

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

JUL 05 2021



Original filed on February 08, 2021.  
Amended pursuant to *Supreme Court  
Civil Rules* 6-2(7)(a) and 6-2(7)(b)(1)

No. S211242  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Darren Liptrot**

Plaintiff

and

**Vancouver College Limited, St. Thomas More Collegiate  
Ltd., Edward English, Joseph Burke, Douglas Kenny,  
Gerard Gabriel McHugh, John Kavalec, The Roman  
Catholic Episcopal Corporation of St. John's, Roman  
Catholic Archbishop of Vancouver, The Catholic  
Independent Schools of Vancouver Archdiocese**

Defendants

**Brought pursuant to the *Class Proceedings Act*, RSBC, 1996 c 50**

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**AMENDED NOTICE OF CIVIL CLAIM**

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This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **PART 1: STATEMENT OF FACTS**

### **Overview**

1. This action arises from psychological, physical and sexual abuse of children perpetrated by current or former members of the Christian Brothers at two Vancouver area Catholic schools, Vancouver College and St. Thomas More, over the period 1976 to 1995-2013.

2. The abuse at Vancouver College and St Thomas More continued a pattern of systemic child abuse at institutions run by the Christian Brothers in Canada ("CBIC") first revealed at the Mount Cashel Orphanage in Newfoundland in the mid to late 1970s.
3. Following incidents of abuse, the CBIC did not act to protect the children in their care, but to protect their abusers from criminal charges by moving them out of Newfoundland to teach at schools owned and operated by the CBIC, including Vancouver College and St. Thomas More. The transfers were carried out with the knowledge and approval of the Archbishop of St. John's.
4. Over the period 1976 to 1983, the CBIC moved six child abusers from Mount Cashel to Vancouver College and St. Thomas More where they had unfettered access to children, abused children and/or failed to protect children from their fellow Christian Brothers.
5. All six Christian Brothers were later convicted of physically and/or sexually abusing orphans in their care at Mount Cashel. One has also been convicted of abuse perpetrated in Vancouver.
6. The transfer of child abusers from Mount Cashel to Vancouver was orchestrated and carried out by senior officials of the CBIC, including Superior General J.L. Kelty, Provincial Superior Gerard Gabriel McHugh and Brother Gordon "Gerard" Bellows, who used their positions of authority at the CBIC and as Directors and Officers of Vancouver College and St. Thomas More to protect the child abusers.
7. The Archbishop of Vancouver and the Catholic Independent Schools of Vancouver Archdiocese had authority over Vancouver College and St. Thomas More during the relevant time period, including the authority to remove teachers and staff.
8. Each of the defendants failed to take appropriate measures to protect children at Vancouver College and St. Thomas More from the abusers.

9. This is a proposed class action on behalf of students of Vancouver College School and St. Thomas More ~~High School~~ who were physically and/or sexually abused by current or former members of the Christian Brothers at those schools during the period 1976 to ~~1995-2013~~ (the "Class Period").

### **The Representative Plaintiff**

10. The plaintiff is a resident of British Columbia with an address for service at 400-856 Homer Street, Vancouver.
11. The plaintiff attended Vancouver College from 1980 to 1985 for grades 8-12.
12. While attending Vancouver College, the plaintiff was abused by a member of the Christian Brothers, Brother Edward English.

### **The Class**

13. This action is brought on behalf of the following proposed class:

All students who attended Vancouver College School and St. Thomas More between 1976 and ~~1995-2013~~ who claim that they were physically and/or sexually abused by one or more current or former members of the Christian Brothers.

(the "Class Members").

### ***History of Abuse by Members of the Christian Brothers***

14. From as early as the 1950s, members of the Christian Brothers perpetrated horrific physical and sexual abuse on boys at the Mount Cashel Orphanage in Newfoundland. The abuse continued for decades.
15. Brother English became a supervisor at Mount Cashel in 1973. He was a disturbed individual who engaged in the serial physical and sexual abuse of boys while he was at Mount Cashel. On multiple occasions Brother English fondled boys' genitals or forced them to touch his. He inserted his finger into

a boy's rectum. He thrust his penis between a boy's legs until he ejaculated and, on another occasion, grabbed the boy's neck and hair and attempted anal intercourse. In another incident, Brother English attacked a boy who wore a splint on an injured finger and, while the boy was on the ground, Brother English stood on the splinted finger, breaking it.

16. In December 1975, the Newfoundland Constabulary of the RCMP began investigating complaints of child abuse by the Christian Brothers at Mount Cashel including accusations of sexual abuse against Brother English.
17. On 17 December 1975, Brother English confessed to the RCMP that he had sexually abused a number of boys at Mount Cashel.
18. The highest ranking official in the CBIC, Provincial Superior Gerald McHugh, was informed of the RCMP investigation. In late 1975, he flew to St. John's. He soon learned directly from Brother English that the allegations of sexual and physical abuse were true.
19. Brother McHugh reported the abuse to both the highest ranking official in the Christian Brothers' organization, Superior General J.L. Keltly in Rome and to Brother Gerard Bellows, the head of education for the CBIC.
20. In late 1975 Brother McHugh met with the Chief of Police and the Deputy Minister of Justice of Newfoundland, Vincent P. McCarthy, to discuss the investigation.
21. As a result of these discussions, Brother McHugh agreed that Brother English and other Christian Brothers would be removed from and not permitted to return to Newfoundland on an understanding that criminal charges would not be laid against them.
22. In late 1975 to 1976, Brother English was sent to the House of Affirmation in Whitinsville, Massachusetts for "treatment". The House of Affirmation was well known within the Catholic community as a residential facility for priests and



members of the Catholic organisation who abused children. It was not a recognised medical, psychiatric or psychological treatment facility and was not equipped, authorized or certified to treat child abusers.

