

Form 2.6 Statement of claim—general

Court Procedures Rules 2006

(see r 50 (Originating claim—content etc), r 303 (Third-party notice—content etc))

In the Supreme Court of the Australian Capital Territory

No SC of

AAE

Plaintiff

TRUSTEES OF THE MARIST BROTHERS

Defendant

The plaintiff claims damages for personal injury in relation to the defendant's negligence.

Details of the claim are as follows:

1. Time, Date, Place and Circumstances of acts or omissions constituting negligence.

- a) The defendant is a body corporate duly incorporated pursuant to section 4 of the *Roman Catholic Church Community Land Act, 1942 (NSW)* and is able to sue and be sued in its corporate name and style.
- b) At all material times the defendant by its servants and/or its agents operated and had the management and control of a school at Marr Street, Pearce, in the Australian Capital Territory known as Marist College Canberra ("the school").

Filed on behalf of the Plaintiff by:-

Porters Lawyers

Level 7, 39 London Circuit

CANBERRA CITY ACT 2601

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DX: 5632, Canberra

Telephone: (02) 6247 3477

Facsimile: (02) 6248 5045

Reference: JDP:07461

- c) At all material times, the defendant by its servants and/or its agents was responsible for employing staff at the school.
- d) At all material times, the defendant by its servants and/or its agents was responsible for the supervision of those who taught at the school.
- e) At all material times John William Chute known as Brother Kostka and Brother Kostka-Chute ("Brother Kostka") taught at the school.
- f) From 1985 to 1988 the plaintiff was a student at the school.
- g) During 1985, 1986, 1987 and 1988 the plaintiff was sexually assaulted by Brother Kostka.

Particulars of sexual assault

- i) During 1985 Brother Kostka taught the plaintiff religion. During religion classes, Brother Kostka regularly sexually assaulted the plaintiff by either touching the plaintiff's penis and testicles from outside his trousers, or by placing his hand inside the plaintiff's trousers and touching the plaintiff's penis and testicles.
- ii) During 1985, 1986 and 1987 Brother Kostka regularly sexually assaulted the plaintiff in his office by either touching the plaintiff's penis and testicles from outside his trousers, or by placing his hand inside the plaintiff's trousers and touching the plaintiff's penis and testicles.
- iii) During 1985, 1986 and 1987 Brother Kostka regularly sexually assaulted the plaintiff on sports afternoons when the plaintiff was

assisting Brother Kostka with the operation of the "pie wagon". Brother Kostka sexually assaulted the plaintiff by either touching the plaintiff's penis and testicles from outside his trousers, or by placing his hand inside the plaintiff's trousers and touching the plaintiff's penis and testicles.

- iv) . During 1985, 1986 and 1987 Brother Kostka regularly sexually assaulted the plaintiff on Friday nights when the plaintiff was assisting Brother Kostka with the operation of the "Friday Film Night". Brother Kostka sexually assaulted the plaintiff by either touching the plaintiff's penis and testicles from outside his trousers, or by placing his hand inside the plaintiff's trousers and touching the plaintiff's penis and testicles.
- v) During the middle of 1988 Brother Kostka sexually assaulted the plaintiff in Brother Kostka's room in the seminary when the plaintiff visited him to pick up a bike frame. Brother Kostka sexually assaulted the plaintiff by touching the plaintiff's penis and testicles from outside his trousers.

2. Precise particulars of the defendant's negligence and other breaches

- a) At all material times, the defendant by its servants and/or its agents, was aware of the risks of children at the school being sexually assaulted by those it engaged to teach at the school.
- b) At all material times, the defendant by its servants and/or its agents, knew that incidents of child sexual assault occurred at the school and were committed and perpetuated by those it engaged to teach at the school.

Particulars of the defendant's knowledge that child sexual assaults at the school were committed and perpetuated by those it engaged to teach at the school

- i) In or about 1970 a parent of a child at the school informed the principal that a Brother at the school had sexually assaulted her child by forcing him to sit on the Brother's lap, placing his hands inside her child's trousers and touching the child's penis, and penetrating her child's anus with his finger.
- ii) In or about 1978 the school arranged for the school's rugby team to play and tour in New Zealand. Whilst members of the school's rugby team were in New Zealand, a Brother who taught at the school and accompanied the team to New Zealand, sexually assaulted two children from the school in a hotel room. The children complained of the sexual assault to a lay teacher employed by the school. The lay teacher considered it necessary to direct all of the children on the tour to ensure that they locked their hotel room doors from the inside, and not allow any of the Brothers from the school to enter their rooms under any circumstances. Upon their return to Australia, the principal was informed of the sexual assaults that had occurred in New Zealand.
- iii) In or about 1979, a mother of a child at the school complained to the principal that Brother Kostka:

1. was showing children pornography in his class;

2. was taking children into his office and forcing them to sit on his lap and comb his hair;
3. was masturbating under his cassock in class; and,
4. that Brother Kostka should be removed from the school because he posed a danger to the children.

