

**THE KING'S BENCH
Winnipeg Centre**

BETWEEN:

John Doe and Jane Doe

Plaintiffs

and

Marymound Inc., The Réseau Compassion Network, and The Government of Manitoba

Defendants

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C130

STATEMENT OF CLAIM

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TO THE DEFENDANT: .

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 a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date

Issued _____

Deputy Registrar
100C – 408 York Avenue
Winnipeg MB R3C 0P9

TO: **Marymound Inc.**
442 Scotia Street
Winnipeg MB R2V 1X4

AND TO: **Réseau Compassion Network**
2200-201 Portage Avenue
Winnipeg MB R3B 3L3

AND TO: **The Government of Manitoba**
c/o Minister of Justice and Attorney General
104 Legislative Building
405 Broadway
Winnipeg MB R3C 3L6

CLAIM

1. The Plaintiffs claim:
 - (a) an order certifying this proceeding as a Class Proceeding pursuant to *The Class Proceedings Act*, C.C.S.M. c. C130 and appointing the Plaintiffs as Representative Plaintiffs for the Class (as defined below);
 - (b) a declaration that the Defendants, Marymound Inc. and the Réseau Compassion Network were negligent and breached their fiduciary duties owed to the Class in the operation, management, supervision, and/or control of Marymound;
 - (c) a declaration that the Defendant, the Government of Manitoba, by and through its employees, servants, agents, staff and representatives was negligent and breached its statutory, common law, and equitable duties toward the Class in the oversight, supervision, inspection, funding, and licensing of Marymound;
 - (d) a declaration that the Defendant, the Government of Manitoba, by and through its employees, staff, agents, servants, and representatives was negligent and breached its statutory, common law, and equitable duties toward the Class by directing, transferring or assigning Class Members to attend or reside at Marymound;
 - (e) a declaration that the Defendants are jointly and severally liable to the plaintiffs and the Class for the damages caused by their breaches of statutory, common law, and equitable duties in relation to the operation,

management, administration, supervision, inspection, and control of Marymount;

- (f) damages in an amount as may be determined by this Honourable Court;
- (g) punitive and/or aggravated damages in an amount as may be determined by this Honourable Court;
- (h) pre-judgment and post-judgment interest pursuant to *The Court of King's Bench Act*, C.C.S.M. c. C280;
- (i) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;
- (j) costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to subsections 24(1) and 33(6) of *The Class Proceedings Act*; and,
- (k) such further and other relief as this Honourable Court deems just.

OVERVIEW

2. Marymound is a children's group home and school in Winnipeg, Manitoba. Founded as a quasi-carceral girls' reformatory in 1911, Marymound has had different names over time: the Good Shepherd Home, St. Agnes Priory, West-Kildonan House, Marymound School, and, since 1975, simply "Marymound." Yet for the children living and attending school at Marymound, the experience has been one of persistent, unchanging, and unyielding abuse.

3. Marymound combines two services for children in care: residential services and educational services. Marymound's residential component is composed of secure and semi-secure living facilities in a group home setting ("**Residential Students**"). Its educational component, known as Marymound School, provides grade 1-12 education for both Residential Students and other foster children from neighbouring group and foster homes ("**Day Students**" and, subject to the precisions below, the "**Class Members**").

4. Marymound's Residential Students and Day Students represent a particularly vulnerable subset of society. Most, if not all putative Class Members attended Marymound as children in care or children in need of protection under *The Child and Family Services Act*, C.C.S.M. c. C80 (the "*CFSA*"). Children are often sent to Marymound in moments of acute personal crisis, after escaping from home, or after being apprehended by the various Child and Family Services ("*CFS*") agencies operating in and around Winnipeg.

5. Despite its transformation from a girls' reformatory to a children's group home, Marymound retained its carceral character. Marymound's staff compensated for a lack of

training and resources by resorting to arbitrary, excessive, and coercive forms of physical punishment against Class Members, including sexual assault, beatings, and the use of solitary confinement in concrete "reflection rooms" for hours or days at a time.

6. Children at Marymount were routinely isolated with a single staff member and subjected to sexual and physical assault, often in situations of restraint or confinement. Staff members forced Class Members to perform oral and penetrative sex in the "reflection room," in locked dormitory rooms, or otherwise about Marymount facilities.