23. Later in 1976, Brothers McHugh, Kelty and Bellows were involved in sending Brother English to St. Thomas More where he taught until 1981. By this point in time, Brothers McHugh, Kelty and Bellows each knew Brother English was a serial abuser of children and posed a serious and continuing threat to students. Rather than protect students, they used their positions of authority within the CBIC and or as directors of St. Thomas More Collegiate Limited, to arrange the move.
24. During Brother English's time at St. Thomas More, school officials including Vice Principal John Burnell received complaints about Brother English's behaviour including assaults against students. In May 1979, Brother English was advised by the CBIC to seek psychiatric treatment.
25. Rather than report the complaints to police or regulatory authorities or expel Brother English from the CBIC, Brothers McHugh and Bellows again used their positions of authority within the CBIC, St. Thomas More Collegiate Ltd. and or as directors and officers of Vancouver College Limited to move Brother English from St. Thomas More to Vancouver College in 1981. Starting in 1981, Brother English assaulted the representative plaintiff as described below.

### ***Other Christian Brothers***

26. In addition to Brother English, Brother McHugh was involved in sending five other Christian Brothers from Mount Cashel to Vancouver College or St. Thomas More from the Mount Cashel Orphanage after allegations of abuse were made against them. These Brothers were: Douglas Kenny, Edward French, David Burton, Edward English, Kevin Short and Joseph Burke.

## **Brother Kenny**

27. In 1971, Brother Kenny was appointed Superior and Superintendent of the Mount Cashel Orphanage. In that position, he received complaints of abuse perpetrated by other Christian Brothers at the orphanage, including Brother English. Allegations of abuse were also made against Brother Kenny himself. In 1976, Brother Kenny was moved to Vancouver College where he remained on staff until 1979 [as a teacher and dormitory supervisor.](#)

[28.](#) In 1992, Kenny was convicted of sexually and physically abusing seven boys at Mount Cashel. On dozens of occasions Kenny kissed boys, fondled their genitals and forced them to touch his. On one occasion he tried to force his fingers into a boy's rectum; when the boy objected, Kenny elbowed him in the stomach. Kenny warned his victims to stay silent during the subsequent police investigation.

[28-29. Brother Kenny physically and sexually abused class members at Vancouver College during the Class Period.](#)

[29-30.](#) At all material times, Brother Kenny was aware or should have been aware of the risks posed by Brother English [and Joseph Burke](#) to students at Vancouver College [and/or St. Thomas More](#), including the representative plaintiff, but failed to take steps to protect them.

## **Brother Short**

[30-31.](#) Brother Short served at Mount Cashel in the 1970s. In 1977, he was moved to St. Thomas More.

[31-32.](#) In 1990, Brother Short was convicted of indecent assault for molesting a 14-year-old student at St. Thomas More. In 1991, he pled guilty to seven charges relating to his earlier sexual abuse of orphans at Mount Cashel.

[32-33.](#) At all material times, Brother Short was aware or should have been aware of the risks posed by Brother English, [Joseph Burke and Brother Kenny](#) to

students at St. Thomas More and/or Vancouver College, including the representative plaintiff, but failed to take steps to protect them.

### **Brother French**

33-34. Brother French served at Mount Cashel in the 1970s. In 1982, Brother French was moved to St. Thomas More. In 1985, he was moved to Vancouver College where he taught until 1987.

34-35. In 1991, Brother French was convicted of indecent assault for abuse he committed at Mount Cashel in the 1970s, including fondling boys' genitals on several occasions, twice under the guise of providing medical treatment.

35-36. At all material times, Brother French was aware or should have been aware of the risks posed by Brother English, Joseph Burke and Brother Kenny to students at St. Thomas More and/or Vancouver College, including the Representative Plaintiff, but failed to take steps to protect them.

### **Brother Joseph Burke**

36-37. ~~Brother~~ Joseph Burke served at Mount Cashel from 1974 to 1976 and again from 1978 to 1981. In 1982, he was moved to St. Thomas More. In 1982, he left the Christian Brothers and St. Thomas More. From 1982 to 2013, he was employed as a teacher at Vancouver College.

38. In 1991, Brother Joseph Burke was convicted of assault causing bodily harm for beating a boy repeatedly across the bare buttocks with a leather strap, causing severe bruising. The conviction was upheld by the Supreme Court of Canada.

37-39. Joseph Burke abused Class Members at Vancouver College and St. Thomas More during the class period.

