

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

M.K., M.R. and O.S.

Plaintiffs

and

WALTER JOSEPH HOLM, JANET HOLM and
THE CHILDREN'S AID SOCIETY OF THE COUNTY OF PRINCE EDWARD,

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff Holms not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

47413
STOCK
TOTAL
CHARGE
15.00
101.00
116.00
07-21-2013
10:57

Date March 28/13

Issued by M. Valiquette
Local Registrar

Address of
court office: 44 Union Street
Picton, Ontario
K0K 2T0

TO: The Children's Aid Society of the County of Prince Edward
16 Macsteven Drive
Picton, On K0K 2T0

AND TO: Walter Joseph Holm

AND TO: Janet Holm

CLAIM

1. The Plaintiff M.K. claims:

- (a) General damages for pain and suffering in the amount of \$350,000.00;
- (b) General damages for loss of future income in the amount of \$1,000,000.00;
- (c) General damages for future care costs in the amount of \$100,000.00;
- (d) Special damages in the amount of \$100,000.00;
- (e) Aggravated damages in the amount of \$250,000.00;
- (f) Punitive damages in the amount of \$1,000,000.00;
- (g) ~~prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;~~
- (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) the costs of this proceeding, plus all applicable taxes; and
- (j) Such further and other Relief as to this Honourable Court may seem just.

2. The Plaintiff M.R. claims:

- (a) General damages for pain and suffering in the amount of \$350,000.00;
- (b) General damages for loss of future income in the amount of \$1,000,000.00;

- (c) General damages for future care costs in the amount of \$100,000.00;
- (d) Special damages in the amount of \$100,000.00;
- (e) Aggravated damages in the amount of \$250,000.00;
- (f) Punitive damages in the amount of \$1,000,000.00;
- (g) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) the costs of this proceeding, plus all applicable taxes; and
- (j) Such further and other Relief as to this Honourable Court may seem just.

3. The Plaintiff O.S. claims:

- (a) General damages for pain and suffering in the amount of \$350,000.00;
- (b) General damages for loss of future income in the amount of \$1,000,000.00;
- (c) General damages for future care costs in the amount of \$100,000.00;
- (d) Special damages in the amount of \$100,000.00;
- (e) Aggravated damages in the amount of \$250,000.00;
- (f) Punitive damages in the amount of \$1,000,000.00;

- (g) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (i) the costs of this proceeding, plus all applicable taxes; and
 - (j) Such further and other Relief as to this Honourable Court may seem just.
4. Each of the Plaintiffs claims the foregoing damages against the Defendant The Children's Aid Society of the County of Prince Edward ("PECCAS") for:
- (a) breach of duty of care and fiduciary duty owed to each of M.K., M.R. and O.S.;
 - (b) breach of non-delegable duty owed to each of M.K., M.R. and O.S.;
 - (c) negligence; and
 - (d) vicarious liability.
5. Each of the Plaintiffs claims the foregoing damages against Walter Joseph Holm and Janet Holm ("the Holms") for:
- (a) sexual assault and/or physical assault and battery and/or psychological abuse and/or infliction of mental distress perpetrated upon each of the Plaintiffs detailed below;

- (b) breach of fiduciary obligations owed to each of the Plaintiffs arising out of the relationship between the Holms as adults and/or guardians and/or foster parents and each of the Plaintiffs as a child; and/or
- (c) intentional and negligent infliction of mental distress occasioned as a result of the sexual assault and/or physical assault and battery and/or psychological abuse, and breach of fiduciary obligations as described herein.

THE PARTIES

- 6. M.K. was born on April 18, 1991 and is currently twenty-one (21) years old. She currently resides in the City of Belleville in the Province of Ontario.
- 7. M.R. was born on August 11, 1989 and is currently twenty-three (23) years old. She currently resides in the Municipality of the County of Prince Edward in the Province of Ontario.
- 8. O.S. was born on May 16, 1993 and is currently nineteen (19) years old. She currently resides in the City of Belleville in the Province of Ontario.
- 9. PECCAS was, at all material times, an approved Children's Aid Society in the County of Prince Edward, Ontario, designated by the Ministry of Community and Social Services to, among other things, protect children in the Society's care or supervision pursuant to the *Child and Family Services Act*, R.S.O. 1990, c.C-11, as amended and its predecessor legislation. PECCAS is responsible in fact and in law for its own negligence and breaches of its statutory and fiduciary duties as well as for the negligence and breaches of duty committed by its servants, agents and employees.