The principal informed the mother that:

1. he was aware of Brother Kostka's behaviour as described above;
 2. had informed the Provincials of the Marist Brothers of Brother Kostka's behaviour;
 3. had tried to have Brother Kostka removed; and,
 4. that the Provincials of the Marist Brothers had refused to take any action in relation to Brother Kostka.
- iv) In or about 1982, Brother Kostka was sexually assaulting a child in his office when a cleaner employed by the defendant, and who was at the time acting within the course of his employment with the defendant, walked into the office to see Brother Kostka close to and facing a child and both pulling up their trousers. Brother Kostka said, "Shit" and the cleaner apologised and left the office.
- v) In or about 1982 a lay teacher employed at the school invited children from the school for extra tutoring and induced the children's

parents to allow the children to stay the night at the lay teacher's house. During the night, the lay teacher required two children to sleep with him in his bed. The lay teacher sexually assaulted one of the children by touching the child's penis. The teacher subsequently sexually assaulted that child by touching the child's penis at the child's home. The child's parents complained to the principals of both the senior and junior schools of the sexual assault. The defendant failed to remove the lay teacher from the school and he later sexually assaulted two other children from the school during a school camp.

- vi) By at least, in or about 1984, the defendant through its servants and/or its agents was aware that another teacher, namely the late **REDACTE** was inducing children from the school to his home for tutoring and enticing them to sleep overnight at his residence.
- vii) In or about 1986, Brother Kostka sexually assaulted a child from the school during the 'Friday Film Night' conducted by Brother Kostka at the school for the children, by touching the child's genitals. The parents of the child informed the school principal of Brother Kostka's sexual assault of their child. The principal informed the parents of the child that it was a very serious matter and that they had every right to report the matter to the police, but that he strongly recommended that the matter be left to be dealt with by the school and that if they did he could assure them that it would never happen again. The defendant did not adequately deal with the matter and

Brother Kostka continued to sexually assault other children of the school until 1993.

- viii) In or about 1986 a child of the school told a teacher who was responsible for the pastoral care of children of the school, that he had been sexually assaulted by Brother Kostka in 1981. He also told the teacher that he could see that Year 7 children were following Brother Kostka around the school and that he feared that Brother Kostka was sexually assaulting those children. The teacher informed the child that there was nothing he could do and that it was not his problem.
- c) Notwithstanding the defendant's knowledge of the matters set out in the particulars above, the defendant by its servants and/or its agents failed to take any or any effective measures to initiate and/or maintain programmes to prevent child sexual assault by those it engaged to teach at the school.
- d) Notwithstanding the defendant's knowledge of Brother Kostka's sexual assault of children of the school from at least 1979, the defendant failed to take any, or any effective measures, to prevent Brother Kostka from continuing to sexually assault children from the school, and provided him with the ongoing opportunity to sexually assault children of the school.
- e) Notwithstanding the defendant's knowledge of Brother Kostka's sexual assault of children of the school from at least 1979, the defendant promoted or allowed Brother Kostka to remain on the school's pastoral care team and teach at the school.

- f) By its conduct in failing to take any or any effective measures to prevent Brother Kostka from sexually assaulting children of the school, and by promoting or allowing him to remain on the school's pastoral care team and teach at the school, the defendant by its servants and/or agents, knowingly or negligently, expressly or impliedly, authorised Brother Kostka's conduct in sexually assaulting the plaintiff and other children of the school as conduct that was within the course of Brother Kostka's engagement as a teacher with the school.
- g) Further, and in the alternative, by its failure to take any or any effective measures to prevent Brother Kostka from sexually assaulting the plaintiff and other children of the school, by promoting him or allowing him to remain on the school's pastoral care team and teach at the school, the defendant represented to the plaintiff's parents that Brother Kostka was a fit and proper person to be entrusted with the care of the plaintiff and other children of the school.
- h) At the time of making the representations referred to above, the defendant by its servants and/or agents knew or ought reasonably to have known that the parents of children of the school including the plaintiff's parents, relied on it to exercise due care, skill and diligence in making the representations, that they would rely on those representations and that if the representations were untrue that they or their children might suffer loss and damage.

- i) The plaintiff's parents relied on the representations of the defendant in agreeing to allow the plaintiff to attend the school and entrusted the care of the plaintiff to the defendant and Brother Kostka.
- j) Further, or in the alternative, by its failure to take any or any effective measures to prevent Brother Kostka from sexually assaulting the plaintiff and other children of the school, by making the representations referred to above, and by authorising Brother Kostka's conduct in sexually assaulting the plaintiff and other children as conduct that was within the course of his engagement as a teacher with the school, the defendant is estopped from denying that Brother Kostka's conduct was not within the course of his engagement as a teacher with the school.
- k) Further, by its failure to take any or any effective measures to prevent Brother Kostka from sexually assaulting the plaintiff and other children of the school, by promoting him or allowing him to remain on the school's pastoral care team and teach at the school, the defendant knowingly or negligently empowered Brother Kostka and provided him with the opportunity to sexually assault the plaintiff and other children of the school, and created or materially increased the risks to which the plaintiff and other children of the school were exposed.
- l) The defendant owed the plaintiff a non-delegable duty of care.
- m) The defendant has breached its non-delegable duty of care to the plaintiff.