38-40. At all material times, ~~Brother~~ Joseph Burke was aware or should have been aware of the risks posed by Brother English and Brother Kenny to students at



St Thomas More and/or Vancouver College, including the representative plaintiff, but failed to take steps to protect them.

### **Brother Burton**

39.41. Brother David Burton served at Mt. Cashel from 1964 to 1968 and in 1982. He was the supervisor of the Saint Stan's Dormitory in 1964-1965 and 1976-1982. During the Class Period, Brother Burton was a teacher at both Vancouver College (in 1984) and St Thomas More (leaving in 1989).

40.42. In 1983, Brother Burton was convicted of gross indecency for abuse he committed at Mount Cashel. In 1993, Brother Burton confessed to sexually abusing five orphans at Mount Cashel, including masturbating and performing oral sex on a child identified as "GM". In 1999, charges of indecent assault and gross indecency were filed against Brother Burton in relation to his confessed abuse of "GM" but subsequently stayed by the Supreme Court of Newfoundland and Labrador because of a previous decision by police not to prosecute in respect of "GM".

41.43. At all material times, Brother Burton was aware or should have been aware of the risks posed by Brother English, Joseph Burke and Brother Kenny to students at St. Thomas More and Vancouver College, including the representative plaintiff, but failed to take steps to protect them.

### ***Abuse of the Representative Plaintiff***

42.44. The representative plaintiff was sexually and physically abused by Brother English while a student at Vancouver College over the years 1981 to 1983. The plaintiff was in grades 9-10 at the time of the abuse.

43.45. The plaintiff reported abuse to the Vice Principal of Vancouver College, Kavalec. Kavalec ignored his complaints and took no action.

## THE PARTIES

### *Defendants*

#### **Vancouver College Limited**

44.46. Vancouver College Limited ("VCL") is a British Columbia company that operates and owns Vancouver College, a Catholic school in Vancouver. Its registered office is at 1600-925 West Georgia Street, Vancouver BC V6C 3L2.

45.47. At all material times, VCL ~~was owned by the CBIC and~~ was responsible for setting policies and procedures for the operation of Vancouver College. At all material times, VCL employed Christian Brothers and former Christian Brothers as teachers. VCL had responsibility for vetting, screening, appointing, training, managing, disciplining and dismissing the Christian Brothers that it employed.

46.48. During the relevant time periods, Brothers McHugh, Kelty and Bellows served as Directors and President of VCL. Each of them knew that Brother English, Brother Kenny, Brother Short, Brother French, Brother Burton and Joseph Burke posed a danger to children such as the Class Members and the representative plaintiff. Despite this knowledge, they ordered, approved and moved ~~him-them~~ to St. Thomas More and /or subsequently to Vancouver College.

#### **St. Thomas More Collegiate Ltd.**

47.49. St. Thomas More Collegiate Ltd. ("STMCL"), previously known as St. Thomas More High School Ltd., is a British Columbia company that operates and owns St. Thomas More Collegiate ("St. Thomas More") a Catholic high school in Burnaby, British Columbia. STMCL has a registered office at 800-855 West Georgia Street, Vancouver, BC V6Z 2H7.

48.50. At all material times, STMCL ~~was owned by the CBIC and~~ was responsible for setting policies and procedures for the operation of St. Thomas More. At all material times, STMCL employed Christian Brothers and former Christian Brothers as teachers at St. Thomas More. STMCL had responsibility for vetting, screening,

appointing, training, managing, disciplining and dismissing the current and former Christian Brothers that it employed.

~~49.~~51. During the relevant time periods, Brother McHugh served as a Director of STMCL. Brother Bellows served as a Director of STMCL from 1978 to 1984. Brother McHugh and Brother Bellows both knew that Brother English, Brother Kenny, Brother Short, Brother French, Brother Burton and Joseph Burke posed a danger to children such as the Class Members and the Representative Plaintiff. Despite this knowledge, they ordered, approved and moved themhim to St. Thomas More and /or subsequently to Vancouver College.

**Gerald Gabriel McHugh**

~~50. — The whereabouts of Gerald Gabriel McHugh are currently unknown to the plaintiff.~~

52. Gerard Gabriel McHugh is an individual residing in Etobicoke, Ontario.

~~51.~~53. At all material times Brother McHugh held the positions of Provincial Superior for the Canadian Province of the CBIC, the highest position of authority over the Christian Brothers organization in Canada; and Superior General, the highest ranking position in the Christian Brothers organisation globally. In his position as Provincial Superior and Superior General, Brother McHugh had a high degree of authority, approaching absolute authority, over any Christian Brother including the power to expel them from the CBIC and transfer them to other positions within the CBIC.

~~52.~~54. During the relevant time period, Brother McHugh also held the positions of:

- (a) Director of VCL from 1972 to 1981;
- (b) President of VCL from 1979 to 1981; and
- (c) Director of STMCL from 1972 to 1977.



### **Edward English**

~~53. The whereabouts of Edward English are currently unknown to the plaintiff.~~

55. Edward English is an individual residing in Weldon, New Brunswick.

~~54.56.~~ Brother English was employed at St. Thomas More and Vancouver College during the Class Period. During the Class Period, Brother English taught Class Members and supervised them in school and extracurricular activities, including overnight trips.