7. At night, Residential Students were locked in their dormitory rooms for hours without access to food, water, or toilets, and were forced to urinate or defecate in the corners of their rooms. Children who self-harmed were left unattended or, if discovered, punished.

8. For most of the Class Period, Marymount has had no policy or system in place for screening prospective employees, and no mechanism for reporting abuse. Any policies that did exist were ineffective and inadequately enforced.

9. The abuse committed against Class Members at Marymount was open and notorious. Yet Class Members who attempted to report their abuse were mocked, denigrated, or ignored, and in many cases subjected to increasingly brutal retaliation by members of staff.

10. The Government of Manitoba, through its agents and staff, has long had direct knowledge of the systemic failures and abuses committed at Marymount. Class Members, their parents, and members of staff have attempted to report the abuse to

higher levels of management at Marymount and the Ministry of Families. Yet neither the Director of Child and Family Services (the "**Director**") nor any other Crown agent or authority has acted to address systemic negligence at Marymount, nor taken any steps to adequately monitor, inspect, or supervise the children placed at Marymount, despite having the statutory duty to do so pursuant to the *CFSA*. The Director has permitted children to be placed at Marymount with knowledge of the abuse they faced.

11. Taken together, the absence of adequate policies, training, staffing, and supervision at Marymount constitutes systemic negligence. The Defendants have repeatedly ignored or overlooked reports of abuse at Marymount, preferring their own interests over the interests of the vulnerable children in their care. The Defendants are liable for the acts of physical, sexual, emotional, spiritual, and cultural abuse committed against Class Members at Marymount, which acts were caused, permitted, and perpetuated by their negligence.

THE PARTIES

Plaintiffs

12. The Plaintiff, John Doe, is an individual residing in the Province of Manitoba. He was born on May 14, 1980. John Doe attended Marymount as a Day Student from 1993 to 1998 from the ages of 13 to 18. He suffered extreme repeated abuse at the hands of Marymount staff and agents during this time and witnessed similar abuse against other putative Class Members.

13. The Plaintiff, Jane Doe, is an individual residing in the Province of Manitoba. She was born on August 11, 1978. She is Métis. Jane Doe attended Marymound as a Residential Student from 1992 to 1995. She suffered extreme repeated abuse at the hands of Marymound staff and agents during this time and witnessed similar abuse against other putative Class Members.

Marymound Inc.

14. The Defendant, Marymound Inc. is a non-share capital corporation under *The Corporations Act*, C.C.S.M. c. C225 with registered offices at 442 Scotia Street, Winnipeg, Manitoba. Marymound Inc. is a registered charity under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.). Marymound Inc. was incorporated in 1975.

15. Marymound Inc. owns and operates Marymound. Marymound is a school, group home, and child care facility governed by the *Child Care Facility (Other than Foster Homes) Licensing Regulation 17/99* under *The Child and Family Services Act*, C.C.S.M. c. C80, among other statutes and regulations. Marymound's educational component, known as Marymound School, is an institutional school bearing school code 1798.

16. Marymound's main physical premises are composed of several large buildings located at 442 Scotia Street, Winnipeg, Manitoba (the "**Scotia Street Property**"). Marymound's principal residential facilities and Marymound School are located on the Scotia Street Property.

17. Prior to the incorporation of Marymound Inc. in 1975, Marymound's residential and educational services were offered on the Scotia Street Property under the direction of

the Congregation of Our Lady of Charity of the Good Shepherd (the "**Sisters of the Good Shepherd**"), with the oversight and supervision of the Crown, through its staff, agents, and employees. The administrative and operational structure of Marymount prior to the incorporation of Marymount Inc. was comparable in all material respects to its operation after the incorporation of Marymount Inc.

18. In addition to the Scotia Street Property, Marymount houses Residential Students in a network of group homes in Winnipeg. Those Class Members housed in Marymount group homes are under the direct management and control of Marymount. Marymount staff move interchangeably between the Scotia Street Property and the nearby group home properties, and report to the main office at the Scotia Street Property. Class Members were and are routinely moved between all Marymount properties. Residential Students in Marymount group homes attend Marymount School at the Scotia Street Property.

19. Marymount Inc. retains and authorizes employees, staff, servants, agents, and representatives to operate Marymount and gives instructions to such employees, staff, servants, agents, and representatives as to the manner in which the facility is to function and operate.

