIGENCE OF THE SECOND DEFENDANT

At the time of the appointment of the First Defendant as a school teacher at St Carthages, and in breach of the said duty, the Second Defendant:-

- a) failed to inquire of authorities in the Archdiocese of Sydney whether the First Defendant was a known or suspected paedophile;
- b) failed to inquire of the Principal and school teachers at St. Thomas More Primary School, Campbelltown, whether the First Defendant was a known or suspected paedophile;
- c) failed to make any inquiries as to the First Defendant's background and suitability for appointment as a school teacher at St. Carthages;
- d) failed to seek any report or information as to why the First Defendant was being transferred from St. Thomas More Primary School, Campbelltown;
- e) failed to seek any report or information from the Third or Fourth Defendants as to the First Defendant's suitability for appointment as a school teacher at St. Carthages;
- f) failed to have in place a proper system for screening and evaluating teachers to be appointed to St. Carthages School;
- g) failed to discuss with the Principal of St. Carthages School the suitability for appointment of the First Defendant as a school teacher at St. Carthages;
- h) failed to have in place a system whereby paedophilic misconduct by the First Defendant against school children would be prevented;
- i) failed to have in place a system whereby children such as the Plaintiff could confidently and safely report paedophilic misconduct by a teacher who was a Marist Brother;
- j) appointed and/or permitted the First Defendant to teach at St. Carthages School notwithstanding that he knew or ought to have known that the First Defendant was a known or suspected paedophile.

FURTHER PARTICULARS OF NEGLIGENCE OF THE SECOND DEFENDANT

At some time after the appointment of the First Defendant as a school teacher at St Carthages School and before the First Defendant ceased teaching at the said school, negligently and in breach of his said duty to the Plaintiff, the Second Defendant:-

- a) failed to report allegations of child abuse of the First Defendant to relevant authorities;
- b) failed to discipline or control the First Defendant in relation to paedophilic misconduct and/or allegations of paedophilic misconduct and/or indicia of paedophilic misconduct by the First Defendant;
- c) failed to take note of clear warning signs of a peculiar relationship between the Plaintiff and the First Defendant strongly suggestive of paedophilic misconduct by the First Defendant;
- d) ignored complaints of misconduct against the First Defendant;
- e) failed to act upon knowledge of strong suspicion that the First Defendant whilst a school teacher at St. Carthages was a paedophile, or alternatively, acted so weakly upon such knowledge or strong suspicion or in the face of complaints about the First Defendant's behaviour so as to condone or tolerate the said paedophilic behaviour;
- f) failed to take early steps to move the First Defendant from his position of authority over children such as the Plaintiff;
- g) participated in an informal scheme whereby known or suspected paedophilic Marist Brothers were allowed to leave their positions and be transferred to another position without their misconduct being exposed and marked.

11. AS TO THE THIRD DEFENDANT (ALEXIS TURTON):

At all material times the Third Defendant was the Provincial of the Marist Brothers and as such was responsible for the appointment and control of the First Defendant.

12. At all material times the Third Defendant had a duty of care to pupils such as the Plaintiff with whom the First Defendant would have contact with and access to and have supervision and control.
13. The Third Defendant breached his duty of care to the Plaintiff.

PARTICULARS OF NEGLIGENCE OF THE THIRD DEFENDANT

- a) Failing to ensure that the First Defendant being a paedophile, was not employed as a teacher at St. Carthages;
- b) failing to discipline or control the First Defendant in relation to paedophilic misconduct and/or allegations of paedophilic misconduct and/or indicia of paedophilic misconduct by the First Defendant;
- c) failing to have in place a system whereby paedophilic misconduct by the First Defendant against school children would be prevented;
- d) failing to have in place a system whereby children such as the Plaintiff could confidently and safely report paedophilic misconduct by a teacher who was a Marist Brother;
- e) negligently failing to take note of clear warning signs of a peculiar relationship between the Plaintiff and the First Defendant strongly suggestive of paedophilic misconduct by the First Defendant;
- f) ignoring complaints of misconduct against the First Defendant;
- g) failing to act upon knowledge or strong suspicion that the First Defendant whilst a school teacher at St. Carthages, was a paedophile, or alternatively acting so weakly upon such knowledge or strong suspicion or in the face of complaints about the First Defendant's behaviour as to condone or tolerate the said paedophilic behaviour;
- h) failing to remove the First Defendant from his position of authority over children such as the Plaintiff;
- i) participating in an informal scheme whereby known or suspected paedophilic Marist Brothers were allowed to leave their positions and be transferred to