### **Joseph Burke**

57. Joseph Burke is an individual residing in Delta, British Columbia.

58. Joseph Burke served at Mount Cashel from 1974 to 1976 and again from 1978 to 1981. In 1982 he was moved to St. Thomas More. In 1982, he left the Christian Brothers and St Thomas More. From 1982 to 2013 he was employed as a teacher at Vancouver College. During the Class Period, Joseph Burke taught Class Members and supervised them in school and extracurricular activities.

### **Brother Kenny**

59. Brother Kenny is an individual residing in St. John's, Newfoundland.

60. Brother Kenny served at Mount Cashel between 1971 and 1976. He was a teacher and dormitory supervisor at Vancouver College from 1977-1979. During the Class Period, Brother Kenny taught Class Members and supervised them overnight as a dormitory supervisor.

### **John Kavalec**

~~55. During the Class Period, John Kavalec was employed as Vice Principal at Vancouver College.~~



~~56. At all material times, John Kavalec knew or ought to have known that Brother English had abused children at Mount Cashel and that he posed a real and continuing danger to students at Vancouver College.~~

### **Roman Catholic Archbishop of Vancouver**

~~57.~~61. The Roman Catholic Archbishop of Vancouver is a corporation sole, incorporated under the *Roman Catholic Archbishop Incorporation Act*, SBC 1909, c. 62 as amended SBC 1938, c. 69 (the "Archbishop of Vancouver") and has a registered office at 150 Robson Street, Vancouver, BC V6B 2A7.

~~58.~~62. At all material times, the Archbishop of Vancouver had authority over all ministerial and pastoral activities that take place within the Vancouver Archdiocese. This included matters pertaining to the establishment and operation of Catholic schools, the operation of any Catholic religious orders or congregations as well as any institution run by members of a Catholic religious institute.

~~59.~~63. At all material times, the CBIC was a congregation recognized by the Catholic Church whose operations in Vancouver fell under the authority of the Vancouver Archbishop.

~~60.~~64. At all material times the Archbishop of Vancouver oversaw and operated the Catholic Independent Schools of Vancouver Archdiocese, Vancouver College and St. Thomas More.

~~61.~~65. At all material times, Vancouver College and St. Thomas More fell within the authority of the Archbishop of Vancouver. The Archbishop of Vancouver had responsibility for and control over major decisions at VCL and STMCL including the transfer of the Christian Brothers into the Vancouver Archdiocese and the hiring and firing of Christian Brothers and former Brothers at VCL and STMCL.

62-66. Two of the means by which the Archbishop of Vancouver exercised authority over Catholic schools within the Vancouver Archdiocese was through the operation of the Catholic Independent Schools of Vancouver Archdiocese and through delegation of authority to the parish pastor associated with each school.

63-67. According to the bylaws of the Catholic Independent Schools of Vancouver Archdiocese, the Archbishop had authority to appoint, approve and remove teachers from Catholic schools within the Archdiocese. These powers could be exercised directly by the Archbishop or by the pastor as the Archbishop's representative.

64-68. At all material times, the Archbishop of Vancouver knew or should have known that serious allegations of physical and sexual abuse of children had been made against members and former members of the Christian Brothers at Mount Cashel and that this was the reason those Brothers were being moved from Mount Cashel to the Vancouver area.

65-69. At all material times, the Archbishop of Vancouver failed to take adequate measures to protect students at Vancouver College and St Thomas More from abuse by members of the Christian Brothers including, in particular, Brother English, Joseph Burke and Douglas Kenny.

### **The Catholic Independent Schools of Vancouver Archdiocese**

66-70. The Catholic Independent Schools of Vancouver Archdiocese (the "CISVA") is a society incorporated under the *Society Act*, RSBC 1996, c 433 with a registered office address at Suite 2100-1075 West Georgia Street, Vancouver BC V6E 3C9.

67-71. At all material times, the CISVA oversaw, managed, and conducted the operations of Catholic Schools in Vancouver including Vancouver College and St. Thomas More. At all material times CISVA set policies for the hiring,

supervision and termination of staff at Vancouver College and St. Thomas More.

68-72. At all material times, the CISVA had authority over the operation of Vancouver College and St. Thomas More. The CISVA exercised this authority through the operation of the Education Committee.

69-73. At all material times, the Education Committee of the CISVA also had the power to appoint, approve and remove teachers from Catholic schools within the Archdiocese.

70-74. At all material times, the CISVA knew or should have known certain members of the Christian Brothers were being moved from Mount Cashel to teach in the Vancouver area because serious allegations of physical and sexual abuse of children had been made against them at Mount Cashel.

74-75. At all material times, the CISVA failed to take adequate measures to protect students at Vancouver College and St. Thomas More from abuse by members of the Christian Brothers including, in particular, Brother English, [Joseph Burke](#) and [Douglas Kenny](#).

