

Form 3A (version 1)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

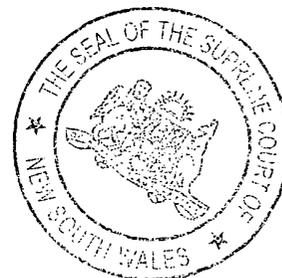
Court	Supreme Court of New South Wales
Division	Common Law
List	General
Registry	Sydney
Case number	2010/ 79518 - 002

TITLE OF PROCEEDINGS

Plaintiff	XY
First Defendant	The Uniting Church In Australia Property Trust
Second Defendant	Knox Grammar School

FILING DETAILS

Filed for	Plaintiff
Legal representative	Robert Patrick Higgins by his Partner Carroll & O'Dea Lawyers ABN 70 355 352 183 Level 18, 111 Elizabeth Street SYDNEY NSW 2000 DX 183 SYDNEY Tel: (02) 9291 7100 Fax: (02) 9221 1117 Email: cod@codea.com.au B.U. 42 Ref: RAA:90828
Legal representative reference	2698
Contact name and telephone	Robert Algie (02) 9291 7100



TYPE OF CLAIM

Torts – Negligence – Personal Injury

RELIEF CLAIMED

The Plaintiff claims:

- 1 Damages.
- 2 Interest.
- 3 Costs.

PLEADINGS AND PARTICULARS

The Plaintiff relies on the following facts and assertions:

1. The Plaintiff was born on 11 May 1972.
2. From early 1984 until the end of 1989 ("the material times") the Plaintiff attended a school known as Knox Grammar School (the "school").
3. At all material times the school was conducted by:
 - a. The First Defendant
 - b. The Second Defendant
 - c. The First and Second Defendants.
4. At all material times the Plaintiff attended the school pursuant to an agreement between his parents and the First and/or Second Defendants whereby his parents paid money for his education and board and the school provided the Plaintiff with an education and board.
5. At all material times the Plaintiff resided during school term times and at other times at the school premises.
6. The Defendants knew of the facts pleaded in paragraph 5.
7. At all material times while at the school premises and while engaged in activities sanctioned by the school the Plaintiff was under the direction and supervision of various members of the staff of the school.
8. At all material times the staff of the school were appointed by and employed by the Defendants or one of them.
9. At all material times the headmaster of the school was Dr Patterson.
10. The headmaster was employed and appointed by the First and/or the Second Defendant.
11. The First and/or the Second Defendant are vicariously liable for the acts and omissions of Dr Patterson in connection with:
 - a. The running of the school;
 - b. The direction and supervision of pupils including the Plaintiff at the school;
 - c. The direction and supervision of pupils including the Plaintiff in the course of school sanctioned activities;
 - d. The selection of teachers and staff;

- e. The allocation of teachers to boarding houses;
 - f. The allocation of teachers to tasks and functions within the school;
 - g. The conduct of the boarding houses;
 - h. The conduct of activities under the control and supervision of school staff;
 - i. The direction and supervision of staff.
12. In January 1985 Damien Piers Vance commenced work as a teacher at the school:
 13. Vance performed duties as:
 - a. A teacher;
 - b. A boarding house master;
 - c. Master in charge of cadets;
 - d. A dispenser of punishment;
 - e. A sporting coach.
 14. Vance resided in a boarding house at the school on a permanent full time basis.
 15. Pupils, including the Plaintiff, lived in the boarding house during term time and otherwise.
 16. By reason of the duties performed by Vance he was in the company of pupils including the Plaintiff in the absence of any other adult person from time to time.
 17. At all material times the Defendants knew of the facts pleaded in paragraph 12, 13 and 14.
 18. At Easter in 1986 Vance sent the Plaintiff a greeting card.

The content of the greeting card was not appropriate to the relationship between a student and a teacher.
 19. The Plaintiff was psychologically and emotionally disturbed by the receipt of the greeting card.
 20. In 1987 Vance punched the Plaintiff in the face causing him injury.