- another position without their misconduct being exposed and marked;
- j) whilst knowing or strongly suspecting that the First Defendant had engaged in paedophilic misconduct at former schools, participating in a scheme whereby he was transferred to St. Carthages School without his earlier misconduct being exposed and marked;
 - k) through his agents the Marist Brothers attached to St. Carthages School, failing to report suspected child sexual abuse by the First Defendant to the proper State Child Protection Services for further investigation;
 - l) failing to supervise or adequately supervise Marist Brother's properties including the Marist Brother's Monastery at Lismore and the Marist Brother's property at 1 Brownell Drive, Watego Bay so that the properties could not be used for the purpose of sexual seduction and/or sexual abuse of children such as the plaintiff.

14. **AS TO THE FOURTH DEFENDANT**
(TRUSTEES OF THE MARIST BROTHERS)

At all material times the Fourth Defendant was a Body Corporate capable of being sued under the name "Trustees of the Marist Brothers".

- 15. At all material times the Fourth Defendant employed and acted through the First Defendant in the supervision and control of the Plaintiff.
- 16. The acts of unlawful sexual assault committed by the First Defendant were committed by him in the course of his employment with the Fourth Defendant and the Fourth Defendant is vicariously responsible for such wrongdoing.
- 17. Further, and in the alternative, the Fourth Defendant was responsible for the supervision and control of members of the Marist Brothers including the First Defendant teaching at St. Carthages school
- 18. At all material times the Fourth Defendant operated and conducted educational institutions including, either solely or jointly with the Fifth Defendant, St. Carthages School and the Trinity College at Lismore.

19. At all material times the Fourth Defendant had a duty of care to the Plaintiff in relation to her health, education and welfare.
20. The Fourth Defendant negligently breached its duty of care to the Plaintiff.

PARTICULARS OF NEGLIGENCE OF FOURTH DEFENDANT

- a) Failing to ensure that the First Defendant being a paedophile, was not employed as a teacher at St. Carthages;
- b) failing to discipline or control the First Defendant in relation to paedophilic misconduct and/or allegations of paedophilic misconduct and/or indicia of paedophilic misconduct by the First Defendant;
- c) failing to have in place a system whereby paedophilic misconduct by the First Defendant against school children would be prevented;
- d) failing to have in place a system whereby children such as the Plaintiff could confidently and safely report paedophilic misconduct by a teacher who was a Marist Brother;
- e) failing to take note of clear warning signs of a peculiar relationship between the Plaintiff and the First Defendant strongly suggestive of paedophilic misconduct by the First Defendant;
- f) ignoring complaints of misconduct against the First Defendant;
- g) failing to act upon knowledge or strong suspicion that the First Defendant whilst a school teacher at St. Carthages, was a paedophile, or alternatively acting so weakly upon such knowledge or strong suspicion or in the face of complaints about the First Defendant's behaviour as to condone or tolerate the said paedophilic behaviour;
- h) failing to take early steps to remove the First Defendant from his position of authority over children such as the Plaintiff;
- i) participating in an informal scheme whereby known or suspected paedophilic Marist Brothers were allowed to leave their positions and be transferred to another position without their misconduct being exposed and marked;

- j) whilst knowing or strongly suspecting that the First Defendant had engaged in paedophilic misconduct at former schools, participating in a scheme whereby he was transferred to St. Carthages School without his earlier misconduct being exposed and marked;
- k) through its agents the Marist Brothers attached to St. Carthages School, failing to report suspected child sexual abuse by the First Defendant to the proper State Child Protection Services for further investigation;
- l) failing to supervise or adequately supervise Marist Brother's properties including the Marist Brother's Monastery at Lismore and the Marist Brother's property at 1 Brownell Drive, Watego Bay so that the properties could not be used for the purpose of sexual seduction and/or sexual abuse of children such as the Plaintiff.
- m) failing to provide any or any adequate education for students such as the Plaintiff about sexual assault and molestation;
- n) failing to warn students such as the Plaintiff of the risk of sexual assault and/or molestation;
- o) failing to warn students such as the Plaintiff that in the event of sexual assault and/or molestation, they should complain to some particular person or through some particular procedure.