### **The Roman Catholic Episcopal Corporation of St. John's**

72-76. The Roman Catholic Episcopal Corporation of St. John's (the "Archbishop of St. John's") is a corporation sole established under *An Act to Incorporate the Roman Catholic Bishop of Saint John's*, 60 Vic. Cap XVIII and now has the legal name of The Roman Catholic Episcopal Corporation of St. John's. The Archbishop of St. John's office is at Pastoral Center, 200 Military Road, St. John's, NL A1C 2E8.

73-77. The Archbishop of St. John's owned the Mount Cashel orphanage and at all material times had authority over all ministerial and pastoral activities that took place within the Archdiocese of St. John's including the operation of any



Catholic schools, religious orders and congregations as well as any institution run by members of a Catholic religious institute.

74-78. At all material times, the Archbishop of St. John's had authority over all matters relating to Catholic education in the St. John's Archdiocese and the operation of the Mount Cashel Orphanage.

75-79. At all material times, the CBIC was a congregation recognized by the Vatican whose operations in St. John's fell under the authority of the Archbishop of St. John's.

76-80. At all material times, the Archbishop of St. John's had authority over the certification of Catholic teachers under the *Education (Teacher Training) Act, 1968*, S. Nfld. 631 (1968). This included powers to terminate, expel and decertify any Christian Brother from teaching.

77-81. At all material times, the operation of the Mount Cashel orphanage fell within the authority of the Archbishop of St. John's. At all material times, the teaching activities of the Christian Brothers fell within the authority of the Archbishop of St. John's. The Archbishop of St. John's was aware from at least as early as the 1950s of complaints of abuse of boys at the Mount Cashel orphanage by the members of the Christian Brothers.

78-82. At all material times, Brothers English, French, Burton, Short, Kenny, and Joseph Burke served at Mount Cashel and taught at Catholic schools in the St. John's Archdiocese.

79-83. The Archbishop of St. John's knew or should have known that Brother English, Joseph Burke and Brother Kenny had abused boys at Mount Cashel and was were being moved out of province. Notwithstanding this knowledge, the Archbishop of St. John's took no steps to revoke Brother English's their certification as a Catholic teachers or otherwise prevent Brother English them from teaching at a Catholic school.



## The Role of the Archbishop of St. John's

~~80-84.~~ Mount Cashel was owned by the Archbishop of St. John's and operated by the CBIC. The CBIC ~~operated~~ also operated Catholic schools in the St. John's Archdiocese under the authority of the Archbishop of St. John's.

~~81-85.~~ The Archbishop of St. John's certified teachers at the Catholic schools in the archdiocese. Many of the Christian Brothers who lived at Mount Cashel, including Brother English, Joseph Burke and Brother Kenny were certified as teachers and taught at the Catholic schools operated by the CBIC in the Archdiocese of St. John's.

~~82-86.~~ The Archbishop of St. John's was notified of the RCMP investigation into abuse at Mount Cashel by no later than December 1975. The Archbishop of St. John's knew or ought to have known that Brother English, Joseph Burke and Brother Kenny had sexually and/or physically abused boys at the orphanage but rather than move to decertify ~~him-them~~ as ~~a~~ teachers, the Archbishop of St. John's approved his-their transfer out of Newfoundland.

## DAMAGES

~~83-87.~~ As a result of the assaults, the Class Members have suffered significant damage including but not limited to:

- (a) pain and suffering;
- (b) psychological injuries;
- (c) addiction issues;
- (d) inability to have normal and healthy sexual development;
- (e) spiritual trauma including loss of faith and inability to have normal spiritual development;
- (f) sexual trauma;

- (g) loss of a bond with family;
- (h) impaired ability to develop and maintain normal and healthy relationships, both friendships and intimate relationships;
- (i) fear, humiliation and embarrassment as a child and adult;
- (j) impaired ability to control anger;
- (k) physical injury;
- (l) loss of employment both in the past and continuing in the future;
- (m) cost of care, past and future;
- (n) out of pocket expenses flowing from the assaults.

## PART 2: RELIEF SOUGHT

84.88. The plaintiff, on his own behalf and on behalf of the Class Members, seeks:

- (a) an order certifying this action as a class proceeding against the defendants and appointing the plaintiff as representative plaintiff in respect of the Class;
- (b) a declaration that the defendants are liable for damages flowing from their breaches of common law duties to the plaintiff and Class Members in relation to the conduct of the current and former Christian Brothers;
- (c) a declaration that the defendants are liable for damages from the breach of fiduciary duty to the plaintiff and Class Members in relation to the conduct of the current and former Christian Brothers;

(d) a declaration that English abused Class Members during the Class Period;

(e) a declaration that Joseph Burke abused Class Members during the Class Period;

(d)(f) A

~~(e)~~(g) a declaration that the Archbishop of Vancouver, the CISVA, VCL and STMCL are vicariously liable for the abuse of the Plaintiff and the Class Members by the current and former Christian Brothers;

~~(f)~~(h) a declaration that the abuse of the plaintiff and the Class Members arose out of the use of property owned by VCL and STMCL;

~~(g)~~(i) an award for damages for negligence and breach of the *Occupiers' Liability Act*, 1974 RSBC and the *Occupiers Liability Act* RSBC 1979, c. 303 against VCL and STMCL;

~~(h)~~(j) past and future costs of health care services pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c. 27;

~~(i)~~(k) punitive damages

~~(j)~~(l) aggravated damages;

~~(k)~~(m) prejudgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128; and

~~(l)~~(n) such further and other relief as this Honourable Court may deem just.

