

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
MAJOR TORTS LIST

No.4877 of 2002

BETWEEN:

ANTHONY JOHN FOSTER

Plaintiff

and

NOREEN HARRISON and OTHERS
(according to the Schedule attached)

Defendants

**DEFENCE OF THE FIRST TO SIXTH DEFENDANTS
TO THE AMENDED STATEMENT OF CLAIM**

Date of Document:	22 October 2004
Filed on behalf of:	The First to Sixth Defendants
Prepared by:	
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To the amended statement of claim dated 15 October 2004, the first to sixth defendants say as follows:

1. As to paragraph 1:
 - (1) They admit that Kevin O'Donnell was the parish priest of the Sacred Heart Parish, Oakleigh, in the state of Victoria (*the parish*) within the Catholic Archdiocese of Melbourne between January 1987 and 5 May 1992 (*the period*).
 - (2) They otherwise deny each and every allegation contained in paragraph 1.
- 1A. Save that they admit that the plaintiff is the father of Emma Foster and Katherine Foster, they do not admit the allegations contained in paragraph 1A.

2. As to paragraph 2:

- (1) They admit that during the period the first defendant was the principal of the Sacred Heart Primary School, Oakleigh, in the state of Victoria (*the school*).
- (2) They admit that the first defendant, in the course of performing her responsibilities as principal of the school, was under a duty to take reasonable care to avoid injury to students while at the school during ordinary school hours on school days.
- (3) They otherwise deny each and every allegation contained in paragraph 2.

3. As to paragraph 3:

- (1) They admit that during the period the second defendant was:
 - (a) the Catholic Archbishop of the Archdiocese of Melbourne;
 - (b) was subject to the obligations imposed on him, and had the powers vested in him, as Catholic Archbishop of the Archdiocese of Melbourne pursuant to the Code of Canon Law dated 25 January 1983 (*the Code of Canon Law*); and
 - (c) was a member of the fourth defendant.
- (2) They otherwise deny each and every allegation contained in paragraph 3.

4. As to paragraph 4:

- (1) They admit that the third defendant was appointed the Catholic Archbishop of the Archdiocese of Melbourne on 22 June 2001.
- (2) They admit that, from 22 June 2001, the third defendant was subject to the obligations imposed on him, and had the powers vested in him, as the Catholic Archbishop of the Archdiocese of Melbourne pursuant to the Code of Canon Law.
- (3) They otherwise deny each and every allegation contained in paragraph 4.


5. As to paragraph 5:


- (1) They admit the allegations contained in paragraph 5(a) and (b) thereof.

- (2) They admit that the fourth defendant was during the period the registered proprietor of the land on which the Sacred Heart Church and Presbytery in the parish and the school were situated.
 - (3) They otherwise deny each and every allegation contained in paragraph 5.
6. As to paragraph 6:
 - (1) They admit that during the period the fifth defendant was the Vicar General of the Catholic Archdiocese of Melbourne.
 - (2) They otherwise deny each and every allegation contained in paragraph 6.
7. As to paragraph 7:
 - (1) They admit that during the period the sixth defendant was the parish priest of the Dandenong parish within the Catholic Archdiocese of Melbourne.
 - (2) They otherwise deny each and every allegation contained in paragraph 7.
8. As to paragraph 8:
 - (1) They do not admit the allegations contained in paragraph 8(a) and (b).
 - (2) They refer to and repeat paragraph 2(2) hereof.
 - (3) They otherwise deny each and every allegation contained in paragraph 8.
9. As to paragraph 9:
 - (1) They refer to and repeat paragraph 2(2) hereof.
 - (2) They otherwise deny each and every allegation contained in paragraph 9.
10. They deny each and every allegation contained in paragraph 10.
11. As to paragraph 11:
 - (1) They do not admit that Emma Foster and/or Katherine Foster were subjected to physical and/or sexual and/or psychological abuse while infants by Kevin O'Donnell.
 - (2) They otherwise deny each and every allegation contained in paragraph 11.
- 11A. They deny each and every allegation in paragraph 11A.

12. They deny each and every allegation in paragraph 12.
13. They deny each and every allegation contained in paragraph 13.
14. They deny each and every allegation contained in paragraph 14.
15. If, which is denied, the plaintiff suffered injury, loss or damage as a consequence of the negligence or breach of duty of the defendants or any of them, the plaintiff's cause of action accrued more than six years prior to the commencement of this proceeding and is statute barred as a result of the operation of section 5 of the *Limitation of Actions Act 1958*.
16. Further, they say that, insofar as the statement of claim alleges a claim against the first to sixth defendants, the statement of claim does not disclose a cause of action, is embarrassing and liable to be struck out.

DATED the day of October 2004


DAVID COLLINS


KEVIN J LYONS

CORRS CHAMBERS WESTGARTH
Solicitors for the First to Sixth Defendants