

IN THE SUPREME COURT OF NEW SOUTH WALES

**SYDNEY REGISTRY
COMMON LAW DIVISION**

No: 17585 of 1993 to 17820
of 1993 inclusive

**EK AND THE OTHER
PLAINTIFFS NAMED AS AA
TO JC INCLUSIVE**

Plaintiff

**TRUSTEES OF THE
CHRISTIAN BROTHERS AND
THE 2ND TO 21ST
DEFENDANTS NAMED IN
THE ATTACHED SCHEDULE
OF DEFENDANTS**

Defendant

**AMENDED NOTICE OF
MOTION**

CARROLL & O'DEA
Solicitors
111 Elizabeth Street
SYDNEY NSW 2000
DX 183 SYDNEY
Tel: 232 2133
Ref: GMP

The 1st Defendant will at 10.00am on 5th December 1994 at Level 7, Supreme Court of New South Wales, Law Courts Building, Queens Square Sydney move the Court for orders:-

1. The proceedings constituted by the Summonses and Statements of Claim be permanently stayed as being an abuse of process in the following respects:-
 - (a) the irremediable prejudice to the First Defendant in being unable, in consequence of the effluxion of time, effectively, to investigate the Plaintiff's allegations in order to defend the proceedings;
 - (b) the failure of the Statements of Claim to fairly notify the First Defendant of the precise allegations made on behalf of each Plaintiff;
 - (c) the apparent conduct of the Plaintiff's Solicitors in issuing the Summonses and the Statements of Claim without proper instructions from all Plaintiffs to do so and

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without specific instructions from all Plaintiffs to make the allegations contained in the Statement of Claim:

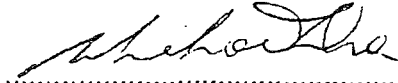
- (d) the real danger that the suggestive and leading methods which have been used by the Plaintiff's Solicitors in order to obtain instructions from the Plaintiffs as to their factual allegations of sexual, physical or "psychological" abuse and consequent psychiatric illness will produce contaminated evidence, false allegations of misconduct and exaggerated claims of injury.
- (e) the naming of the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th Defendants as parties to the action when no cause of action could conceivably in law arise in respect of them.
- (f) the pleadings are an abuse of process in so far as they duplicate proceedings which have been commenced already in the State of Victoria, in particular as regards the following Plaintiffs:-
- (i) BU - Plaintiff No. 17754 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9754 of 1993.
 - (ii) AE - Plaintiff No. 17718 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9753 of 1993.
 - (iii) D^y - Plaintiff No. 17817 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9776 of 1993.
 - (iv) BS - Plaintiff No. 17756 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9775 of 1993.
 - (v) EY - Plaintiff No. 17683 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9777 of 1993.
 - (vi) AV - Plaintiff No. 17731 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9783 of 1993.
 - (vii) BD - Plaintiff No. 17739 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9765 of 1993.
 - (viii) AW - Plaintiff No. 17732 of 1993 is Plaintiff in the Supreme Court of Victoria proceedings No. 9758 of 1993.

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- (ix) FR - Plaintiff in the Supreme Court of Victoria proceedings No. 9762 of 1993.
- (x) EZ - Plaintiff in the Supreme Court of Victoria proceedings No. 9759 of 1993.
- (xi) AD - Plaintiff in the Supreme Court of Victoria proceedings No. 9767 of 1993.
- (xii) CG - Plaintiff in the Supreme Court of Victoria proceedings No. 9761 of 1993.
- (xiii) BX - Plaintiff in the Supreme Court of Victoria proceedings No. 9773 of 1993.
- (xiv) BA - Plaintiff in the Supreme Court of Victoria proceedings No. 9768 of 1993.
- (xv) AR - Plaintiff in the Supreme Court of Victoria proceedings No. 9760 of 1993.
- (xvi) GT - Plaintiff in the Supreme Court of Victoria proceedings No. 9756 of 1993.
- (xvii) AY - Plaintiff in the Supreme Court of Victoria proceedings No. 9774 of 1993.
- (xviii) IS - Plaintiff in the Supreme Court of Victoria proceedings No. 9779 of 1993.
- (xix) GS - Plaintiff in the Supreme Court of Victoria proceedings No. 9769 of 1993.
- (xx) GF - Plaintiff in the Supreme Court of Victoria proceedings No. 9766 of 1993.
- (xxi) DT - Plaintiff in the Supreme Court of Victoria proceedings No. 9763 of 1993.
- (xxii) AS - Plaintiff in the Supreme Court of Victoria proceedings No. 9772 of 1993.
- (xxiii) AJ - Plaintiff in the Supreme Court of Victoria proceedings No. 9782 of 1993.
- (xxiv) GM - Plaintiff in the Supreme Court of Victoria proceedings No. 9764 of 1993.