### **PART 3: LEGAL BASIS**

#### ***Duty of Care***

#### **VCL and STML**

85-89. The defendants VCL and STMCL owed a duty of care to students in the Catholic school system of the Vancouver Archdiocese including to students enrolled in their respective schools. This duty of care arose from:

- (a) the knowledge of their directors that Brother English, Joseph Burke and Brother Kenny posed a serious and continuing threat to students;
- (b) the general authority and power which the schools had over students enrolled in their respective schools;



- (c) the authority granted to teachers over students enrolled in the school;
- (d) the power imbalance which teachers exercised over students;
- (e) the responsibility to provide a safe and supportive environment for students that was free from physical and sexual abuse;
- (f) the obligation to vet applicants for teaching positions including checking references and investigating the background of applicants;
- (g) the obligation to monitor teacher performance including the obligation to investigate complaints of inappropriate teacher interactions with students; and
- (h) the obligation under the *Family and Child Service Act*, SBC 1980 c11, to report the abuse of the Class Members to the superintendent of Family and Child Service.

### **Brother English**

86-90. The defendant Brother English owed a duty of care to the plaintiff and students at Vancouver College and St. Thomas More. This duty of care arose from:

- (a) his position as a teacher;
- (b) his position as an authority figure within the school; and
- (c) the authority granted to him by the schools to discipline students.

### **Joseph Burke**

91. The defendant Joseph Burke owed a duty of care to the Class Members. This duty of care arose from:

- (a) his position as a teacher;
- (b) his position as an authority figure within the school;



(c) the authority granted to him by the schools to discipline students.

**Brother Kenny**

92. The defendant Brother Kenny owed a duty of care to the Class Members. This duty of care arose from:

(a) his position as a teacher;

(b) his position as an authority figure within the school;

(c) the authority granted to him by the school to discipline students;

(d) his knowledge that Brother English and Joseph Burke had abused children at Mount Cashel.

**Brother McHugh**

87-93. The defendant Brother McHugh owed a duty of care to the plaintiff and students at Vancouver College and St. Thomas More. This duty of care arose from:

(a) his knowledge that Brother English, Joseph Burke and Brother Kenny posed a serious and continuing threat to students;

(b) his position as senior official of the CBIC with near complete authority over the autonomy of each Christian Brother;

(c) his position as a Director and President of Vancouver College;

(d) his position as a Director of St. Thomas More;

(e) the obligation under the *Family and Child Service Act*, SBC 1980, to report the abuse of the Class Members to the superintendent of Family and Child Service.

### Kavalec

~~88. The defendant Kavalec owed a duty of care to the plaintiff and to students at Vancouver College. This duty of care arose from:~~

- ~~(a) his position as teacher and vice principal at Vancouver College;~~
- ~~(b) his obligation to protect students from abuse by teachers employed at the schools;~~
- ~~(c) his obligation to vet applicants for teaching positions;~~
- ~~(d) his obligation to monitor teacher performance and investigate all complaints of inappropriate teacher interactions with students; and~~
- ~~(e) his obligation under the Family and Child Service Act, SBC1980, c11 to report the abuse of the Class Members to the superintendent of Family and Child Service.~~

### The Archbishop of St. John's

~~89-94.~~ The Archbishop of St. John's owed a duty of care to the plaintiff and students at Vancouver College and St. Thomas More. This duty of care arose from:

- (a) the knowledge that Brother English, Joseph Burke and Brother Kenny posed a serious and continuing threat to students;
- (b) the authority which the Archbishop of St. John's held over all matters pertaining to the activities of the Christian Brothers in St. John's including at Mount Cashel;
- (c) the authority which the Archbishop of St. John's had to decertify Catholic school teachers;
- (d) the authority which the Archbishop of St. John's had to prevent decertified teachers from teaching at any Catholic school in Canada; and

- (e) the obligation owed by the Archbishop of St. John's to inform fellow Archbishops including the Archbishop of Vancouver of the instances of abuse at Mount Cashel and the dangers posed by the Christian Brothers to children in Catholic schools.

### **The Archbishop of Vancouver**

90-95. The Archbishop of Vancouver owed a duty of care to the plaintiff and students at Vancouver College and St. Thomas More. This duty of care arose from:

- (a) the authority which the Archbishop of Vancouver held over all matters pertaining to the activities of the Christian Brothers in the Vancouver Archdiocese including at Vancouver College and St. Thomas More;
- (b) the authority which the Archbishop had over the operation of Catholic schools in the Vancouver Archdiocese;
- (c) the responsibility to provide a safe and supportive school environment for students that was free from physical and sexual abuse;
- (d) the authority which the Archbishop held to approve of, monitor and terminate the employment of teachers at Vancouver College and St. Thomas More; and
- (e) the obligation under the *Family and Child Service Act*, SBC 1980 c11, to report the abuse of the Class Members to the superintendent of Family and Child Service.