Réseau Compassion Network

20. The Defendant, Réseau Compassion Network is a not-for-profit corporation under the *Canada Not-for-profit Corporations Act*, S.C. 2009 c. 23, with registered offices at 2200-201 Portage Avenue, Winnipeg, Manitoba. The Réseau Compassion Network is a registered charity under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.).

21. Réseau Compassion Network was first incorporated in 1999 under the name Catholic Health Corporation of Manitoba and renamed the Réseau Compassion Network in 2014. At all material times, the Catholic Health Corporation of Manitoba/Réseau Compassion Network has been designated as a Public Juridical Person of the Roman Catholic Congregation for Institutes of Consecrated Life and Societies of Apostolic Life under the canon laws of the Roman Catholic Church.

22. Réseau Compassion Network is the central administrative, management, governance, and funding organ for an association of approximately sixteen Catholic healthcare and social services organizations, also collectively referred to as the Réseau Compassion Network (the "Network" and "Network Members").

23. Réseau Compassion Network is responsible for the oversight and management of the Network and its Network Members. It exercises direct and indirect control and influence over the administration, management, governance, and funding of each Network Member, including Marymound Inc., and, among other things:

- (a) Réseau Compassion Network is the sole voting member or shareholder of each Network Member, and of Marymound Inc. in particular. In the alternative, Réseau Compassion Network selects, nominates, or appoints individuals to serve as the voting member or voting members of each Network Member, and Marymound Inc. in particular;
- (b) Réseau Compassion Network identifies, vets, selects, elects, and/or appoints the members of the boards of directors for each Network Member, and for Marymound Inc., in particular;

- (c) Réseau Compassion Network is authorized and empowered, as a voting member or through voting members nominated for such purpose, to remove the directors of each Network Member, and Marymount Inc., in particular;
- (d) Réseau Compassion Network provides training, orientation, and instructions to the board of each Network Member, and to the board of Marymount Inc., in particular;
- (e) Réseau Compassion Network purports to require Network Members, and Marymount Inc. in particular, to adopt and implement ethical codes and codes of conduct, the existence and adequacy of which are not admitted;
- (f) Réseau Compassion Network requires Network Members, and Marymount Inc. in particular, to provide periodic reporting on management, operations, activities, and fundraising, the existence and adequacy of which is not admitted;
- (g) Réseau Compassion Network collects, receives, and distributes funds to and on behalf of Network Members, and Marymount Inc. in particular, including government funds; and
- (h) Réseau Compassion Network provides Network Members, and Marymount Inc. in particular, with funding in the form of direct funding, grants, subsidies, and gifts.

24. Marymount Inc. became a Network Member in or about 2008.

25. Réseau Compassion Network exercises direct and indirect control and influence over the administration, management, governance, staffing, and funding of Marymount.

26. Réseau Compassion Network has knowledge of the daily operation, management, affairs, and activities of Marymount, including the Abuse (as defined below).

The Government of Manitoba

27. The Defendant, His Majesty the King in Right of Manitoba, represented by the Government of Manitoba (the "Crown"), is named in these proceedings pursuant to the provisions of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, as amended.

28. At all material times, the Crown, through and with its agents, servants, and employees was responsible for the oversight, inspection, regulation, and supervision of Marymount, and for the protection of children at Marymount under the *CPSA*, as amended, and under other applicable laws, statutes, and regulations governing child welfare and social services.

29. The Crown provided funding to Marymount on both a per-diem basis and in respect of individual programs and services.

30. At all material times, the Director of Child and Family Services and his or her employees, staff, agents, servants, representatives, and delegates were responsible for the oversight, inspection, regulation, and supervision of Marymount.

31. At all material times, the Director of Child and Family Services and his or her employees, staff, agents, servants, representatives, and delegates were responsible for

placement decisions in respect of children in care, including the placement of Class Members. The Director of Child and Family Services, through his or her agents and representatives, could and did place Class Members at Marymound as both Residential Students and Day Students at various times throughout the Class Period.

