

Form 2.9**Defence***Court Procedures Rules 2006*

In the Supreme Court of the Australian Capital Territory

No SC 171 of 2008

AAE

Plaintiff

TRUSTEES OF THE MARIST BROTHERS

First Defendant

ALEXIS TURTON

Second Defendant

OTHMAR WELDON

Third Defendant

CHARLES HOWARD

Fourth Defendant

KIERAN GEANEY

Fifth Defendant

ALMAN DWYER

Sixth Defendant

MARK MAY

Seventh Defendant

JOSEPH McMAHON

Eighth Defendant

PAT THOMPSON

Ninth Defendant

Filed for the first, second, fourth, fifth, eighth to nineteenth, twenty-first to twenty-fifth defendants

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TERENCE HEINRICH
Tenth Defendant

WILLIAM CONNELL
Eleventh Defendant

JEFFREY CROWE
Twelfth Defendant

MICHAEL FLANAGAN
Thirteenth Defendant

ERNEST HOUSTON
Fourteenth Defendant

JOHN THOMPSON
Fifteenth Defendant

MICHAEL NAUGHTIN
Sixteenth Defendant

FREDERICK McMAHON
Seventeenth Defendant

GEOFFREY JOY
Eighteenth Defendant

COMAN SYKES
Nineteenth Defendant

ROBERT GOODWIN
Twentieth Defendant

RONALD PERRY
Twenty-first Defendant

CRISTOPHER WADE
Twenty-second Defendant

KELVIN CANAVAN
Twenty-third Defendant

ANTHONY ROBINSON
Twenty-fourth Defendant

CATHOLIC CHURCH INSURANCES LIMITED
ACN 000 005 210
Twenty-fifth Defendant

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- 1 The first, second, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth defendants ("**the defendants**") deny that the plaintiff is entitled to the general relief claimed, as alleged in the Amended Originating Claim ("**the Claim**").
- 2 The defendants admit that the first defendant are the trustees of community land for each community as defined by s.4 of the *Roman Catholic Church Communities' Lands Act 1942* (NSW) and by virtue of the said Act the first defendant is a body corporate and has the powers invested in the Trustees in the said Act but the defendants otherwise do not admit that the first defendant is liable to be sued in that corporate name and style by the plaintiff as alleged in paragraph 1 of the Claim.
- 3 The defendants do not admit that between 1968 and 1994 the first defendant by its members, servants and/or agents operated and had the management and control of the school at Marr Street Pearce in the Australian Capital Territory known as Marist College Canberra ("**the school**") as alleged in paragraph 2 of the Claim.
- 4 The defendants do not admit paragraph 3 of the Claim.
- 5 The defendants do not admit that the first defendant by its servants and/or its agents was responsible for the supervision of those who taught at the school between 1968 and 1994 as alleged in paragraph 4 of the Claim.
- 6 The defendants admit that John William Chute ("**Brother Kostka**") taught at the school but does not otherwise admit paragraph 5 of the Claim.
- 7 The defendants do not admit that during 1985, 1986, 1987 and 1988 and whilst a student at the school the plaintiff was sexually assaulted by Brother Kostka, as alleged in paragraph 6 of the Claim.
- 8 The defendants do not admit paragraph 6(a) of the Claim.
- 9 The defendants do not admit paragraph 6(b) of the Claim.
- 10 The defendants do not admit paragraph 6(c) of the Claim.
- 11 The defendants do not admit paragraph 6(d) of the Claim.
- 12 The defendants do not admit paragraph 6(e) of the Claim.
- 13 The defendants do not admit that as a result of the assaults listed in paragraphs 6(a) – (e) of the Claim, or at all, the plaintiff was injured and has suffered injury and harm as alleged in paragraph 7 of the Claim.
- 14 The defendants deny that the first defendant is vicariously liable for the acts of Brother Kostka in assaulting the plaintiff and for the injury and harm suffered by the plaintiff as alleged in paragraph 8 of the Claim.