10. At all material times, the Holms operated a foster home into which PECCAS placed children, including each of the Plaintiffs. At all material times, the Holms had each of the Plaintiffs in their direct custody, care and control. Each of the Plaintiffs were also under the care, control and supervision of PECCAS.
11. Upon admission to the Holms' foster home, children such as each of the Plaintiffs became wards of PECCAS and PECCAS assumed all rights and duties of a legal guardian for the purpose of care, custody and control of the children, including each of the Plaintiffs.
12. At all material times, PECCAS had the capacity and obligation to make decisions on behalf of children, including each of the Plaintiffs, so that the best interests of the children were considered and certain children, including each of the Plaintiffs were directed to be placed under the care of PECCAS.
13. In addition, a special relationship existed between the parties that arose as a result of PECCAS's duty to act as legal guardians over children, including over each of the Plaintiffs and to care, supervise and have control over children, including each of the Plaintiffs. Accordingly, each of the Plaintiffs had a reasonable expectation that PECCAS would exercise due care in fulfilling their responsibility.
14. At all material times, the Holms were the operators of the Holm foster home, where each of the Plaintiffs were placed by PECCAS. At all material times, each of the Plaintiffs were placed under the care and supervision of the Holms who acted *in loco parentis* to each of the Plaintiffs.

THE ABUSE

M.K.

15. In approximately October 2006, M.K. was placed by PECCAS in the Holm foster home when she was fifteen (15) years old. M.K. lived with the Holms for approximately three and a half years until April 2010 at which time she was removed. Over the course of her stay at the Holm foster home, M.K. became a favorite recipient of the unwanted attention of Walter Joseph Holm and as a result was sexually abused and/or physically assaulted and/or battered and/or psychologically and emotionally abused. The abuse of M.K. included, but was not limited to:

- (a) watching pornographic video material with both of the Holms or either of the Holms individually at different times;
- (b) early in her time at the Holms' house being asked very detailed questions about her sexual experience;
- (c) receiving various sex toys and sexual instruments and devices as Christmas and/or birthday gifts;
- (d) Walter Joseph Holm fondling her buttocks and breasts at parties with pornographic material being viewed on the TV in the presence of many other people;
- (e) Walter Joseph Holm showing her pictures of the Holms with friends naked and engaged in sexual acts;

- (f) Walter Joseph Holm asked her to masturbate for him, to perform oral sex on him and told her that he wanted to make her reach orgasm;
- (g) Walter Joseph Holm asked her to simulate fallatio on a banana on camera;
- (h) Walter Joseph Holm came into the bathroom on an occasion while M.K. was in the shower. He waited for her to finish her shower. When she came out of the shower, he had his pants off and asked M.K. to perform oral sex on him. She did so, but not to the point of making Walter Joseph Holm ejaculate. She stopped because she felt guilty;
- (i) Later the same day, Walter Joseph Holm compelled her to perform oral sex on him until he ejaculated;
- (j) ~~Walter Joseph Holm forced her to watch pornographic video of him and Janet Holm~~ and then told her of sexual acts that he and Janet Holm had engaged in with other foster children;
- (k) On one occasion, the Holms brought out a cake in the shape of a penis for M.K. in front of several other people;
- (l) After M.K. left the home, primarily because of Janet Holm's jealousy towards Walter Joseph Holm's feelings for M.K., Janet Holm continued to harass and intimidate M.K. via email, Facebook and word of mouth;
- (m) such other and further abuses as will be advised prior to trial.

M.R.