2. Alternatively, that the Summonses and Statements of Claim be struck out in respect of each Plaintiff who does not within 28 days, or such different time as the Court may order, give his own individual Affidavit:-
- (a) separately describing each basic factual allegation which he makes of sexual assault and battery, by specifying in respect of each separate alleged occurrence the approximate time and date thereof, the precise place within a school or any other locality where it is alleged to have taken place, the name of the alleged perpetrator, and a brief, chronological and anatomically explicit description of each particular alleged occurrence;
 - (b) separately describing each basic factual allegation which he makes of physical assault and battery, by specifying in respect of each separate alleged occurrence the approximate time and date thereof, the precise place within a school or any other locality where it is alleged to have taken place, the name of the alleged perpetrator, and a brief, chronological and anatomically explicit description of each particular alleged occurrence;
 - (c) separately describing each basic factual allegation which he makes as to "psychological abuse", by specifying in respect of each separate alleged occurrence the approximate time and date thereof, the precise place within a school or any other locality where it is alleged to have taken place, the name of the alleged perpetrator, and a brief, chronological and anatomically explicit description of each particular alleged occurrence;
 - (d) confirming that the Plaintiff's Solicitors have been retained by him to commence proceedings on his behalf and to make therein any of the allegations referred to in (a), (b) or (c).
3. Alternatively, that the entire proceedings be transferred pursuant to Section 5(2) of the Jurisdiction of Courts (Cross-Vesting) Act (NSW) 1987 to the Supreme Court of Western Australia, with the deemed date of commencement in Western Australia of the transferred proceedings being 31 August 1993.
4. Alternatively an order that the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 13th, 14th and 15th Defendants are dismissed from the proceedings.

- 5. Such further or other order as to the Court seems appropriate. .
- 6. The Plaintiffs to pay the costs of this Motion, and of the proceedings.



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 Michael O'Dea by his Partner
 Solicitor for the 1st Defendant

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SCHEDULE OF DEFENDANTS

Trustees of the Christian Brothers	Firstnamed Defendant	1
Robert Julian McDonald Provincial superior for the Time Being Congregation of Christian Brothers St Mary's Province	Secondnamed Defendant	2
Gerald T Faulkner Provincial superior for the Time Being Congregation of Christian Brothers Holy Spirit Province	Thirdnamed Defendant	
Bryan De Paul Noonan Provincial Superior for the Time Being Congregation of Christian Brothers St Patrick's Province	Fourthnamed Defendant	3
Terry A Kingston Provincial Superior for the Time Being Congregation of Christian Brothers St Francis Xavier's Province	Fifthnamed Defendant	
Edward Bede Clancy Archbishop for the Time Being of the Archdiocese of Sydney	Sixthnamed Defendant	
Barry James Hickey Archbishop for the Time Being of the Archdiocese of Perth	Seventhnamed Defendant	4
St Thomas Francis Little Archbishop for the Time Being of the Archdiocese of Melbourne	Eighthnamed Defendant	
Leonard Anthony Faulkner Archbishop for the Time Being of the Archdiocese of Adelaide	Ninthnamed Defendant	
John Alexius Batherby Archbishop for the Time Being of the Archdiocese of Brisbane	Tenthnamed Defendant	

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Eric D'Arcy
Archbishop for the Time Being
of the Archdiocese of Hobart

Eleventhnamed
Defendant

Francis Patrick Carroll
Archbishop for the Time Being
of the Archdiocese of Canberra and Goulburn

Twelfthnamed
Defendant

Peter Quinn
Bishop for the Time Being
of the Archdiocese of Bunbury

Thirteenthnamed
Defendant

Alexis Turton
Provincial for the Time Being
of the Marist Brothers of the Schools

Fourteenthnamed
Defendant

Justin Joseph Bianchini
Bishop of Geraldton for the Time Being

Fifteenthnamed
Defendant

Commonwealth of Australia

Sixteenthnamed
Defendant

State of Western Australia

Seventeenthnamed
Defendant

Minister of Education for
Western Australia

Eighteenthnamed
Defendant

Minister for Health for
Western Australia

Nineteenthnamed
Defendant

Minister for Lands
Department of Land Administration

Twentiethnamed
Defendant

Minister for Community Services
Community Services Department for
Western Australia

Twenty-Firstnamed
Defendant