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- 15 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was an employee of the first defendant, as alleged in paragraph 8(a) of the Claim.
- 16 The defendants deny that the assault upon and injury to the plaintiff by Brother Kostka occurred in the course of Brother Kostka's employment with the first defendant, as alleged in paragraph 8(b) of the Claim.
- 17 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was acting as an agent of the first defendant for the purposes of the pursuit and furtherance of its undertaking namely, the education of children at the school, as alleged in paragraph 8(c) of the Claim.
- 18 The defendants deny that Brother Kostka was part of a joint common enterprise in concert with the first defendant, namely the education of children at the school, as alleged in paragraph 8(d) of the Claim.
- 19 The defendants deny that the first defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 9 of the Claim.
- 20 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the first defendant, as alleged in paragraph 10 of the Claim.
- 21 The defendants deny that the first defendant breached a non-delegable duty of care to the plaintiff as alleged in paragraph 10(a) – (k) of the Claim, or at all and further says, that as the particulars of breach of duty are not matters for traverse, the defendants do not plead to each particular of breach.
- 22 The defendants deny that the first defendant had/has a vicarious liability and/or direct liability for the acts and omissions of the first defendant, or at all, and further deny that any injury or harm to the plaintiff (which is not admitted) was/were caused by or materially contributed to by the first defendant's failure through its members, servants and/or agents to discharge its obligations as a fiduciary to the benefit of the plaintiff's parents and the plaintiff, as alleged in paragraph 11 of the Claim.
- 23 The defendants deny that between 1968 and 1994 the first defendant operated and/or managed the school through the Principal ("**the principal**") of the school from time to time and further denies that the first defendant is vicariously liable for each of the acts and omissions of the various principals which caused injury and harm to the plaintiff as alleged in paragraph 12 of the Claim.
- 24 The defendants deny that between 1968 and 1994 the first defendant operated and/or managed the school through the Provincials of the Trustees of the Marist Brothers from time to time and further deny that the first defendant is vicariously

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liable for each of the acts and omissions of the various Provincials of the Trustees of the Marist Brothers which caused injury and harm to the plaintiff as alleged in paragraph 13 of the Claim.

- 25 The defendants deny that between 1968 and 1994 the first defendant operated and/or managed the school through the Councillors of the Provincial Council of the Marist Brothers Province of Sydney from time to time and further deny that the first defendant is vicariously liable for each of the acts and omissions of the various Provincials of the Trustees of the Marist Brothers which caused injury and harm to the plaintiff as alleged in paragraph 14 of the Claim.
- 26 The defendants deny that the conduct of the first defendant through its servants and/or agents fell so far short of acceptable standards as to represent a contumelious disregard for the plaintiff's rights and a violation of the rights to personal and bodily integrity as alleged in paragraph 15 of the Claim.
- 27 The defendants admit that the sixth defendant was the Provincial of the Marist Brothers from 8 May 1983 to 22 June 1989 but otherwise deny paragraph 16 of the Claim.
- 28 The defendants admit that the third defendant was the Provincial of the Marist Brothers from 10 November 1964 to 19 August 1972 but otherwise deny paragraph 17 of the Claim.
- 29 The defendants admit that the fourth defendant was the Provincial of the Marist Brothers from 20 August 1972 to 30 September 1976 but otherwise deny paragraph 18 of the Claim.
- 30 The defendants admit that the fifth defendant was the Provincial of the Marist Brothers from 21 November 1976 to 30 April 1983 but otherwise deny paragraph 19 of the Claim.
- 31 The defendants say that the matters sought to be pleaded in paragraph 20 of the Claim are embarrassing, vexatious and/or oppressive by reason of the ambiguity of that which is sought to be incorporated and the pleading is liable to be struck out and the defendants do not otherwise admit paragraph 20 of the Claim.
- 32 The defendants deny paragraph 21 of the Claim.
- 33 The defendants deny paragraph 22 of the Claim.
- 34 The defendants deny paragraph 23 of the Claim.
- 35 The defendants deny paragraph 24 of the Claim.
- 36 The defendants deny paragraph 25 of the Claim.
- 37 The defendants deny paragraph 26 of the Claim.