16. M.R. was placed by PECCAS in the Holm foster home in approximately August 2004, when she was fifteen (15) years old. Over the course of her time at the Holm foster home, M.R. was sexually abused and/or physically assaulted and/or battered and/or psychologically and emotionally abused. The abuse of M.R. included, but was not limited to:
- (a) being required to watch pornographic materials with either of the Holms or with the Holms together and along with other foster children, even on school nights;
 - (b) accompanying Walter Joseph Holm in his job as a truck driver, on trips to Montreal where he would engage her in detailed and explicit discussions about sex;
 - (c) on those trips to Montreal, she was required to sleep in the same bunk as Walter Joseph Holm and cuddle him on the pretense of keeping him warm with her body heat, despite the truck having the ability to be configured with separate bunks;
 - (d) being repeatedly and continuously complimented on her appearance, and in particular her breasts;
 - (e) Walter Joseph Holm would take photographs specifically of her clothed breasts;
 - (f) being subjected to embarrassing and derogatory sexual discussions in front of several other foster children and encouraged to have sex with her first boyfriend at the age of fifteen (15) in front of several other foster children by Janet Holm;

- (g) receiving sexually explicit gifts such as vibrators, lingerie and sex oils for Christmas gifts at the age of fifteen (15);
- (h) being shown photos of the Holms and their friends engaged in sexual acts;
- (i) having Janet Holm speaking about sex to another man about M.R. with M.R. present;
- (j) being repeatedly and continuously exposed to suggestive (ostensibly accidental) touching and contact by Walter Joseph Holm;
- (k) being provided alcohol at parties that the Holms would host and that were attended by many foster children, as young as 14 and 15 years old;
- (l) such further and other abuses that will be advised prior to trial.

O.S.

17. O.S. was placed by PECCAS in the Holm foster home in approximately July 2008, when she was fifteen (15) years old. Over the course of her stay at the Holm foster home, O.S. was sexually abused and/or physically assaulted and/or battered and/or psychologically and emotionally abused. The abuse of O.S. included, but was not limited to:

- (a) repeated and continuous sexually explicit discussion by and questioning from Walter Joseph Holm;
- (b) on the first occasion on which he was alone with M.K. and O.S., Walter Joseph Holm told O.S. to “think about me while you masturbate.”;

- (c) Walter Joseph Holm would try to "cuddle her" in a highly suggestive and inappropriate fashion on the couch by asking her to place her leg on his genital area and have her hand on his chest;
- (d) Walter Joseph Holm would on numerous occasions grab her breasts and buttocks;
- (e) Walter Joseph Holm would compel M.K. and O.S. to hug and then would make sexually inappropriate remarks about them;
- (f) after the departure of M.K. from the Holm foster home, Walter Joseph Holm began to focus his attention and affections on O.S.;
- (g) for her first Christmas at the Holm residence, when she was fifteen (15) years old, O.S. received a book with detailed and explicit photographs and explanations of sexual positions;
- (h) during the course of her stay at the Holm foster home, O.S. began to feel that the highly sexually charged atmosphere was normal;
- (i) Janet Holm encouraged her to pursue and have sex with M.K.'s boyfriend in an effort to manipulate O.S. to satisfy Janet Holm's jealousy towards M.K.;
- (j) On her first night at the Holm foster home, Janet Holm asked O.S. what the "kinkiest" thing she ever did was, while at the dinner table in front of other teenaged foster children;
- (k) Janet Holm told M.K. that Walter Joseph Holm would talk about O.S. while he and Janet Holm were having sex;

- (l) such further and other abuses that will be advised prior to trial.

LIABILITY OF THE HOLMS

18. Each of the Plaintiffs plead that the Holms owed each of them a duty of care and that they trusted the Holms because:

- (a) the Holms were foster parents, authority and/or parental figures in a position of power;
- (b) the Holms were acting in *loco parentis*;
- (c) the Holms were employees or agents of PECCAS;
- (d) the Holms were older in age; and
- (e) such further and other reasons as may be advised prior to trial.