THE CLASS

32. Pursuant to the provisions of *The Class Proceedings Act*, C.C.S.M. c. C130, the Plaintiffs seek to represent a class defined as follows:

Every person who attended Marymound as a Residential Student or Day Student from July 1, 1951, to the present (the "**Class Period**") where:

- a) "**Residential Students**" refers to any person who resided at Marymound; and
- b) "**Day Students**" refers to any person who was enrolled or otherwise attended Marymound School for any length of time but did not reside at Marymound

(the "**Class**" and the "**Class Members**").

HISTORY OF MARYMOUND

Good Shepherd Reformatory, 1911-1975

33. Marymound has operated continuously from 1911 to the present.

34. Marymound was founded in 1911 by the Sisters of the Good Shepherd at the request and invitation of Justice Thomas Daly of the Winnipeg Juvenile Court to serve as a reformatory for delinquent girls. Marymound was often initially referred to as the "Good Shepherd Home."

35. The Sisters of the Good Shepherd were selected to operate the reformatory due to their reputation for operating women's prisons, reformatories, and "Magdalen Homes" for "fallen women" throughout the world, including in Britain, Ireland, Australia, and the Netherlands.

36. Individuals were placed in the Good Shepherd Home (i) by order of the Juvenile Court; (ii) due to unwed pregnancy or single motherhood; (iii) after running away from home; or (iv) due to purported behavioural issues or "sexual immorality." The Sisters of the Good Shepherd sought to redeem fallen women through a program of prayer, penitence, physical punishment, and manual labour.

37. Beginning in the 1920s, the Good Shepherd Home began to accept children from the child welfare system in accordance with the Sisters' of the Good Shepherd tenet of "turning nobody away". In 1925, the Sisters of the Good Shepherd constructed a large dormitory and additional teaching facilities at the Scotia Street Property, known as St. Agnes Priory, in order to expand their group foster programs.

38. In 1958, the Sisters of the Good Shepherd constructed a separate school building on the Scotia Street Property known as Marymound School. Marymound School admitted children from the Good Shepherd Home and St. Agnes Priory, along with other students from foster homes in and around Winnipeg.

39. At all material times, the Good Shepherd Home, St. Agnes Priory and Marymound School operated as a single administrative and operational unit on the Scotia Street Property, staffed by the Sisters of the Good Shepherd and lay employees. Residential Students were routinely moved between the Good Shepherd Home and St.

Agnes Priory, and attended Marymound School without leaving the Scotia Street Property. To the extent the Crown, through the Director or other agents, exercised oversight or supervisory authority, the Crown and its agents treated the Good Shepherd Home, St. Agnes Priory, and Marymound School as a single administrative unit.

40. Children residing at the Good Shepherd Home, at St. Agnes Priory, and/or attending Marymound School had virtually no control over any aspect of their lives. They were routinely subjected to idiosyncratic modes of discipline developed by the Sisters of the Good Shepherd at the Good Shepherd Home and in their various reformatories throughout the world. In particular, the Sisters of the Good Shepherd:

- (a) inculcated children with a belief that they were spiritually fallen, broken, inferior, and requiring redemption;
- (b) employed ritualized modes of punishment, including physical beatings, simulated drowning, solitary confinement in a basement cell known variously as "St. Peter's Room," the "reflection room," the "time-out room," or being forced to wear urine-soaked sheets as a punishment for bedwetting;
- (c) imposed a strict program of Catholic prayer, penitence, catechism, and veneration of the Congregation's founder Mary Euphrasia Pelletier; and
- (d) required residents to perform manual labour, including most notably in industrial laundry facilities.

41. In addition to the above forms of discipline and punishment, children at the Good Shepherd Home were subjected to physical and sexual abuse by the Sisters of the Good Shepherd, their employees, and other members of the clergy who attended at the Good Shepherd Home from time to time.

42. Each of the above modes of discipline, punishment, and abuse persisted into the Class Period.

Marymound Inc., 1975-2008

43. In 1975, the Sisters of the Good Shepherd incorporated Marymound Inc. and combined the residential and educational components of the Good Shepherd Home, St. Agnes Priory and Marymound School into a singly entity known only as "Marymound." Individual Sisters of the Good Shepherd remained at Marymound as agents, representatives, and servants of Marymound Inc., in addition to lay staff hired and employed by Marymound Inc. for the purpose of supervising, teaching, and caring for Residential Students and Day Students.