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- 38 The defendants deny paragraph 27 of the Claim.
- 39 The defendants deny paragraph 28 of the Claim.
- 40 The defendants admit that John William Chute ("**Brother Kostka**") taught at the school but does not otherwise admit paragraph 29 of the Claim.
- 41 The defendants do not admit that during 1985, 1986, 1987 and 1988 and whilst a student at the school the plaintiff was sexually assaulted by Brother Kostka, as alleged in paragraph 30 of the Claim.
- 42 The defendants do not admit paragraph 30(a) of the Claim.
- 43 The defendants do not admit paragraph 30(b) of the Claim.
- 44 The defendants do not admit paragraph 30(c) of the Claim.
- 45 The defendants do not admit paragraph 30(d) of the Claim.
- 46 The defendants do not admit paragraph 30(e) of the Claim.
- 47 The defendants do not admit that as a result of the assaults listed in paragraphs 30(a) – (e) of the Claim, or at all, the plaintiff was injured and has suffered injury and harm as alleged in paragraph 31 of the Claim.
- 48 The defendants deny that the sixth defendant is vicariously liable for the acts of Brother Kostka in assaulting the plaintiff and for the injury and harm suffered by the plaintiff as alleged in paragraph 32 of the Claim.
- 49 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was an employee of the sixth defendant, as alleged in paragraph 32(a) of the Claim.
- 50 The defendants deny that the assault upon and injury to the plaintiff by Brother Kostka occurred in the course of Brother Kostka's employment with the sixth defendant, as alleged in paragraph 32(b) of the Claim.
- 51 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was acting as an agent of the sixth defendant for the purposes of the pursuit and furtherance of its undertaking namely, the education of children at the school, as alleged in paragraph 32(c) of the Claim.
- 52 The defendants deny that Brother Kostka was part of a joint common enterprise in concert with the sixth defendant, namely the education of children at the school, as alleged in paragraph 32(d) of the Claim.
- 53 The defendants deny that the sixth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff

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including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 33 of the Claim.

54 The defendants deny that the third defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 34 of the Claim.

55 The defendants deny that the fourth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 35 of the Claim.

56 The defendants deny that the fifth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 36 of the Claim.

57 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted) were caused by the breaches of duty of care owed by the sixth defendant, as alleged in paragraph 37 of the Claim.

58 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted) were caused by the breaches of duty of care owed by the third defendant, as alleged in paragraph 38 of the Claim.

59 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted) were caused by the breaches of duty of care owed by the fourth defendant, as alleged in paragraph 39 of the Claim.

60 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted) were caused by the breaches of duty of care owed by the fifth defendant, as alleged in paragraph 40 of the Claim.

61 The defendants deny that the third, fourth, fifth and sixth defendants breached a duty of care to the plaintiff as alleged in paragraph 40(a) – (k) of the Claim, or at all and further say, that as the particulars of breach of duty are not matters for traverse, the defendants do not plead to each particular of breach.

62 The defendants deny that the sixth defendant had/has a vicarious liability and/or direct liability for the acts and omissions of the sixth defendant, or at all, and further deny that any injury or harm to the plaintiff (which is not admitted) was/were caused by or materially contributed to by the sixth defendant's failure to discharge its obligations as a fiduciary to the benefit of the plaintiff's parents and the plaintiff, as alleged in paragraph 41 of the Claim.

63 The defendants deny that between 1968 and 1994 the third, fourth, fifth and sixth defendants conducted the school through the Trustees of the Marist Brothers and that the third, fourth, fifth and sixth defendants are vicariously liable for each of the

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acts and omissions of the Trustees of the Marist Brothers which caused injury and harm to the plaintiff, as alleged in paragraph 42 of the Claim.

- 64 The defendants deny that between 1968 and 1994 the third, fourth, fifth and sixth defendants conducted the school through the Councillors of the Provincial Council of the Marist Brothers Province of Sydney and further deny that the third, fourth, fifth and sixth defendants are vicariously liable for each of the acts and omissions of the Councillors of the Provincial Council of the Marist Brothers Province of Sydney which caused injury and harm to the plaintiff, as alleged in paragraph 43 of the Claim.
- 65 The defendants deny that between 1968 and 1994 the third, fourth, fifth and sixth defendants conducted the school through the principal of the school and from time to time and each of the third, fourth, fifth and sixth defendants are vicariously liable for each of the acts and omissions of the various principals which caused injury and harm to the plaintiff, as alleged in paragraph 44 of the Claim.
- 66 The defendants deny that the conduct of the third, fourth, fifth and sixth defendants fell so far short of acceptable standards as to represent a contumelious disregard for the plaintiff's rights and a violation of the rights to personal and bodily integrity as alleged in paragraph 45 of the Claim.
- 67 The defendants admit paragraph 46 of the Claim.
- 68 The defendants admit paragraph 47 of the Claim.
- 69 The defendants admit paragraph 48 of the Claim.
- 70 The defendant admits paragraph 49 of the Claim.
- 71 The defendants admit paragraph 50 of the Claim.
- 72 The defendants do not admit paragraph 51 of the Claim.
- 73 The defendants do not admit paragraph 52 of the Claim.
- 74 The defendants do not admit paragraph 53 of the Claim.
- 75 The defendants do not admit paragraph 54 of the Claim.
- 76 The defendants do not admit paragraph 55 of the Claim.
- 77 The defendants do not admit paragraph 56 of the Claim.
- 78 The defendants do not admit paragraph 57 of the Claim.
- 79 The defendants do not admit paragraph 58 of the Claim.
- 80 The defendants do not admit paragraph 59 of the Claim.