19. As a result of the relationships between each of the Plaintiffs and the Holms, each of the Plaintiffs was vulnerable to the Holms such that the Holms owed a special duty of care or fiduciary duty:

- (a) not to commit physical assault and/or battery and/or psychological and emotional abuse against them;
- (b) not to use their positions of power and influence to abuse each of the Plaintiffs;
- (c) to ensure that each of the Plaintiffs was safe from abuse while under their care;
- (d) to respect each of the Plaintiff's integrity and privacy;

- (e) such further and other duties as may be advised prior to trial.
20. At all material times, the Holms assumed the fiduciary obligation of providing parental care, guidance and supervision to each of the Plaintiffs and the obligation to provide them with the necessities of life.
21. Each of the Plaintiffs states that the Holms' actions as aforesaid constituted breach of trust, gross negligence and assault upon each of their persons.
22. The Holms breached their fiduciary and statutory duties through their commission of acts of abuse, and/or omission to prevent their commission of acts by permitting such abuse to occur and by failing to provide each of the Plaintiffs with proper ongoing care, guidance, education, training, an environment free from violence that is conducive to social, educational and emotional development.
23. The Holms knew that they were pedophiles or child abusers and should have taken steps not to be in the presence of or be responsible for the care of young children.
24. The conduct of the Holms was intentional, malicious and was done with the knowledge that it would cause each of the Plaintiffs and other vulnerable children in their care to suffer humiliation, indignity, physical, emotional and mental distress and injury.
25. Further, the conduct of the Holms was done with the knowledge that each of the Plaintiff's emotional and physical anguish would increase and with wanton, careless and wilful disregard of the consequences to each of the Plaintiffs and other vulnerable children in their care.

26. The conduct of the Holms was harsh, vindictive and reprehensible. Such conduct is offensive to the ordinary standards of decent conduct in the community and is conduct that ought to be deterred and is deserving of a full condemnation and punishment. Such conduct is deserving of the fullest sanctions available to this Honourable Court including an award of aggravated, exemplary and punitive damages.

LIABILITY OF PECCAS

27. Pursuant to the provisions of the *Child and Family Services Act*, each of the Plaintiff's attendance at the Holm foster home was mandatory, placing PECCAS in the position of *parenes patriae* to each of them. The Holms and PECCAS stood in the place and stead of each of M.K.'s, M.R.'s and O.S.'s respective parents during their respective times at the Holm foster home.
28. The Plaintiffs state that PECCAS is liable for the abuse that each of them suffered while in the care of PECCAS.
29. PECCAS was, at all material times, responsible for the placement of the Plaintiffs in foster homes and/or group homes, the screening and selection of foster parents and the supervision and inspection of group homes and/or foster homes. PECCAS was also responsible for supervision and inspection of foster homes and/or group homes and/or birth homes after placement of children and employed a system whereby inspections were carried out.
30. Under the *Child and Family Services Act*, PECCAS was under statutory duties to investigate allegations or evidence that each of either of the Plaintiffs was in need of

protection, to protect each of the Plaintiffs and to provide care to each of the Plaintiffs.

There is no provision by which PECCAS may delegate these responsibilities.

VICARIOUS LIABILITY OF THE PECCAS

31. The Plaintiffs state that all material times the Holms were employees, servants or agents of PECCAS, and that they were acting in the course of their employment, service or agency when they committed the aforementioned sexual assaults and/or physical assaults and battery and/or psychological and/or emotional abuse upon the Plaintiffs. As such PECCAS is vicariously liable for the acts committed by the Holms.

32. The Plaintiffs further plead that PECCAS is vicariously liable for the actions of the Holms since:
 - (a) ~~there was a significant connection between the creation or enhancement of the risk~~ to each of the Plaintiffs and the sexual abuse and/or physical assaults and battery and/or psychological and/or emotional abuse that accrued therefrom;

 - (b) PECCAS created or enhanced the risk of harm to each of the Plaintiffs by materially empowering the Holms and by placing each of the Plaintiffs under the control of the Holms;

 - (c) the sexual assault and/or physical assaults and battery and/or psychological and/or emotional abuse were related to the intimacy inherent in the enterprise of PECCAS;

- (d) the children in the care of PECCAS, including the Plaintiffs, were vulnerable to the wrongful exercise of power granted to the Holms by PECCAS;
- (e) the Holms were expected to manage and supervise children, including each of the Plaintiffs, as a function of their employment with PECCAS;
- (f) the nature of the relationship between the Holms and the children in their care was parent-like or role model-like, and on its own created a considerable risk of wrongdoing;
- (g) PECCAS can effectively compensate each of the Plaintiffs; and
- (h) PECCAS will be deterred from employing and empowering individuals like the Holms who are inappropriate to care for the children.