### **Fiduciary Duty**

91-96. Each of the Defendants owed a fiduciary duty to the Class Members as individuals or entities responsible for students in their care. The fiduciary duty arose from the following:

- (a) The authority which each defendant had over teachers in the Catholic education system;



- (b) The authority which each defendant had over students in the Catholic education system;
- (c) The power imbalance which existed between students and the defendants; and
- (d) The obligations of the Defendants as being *in loco parentis* to students in the Catholic education system.

92-97. The Defendants breached their respective fiduciary duties by failing to protect the Class Members from physical and sexual assault during the Class Period.

### ***Breach of Duty***

93-98. The Defendants breached their respective duties of care by failing to protect the Class Members from physical and sexual assault during the Class Period.

94-99. All of the Defendants had reasonable grounds to believe that the Class Members were being abused as such were required under the *Family and Child Service Act*, SBC 1980, to report the abuse of the Class Members to the superintendent of Family and Child Services. By failing to report as required, the Defendants breached the standard of care owed to the Class Members

95-100. Further particulars of each of the defendants' wrongdoing, as presently known, is as follows.

### **Particulars of wrongdoing against Brother English**

96-101. Brother English assaulted and sexually abused the Plaintiff.

97-102. During the Class Period the Class Members were all minors and could not consent.

98-103. The abuse constitutes negligence, assault, battery, a breach of fiduciary duty, a breach of trust or confidence and/or intentional infliction of pain, suffering and mental distress.



**Particulars of wrongdoing against Joseph Burke**

104. Joseph Burke assaulted and sexually abused Class Members during the Class Period.
105. During the Class Period the Class Members were all minors and could not consent.
106. The abuse constitutes negligence, assault, battery, a breach of fiduciary duty, a breach of trust or confidence and/or intentional infliction of pain, suffering and mental distress.

**Particulars of wrongdoing against Brother Kenny**

107. Brother Kenny assaulted and sexually abused Class Members during the Class Period.
108. During the Class Period the Class Members were all minors and could not consent.
109. The abuse constitutes negligence, assault, battery, a breach of fiduciary duty, a breach of trust or confidence and/or intentional infliction of pain, suffering and mental distress.

**Particulars of wrongdoing against Kavalec**

- ~~99. During the Class Period, Kavalec received complaints of sexual and/or physical abuse of Class Members at Vancouver College~~
- ~~100. In the alternative, Kavalec ought to have been aware of the abuse, and was negligently and/or wilfully blind to the abuse.~~
- ~~101. At all material times, Kavalec had reasonable grounds to believe that the children being abused were in need of protection and as such was required under the *Family and Child Service Act*, SBC 1980 c11, to report the abuse to the superintendent of Family and Child Service.~~

~~102. Kavalec was negligent and breached the duties owed to the Class Members by failing to take proper and reasonable steps to take action to protect Class Members in circumstances where he knew or ought to have known that students in his care were being abused.~~

**Particulars of wrongdoing against Archbishop of St. John's**

~~103.110.~~ The Archbishop of St. John's failed to take reasonable measures to protect the plaintiff and Class Members from abuse by Christian Brothers. In particular:

- (a) the Archbishop prioritized the protection of the reputation of the Catholic Church over the need to protect children from further abuse by the Christian Brothers;
- (b) the Archbishop approved of, facilitated and/or ratified the transfer of Brother English, Joseph Burke and Brother Kenny out of Newfoundland to a teaching positions at a CBIC school in Vancouver when it knew Brother English, Joseph Burke and Brother Kenny had abused boys at Mount Cashel and posed a real and continuing danger to students, including the plaintiff and Class Members;
- (c) the Archbishop failed to revoke or take steps to revoke Brother English's, Joseph Burke's or Brother Kenny's certification to teach in Catholic schools; and
- (d) the Archbishop failed to warn the Archbishop of Vancouver of the real and continuing danger which Brother English, Joseph Burke and Brother Kenny posed to students, including the plaintiff and Class Members.

**Particulars of wrongdoing against Vancouver College Limited and St. Thomas More Collegiate Limited**

~~104.111.~~ VCL and STMCL failed to take reasonable measures to protect the plaintiff and Class Members from abuse. In particular:



- (a) STMCL employed Brother English and Joseph Burke when Board of Directors' members Brother McHugh and/or Brother Kelty Bellows knew that Brother English and Joseph Burke had abused boys at Mount Cashel and posed a serious and continuing danger to students;
- (b) STMCL failed to properly monitor the conduct of Brother English or Joseph Burke's conduct once appointed as a teachers at St. Thomas More;
- (c) STMCL failed to properly investigate complaints regarding Brother English's the conduct of Brother English or Joseph Burke conduct as a teachers at St. Thomas More, including failing to report theirhis conduct to the Commissioner of BC Teachers;
- (d) VCL and STMCL transferred or facilitated or approved of the transfer of Brother English and Joseph Burke to Vancouver College when they knew that they posed a real and continuing danger to students;
- (e) VCL employed Brother English, Joseph Burke and Brother Kenny as a teachers when both Brother Kelty and Brother McHugh, who each held the position of director and President of Vancouver College variously at material times, knew that Brother English, Joseph Burke and Brother Kenny had abused boys at Mount Cashel and posed a real and continuing danger to students;
- (f) VCL failed to properly monitor Brother English's the conduct of Brother English, Joseph Burke and Brother Kenny once appointed as a teachers at Vancouver College;
- (g) VCL failed to properly investigate complaints regarding Brother English's the conduct of Brother English, Joseph Burke and Brother Kenny as a teachers at Vancouver College and failed to report theirhis conduct to the Commissioner of BC Teachers; and



- (h) VCL permitted Brother English, [Joseph Burke and Brother Kenny](#) to have unsupervised access to students during extracurricular school activities including [in Brother English's case](#), a school trip to Eastern Canada.