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- 81 The defendants do not admit paragraph 60 of the Claim.
- 82 The defendants admit that John William Chute ("**Brother Kostka**") taught at the school but do not otherwise admit paragraph 61 of the Claim.
- 83 The defendants do not admit that during 1985, 1986, 1987 and 1988 and whilst a student at the school the plaintiff was sexually assaulted by Brother Kostka, as alleged in paragraph 62 of the Claim.
- 84 The defendants do not admit paragraph 62(a) of the Claim.
- 85 The defendants do not admit paragraph 62(b) of the Claim.
- 86 The defendants do not admit paragraph 62(c) of the Claim.
- 87 The defendants do not admit paragraph 62(d) of the Claim.
- 88 The defendants do not admit paragraph 62(e) of the Claim.
- 89 The defendants do not admit that as a result of the assaults listed in paragraphs 62(a) – (e) of the Claim, or at all, the plaintiff was injured and has suffered injury and harm, as alleged in paragraph 63 of the Claim.
- 90 The defendants deny that the tenth defendant is vicariously liable for the acts of Brother Kostka in assaulting the plaintiff and for the injury and harm suffered by the plaintiff, as alleged in paragraph 64 of the Claim, or at all.
- 91 The defendants say that as the particulars of the claim for vicarious liability are not matters for traverse, the defendants do not plead to each particular of the claim for vicarious liability set out in paragraphs 64(a) – (d) of the Claim.
- 92 The defendants do not admit that the tenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 65 of the Claim.
- 93 The defendants do not admit that the seventh defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 66 of the Claim.
- 94 The defendants do not admit that the third defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 67 of the Claim.
- 95 The defendants do not admit that the eighth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of

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the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 68 of the Claim.

- 96 The defendants do not admit that the ninth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 69 of the Claim.
- 97 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the tenth defendant, as alleged in paragraph 70 of the Claim.
- 98 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the seventh defendant, as alleged in paragraph 71 of the Claim.
- 99 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the third defendant, as alleged in paragraph 72 of the Claim.
- 100 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the eighth defendant, as alleged in paragraph 73 of the Claim.
- 101 The defendants deny that the sexual assault, injury and harm to the plaintiff (which are not admitted by the defendants) were caused by breaches of duty of care owed by the ninth defendant, as alleged in paragraph 74 of the Claim.
- 102 The defendants deny that the tenth, seventh, third, eighth and ninth defendants as principals of the school breached a non-delegable duty of care to the plaintiff as alleged in paragraph 74(a) – (k) of the Claim, or at all and further says, that as the particulars of breach of duty are not matters for traverse, the defendants do not plead to each particular of breach.
- 103 The defendants deny that the tenth defendant had/has a vicarious liability and/or direct liability for the acts and omissions, and further deny that any injury or harm to the plaintiff (which is not admitted) was/were caused by or materially contributed to by the eleventh defendant's failure to discharge its obligations as a fiduciary to the benefit of the plaintiff's parents and the plaintiff, as alleged in paragraph 75 of the Claim.
- 104 The defendants deny that between 1968 and 1994 the tenth, seventh, third, eighth and ninth defendants conducted the school through the Trustees of the Marist Brothers and further deny that the tenth, seventh, third, eighth and ninth defendants are vicariously liable for each of the acts and omissions of the Trustees of the Marist Brothers which caused injury and harm to the plaintiff, as alleged in paragraph 76 of the Claim.

