

CV-17 583406
Court File No. 00CP

ONTARIO
SUPERIOR COURT OF JUSTICE



BETWEEN:

CHRISTIAN EDUARDO GUTIERREZ

Plaintiff

- and -

THE WATCHTOWER BIBLE AND TRACT SOCIETY OF CANADA,
WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA and
WATCH TOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

Defendants

Proceedings under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANTS

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 does 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.

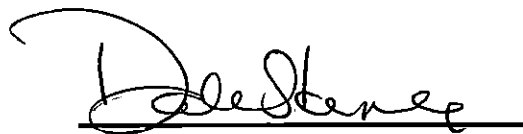
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$100.000 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date September 26 , 2017 Issued by


Local registrar

393 University Avenue
10th Floor
Toronto, Ontario M5G 1E6

TO: THE WATCHTOWER BIBLE AND TRACT SOCIETY OF CANADA
13893 Highway 7
Georgetown, Ontario
L7G 4S4

TO: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
1630 SPRING RUN ROAD EXTENSION
CORAOPOLIS, PENNSYLVANIA,
USA 15108-0

TO: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
100 WATCHTOWER DRIVE
PATTERSON, NEW YORK
USA 12563-2232

CLAIM

PLAINTIFF

1. The plaintiff Christian Eduardo Gutierrez (hereinafter referred to as "Gutierrez") resides in Calgary Alberta. At all material times Gutierrez was a member of the Jehovah's Witness Organization ("a Witness"). Gutierrez was sexually abused by another Witness when he was a minor.

2. The Representative Plaintiff brings this claim on his own behalf and on behalf of all class members (the "Class Members"), claim:
 - a) An order certifying this action as a class proceeding and appointing Gutierrez as representative plaintiff.

 - b) compensation for breach of trust, breach of fiduciary duties, negligence, trespass, assault and damages for the infliction of mental distress occasioned as a result of their sexual and mental abuse at the hands of Elders and congregation members and the failure to assist and protect the Class Members from the abuse perpetrated upon them by Elders and congregation members, in the amount of \$20,000,000.00 ;

 - c) damages for vicarious liability in failing to protect the interest of the representative Plaintiff and the Class Members in the amount of \$20,000,000.00;

- d) damages for breach of the Defendants duty of care, in the amount of \$20,000,000.00;
- e) punitive and exemplary damages in the amount of \$4,000,000.00;
- f) aggravated damages in the amount of \$2,000,000;
- g) special damages in an amount to be determined at trial;
- h) An order certifying the herein action as a class proceeding pursuant to the *Class Proceedings Act*;
- i) prejudgment and post-judgment interest pursuant to the *Courts of Justice Act R.S.O. 1990, c.43, ss.128 and 129*;
- j) costs of this action on a complete indemnity basis;
- k) such further and other relief as this Honourable Court may deem just.

THE DEFENDANTS

3. The Jehovah's Witnesses is a Christian religious organization (the "Organization") that reports to have over 8,000,000 (eight million) members

- worldwide and over 113,500 (one hundred thirteen thousand five hundred) members in Canada.
4. In Canada, the Organization is run by a branch office of the worldwide organization known as the Watchtower Bible and Tract Society of Canada (the “JW Canada”) incorporated under the Canada *Not-for-profit Corporations Act*. JW Canada is the secular arm of the Organization in Canada for all purposes.
 5. The defendant Watch Tower Bible and Tract Society of New York, Inc. (“JW New York”) is the entity that controls the worldwide operations of the Jehovah’s Witnesses. JW New York’s head office is located at Warwick, New York.
 6. JW New York establishes the policies and procedures in respect of the prevention and reporting of sexual abuse for Jehovah’s Witnesses organizations worldwide, including Canada.
 7. The defendant Watchtower Bible and Tract Society of Pennsylvania (“JW PA”) is the entity that The Pennsylvania Society assists the Governing Body, and is the principal corporation used to support the activities of the Witnesses.
 8. The Plaintiff pleads that, by virtue of the acts described herein, each of the defendants is vicariously liable for the act and omissions of the others for the following reasons:

- (a) Each was the agent of the other;
- (b) Each defendant's business was operated so that it was inextricably interwoven with the business of the other;
- (c) Each defendant entered into a common advertising and business plan with the other;
- (d) Each defendant operated pursuant to a common business plan;
- (e) Each defendant intended that the businesses be run as one business organization; and
- (f) All or some of the defendants are related, associated or affiliated.