NEGLIGENCE, BREACH OF FIDUCIARY DUTY AND BREACH OF NON-DELEGABLE DUTY OF THE PECCAS

33. Each of the Plaintiffs pleads that PECCAS and the Holms respectively owed them a duty of care and that they trusted PECCAS because:

- (a) they were foster parents, authority and/or parental figures in a position of power;
- (b) in the case of PECCAS and the Holms, they were acting *in loco parentis*;
- (c) in the case of the Holms, they were employees or agents of PECCAS;
- (d) they were older in age; and
- (e) such further and other reasons as may be advised prior to trial.

34. As a result of the relationship between each of the Plaintiffs and PECCAS and the Holms, the Plaintiffs each became vulnerable to such an emotional extent that PECCAS and the Holms owed each of the Plaintiffs a special duty of care or fiduciary duty:
- (a) not to commit sexual abuse and/or physical assault and/or battery and/or psychological and/or emotional abuse against them;
 - (b) not to use their positions of power and influence to abuse each of the Plaintiffs;
 - (c) not to encourage or allow residents and/or other children to abuse one another;
 - (d) not to use the relationship to satisfy their own desires;
 - (e) to ensure that each of the Plaintiffs was safe from abuse while under their care;
 - (f) to assist each of the Plaintiffs and arrange for the appropriate therapy for them;
 - (g) to ensure that each of the Plaintiffs was not subjected to inhumane treatment;
 - (h) to respect the integrity and privacy of each of the Plaintiff's persons; and
 - (i) such further and other duties as may be advised prior to trial.
35. At all material times, PECCAS assumed the fiduciary obligation providing parental care, guidance, education and training to each of the Plaintiffs.
36. At all material times, the *Child and Family Services Act*, the *Child Welfare Act* and predecessor legislation placed non-delegable duties on PECCAS to protect children under their care or supervision, including each of the Plaintiffs, and to provide care for children assigned or committed to their care, including each of the Plaintiffs.

37. PECCAS and the Holms breached their fiduciary duties by their commission of acts of abuse or by permitting such abuse to occur, and by failing to provide each of the Plaintiffs with proper ongoing care, guidance, education, training and an environment free from violence that is conducive to social, educational and emotional development.
38. Each of the Plaintiffs further states that PECCAS breached its duty of care and/or fiduciary duty and/or non-delegable and/or statutory duty owed to them insofar as PECCAS knew or ought to have known that the Holms were cruel and would sexually and/or physically and/or psychologically and/or emotionally abuse children such as the Plaintiffs.
39. PECCAS was systematically negligent in failing to have in place management and operation procedures that would reasonably have prevented the abuse.
40. PECCAS systematically breached its fiduciary duty and/or non-delegable duty owed to each of the Plaintiffs and other children in their care and was systematically negligent in its hiring and supervision or investigation of the Holms in that they knew or ought to have known that the Holms were not suitable for being foster parents, parents of or for acting in *loco parentis* to children, including each of the Plaintiffs, for the following reasons:
 - (a) they failed to properly investigate or to take the appropriate action against the Holms upon receiving complaints regarding the abuse by the Holms;
 - (b) they failed to properly investigate upon evidence or complaints of the Plaintiffs or of any other child because of a desire to protect their own interests over each of the Plaintiff's respective interests;

- (c) they failed to remove the Holms from their positions even though they knew or ought to know that they had a tendency towards sexual assault, cruelty, psychological abuse and violence;
- (d) they failed to advise the proper authorities, including the police, of occurrences of abuse of M.K., M.R. and O.S. or of other children by the Holms;
- (e) they failed to conduct reference checks with respect to the Holms or if they conducted reference checks they failed to adequately and properly do so in accordance with accepted and/or reasonable personnel procedure;
- (f) they did not provide proper, adequate or effective training or monitoring, initially or on an ongoing basis, of the Holms in order to ensure that they were suitable and fit to act as employees and/or agents and/or foster parents and to be in the presence of and have relationships with children such as M.K., M.R. and O.S.;
- (g) they failed to properly train staff and/or have in place a system that might detect and respond to sexual assault and/or physical assault and battery and/or psychological and/or emotional abuse by employees, servants or agents such as the Holms;
- (h) they failed to adequately supervise the Holms such that they would not be able to commit sexual abuse and/or physical assault and battery and/or psychological and/or emotional abuse upon children such as M.K., M.R. and O.S.;
- (i) they permitted children, including M.K., M.R. and O.S. to be placed in the care of the Holms when they knew or ought to have known that the Holms were incapable of safely caring for children;