44. The incorporation of Marymound Inc. did not alter operations at Marymound. The Good Shepherd Home, St. Agnes Priory, and Marymound School had at all material times functioned as a single administrative and operational unit. Existing Marymound staff remained responsible for the day-to-day operation of Marymound and had primary responsibility for supervision, discipline, and teaching.

45. Marymound Inc. did not put in place any policies, procedures, or standards to limit or restrict the disciplinary and substandard supervisory practices already in use. Lay

staff employed by Marymound Inc. continued to apply the arbitrary and excessive forms of physical discipline originally devised by the Sisters, without any policies or standards governing the use of force, confinement, or physical punishment.

46. The persons admitted to Marymound were and are typically children under the age of seventeen. In many cases, Class Members were placed at Marymound against their will by local child and family services agencies, or by the Director of Child and Family Services acting in its capacity as guardian under the *CFSA*.

47. Marymound has at all material times during the Class Period offered two basic services:

- (a) **"Residential"** or **"Live-in Services,"** refer to services provided to those who live at Marymound; and,

(collectively, **"Residential Services"**)

- (b) **"Marymound School"** refers to the educational component of Marymound. Marymound School is open to both Residential Students and children in local foster care, who may attend as Day Students.

48. Since 1975, Marymound has accepted between 50 and 100 Residential Students and Day Students per year. Marymound's student population is composed of children in care, foster children, children in need of protection, and young offenders. Class Members are often survivors of abuse, neglect, addiction, or other traumas, including traumatic apprehension by CFS agencies. The majority of Marymound's Residential Student and Day Student populations are Indigenous.

Catholic Health Corporation of Manitoba and The Réseau Compassion Network

49. In 1999, a separate congregation, the Grey Nuns of Manitoba, incorporated the Catholic Health Corporation of Manitoba (the "CHCM") in an effort to centralize the governance, administration, management, and funding of Catholic-run health and social services in Manitoba under a single organization.

50. Marymount Inc. transferred elements of its operations, management, governance, and funding to the CHCM in 2008.

51. In 2014, the CHCM was renamed Réseau Compassion Network.

52. At all material times since Marymount Inc. joined the Network in 2008, the Réseau Compassion Network has exercised direct and indirect influence and control over Marymount, including by vetting, selecting, appointing, and training the directors of Marymount Inc., receiving reports of activities at Marymount, and providing funding.

THE PLAINTIFFS' EXPERIENCES AT MARYMOUND

John Doe

53. John Doe attended Marymount as a Day Student from approximately 1993 to 1995, from the ages of 13 to 15, while he was under the care of CFS. At that time, John Doe was involved in the criminal justice system and bound by conditions requiring consistent attendance at school.

54. At Marymount, John Doe was subjected to violent physical and sexual abuse at the hands of both students and staff.

55. In response to purported misbehaviour, John Doe was beaten and restrained by two male staff using handcuffs and submission holds in front of other students. He routinely witnessed staff punching, kicking, and restraining other students for minor disturbances.

56. On multiple occasions, John Doe was brought by two male staff members to a basement cell he knew as the "reflection room" or the "lockup room." This cell was furnished with a steel door, a small window, and a cement bench covered by a thin carpet where John Doe would be left alone for hours without food, water, or access to toilets. His requests to be escorted to the washroom were ignored, and he was often required to urinate in the cell, for which he received further punishment.

57. On three occasions, while he was locked in the "reflection room," John Doe was forced to perform oral sex on a male staff member who threatened to report John Doe if he refused. Another staff member, the same individual each time, stood guard outside the cell. Knowing that school attendance was a condition of his release, John Doe felt he had no choice but to comply with the guard or else be reported for violating his conditions.

58. As a result of the abuse he suffered at Marymount, John Doe experiences traumatic flashbacks and emotional distress. He has never held consistent employment and spent extended periods of his life in custody, beginning at age 16.

59. During his time as a Day Student, John Doe never observed any form of oversight, supervision, or inspection by the Crown or its agents at Marymount.

Jane Doe

60. Jane Doe attended Marymount as a Residential Student from 1992 to 1995, from the ages of 14 to 17. She was voluntarily placed with Child and Family Services by her mother.

61. As a Residential Student, Jane Doe was housed alone or with one other Residential Student in a locked room. She was not permitted to leave her room unaccompanied. Due to staffing shortages, Jane Doe would often spend hours without food, water, or access to a toilet, and was required to urinate in the corner of her room, for which she was punished.