CLASS MEMBERS

9. The Plaintiff brings this action on their own behalf and on behalf of the following subclasses:
- a) All persons in Canada who were or are a Jehovah's Witness who allege having been sexually abused by a Jehovah's Witness Elder (the "**Elder Abuse Subclass**").
 - b) All persons who were or are a Jehovah's Witness who allege having been sexually abused as a child (the "**Sexual Abuse Subclass**").

DEFENDANTS' STRUCTURE

10. The Organization has a strict hierarchical structure controlled and directed

by a committee called "The Governing Body" of the Organization. Ordinarily, the Governing Body is composed of 7 men.

11. The Governing Body is the ultimate decision making body for Jehovah's Witnesses worldwide. Jehovah's Witnesses have a presence in most countries.

12. The Governing Body is composed of a council of seven men, who meet at international headquarters is located in Warwick, New York. The Governing Body establishes all doctrines, administrative, disciplinary, and evangelical policies of the Organization based on its interpretations of the Bible.

13. The Governing Body appoints, directs and supervises Branch Offices in different countries that are responsible for overseeing the activities of Witnesses in each country and responsible for operating The Organization and publication and distribution of Watch Tower Society literature in each country.

14. Branch Offices supervise the administrative functions for Witness congregations of Kingdom Halls in their jurisdiction. The Defendant JW Canada is the Branch Office and spiritual and secular representative of the Organization in Canada. There are an estimated 1400 congregations in Canada.

15. Congregations meet in local buildings known as Kingdom Halls. More than one congregation may meet in any one Kingdom Hall.

AUTHORITY OF ELDERS

16. As stipulated by the Governing Body, the congregation of each Kingdom Hall is governed and lead by a council composed of four to five Elders who are appointed by the Organization. Elders are completely responsible for congregational governance, pastoral work, setting meeting times, and selecting speakers, conducting meetings, directing the public preaching work, and forming judicial committees to investigate and decide all disciplinary action in cases where members are believed to have committed sins.

17. The remainder of each Kingdom Hall congregation consists of Witness members. Witnesses are required to provide absolute obedience, and defer to, the Elders in all matters.

18. The Governing Body has decreed that congregational judicial committees determine whether sins have been committed by members.

19. The offences that constitute sins are identified in a book approved by the Governing Body and provided only to Elders titled "Shepherd the Flock of God".

20. Sexual abuse is a sin by the Organization.

OBEDIENCE, DISCIPLINE and CONFIDENTIALITY

21. The Organization is insulated from mainstream society. The Organization discourages members from associating with non-Jehovah's Witnesses, from reporting crimes that involve other Witnesses to police, and

prohibits Witnesses from suing other Witnesses.

22. Non-Jehovah's Witnesses are referred to as "worldly". While appreciating that contact with worldly persons is inevitable at work, school and elsewhere all such contact is to be minimized. Witnesses are encouraged to associate with other Witnesses as much as possible.

23. Elders are granted enormous power over other Witnesses.

24. Elders form the judicial committee of each congregation that has the authority to discipline congregation members, including but not limited to disfellowship. Failure to follow the directions of congregation Elders can result in a member being disfellowshipped from the Organization and having all contact with family members and friends who are Witnesses cut off.

25. Disfellowshipped members are shunned by all other Organization members, including family, friends, acquaintances and work colleagues.