- (j) they knew or ought to have known that the Holms were persons with aberrant social tendencies who engaged in illegal and immoral abuse of children who were under their supervision or otherwise;
- (k) they knew or ought to have known that placing the Holms in positions of trust and authority would facilitate their ability to do wrong, and that without that position of authority the wrongs could not have been perpetrated against M.K., M.R. and O.S. or other children in their care;
- (l) they knew or ought to have known that the Holms inflicted the abuse and breaches during the course of their employment and/or agency;
- (m) they knew or ought to have known of the Holms' actions involving each of M.K., M.R. and O.S. and other children, and they knew or ought to have known of these children's relationships with the Holms;
- (n) they failed to warn potential victims, such as M.K., M.R. and O.S. and other children in their care, that there was a risk that the Holms might commit sexual assault and/or physical assault and battery and/or psychological and/or emotional abuse;
- (o) they failed to respond properly and take appropriate steps to protect potential victims, including M.K., M.R. and O.S. even where information was obtained that the Holms might be committing sexual assault and/or physical assault and battery and/or psychological and/or emotional abuse;

- (p) they failed to take all precautions within their control to prevent the abuse perpetrated against each of M.K., M.R. and O.S. and other children in their care;
- (q) they breached the duty of care owed to each of M.K., M.R. and O.S. and other children in their care as they continued to employ the Holms as employees and/or agents and/or foster parents when they knew or ought to have known they were not of good moral character and were not fit to perform the duties of an employee and/or agent and/or foster parent in a position of authority;
- (r) they knowingly aided, encouraged and/or permitted the Holms to commit the aforementioned sexual assaults and/or physical assaults and battery and/or psychological and/or emotional abuse upon both each of M.K., M.R. and O.S. and other children in their care;
- (s) they failed to recognize that M.K.'s, M.R.'s and O.S.'s physical and psychological well-being were being endangered by the Holms;
- (t) they failed to properly investigate the Holms prior to placing each of M.K., M.R. and O.S. in the Holms' care when they knew or ought to have known that the Holms would sexually, physically, psychologically and/or emotionally abuse M.K., M.R. and O.S.;
- (u) they failed to provide each of M.K., M.R. and O.S. and other children in their care with adequate care, training and treatment and proper moral, physical, academic, and vocational education and supervision;

- (v) they failed to assist each of M.K., M.R. and O.S. and provide counselling, medical care and other supports to them and other children in their care following the assaults;
- (w) they were systematically negligent in failing to have in place management and operation procedures that would reasonably have prevented the abuse; and
- (x) such further and other particulars as may be provided prior to trial.

41. PECCAS benefited by the omissions described herein because, for example:

- (a) they desired to cover up the Holms' abuse of M.K., M.R. and O.S.;
- (b) they desired to avoid negative attention;
- (c) they desired to avoid negative publicity that would hurt their reputation; and
- (d) they were more concerned with cost saving measures than with ensure proper protections were in place to care for vulnerable individuals such as J.S. and A.F.

42. Each of M.K., M.R. and O.S. further state that the negligent hiring and/or supervision of the Holms by PECCAS, and the breach of fiduciary duty and/or non-delegable duty by PECCAS, materially contributed to the injuries sustained by each of M.K., M.R. and O.S. and other children in their care as a result of the actions of the Holms insofar as these acts of negligence and breach of fiduciary duty allowed the Holms to continue their employment, service or agency and have access to children such as M.K., M.R. and O.S..

43. Each of M.K., M.R. and O.S. states that PECCAS knew or ought to have known that it was reasonably foreseeable that the Holms would commit sexual abuse and/or physical assaults and batter and/or psychological and/or emotional abuse upon each of M.K., M.R. and O.S.

and other children in their care, and that their suffering as herein described was foreseeably by each of the Defendants and was caused by the intentional and/or negligent acts referred to herein.