Particulars

Vance punched the Plaintiff in the face in connection with the Plaintiff placing food scraps in bins at the school contrary to the allegedly proper procedure in that regard.

As such the punch constituted disciplining of the Plaintiff.

21. The Defendants are vicariously liable for the acts and omissions of Vance.

22. The Plaintiff reported the fact of his having been punched to his parents by telephone.
23. The Plaintiff's parents sought to raise with the school Vance's conduct by meeting with Patterson.
24. In breach of the duty of care owed by the school to the Plaintiff nothing was done in relation to Vance having punched the Plaintiff and Vance remained a teacher at the school.
25. The school should have:
 - a. Acted on the complaints of the Plaintiff and his parents;
 - b. Terminated Vance's employment;
 - c. Notified the Police of Vance having assaulted the Plaintiff;
 - d. Investigated the matter to ascertain whether Vance was the subject of any other complaints by pupils at the school;
 - e. Informed the Plaintiff of the actions it proposed to take with respect to Vance's behaviour.
26. Later in 1987 Vance invited the Plaintiff to have a cigarette with him while both were at the school premises. In connection with that invitation:
 - a. Vance suggested that the cigarette should be smoked where neither would be likely to get into trouble: by which he meant detected by some adult person;
 - b. Vance escorted the Plaintiff to a location beneath the school chapel;
 - c. The location was known as the Q store and was used in connection with cadets;
 - d. Beneath the school chapel Vance and the Plaintiff smoked a cigarette;
 - e. While beneath the chapel Vance:
 - i. Told the Plaintiff that he engaged in masturbation with many other students at the school;
 - ii. Told the Plaintiff that he engaged in masturbation with other students of the school in the Q store;
 - iii. Asked the Plaintiff if he would be interested in engaging in masturbation of, by and with him;
 - iv. Sought information from the Plaintiff as to the size of his penis.
27. The matters pleaded in paragraphs 18 and 26 above:

- a. Constituted an attempt by Vance to groom the Plaintiff for the purposes of Vance engaging in sexual activity with the Plaintiff;
 - b. Were matters not properly the subject of a relationship between a teacher and a pupil;
 - c. Caused the Plaintiff to fear for his safety and disturbed him psychologically and emotionally;
 - d. Were capable of detection or ascertainment by action on the part of the Defendants designed to protect the students in its care.
28. In light of the breach referred to at paragraph 24 above the Plaintiff did not report the incident referred to in paragraph 26 to Dr Patterson.
 29. In about 1989 the Plaintiff learned that Vance had sent a card to a boy at the school similar to the card received by the Plaintiff.
 30. Upon learning of the fact pleaded in paragraph 29 above the Plaintiff informed Dr Patterson of the events related in paragraphs 18 – 20 inclusive.
 31. Dr Patterson applied extreme emotional and psychological pressure to the Plaintiff so as to dissuade the Plaintiff from doing anything formal in relation to Vance's behaviour.

Particulars

Dr Patterson told the Plaintiff that the consequences for Vance would be serious and that the Plaintiff needed to examine his conscience before taking any formal step with respect to the actions of Vance.

32. The matters pleaded in paragraph 26 constituted a failure by the Defendants to exercise reasonable care for the safety, health and wellbeing of the Plaintiff.
33. The Defendants owed the Plaintiff a duty to ensure that reasonable care was taken with respect to his safety, health and wellbeing while he was a pupil at the school, while he was on school property and while he was under the direction and supervision and in the care of the school, Dr Patterson and teachers at the school, including Vance.
34. The First and Second Defendants failed to ensure that reasonable care was taken for the health, safety and wellbeing of the Plaintiff.