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- 105 The defendants deny that between 1968 and 1994 the tenth, seventh, third, eighth and ninth defendants conducted the school through the Councillors of the Provincial Council of the Marist Brothers Province of Sydney and further deny that the tenth, seventh, third, eighth and ninth defendants are vicariously liable for each of the acts and omissions of the Councillors of the Provincial Council of the Marist Brothers Province of Sydney which caused injury and harm to the plaintiff, as alleged in paragraph 77 of the Claim.
- 106 The defendants deny that between 1968 and 1994 the tenth, seventh, third, eighth and ninth defendants conducted the school through the Provincials of the Marist Brothers from time to time and further deny that each of the tenth, seventh, third, eighth and ninth defendants are vicariously liable for each of the acts and omissions of the various Provincials of the Marist Brothers which caused injury and harm to the plaintiff, as alleged in paragraph 78 of the Claim.
- 107 The defendants deny that the conduct of the Principals fell so far short of acceptable standards as to represent a contumelious disregard for the plaintiff's legal rights and violation of his rights to personal and bodily integrity, as alleged in paragraph 79 of the Claim.
- 108 The defendants admit paragraphs 80 – 100 of the Claim.
- 109 The defendants say that the matters sought to be pleaded in paragraph 101 of the Claim are embarrassing, vexatious and/or oppressive by reason of the ambiguity of that which is sought to be incorporated and the pleading is liable to be struck out and the defendants do not otherwise admit paragraph 101 of the Claim.
- 110 The defendants deny paragraph 102 of the Claim.
- 111 The defendants deny paragraph 103 of the Claim.
- 112 The defendants admit that John William Chute ("**Brother Kostka**") taught at the school but do not otherwise admit paragraph 104 of the Claim.
- 113 The defendants do not admit that during 1985, 1986, 1987 and 1988 and whilst a student at the school the plaintiff was sexually assaulted by Brother Kostka, as alleged in paragraph 105 of the Claim.
- 114 The defendants do not admit paragraph 105 (a) of the Claim.
- 115 The defendants do not admit paragraph 105 (b) of the Claim.
- 116 The defendants do not admit paragraph 105 (c) of the Claim.
- 117 The defendants do not admit paragraph 105 (d) of the Claim.
- 118 The defendants do not admit paragraph 105 (e) of the Claim.

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- 119 The defendants do not admit that as a result of the assaults listed in paragraphs 105 (a) – (e) of the Claim, or at all, the plaintiff was injured and has suffered injury and harm as alleged in paragraph 106 of the Claim.
- 120 The defendants deny that the second, tenth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third and twenty-fourth defendants are individually and collectively vicariously liable for the acts of Brother Kostka in assaulting the plaintiff and for the injury and harm suffered by the plaintiff as alleged in paragraph 107 of the Claim.
- 121 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was an employee of the second, tenth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third and/or twenty-fourth defendants, as alleged in paragraph 107 (a) of the Claim.
- 122 The defendants deny that the assault upon and injury to the plaintiff by Brother Kostka occurred in the course of Brother Kostka's employment with the second, tenth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third and/or twenty-fourth defendants, as alleged in paragraph 107 (b) of the Claim.
- 123 The defendants deny that at the time and in the circumstances when Brother Kostka assaulted and injured the plaintiff, Brother Kostka was acting as an agent of the second, tenth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third and twenty-fourth defendants individually and collectively for the purposes of the pursuit and furtherance of its undertaking namely, the education of children at the school, as alleged in paragraph 107 (c) of the Claim.
- 124 The defendants deny that Brother Kostka was part of a joint common enterprise in concert with the second, tenth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third and/or twenty-fourth defendants, namely the education of children at the school, as alleged in paragraph 107 (d) of the Claim.
- 125 The defendants do not admit that the second defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 108 of the Claim.
- 126 The defendants do not admit that the tenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 109 of the Claim.
- 127 The defendants do not admit that the thirteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 110 of the Claim.

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- 128 The defendants do not admit that the fourteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 111 of the Claim.
- 129 The defendants do not admit that the twenty-first defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 112 of the Claim.
- 130 The defendants do not admit that the twenty-second defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 113 of the Claim.
- 131 The defendants do not admit that the twenty-third defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 114 of the Claim.
- 132 The defendants do not admit that the twenty-fourth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 115 of the Claim.
- 133 The defendants do not admit that the third defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 116 of the Claim.
- 134 The defendants do not admit that the fourth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 117 of the Claim.
- 135 The defendants do not admit that the fifth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 118 of the Claim.
- 136 The defendants do not admit that the sixth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 119 of the Claim.
- 137 The defendants do not admit that the seventh defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of

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the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 120 of the Claim.