21. **AS TO THE FIFTH DEFENDANT**
(TRUSTEES OF THE PRESENTATION SISTERS)

At all relevant times the Fifth Defendant was a Body Corporate capable of being sued under the name "Trustees of the Presentation Sisters".

22. At all material times the Fifth Defendant was responsible for the supervision and control of members of the Presentation Sisters Order ("The Presentation Sisters").
23. At all material times the Fifth Defendant operated and conducted educational institutions including, either solely or jointly with the Fourth Defendant, St. Carthages School and Trinity College at Lismore.

24. At all material times the Fifth Defendant had a duty of care to the Plaintiff in relation to her health, education and welfare.
25. The Fifth Defendant negligently breached its duty of care to the Plaintiff.

PARTICULARS OF NEGLIGENCE OF THE FIFTH DEFENDANT

- a) Failing to ensure that the First Defendant being a paedophile, was not employed as a teacher at St. Carthages;
- b) negligently failing to discipline or control the First Defendant in relation to paedophilic misconduct and/or allegations of paedophilic misconduct and/or indicia of paedophilic misconduct by the First Defendant;
- c) negligently failing to have in place a system whereby paedophilic misconduct by the First Defendant against school children at St. Carthages School would be prevented;
- d) negligently failing to have in place a system whereby children such as the Plaintiff could confidently and safely report paedophilic misconduct by a teacher who was a Marist Brother;
- e) negligently failing to take note of clear warning signs of a peculiar relationship between the Plaintiff and the First Defendant strongly suggestive of paedophilic misconduct by the First Defendant;
- f) not dealing properly with complaints of misconduct against the First Defendant;
- g) failing to act upon knowledge or strong suspicion that the First Defendant was a paedophile or alternatively acting so weakly upon such knowledge or strong suspicion or in the face of complaints in early 1985 about the First Defendant's behaviour so as to condone or encourage the said paedophilic behaviour;
- h) failing to take steps in March 1985 to remove the First Defendant from his position of authority over children such as the Plaintiff;
- i) failing in 1985, 1986 and 1987 through its agent Sister Julia O'Sullivan to report suspected child sexual abuse by the First Defendant to the proper State

Child Protection Services for further investigation and action.

- j) failing through its agents the religious Sisters attached to St Carthages School, to supervise or adequately supervise the premises of St Carthages School including the classroom in which the First Defendant taught the Plaintiff so as to prevent such premises being used for the purpose of the criminal seduction and/or sexual abuse of children including the Plaintiff.

26. **PLAINTIFF'S INJURIES LOSSES AND DAMAGES**

By reason of the said assaults of the First Defendant and the negligence of the Defendants or one or more of them, the Plaintiff suffered and continues to suffer injury, loss and damage including severe psychological injury.

PARTICULARS OF PLAINTIFF'S INJURIES AND DISABILITIES:

- a) Post traumatic stress disorder
- b) loss of enjoyment of life
- c) recurrent and intrusive recollections of the events
- d) nightmares and sleep disturbances
- e) feelings of detachment from others
- f) poor concentration
- g) dissociation
- h) low self esteem
- i) depression
- j) dramatic mood swings
- k) somatic symptoms including but not limited to glandular fever, impetigo, bronchitis, laryngitis and recurrent minor infections
- l) self mutilation
- m) lack of sexual interest
- n) association of sex with pain
- o) disrupted schooling
- p) sense of betrayal and confusion regarding the Roman Catholic Church and

faith

- q) inability to form close friendships
- r) feeling of stigmatisation by peers resulting in the need to change High Schools and leave the Lismore area
- s) destruction of relationship with the Plaintiff's parents and alienation from family.