26. The Organization requires Witnesses and Elders to keep any offences or allegations (including allegations of sexual abuse) that involve a Witness absolutely confidential.

SEXUAL ABUSE POLICIES

27. Organization policy established by the Governing Body requires Elders to keep a record of all allegations of sexual abuse by or against a Witness and to

provide a report of the abuse to the Society Head Office. Records of sex abuse allegations by a Witness are to be kept indefinitely.

28. Organization policy prohibits Elders from reporting allegations of sexual abuse by or against a Witness to secular authorities. Instead the Organization requires that Elders report such allegations to the Organization legal department.

29. The Organization discourages Witnesses who are victims of sexual abuse from attending group therapy or counseling because it may breach the confidentiality demanded by the Organization of its members.

30. The Organization does not consider an allegation of sexual abuse to be legitimate or established unless or until there is a ruling by the congregation's judicial committee of Elders.

31. The Organization's policies seek to avoid or to delegate the responsibility to report suspected sexual abuse to the adult victim or, the event of suspected child abuse, to the child's parents or physicians, regardless of whether this policy is contrary to duties imposed by statute and common law.

JUDICIAL COMMITTEES AND SEXUAL ABUSE

32. The Organization's policy and protocol for dealing with allegations of sexual abuse is seriously flawed and results in further harm to victims of sexual abuse and results in legitimate allegations of sexual abuse going unreported.

33. All allegations of wrongdoing within a congregation are dealt with by a judicial committee made up of Elders from the congregation.

34. Organization policy and protocol requires Witnesses who have been a victim of sexual abuse to confront their abuser (in person and in the presence of the members of the judicial committee.) The Organization knew or ought to have known the significant harm this policy could and did cause to vulnerable victims of sexual abuse.

35. Before a judicial committee is formed the Elders must first determine if the allegation has been "established". The Organization does not consider there to be evidence of wrongdoing unless there is a confession or unless there are two or more eyewitnesses to the wrongdoing. According to Organization policy no action can be taken unless the allegation is established by two witnesses. The victim is considered a witness.

36. If a victim complainant cannot call upon another to attest to the alleged sexual abuse, he or she may be found to have committed slander and face disassociation from the congregation. Given the circumstances in which sexual assault is ordinarily committed, the Organization's policy effectively requires a confession from the assailant to prove the sexual assault allegation.

37. Because congregation members have little or no social support outside the Witness community, disassociation can cause serious harm to already vulnerable victims of sexual abuse.

38. For decades the Organization knew or ought to have known about the damage and harm caused by sexual abuse. The Organization knew or ought to have known that its policy for establishing allegations of sexual abuse was flawed and harmful to victims of abuse and resulted in legitimate allegations of abuse not being investigated, pursued or reported to secular authorities.

39. For decades the Organization has received thousands of reports of sexual abuse, including child sex abuse, and has failed to investigate and/or report the abuse to secular authorities, even where required by law.

40. The Organization's policies, as aforesaid, helped to conceal or ignore serious cases of sexual abuse.

41. The relationship between the Organization and congregation Elders is both spiritual and temporal. The Organization's actions created or materially increased the risk of harm to the Plaintiff and other class members.

42. It was reasonably foreseeable that the actions or inactions of the Organization could harm the Plaintiff and the class.

43. The Organization was in a relationship of proximity with the Plaintiff and the class by virtue of the power and authority the Organization and its Elders held over the class.

44. The Organization provides Elders with the opportunity to abuse their power.

45. The Elder's wrongful acts were strongly related to the psychological intimacy inherent in their role as spiritual leaders of their congregations.

46. The Organization conferred an enormous degree of power on Elders and other officers relative to congregation members, including children.

DETAILS OF THE PLAINTIFF'S ABUSE: GUTIERREZ

47. At all material times, Gutierrez was a child member of the Organization.

48. Gutierrez does not recall the Organization Congregation to which he belonged when he was a child.

49. Gutierrez was sexually assaulted by an Elder of the Congregation of JW Canada.

50. Gutierrez was so overwhelmed by the assault that he did not report it to anyone at the time, including his father who was also an Elder of the Congregation.