- 138 The defendants do not admit that the eleventh defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 121 of the Claim.
- 139 The defendants do not admit that the twelfth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 122 of the Claim.
- 140 The defendants do not admit that the fifteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 123 of the Claim.
- 141 The defendants do not admit that the sixteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 124 of the Claim.
- 142 The defendants do not admit that the seventeenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 125 of the Claim.
- 143 The defendants do not admit that the eighteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 126 of the Claim.
- 144 The defendants do not admit that the nineteenth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 127 of the Claim.
- 145 The defendants do not admit that the twentieth defendant owed the plaintiff a non-delegable common law duty of care to exercise reasonable care for the safety of the plaintiff including to protect him from sexual assault by those who taught at the school, as alleged in paragraph 128 of the Claim.
- 146 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the second defendant, as alleged in paragraph 129 of the Claim.

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- 147 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the tenth defendant, as alleged in paragraph 130 of the Claim.
- 148 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the thirteenth defendant, as alleged in paragraph 131 of the Claim.
- 149 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the fourteenth defendant, as alleged in paragraph 132 of the Claim.
- 150 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twenty-first defendant, as alleged in paragraph 133 of the Claim.
- 151 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twenty-second defendant, as alleged in paragraph 134 of the Claim.
- 152 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twenty-third defendant, as alleged in paragraph 135 of the Claim.
- 153 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twenty-fourth defendant, as alleged in paragraph 136 of the Claim.
- 154 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the third defendant, as alleged in paragraph 137 of the Claim.
- 155 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the fourth defendant, as alleged in paragraph 138 of the Claim.
- 156 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the fifth defendant, as alleged in paragraph 139 of the Claim.
- 157 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the sixth defendant, as alleged in paragraph 140 of the Claim.
- 158 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the seventh defendant, as alleged in paragraph 141 of the Claim.

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- 159 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the eleventh defendant, as alleged in paragraph 142 of the Claim.
- 160 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twelfth defendant, as alleged in paragraph 143 of the Claim.
- 161 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the fifteenth defendant, as alleged in paragraph 144 of the Claim.
- 162 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the sixteenth defendant, as alleged in paragraph 145 of the Claim.
- 163 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the seventeenth defendant, as alleged in paragraph 146 of the Claim.
- 164 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the eighteenth defendant, as alleged in paragraph 147 of the Claim.
- 165 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the nineteenth defendant, as alleged in paragraph 148 of the Claim.
- 166 The defendants deny that the sexual assault, injury and harm to the plaintiff were caused by breaches of duty of care owed by the twentieth defendant, as alleged in paragraph 149 of the Claim.
- 167 The defendants deny that the second, third, fourth, fifth, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and/or twenty-fourth defendants or at all, breached a duty of care to the plaintiff as alleged in paragraph 149 (a) – (k) of the Claim, or at all and further say, that as the particulars of breach of duty are not matters for traverse, the defendants do not plead to each particular of breach.
- 168 The defendants deny that the defendants or any one of the defendants had/has a vicarious liability and/or direct liability for the acts and omissions of the second, third, fourth, fifth, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and/or twenty-fourth defendants or at all, and further deny that any injury or harm to the plaintiff (which is not admitted) was/were caused by or materially contributed to by the failure of the second, third, fourth, fifth, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth,

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seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth defendants, or at all, to discharge their obligations as a fiduciary to the benefit of the plaintiff's parents and the plaintiff, as alleged in paragraph 150 of the Claim.

