

IN THE COUNTY COURT OF VICTORIA
 AT MELBOURNE
 DAMAGES AND COMPENSATION LIST
 GENERAL DIVISION

No: CI-11-03121

BETWEEN
 BIW

Plaintiff

-AND-

GEELONG GRAMMAR SCHOOL
 (A.C.N 004 971 500)

First Defendant

-AND-

PHILIPPE TRUTMAN

Second Defendant

STATEMENT OF CLAIM

Date of document:	10 July 2012
Filed on behalf:	Plaintiff
Prepared by:	
Robinson Gill	Solicitors Code
Solicitors	DX 12805 Box Hill
701 Station Street	Tel: 9890 3321
Box Hill	Fax: 9898 4266
Melbourne, Victoria	Ref: JG:JF:29106

1. The First Defendant is and was at all relevant times:
 - (a) An incorporated body and is capable of being sued;
 - (b) The employer responsible for the actions of Phillippe Trutman ("Trutman") in his position as boarding house assistant of the Highton Campus of the First Defendant's school, Victoria ("Highton").
2. In about 1989 ("the period") the Plaintiff was a boarder at Highton.

PARTICULARS

The Plaintiff was born on **REDACTED**. In 1989 the Plaintiff transferred to Geelong Grammar as a boarding student and was assigned to Highton. The

Plaintiff would attend school during the day and at night was required to sleep in a room at Highton.

3. The Second Defendant ("Trutman") was a boarding house assistant at Highton from about 1985 to about 1996.
4. In 1989 Trutman physically assaulted the Plaintiff at Highton ("the sexual assaults").

PARTICULARS

About 2 weeks after beginning at Geelong Grammar the Plaintiff was asleep in his room. Trutman entered the Plaintiff's room. Trutman came to the side of the Plaintiff's bed and reached under the bedclothes. Trutman placed his hand about the Plaintiff's genitals and touched the Plaintiff repeatedly and insistently. Trutman attempted to put his hands inside the Plaintiff's underwear in an aggressive manner. The Plaintiff turned away from Trutman to stop his actions. Trutman then left the Plaintiff's room.

5. The First Defendant is vicariously liable for the sexual assaults.
6. By reason of the sexual assaults the Plaintiff has suffered injury, loss and damage.

PARTICULARS OF INJURY

- (a) Post traumatic stress disorder;
- (b) Emotional distress;
- (c) Depression;
- (d) Pain, suffering and anxiety.

PARTICULARS OF LOSS AND DAMAGE

- (a) The Plaintiff was born on **REDACTED**.

- (b) As a result of the sexual assaults the Plaintiff was unable to complete school through VCE.
 - (c) As a result of the injuries suffered because of the sexual assaults the Plaintiff has been forced off work at various stages. The Plaintiff makes a claim for loss of earnings and loss of earning capacity. The Plaintiff will provide further particulars of medical and like expenses and loss of earnings prior to the trial of this action.
7. Further at all relevant times in the period the First Defendant owed the Plaintiff a duty to take reasonable care for his safety while the Plaintiff was at Highton.

PARTICULARS OF THE FIRST DEFENDANT'S DUTY

- (a) At the time the Plaintiff began at Highton he was aged 14 and a minor;
 - (b) At the time the Plaintiff began at Highton he was a boarder and dependent on the First Defendant to provide appropriate accommodation;
 - (c) The placement of the Plaintiff at Highton was a decision made by the First Defendant;
 - (d) At all relevant times the First Defendant controlled the circumstances of supervision at Highton;
 - (e) At all relevant times the First Defendant controlled the staff on duty at Highton.
8. The First Defendant negligently breached its duty of care to the Plaintiff in permitting the sexual assaults to occur.

PARTICULARS OF BREACH OF DUTY

- (a) Allowing Trutman access to the Plaintiff's room at night;
- (b) Failing to properly vet Trutman for his suitability to work as a boarding house assistant in 1989;

- (c) Failing to respond to claims that Trutman was sexually assaulting boys at Highton prior to the sexual assaults;
 - (d) Failing to have a system in place to ensure that there was no access to the Plaintiff's room by a single member of staff but rather only by two members of staff who were on duty;
 - (e) Placing Trutman in a position of control over the Plaintiff when he was unsuitable for such a task;
 - (f) Placing Trutman in charge of the supervision at Highton when it knew or ought to have known that he sexually assaulted children;
 - (g) Failing to investigate reports of misconduct of Trutman prior to and during 1989;
 - (h) Failing to properly supervise Trutman;
 - (i) Upon becoming aware that Trutman had engaged in illegal or inappropriate activities failing to properly investigate such activities and remove Trutman from his position;
 - (j) Failing to screen, or properly screen, Trutman for the position of assistant of Highton when it knew that the position involved a large amount of unsupervised work with children and that Trutman would be in a position of power and control over boarders such as the Plaintiff;
 - (k) Requiring or permitting Trutman to perform tasks where he was isolated from supervision of adults and had a large amount of control and power of children at Highton;
9. By reason of the First Defendant's breach of duty the Plaintiff has suffered injury loss and damage.

PARTICULARS

The Plaintiff refers to and repeats the particulars subjoined to paragraph 6 above.

10. Further to the preceding paragraphs, by reason of the matters set out in the particulars annexed to this paragraph the Plaintiff is entitled to aggravated and exemplary damages.

PARTICULARS AS TO AGGRAVATED AND EXEMPLARY DAMAGES

- (a) Immediately after the sexual assaults the Plaintiff informed his mother. She in turn telephoned the school nurse, Kate Parsons. Ms. Parsons took the Plaintiff to a meeting with the Principal John Bugg and the Vice Principal Paul Claridge. The Plaintiff was questioned closely about what happened during the night by the Principal and the Vice Principal. The Plaintiff was told not to tell anyone what had happened.
- (b) The First Defendant did not refer the matter of the sexual assaults to the police;
- (c) Some days later the Plaintiff was in the mess hall discussing whether any other students had seen a teacher in the hallway on the night of the sexual assaults. One of the other students said that he had. The Plaintiff approached Mr. Claridge and told him this. The Plaintiff was grabbed by the back of the shirt by Mr. Claridge. He was taken to the Vice Principal's office and made to wait alone for 6 hours. His mother was called to pick him up. The Plaintiff was expelled from school.
- (d) The First Defendant demanded the Plaintiff's family pay full school fees for the term after the Plaintiff was expelled.

11. By reason of s.28LC (2)(a) of the Act Part VBA of the *Wrongs Act* 1958 (Vic) has no application to the Plaintiff's claim and the Plaintiff need not prove that he has sustained a "significant injury" in order to recover damages for non-economic loss.

12. In the alternative to the preceding paragraph the Plaintiff has sustained a "significant injury" within the meaning of the Act.

**AND THE PLAINTIFF CLAIMS:
DAMAGES INCLUDING AGGRAVATED AND EXEMPLARY
DAMAGES**

A.S.PILLAY