51. Gutierrez subsequently reported the assault to another Elder of the Congregation.

52. As a consequence of that report, a group of Elders attended at the home of Gutierrez and his parents.

53. Other than giving Gutierrez some Organization magazines, the Organization did not take any further steps arising from Gutierrez's report of the sexual assault.

54. Gutierrez's father was upset the Gutierrez reported the sexual assault to another

Elder and not to him.

55. Gutierrez made another report the sexual assault to a Organization Circuit Overseer. Circuit Overseers are appointed to their positions by the defendant JW NY. It is the responsibility of Circuit Overseers to ensure that Congregations in their respective districts abide by the practices, policies and procedures enunciated by the Governing Board.
56. Gutierrez does not recall the full name of the said Circuit Overseer but recalls that he was originally from Quebec and that his surname was Daoust.
57. The Circuit Overseer brushed off Gutierrez's report of the sexual assault, saying 'that is in the past.'
58. Gutierrez has received and continues to receive counseling as a consequence of the said sexual assault.
59. Gutierrez is no longer a member of the Organization.
60. Gutierrez pleads that the sexual abuse which he suffered, the Elders' failure to report and adequately address the abuse has caused him to develop certain psychological mechanisms in order to survive the trauma of the sexual abuse, including denial, repression, disassociation and guilt.
61. Gutierrez still does not understand/appreciate the full extent of the damage caused to him by the sexual assault committed by his abuser, the failure of Congregation

Elders to adequately address the harm or report it to police, and the damages caused by same.

62. The Organization in each instance of sex abuse failed to protect Class Members given their vulnerability. The Organization through its failure to meet its duty of care, contributed to creating an environment in which pedophiles were able to sexually assault and abuse Gutierrez and the other Class Members.

63. The Organization owed Gutierrez and all Class Members, a duty of care and fiduciary duties.

64. The Representative Plaintiff claims and pleads that the Organization is directly liable to the class members for the harm directly caused by its flawed policies and processes and the manner in which allegations of sexual abuse are dealt with by the Organization.

65. The Representative Plaintiff claims and pleads that the Organization is vicariously responsible for the acts and conduct of its members, in this case, the Plaintiff and Class Members' abusers, and that the Organization is negligent:

a) By not reporting child abuse to police, by allowing known or accused abusers to remain in positions of trust and authority, and by creating an atmosphere of fear of sanctions for victims of abuse seeking to report their abuse to authorities, the Organization facilitated abusers' capacity to do wrong and

continue to do wrong and, without that culture, the wrongs could not have been perpetrated against the Plaintiff and all Class Members;

- b) The Organization knew or ought to have known about the cases of sexual abuse. Prior to the attacks upon the Representative Plaintiff and other class members, the Organization was aware or should have been aware that the abusers and other pedophiles, who were active members of the Organization, had engaged in illegal and abhorrent sexual practices with youth members of the congregation.
- c) The Organization failed to adopt proper or adequate policies and practices to ensure that known abusers were reported to authorities or not allowed to remain in the Organization's community where they were able to continue abusing their victims.
- d) The Organization failed to fulfill its reporting obligations, sought to delegate the Organization's reporting obligations and failed to ensure that those to whom the Organization purported to delegate reporting responsibility fulfilled the reporting responsibility.
- e) The Organization did not provide proper, adequate or effective training or monitoring, initially or on an ongoing basis, to ensure that Congregation members were suitable and fit to care for or to supervise children;

f) Such further and other particulars as may be advised prior to trial.