62. Jane Doe was repeatedly subjected to excessive discipline and physical punishment for minor disruptions. She was beaten, punched, and kicked by staff members in response to purported misbehaviour. Acting in groups of four or five, Marymount staff restrained Jane Doe and locked her in the "reflection room" for hours without food, water, or access to a toilet. This occurred at a frequency of approximately twice per month. In some instances, Jane Doe was confined for an entire day and did not attend school.

63. In response to the abuse, Jane Doe attempted to escape. However, she was caught by a male staff member who returned her to Marymount and forced her to perform oral and vaginal sex. Throughout her residence at Marymount, the same staff member repeatedly sexually assaulted Jane Doe on numerous occasions, including in his truck on Marymount grounds, in the "reflection room," in the stairwells on Marymount grounds and in her dormitory room.

64. Jane Doe attempted to report her abuse to Marymound staff. However, she was accused of fabrication and of speaking inappropriately for a young woman. She began to self-harm and witnessed other girls in her dormitory committing acts of self harm. In one instance, Jane Doe observed that a neighbouring Residential Student had hanged herself from a ceiling light. Marymound refused to provide any medical or psychiatric support.

65. Jane Doe was permitted one phone call per week with her mother under the supervision of Marymound staff. After finally succeeding in alerting her mother to the abuse, Jane Doe's mother reported the abuse to both higher management at Marymound, the Director, and other agents of the Crown. No action was taken.

66. Jane Doe escaped Marymound at 17 years of age. As a result of the abuse she suffered at Marymound, Jane Doe developed severe drug addictions and began to perform sex work to afford drugs. She continues to suffer the mental, physical, and emotional consequences of her abuse, and struggles with addiction, for which she is prescribed methadone.

67. During her time as a Residential Student, Jane Doe never observed any form of oversight, supervision, or inspection by the Crown or its agents at Marymound.

THE ABUSE

68. In addition to the incidents of abuse and negligent management described above, Class Members were routinely subjected to sexual, physical, and emotional abuse at Marymound, as detailed below (the "Abuse"). The Abuse occurred while the Class Members were minors.

69. The perpetrators of the Abuse were the staff, teachers, administrators, employees, servants and agents of Defendants, as well as other students, by and with the knowledge, acquiescence and encouragement of the Defendants.

70. Class Members were frequently subjected to racist, sexist, homophobic, and sexualized Abuse by both staff and students, by and with the knowledge, acquiescence and encouragement of the Defendants.

71. Class Members suffered the following forms of Abuse as minors:

- (a) sexual assault and molestation, including:
 - (i) non-consensual oral, vaginal, and anal penetration;
 - (ii) being forced to perform oral sex under coercion or threats;
 - (iii) being subjected to sexual touching, fondling, or kissing;
 - (iv) being forced to strip and/or being left naked in public areas;
- (b) being beaten or otherwise physically assaulted, restrained, kicked or punched;
- (c) being held for extended periods of solitary confinement in their own rooms or in locked "reflection rooms," whether intentionally or as a result of neglect, understaffing, or lack of resources;
- (d) being deprived of food and water, whether intentionally or as a result of neglect, understaffing, or lack of resources;

- (e) being deprived of access to toilets, causing Class Members to relieve themselves in their rooms, or in locked "reflection rooms," whether intentionally or as a result of neglect, understaffing, or lack of resources;
- (f) being subjected to excessive and arbitrary punishments, far exceeding the limits of reasonable discipline;
- (g) being subjected to racist, sexist, and homophobic slurs, particularly by reason of Indigenous identity;
- (h) being verbally demeaned, threatened, harassed, or degraded, particularly by reason of Indigenous identity;
- (i) being punished for speaking Indigenous languages or practicing Indigenous customs; and
- (j) being subjected to additional Abuse for resisting, reporting, or complaining about the Abuse.