Particulars of breach of duty

- i) Allowing Brother Kostka to continue to have any involvement in the teaching of children from at least 1979.
- ii) Failure to have in place and/or enforce a strict code of conduct with respect to the prevention of child sexual assault.
- iii) Failure to take any or any adequate steps to identify children from the school who had been affected by Brother Kostka's abuse and initiate counselling, so as to minimise the risks of injury to the abused children.
- iv) Failure to have in place and/or enforce a procedure for the dealing of accusations or complaints of child sexual assault by teachers engaged by the school.
- v) Failure to initiate programmes to educate children of the school in responses designed to ensure their personal safety in the event that they were sexually assaulted by teachers engaged by the school, including programmes designed to encourage the reporting of such conduct to the school counsellor, the principal or other staff member, or by means of a peer support scheme and to ensure that such complaints be adequately and properly investigated and resolved in a manner that eliminated any future risks of child sexual assault.
- vi) Discouraging the reporting of incidents of child sexual assault to the police.

- vii) Failure to have systems and protocols in place to ensure that cases of possible or suspected child sexual assault were reported to the appropriate authorities.
- viii) Failure to devise and maintain a suitable system or procedure so as to ensure that its personnel were suitable for the purpose of being entrusted with the care of children.
- ix) Failure to warn or train its personnel of the risks and dangers of child sexual assault.
- x) Failure to institute and maintain a system of in-service programmes for its personnel so as to avoid the risks of child sexual assault.
- xi) Allowing Brother Kostka to teach at its school.
- xii) Failure to terminate Brother Kostka's engagement with the school from at least 1979.
- xiii) Failure to educate the children of the school including the plaintiff, of the risks of child sexual assault and provide a system whereby the plaintiff would be encouraged to complain of sexual assault.
- xiv) Failure to take any or any adequate steps so as to ensure that Brother Kostka did not abuse children or continue to abuse children from at least 1979.
- xv) Failure to warn the plaintiff or his parents of the risks of sexual assault.



- xvi) Failure to report Brother Kostka's conduct in sexually assaulting children of the school to the police.
 - xvii) Entrusting the care of the plaintiff to Brother Kostka.
 - xviii) Failing to recognise that Brother Kostka was not suitable for the purposes of being entrusted with the care of children.
 - xix) Failure to instruct its staff to report all known or suspected cases of sexual assault of children of the school to the appropriate authorities.
 - xx) Failure to supervise or adequately supervise Brother Kostka.
 - xxi) Failure to supervise or adequately supervise the children of the school including the plaintiff.
 - xxii) Failure to recognise that Brother Kostka was likely to sexually assault the students entrusted to his care.
 - xxiii) Failure to exercise due skill and care in the making of the representations referred to above, and in the care and supervision of the plaintiff.
 - xxiv) Res ipsa loquitur.
- n) Further, the acts of Brother Kostka in sexually assaulting the plaintiff and other children, were part of a course of conduct which occurred at the school and were closely connected with the defendant's enterprise and Brother Kostka's engagement as a teacher at the school.

- o) Further, and in the alternative, the defendant and Brother Kostka were in a special position of trust and authority in relation to the plaintiff and his family and were entrusted with the care of the plaintiff.
- p) Further, by reason of the teacher/student and school authority/student relationship between the plaintiff and the defendant, the defendant and Brother Kostka were each fiduciaries with respect to the plaintiff and owed fiduciary duties to him.
- q) The defendant and Brother Kostka have been in breach of their duty of care, their special position of trust, and/or fiduciary duties causing injury to the plaintiff.
- r) The plaintiff relies on the matters set out in the paragraphs above as particulars of exemplary and aggravated damages.
- s) Further, the defendant is vicariously liable for the acts of Brother Kostka.

Particulars

Brother Kostka committed the sexual assaults within the course of his engagement as a teacher with the school and pursuant to the representations made by the defendant referred to in the paragraphs above.

3. Particulars of breach of statutory duty.

- a) Not applicable.

4. Injuries and disabilities suffered by the plaintiff.

As a consequence of the assaults committed by Brother Kostka the plaintiff has suffered a psychiatric illness

5. Plaintiff's health professionals.

To be provided.

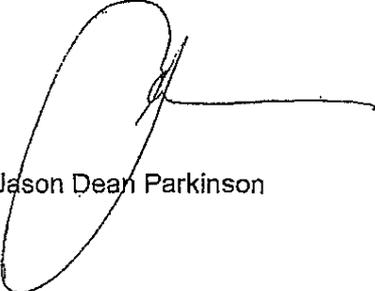
6. Nature of claims for past and future losses.

The plaintiff has suffered psychiatric injury, mental harm and nervous shock, medical expenses and loss of earning capacity. Full particulars will be provided in due course.

AND the plaintiff claims compensatory damages, exemplary damages, aggravated damages and/or equitable compensation, interest and costs and interest pursuant to Rule 1616 of the Court Procedures Rules.

Date:

26 February 2008


Jason Dean Parkinson