**Particulars of wrongdoing against CISVA, and the Archbishop of Vancouver**

[405.112.](#) The Archbishop of Vancouver and the CISVA failed to take reasonable measures to protect the plaintiff and Class Members from abuse. In particular, the Archbishop of Vancouver and the CISVA:

- (a) approved of, endorsed, or ratified the appointment of the [current and former](#) Christian Brothers to teaching positions at Vancouver College and St. Thomas More when they knew or should have known of their history of abusing children at Mount Cashel;
- (b) failed to conduct an adequate investigation into the background of each [current and former](#) Christian Brother before approving, endorsing or ratifying their appointment as teachers at Vancouver College and St. Thomas More;
- (c) failed to exercise proper oversight over [current and former](#) Christian Brothers appointed as teachers in Vancouver and/or over their interactions with students; and
- (d) failed to conduct any or adequate investigations into complaints of inappropriate treatment of students at Vancouver College and St. Thomas More by the [current and former](#) Christian Brothers.

***Vicarious Liability***

[406.113.](#) VCL is vicariously liable for the conduct of the [current and former](#) Christian Brothers employed at Vancouver College during the Class Period.

[407.114.](#) STMCL is vicariously liable for the conduct of the [current and former](#) Christian Brothers employed at St. Thomas More during the Class Period.

~~408.~~115. The Archbishop of Vancouver and the CISVA are vicariously liable for the conduct of current and former Christian Brothers employed by VCL and STMCL during the Class Period.

### ***Occupiers' Liability***

~~409.~~116. At all material times VCL was an occupier of Vancouver College within the meaning of both the *Occupiers' Liability Act*, 1974 RSBC and the *Occupiers Liability Act* RSBC 1979, c 303 (the *Occupiers' Liability Acts*) by virtue of the fact that VCL was:

- (a) in physical possession of Vancouver College; and
- (b) had responsibility for and control over the activities conducted at Vancouver College.

~~410.~~117. At all material times STMCL was an occupier within the meaning of both the *Occupiers' Liability Acts* by virtue of the fact that STMCL was:

- (a) in physical possession of St. Thomas More; and
- (b) had responsibility for and control over the activities conducted at St. Thomas More.

~~411.~~118. At the time of the abuse, the Class Members were on Vancouver College and St. Thomas More property as students attending the schools.

~~412.~~119. As occupiers under the *Occupiers' Liability Acts*, VCL and STMCL owed a duty to the Class Members. VCL and STMCL breached the duty by failing to take reasonable care to ensure the Class Members' safety using the premises.

~~413.~~120. As a result of the conduct of the Defendants the Class Members have suffered and continue to suffer loss and damages.

### ***Aggravated damages***

~~114.121.~~ Kavalec and Vancouver College aggravated the damages suffered by Class Members. Factors giving rise to aggravated and punitive damages against include:

- (a) dismissing Class Members who reported that they were abused by the current and former Christian Brothers;
- (b) failing to take any steps to address the reports of abuse by the Class Members such as:
  - (i) contacting the police and governing regulatory authorities;
  - (ii) terminating the current and former Christian Brothers' employment;
  - (iii) assisting the Class Members with counselling or other services.

### ***Punitive Damages***

~~115.122.~~ The conduct of the defendants outlined above is egregious and so extreme in nature as to be deserving of condemnation and punishment. Compensatory damages alone are inadequate.



Plaintiff's address for service:

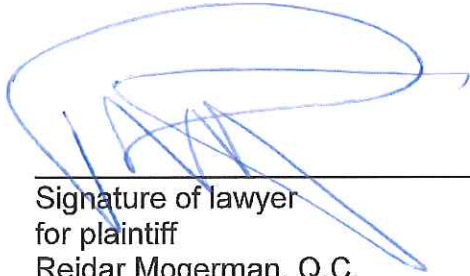
**CAMP FIORANTE MATTHEWS MOGERMAN**

#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Date: JUL/02/2021~~FEB/08/2021~~



Signature of lawyer  
for plaintiff  
Reidar Mogerman, Q.C.

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**ENDORSEMENT ON ORIGINATING PLEADING FOR SERVICE OUTSIDE BRITISH COLUMBIA**

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The plaintiff claims the right to serve this pleading on the defendants outside British Columbia on the ground that it concerns a tort committed in British Columbia as per section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**APPENDIX**

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**CONCISE SUMMARY OF NATURE OF CLAIM:**

**THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

**THIS CLAIM INVOLVES:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law

- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know