66. In addition to the foregoing, the Representative Plaintiff claim that the Organization is vicariously liable and/or negligent for the acts and conduct of the abusers of the Representative Plaintiff and other Class Members by reason of:

- a) failing to have proper or adequate, or any, policies relating to reporting or investigating claims of sexual abuse to the Organization;
- b) failing to ensure that any such policies were followed and enforced;
- c) failing to have proper or adequate, or any, policies for monitoring the activities of Organization members in positions of authority;
- d) failing to have effective policies and procedures for determining whether sexual assaults had been perpetrated on Organization members by other Organization members;
- e) failing to ensure that any such policies were followed and enforced;
- f) failing to have proper or adequate, or any, policies to educate Congregation members, including child members, about sexual abuse;
- g) failing to ensure that any such policies were followed and enforced;
- h) failing to have proper or adequate, or any, policies for reporting sexual, abuse by Congregation members to public authorities;
- i) failing to ensure that such policies were followed and enforced;
- j) failing to properly supervise, control, monitor and give guidance to the Representative Plaintiff and the Class Members;
- k) The Organization knew, or ought to have known of the actions of the

persons who abused the Representative Plaintiff and took no steps to have the abusers removed from the Organization;

- l) The Organization failed to provide leadership by implementing and enforcing guidelines on sexual abuse, thereby causing the Representative Plaintiff and the Class Members damages to begin, continue and become exacerbated.
- m) The Organization failed to warn potential victims of sexual abuse, such as the Representative Plaintiff, that there was a risk that known child abusers might commit sexual assault; and
- n) Such further and other particulars as may be advised prior to trial.

67. Further, and in addition to the foregoing, the Representative Plaintiff claim vicarious liability against the Organization by reason of:

- a) The Organization failing to provide regular, proper effective training, teaching guidelines or monitoring the Representative Plaintiff or minor Class Members adequately or at all, to ensure that the Organization was operating in accordance with, and as an institution holding itself out as a religious organization;
- b) The Organization failed to respond properly or take appropriate steps to protect potential victims, such as the Representative Plaintiff and other child Class Members, where information was obtained that Organization member child abusers were or might be committing sexual assaults. Furthermore, when the sexual assaults of other complainants by

Congregation members were discovered, the Organization failed to undertake a fair investigation or otherwise ensure that there were no victims or perpetrators; and

- c) such further and other particulars as may be advised prior to trial.

68. The Plaintiff pleads that the Organization owed a duty to the Representative Plaintiff, and all Class Members to ensure that they were reasonably safe while in the care and custody of Congregation members.

69. As a result of the abuse, the Representative Plaintiff and the other Class Members have encountered a number of emotional and psychological difficulties. They have become alienated from their family members, and their relationships with others have been adversely affected because of the sexual abuse. The Representative Plaintiff and the other Class Members have suffered serious and permanent injuries and general and special damages for which the Organization is at law vicariously liable including:

- a) ongoing severe emotional and psychiatric hospitalization and professional counseling which continues to this day;
- b) numerous attempts at suicide;
- c) inability to sleep;

- d) recurring nightmares;
- e) difficulty in developing and maintaining healthy and meaningful interpersonal relationships;
- f) inability to trust other individuals;
- g) emotional and mental distress;
- h) low self esteem;
- i) major depression;
- j) failed relationships;
- k) problems with authority figures leading to conflicts with employers;
- l) lack of self confidence;
- m) inability to complete formal education;
- n) loss of income;

- (o) substance abuse;
- (p) physical pain;
- (q) depression;
- (r) mental anguish;
- (s) loss of enjoyment of life;
- p) such further and other damages as may be advised prior to trial.

70. As a result of the assault upon their physical safety, integrity and mental well being, the experiences have left the Representative Plaintiff and each Class Member emotionally and mentally scarred.

71. As a consequence of these experiences the Representative Plaintiff and Class Members have been put to medical expense and will require therapy and medical attention.

72. The Plaintiff, therefore, submit that judgment be granted for the relief sought together with costs on a complete indemnity scale.

73. The Plaintiff propose that the within action be tried at the City of Toronto.

Date: September 26, ²⁰¹⁷~~2016~~

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STATEMENT OF CLAIM

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