PARTICULARS OF MONIES WHICH THE PLAINTIFF HAS PAID OR IS LIABLE TO PAY:

The plaintiff has incurred expense for hospital medical and other treatment, detailed particulars of which will be supplied in due course.

PARTICULARS OF OTHER LOSSES SUSTAINED BY THE PLAINTIFF

The plaintiff has suffered a loss of earnings and a loss of earning capacity, detailed particulars of which will be supplied in due course.

THE PLAINTIFF CLAIMS:

The Plaintiff claims compensatory as well as aggravated and exemplary damages.

PARTICULARS OF AGGRAVATED AND EXEMPLARY DAMAGES AGAINST SECOND, THIRD, FOURTH AND FIFTH DEFENDANTS:

- a) The Defendants or some or more of them wrongly and collusively agreed with others of them that the First Defendant should be appointed to and be permitted to teach at St Carthages School notwithstanding that he was a known and/or suspected paedophile.

- b) The Defendants or one or more of them knew or ought to have known prior to the appointment of the First Defendant as a teacher at St. Carthages School that the First Defendant was a known or suspected paedophile.
- c) At all material times the Defendants or one or more of them were aware and ought to have been aware that the First Defendant had been removed from teaching positions at several schools because of his known or suspected paedophilic behaviour.
- d) At all material times the Defendants or one or other of them had knowledge of credible complaints of the First Defendant's sexual misconduct and/or inappropriate intimate behaviour towards various school children.
- e) Notwithstanding the matters pleaded in b) c) or d) the Defendants or one or other of them appointed and/or permitted the First Defendant to teach at St Carthages School where he would have access to and control and authority over children including the Plaintiff in contumelious disregard of the Plaintiff's rights.
- f) The Defendants or one or other of them failed to act upon credible complaints of inappropriate behaviour of the First Defendant towards children prior to the Plaintiff being sexually assaulted by the First Defendant.
- g) The Defendants or one or other of them failed to act upon credible complaints of inappropriate behaviour of the First Defendant during 1986 and 1987.
- h) The failure of the Defendants or one or other of them to act notwithstanding being aware of credible complaints as alleged in f) and g) is deserving of punishment.

- i) The conduct of the Defendants was highhanded, illegal, and in total disregard of the Plaintiff's rights and engaged in with full awareness of the likelihood that the Plaintiff would suffer loss and damage.

26. In addition the Plaintiff claims:

- (a) Interest under Section 94 of the Supreme Court Act
- (b) Costs.

To the Defendants:

GREGORY SUTTON
C/- Greg Walsh & Co., Solicitors,
84 Waldron Road, Chester Hill NSW 2162
DX 11224 BANKSTOWN

JOHN STEVEN SATTERSTHWAITE A.B.
Bishop of Diocese of Lismore,
Bishops House, 6 Keen Street, Lismore NSW 2480

BROTHER ALEXIS TURTON
C/- Carroll and O'Dea, Solicitors,
Level 19, St. James Centre,
111 Elizabeth Street, Sydney NSW 2000
DX 183 SYDNEY

TRUSTEES OF THE MARIST BROTHERS
C/- Carroll and O'Dea, Solicitors,
Level 19, St. James Centre,
111 Elizabeth Street, Sydney NSW 2000
DX 183 SYDNEY

TRUSTEES OF THE PRESENTATION SISTERS
100 High Street,
LISMORE NSW 2480

1. You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this Statement of Claim upon you and you comply with the rules of Court relating to your defence.

Plaintiff:

ACU

Plaintiff's Address for Service:

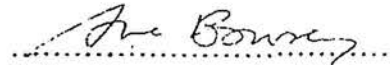
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Service by Facsimile Transmission will be accepted
FACSIMILE NO. (02) 9546 7155

Address of Registry:

Supreme Court, Queens Square, Sydney

Dated: 16 August, 1996



Robert James Charles Benjamin by his
employed Solicitor Susan Anne Bowrey



20 AUG 1996 ✓