44. Each of M.K., M.R. and O.S. further claims that PECCAS' breaches of the duties they owed towards each of M.K., M.R. and O.S. and other children in their care were done with the knowledge that they would cause M.K., M.R. and O.S. suffer humiliation, indignity, sexual, physical, emotional and mental distress and injury, and demonstrated a wanton, careless and wilful disregard of the consequences to each of M.K., M.R. and O.S. and other children in their care. The conduct of PECCAS, in general, is reprehensible and should be deterred, and each of M.K., M.R. and O.S. is therefore entitled to punitive and exemplary damages.

LIMITATION PERIOD

45. To conceal the sexual and/or physical assaults and battery of each of M.K., M.R. and O.S., the Holms used various threats and insidious measures to ensure that each of M.K., M.R. and O.S. did not disclose the sexual abuse and/or physical assaults and battery. Each of M.K., M.R. and O.S. pleads and relies upon the doctrine of fraudulent concealment.
46. At the time that the abuse occurred, each of M.K., M.R. and O.S. felt terrified, shocked, confused and ashamed. Although each of M.K., M.R. and O.S. disclosed the abuse to their workers at the time, their complaints were ignored. The Plaintiffs further state that any discussion of the abuse after their removal from the foster home led to them being moved eventually unable to discuss the abuse given their fear, embarrassment, self-blame and denial. Each of M.K., M.R. and O.S. has oppressed much of the anger and grief resulting

from the abuse. It was, and continues to be, very painful for each of the Plaintiffs to think about, let alone speak about the abuse.

47. The conduct of the Holms who were in positions of authority at all material times, was and is, an extreme source of pain and suffering for each of M.K., M.R. and O.S. who were dependent on the Holms for the necessities of life.
48. Each of M.K., M.R. and O.S. pleads that the Holms' conduct and actions in the circumstances have caused them to develop certain psychological mechanisms in order to survive the horrors of the sexual assault and/or physical assault and battery and/or psychological and/or emotional abuse. These mechanisms include denial, repression, dissociation and guilt.
49. The conduct of the Holms prevented each of M.K., M.R. and O.S. from discovering the wrongfulness of the Holms' actions, the nature of each of the Plaintiff's respective injuries and/or the nexus between their injuries and the abuse. Each of M.K., M.R. and O.S. blames herself for the occurrence of the sexual assault and/or physical assault and battery and/or psychological and/or emotional abuse.
50. Each of M.K., M.R. and O.S. has received little or no meaningful therapy regarding the abuse. They are still in the process of coming to understand and appreciate the full extent of the injuries caused to them by the sexual abuse and/or physical assault and battery and psychological and/or emotional abuse performed upon each of them by the Holms and the nexus between the sexual abuse and/or physical assaults and battery and psychological and/or emotional abuse and the injuries caused by the abuse. Each of M.K., M.R. and O.S. requires therapy and medical attention.

51. Each of M.K., M.R. and O.S. pleads and relies upon the presumption that, as a victim of sexual, physical, psychological and emotional abuse, they are only now discovering the necessary connection between their injuries and the wrong done to them by the Defendants and relies on the presumption with respect to same.
52. Each of M.K., M.R. and O.S. was incapable of commencing the proceeding before now because of her physical, mental or psychological condition. Each of M.K., M.R. and O.S. relies on the presumptions established in sections 10(2) and 10(3) of the *Limitations Act*, 2002, S.O. 2002, c-24, Sch. B with respect to same.
53. Each of M.K., M.R. and O.S. pleads that at the time of the assaults, the PECCAS has charge of each of them and were in a position of trust or authority in relation to each of them. Each of M.K., M.R. and O.S. was dependent upon the PECCAS. Each of M.K., M.R. and O.S. relies on the presumptions established in section 16 of the *Limitations Act*, 2002, S.O. 2002, c-24, Sch. B with respect to same.