- 169 The defendants deny that between 1968 and 1994 the second, third, fourth, fifth, sixth, seventh, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth defendants or at all, conducted the school and further deny that each of the Councillors is individually and collectively vicariously liable for each of the acts and omissions of the various principals which caused injury loss and harm, as alleged in paragraph 151 of the Claim.
- 170 The defendants deny that between 1968 and 1994 the Councillors from time to time, either individually or collectively conducted the school through Provincials of the Marist Brothers from time to time and further deny that the Councillors are vicariously liable for each of the acts and omissions of the various Provincials of the Marist Brothers which caused injury and harm to the plaintiff, as alleged in paragraph 152 of the Claim.
- 171 The defendants deny that between 1968 and 1994 the Councillors from time to time, either individually or collectively conducted the school through the Trustees of the Marist Brothers and further deny that the Councillors are individually and collectively vicariously liable for each of the acts and omissions of the Trustees of the Marist Brothers which caused injury and harm to the plaintiff, as alleged in paragraph 153 of the Claim.
- 172 The defendants deny that the conduct of the Councillors individually and collectively fell so far short of acceptable standards as to represent a contumelious disregard for the plaintiff's rights and a violation of his rights to personal and bodily integrity, as alleged in paragraph 154 of the Claim.
- 173 The twenty-fifth defendant ("CCI") admits that it conducted business as an insurer as alleged in paragraph 155 of the Claim.
- 174 CCI does not admit that the first defendant was the owner/operator of the school and does not otherwise admit paragraph 156 of the Claim.
- 175 CCI admits that, from time to time between 1968 and 1994 CCI provided insurance in respect of employees and servants of the school but does not otherwise admit paragraph 157 of the Claim.
- 176 CCI denies that the first to twenty-fourth defendants inclusive has/have a liability to pay damages in these proceedings with respect to the claims against the first to twenty-fourth defendants and in those circumstances does not admit that the first to twenty-fourth defendants are liable to be indemnified, and otherwise CCI does not admit paragraphs 158 – 181 inclusive of the Claim.

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- 177 CCI admits that the plaintiff's claim against CCI is brought pursuant to the provisions of Part 15.3 of the *Civil Law (Wrongs) Act 2002* (ACT) but denies that the plaintiff has yet obtained leave to bring the proceedings pursuant to Part 15.3 of the *Civil Law (Wrongs) Act 2002* (ACT).
- 178 FURTHER and in addition and in answer to the whole of the plaintiff's claim, the defendants deny that the plaintiff is entitled to compensatory damages, exemplary damages, aggravated damages and/or equitable compensation, interest, costs and interest pursuant to Rule 1616 of the *Court Procedure Rules 2006* (ACT) or at all.
- 179 FURTHER and in addition and in answer to the plaintiff's claim for relief the defendants deny that the facts alleged in the Claim give rise to any claim for exemplary damages, aggravated damages and/or equitable compensation.
- 180 FURTHER and in addition and in answer to the whole of the Claim, the defendants says that the plaintiff's claim against the defendants is not maintainable as, contrary to s.11 and/or s.16B of the *Limitation Act 1985* (ACT), the claim was brought after the end of the limitation period.
- 181 FURTHER and in addition and in answer to the whole of that part of the Claim based on equitable principles, the defendants say that the plaintiff is not entitled to maintain a cause of action against the defendants as equity affords the defendant the same limitations imposed by the *Limitation Act 1985* (ACT).
- 182 FURTHER and in addition and in answer to the whole of that part of the Claim based on equitable principles, the defendants says that the plaintiff is not entitled to maintain a cause of action against the defendants on the ground of laches on the part of the plaintiff.
- 183 FURTHER and in addition to so much of those parts of the Claim that allege authority given to Brother Kostka by the defendants or representations made by the defendants with respect to Brother Kostka, the defendants say that none of the injuries, losses or damage and/or harm alleged by the plaintiff was caused by or resulted from reliance by the plaintiff thereon, or, to the extent that it may be found to be relevant, by his parents or either of them.
- 184 FURTHER and in addition, the defendants say that the facts alleged by the plaintiff do not give rise to a positive duty on the part of the defendants or any of them to take positive steps to protect the plaintiff from criminal acts by a third party, Brother Kostka.

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Date: 12 September 2008

Richard Garnett

DLA PHILLIPS FOX as agents for
MONAHAN & ROWELL

First, second, fourth, fifth, eighth to
nineteenth, twenty-first to twenty-fifth
defendants' solicitor

Notice about reply

You have 14 days to file and serve a reply to the defence. If you do not do so, you may be prevented from presenting evidence in relation to allegations of fact made in the defence.

The Civil Law (Wrongs) Act 2002, s 188 (Certificate that claim or defence has reasonable prospects of success) does not apply to this action.