Particulars of failure to ensure reasonable care was taken

Failing to conduct any or any adequate background checks on staff to be employed at the school;

- a. Failing to obtain and check references in relation to proposed staff prior to employing such staff;

- b. Permitting boarding staff to be present alone in the company of students;
- c. Failing to require that staff be chaperoned in the boarding house so as to deter staff from acting improperly with respect to students;
- d. Failing to undertake a rigorous assessment of staff prior to permitting them to take up residence in the boarding houses;
- e. Failing to undertake a rigorous assessment of staff prior to permitting them to be in the extended unsupervised company of pupils;
- f. Failure to institute and maintain a system of mandatory reporting of known or suspected cases of sexual assaults upon children of the school to external authorities;
- g. Failure to institute and maintain a program to educate children of the school in relation to their right to be free from sexual abuse at the school and to report any sexual abuse to an appropriate designated person or persons or alternatively to his parents or to the police;
- h. Failing to employ married staff for the purposes of minding students in the boarding facilities at the school;
- i. Failing to conduct an audit of student attitudes to teachers on a regular basis so as to detect issues such as the sexual contact that was occurring between Vance and numerous students;
- j. Failing to seek input from students as to the appropriateness of staff;
- k. Permitting Vance to be and remain a boarding house master;
- l. Failing to place the issue of Vance's behaviour in the hands of the police when complained of by the Plaintiff;
- m. Failing to undertake any or any adequate investigation of the Plaintiff's report prior to pressuring him into doing nothing about Vance's actions;
- n. Failing to implement a protocol forbidding private communication between staff and pupils;
- o. Failing to implement a protocol to ensure that pupils were not exposed to the sexual predilections of staff;
- p. Failing to ensure that staff did not groom pupils;
- q. Failing to ensure that staff did not smoke with pupils;
- r. Failing to ensure that staff did not seek private locations for the purposes of having sexual contact with pupils;

- s. Failing to know what was going on at the school;
 - t. Failing to recognise Vance as an undesirable element in a boarding school;
 - u. In assaulting the Plaintiff;
 - v. In appointing Vance;
 - w. By delegating the care of the Plaintiff to a person who did not take reasonable care for the health and wellbeing of the Plaintiff;
 - x. Vance's failure to take reasonable care of the Plaintiff's health and wellbeing constitutes a breach by the First and Second Defendant's non-delegable duty of care;
 - y. Failing to see that care was taken;
 - z. Failing to properly supervise the school;
 - aa. Failing to properly direct the school;
 - bb. Res ipsa loquitur.
35. Further, the First and Second Defendants are vicariously liable for the conduct of Vance as their employee:
- a. In assaulting the Plaintiff;
 - b. In causing the Plaintiff emotional distress;
 - c. In causing the Plaintiff psychological and psychiatric injury.
36. Further, the First and Second Defendants are vicariously liable for the conduct of Dr Patterson as their employee:
- a. In causing the Plaintiff emotional distress;
 - b. In causing the Plaintiff psychological and psychiatric injury.
37. In consequence of the breaches pleaded above the Plaintiff has suffered injury loss and damage.

Particulars of Injury

- (a) Adjustment disorder with angry mood;
- (b) Anxiety disorder;
- (c) Antisocial personality disorder.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the Plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



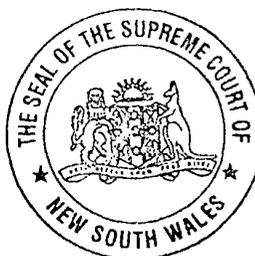
Robert Patrick Higgins by his Partner

Capacity

Solicitor for the Plaintiff

Date of signature

12 April 2010



12 APR 2010



NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the Plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the Plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the Plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 5, Law Courts Building, Queens Square 184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	(02) 9230 8111

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name XY
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SYDNEY NSW 2000

Legal representative for Plaintiff

Name Robert Patrick Higgins by his Partner
Practising certificate number 2698
Firm Carroll & O'Dea
Contact solicitor Robert Algie
Address Level 18, 111 Elizabeth Street
SYDNEY NSW 2000
DX address DX 183 SYDNEY
Telephone (02) 9291 7100
Fax 9221 1117

DETAILS ABOUT DEFENDANTS**First Defendant**

Name The Uniting Church in Australia Property Trust (NSW)
Address Level 3, 222 Pitt Street
SYDNEY NSW 2000

Second Defendant

Name Knox Grammar School
Address 7 Woodville Avenue
WAHROONGA NSW 2076