SIMILAR FACT EVIDENCE

54. Each of M.K., M.R. and O.S. pleads that the Holms sexually abused and/or physically assaulted and/or battered and/or psychologically abused other children who were under their care or control. Each of M.K., M.R. and O.S. pleads that Joe Holm's and Janet Holm's sexual abuse of the aforementioned children included, but was not limited to: ongoing and frequent sexual touching by Walter Joseph Holm over a period of several years; Walter Joseph Holm performing oral sex upon and Holm giving and receiving oral sex from those children. Each of M.K., M.R. and O.S. pleads that the Holms' abuse of the aforementioned children was strikingly similar to the abuse perpetrated on each of M.K.,

- j) issues with sexual identity;
- k) major depression and helplessness;
- l) self-harm;
- m) suicidal ideation and suicide attempts;
- n) loss of enjoyment of life;
- o) anger, aggressions, rage;
- p) panic attacks;
- q) anxiety;
- r) insomnia, night terrors, nightmares of abuse and sleepwalking;
- s) problems with memories and flashbacks;
- t) avoidance of reminders of the abuse;
- u) a crisis in self-identity and sexuality;
- v) problems with promiscuity;
- w) serious problems with intimacy;
- x) difficulty in developing healthy and meaningful relationships;
- y) inability to trust other individuals;

- z) impairment of each of their opportunity to experience a normal childhood and development of their adolescence and adulthood;
 - aa) impairment of each of their mental health and well-being such that they will require medical treatment and counselling;
 - bb) distrust and resentment toward authority figures leading to conflicts with employers and educational institutions;
 - cc) impairment of each of their ability and opportunity to obtain an education appropriate to their abilities and aptitude;
 - dd) loss of income and loss of future income; and
 - ee) such further and other damages as may be advised prior to trial.
56. As a result of the wrongful acts, negligence, breach of trust, breach of fiduciary duty and breach of non-delegable duty, each of M.K, M.R. and O.S. states that they have suffered from and continues to suffer from loss of youth, loss of education and the loss of ability to function as a normal adult.
57. Each of M.K., M.R. and O.S. states their schooling suffered as direct result of the harm caused by the abuse. As a result, each of M.K, M.R. and O.S. has been unable to obtain a career that each of them may otherwise have obtained had they not been abused.
58. Each of M.K., M.R. and O.S. states that their suffering herein described was reasonably foreseeable by the Defendants and was the result of the intentional and/or negligent acts referred to herein.

59. As a result of the aforementioned abuse and negligence, each of M.K., M.R. and O.S. has suffered and will continue to suffer damages. They have incurred medical expenses and will continue to require therapy and medical attention. They have each lost potential income as a result of being unable to function properly.
60. Each of M.K., M.R. and O.S. pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N-1, the *Trainings Schools Act*, 1965, S.O. 1965, c.132, the *Child and Family Services Act*, R.S.O. 1990, c.C-11, and the *Limitations Act, 2002*, S.O. 2002, c-24, Sch. B and subsequent amendments thereto and their predecessor legislation.
61. Further, each of M.K., M.R. and O.S. pleads that the Holms and PECCAS, as occupiers of the facilities in which each of M.K., M.R. and O.S. lived, owed a duty of care to each of the Plaintiffs to ensure that they were reasonably safe while on the premises and that the Holms and PECCAS breached their duty of care. Particulars of the breach and the injuries that resulted are particularized above. Each of M.K., M.R. and O.S. pleads and relies upon the *Occupiers' Liability Act*, R.S.O. 1990, c.0-2 and subsequent amendments thereto and its predecessor legislation and common law.
62. M.K., M.R. and O.S. propose that this action be tried in Picton, Ontario.

March 27, 2013

O'FLYNN WEESE LLP
Barristers & Solicitors
65 Bridge Street East
Belleville Ontario
K8N 1L8

JOHN D. BONN
LSUC# 48956S
jbonn@owlaw.com
Tel: (613) 966-5222
Fax: (613) 961-7991

Lawyers for the Plaintiffs

M.K. et al.

Plaintiffs

-and-

CHILDREN'S AID SOCIETY OF THE COUNTY OF PRINCE
EDWARD et al.

Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
PICTON

STATEMENT OF CLAIM

O'FLYNN WEESE LLP
Barristers & Solicitors
65 Bridge Street East
Belleville Ontario
K8N 1L8

John D. Bonn

LSUC# 48956S

jbonn@owtlaw.com

Tel: (613) 966-5222

Fax: (613) 961-7991

Lawyers for the Plaintiffs