72. In addition to the Abuse described above, the Class Members were confined to a toxic environment that permitted, exacerbated, and contributed to the Abuse, and which formed part of the Abuse:

- (a) rooms were unnecessarily locked, creating a prison-like atmosphere;
- (b) facilities, including classrooms and dormitories, were overcrowded;
- (c) facilities were short-staffed, falling far behind appropriate industry, professional, and statutory standards or staffing ratios;

- (d) staff made intermittent, inadequate, or no attempt to supervise Class Members' activities;
- (e) reports of the Abuse were knowingly ignored or punished as fabrications, creating a culture of silence;
- (f) staff members who attempted to report the Abuse to higher management were disciplined, suspended, or terminated;
- (g) residents were forced to continue co-habiting with their assailants, even after reporting abuse;
- (h) residents with known dangerous personality traits and tendencies, or traits and tendencies which ought to have been known, were placed in shared rooms with other vulnerable residents;
- (i) the Defendants failed, refused, or neglected to put in place policies or guidelines governing the use of force, solitary confinement, or other forms of discipline;
- (j) the Defendants failed, refused, or neglected to put in place policies or guidelines governing reports of abuse; and
- (k) the Defendants prevented Class Members from contacting their parents, or other authorities to report the abuse.

73. The Abuse occurred on the grounds of Marymount.

74. The teachers, employees, staff, agents, servants, and representatives of the Defendants participated in the Abuse, directed that the Abuse occur, witnessed the Abuse, were aware that the Abuse was occurring or were wilfully blind to the Abuse.

75. The Defendants cultivated a culture of silence whereby victims of the Abuse were and are discouraged from coming forward. Class Members who attempted to report the Abuse were ignored, denigrated, or subjected to further Abuse.

76. The Abuse has repeatedly been reported to staff and higher levels of management at Marymount and to agents of the Crown within the Ministry of Families, and the Ministry of Education. The Abuse was open, notorious, and known by all staff, including senior staff and higher levels of management at Marymount and among agents and senior staff of the Crown.

77. The Defendants, through their staff, employees, and agents, actively encouraged, condoned, and facilitated the Abuse. Specifically:

- (a) the Defendants and their staff were desensitized to the Abuse;
- (b) the Defendants and their staff believed that the Abuse would redeem, correct, or otherwise benefit Class Members;
- (c) the Defendants and their staff turned a blind eye to the Abuse;
- (d) the Defendants and their staff justified and defended the Abuse;
- (e) the Defendants and their staff refused or failed to act on complaints from students or parents when the Abuse was reported, and in fact took reprisals against Class Members and employees who reported the Abuse;

- (f) the Defendants and their staff withheld or failed to report information on the Abuse to the parents of Class Members;
- (g) the Defendants other than the Crown withheld or failed to report the Abuse to the Crown;
- (h) in the alternative, in the event the Defendants reported the Abuse to the Crown, the Crown ignored or failed to act on reports of the Abuse received from Class Members and parents of Class Members attending Marymount; and
- (i) the Defendants actively prevented, or created conditions that had the effect of preventing, Class Members from reporting the Abuse to their parents, the Crown, or the police.

78. Class Members who attempted to escape Marymount were subjected to renewed forms of punishment and Abuse, including solitary confinement, restraint, physical abuse, and deprivation of basic necessities.

79. Class Members who suffered mental health issues as a result of the Abuse were punished, ignored, and subjected to renewed forms of Abuse.

80. Class Members who threatened or attempted to commit suicide were prevented from obtaining medical or psychiatric help, and instead subjected to renewed forms of Abuse.

KNOWLEDGE OF THE DEFENDANTS

81. The Defendants have at all material times known of the Abuse and failed to reasonably consider or act upon the knowledge, report, complaints, and information they have been provided by residents, students, family members of students, and staff.

82. In addition to failing to provide proper care for Class Members, the Defendants were aware of the Abuse occurring at Marymount and failed to take any reasonable action to prevent it from occurring or continuing.

83. The Crown, through its staff, agents, and employees, received direct reports of Abuse at Marymount and failed to take any steps to correct or address such Abuse, or to require Marymount to implement policies, codes of conduct, or other standards to address the Abuse.

POLICIES ARE INADEQUATE, INFREQUENTLY ENFORCED, AND INEFFECTIVE

84. The Defendants had no policies to limit the Abuse. The Abuse was tolerated, condoned, and in many cases perpetrated by the staff, employees, and agents of the Defendants.

85. In the alternative, to the extent the Defendants did maintain policies to limit the Abuse, such policies were inadequate, infrequently enforced, and ineffective. In particular, the Defendants:

- (a) failed to create, implement, or enforce an adequate screening process for prospective employees;
- (b) failed to place appropriate limits on the use of physical discipline against Class Members;

- (c) failed to place appropriate limits on the use of solitary confinement against Class Members;
- (d) failed to investigate allegations of Abuse;
- (e) failed to record instances of the Abuse and, in some cases, manipulated records concerning incidents of Abuse;
- (f) failed to involve police when criminal acts had taken place;
- (g) failed to ensure appropriate confidentiality measures to protect Class Members reporting Abuse;
- (h) withheld or failed to provide medical or psychological support to victims of the Abuse;
- (i) delayed or held investigations in abeyance;
- (j) failed to train staff to identify, report, and respond to incidents of Abuse; and
- (k) punished Class Members for reporting incidents of Abuse.

86. In the rare cases where complaints of Abuse were determined to be well-founded, the sanctions applied were either ineffective or constituted additional Abuse, continuing the cycle.

87. The Defendants have at all material times owed a duty to create and enforce effective policies. For the majority, if not the entirety of the Class Period, the Defendants had no policies whatsoever.

88. The operational policies and practices of Marymound Inc., if any, were inadequate to meet the standard of operating and maintaining a group home and, in particular, to meet the needs of vulnerable Class Members. As a result, the care provided to the Class Members and the conditions at the facility were poor, the staff hired were unskilled or unsuitable for dealing with vulnerable children, and the facility was not suited to protect or foster the best interests of Class Members.

89. The operational policies, practices, and procedures developed by the Crown were inadequate or inadequately enforced and failed to meet the needs of vulnerable Class Members. As a result of the Crown's failure to establish adequate policies, practices or procedures, conditions at Marymound were poor, the staff hired were unskilled or unsuitable for dealing with vulnerable children, and the facility was unsuitable to protect or foster the best interests of Class Members.

SCREENING AND TRAINING IS INADEQUATE

90. Marymound Inc. and Réseau Compassion Network did not adequately screen prospective employees for the risk that they may commit the Abuse. In the alternative, Marymound Inc. and Réseau Compassion Network knowingly employed staff with antecedents suggesting that they may commit the Abuse, including prior criminal records for assault, battery, and other violent offences.

91. The training put in place for staff, employees, and agents of Marymound Inc. and Réseau Compassion Network with respect to sexual abuse, physical abuse, and emotional abuse was inadequate.

92. The Defendants' staff, employees, and agents at Marymount were not trained to identify, intervene in, or receive reports of Abuse.

93. In the alternative, the training provided by the Defendants, if any, failed to inform staff, employees, and agents about appropriate conduct, lacked credibility, and further demonstrated that the Defendants did not take the Abuse seriously.

94. The Crown, though its agents, employees, and staff, failed to supervise, monitor, and inspect the staff, employees, and agents of the Defendants at Marymount. The Crown failed to impose minimum standards for training or screening. In the alternative, to the extent the Crown imposed minimum standards for training or screening, such policies and standards were inadequate, improperly enforced, and ineffective.

DEFENDANTS BREACHED THE DUTY OF CARE

95. Each Defendant has at all material times owed a duty of care to Class Members through the establishment, funding, oversight, operation, management, supervision, control, maintenance and support of Marymount.

96. The Defendants were jointly and severally negligent and breached the duty of care by operating or permitting Marymount to be operated in a manner that allowed Class Members to be subjected to the Abuse.

97. Marymount Inc. and the Réseau Compassion Network owed Class Members a duty to act in the manner of a careful and prudent parent in the operation of Marymount, and among other things, the duty to:

- (a) conduct the affairs of Marymount to the standard of a careful and prudent parent;
- (b) adequately, properly and effectively supervise the environment of Marymount and the conduct of its staff, employees, and agents to ensure students, including the Plaintiffs and the putative Class Members, would not suffer harm;
- (c) provide adequate, proper, and effective care for children at Marymount;
- (d) ensure that sexual, physical, and emotional abuse would not occur at Marymount;
- (e) protect Class Members from any person or thing which would endanger or be injurious to the health and well-being of students;
- (f) use reasonable care to ensure the safety, well-being, and protection of Class Members at Marymount;
- (g) screen prospective employees, and set and implement standards of conduct for its staff, employees, agents, and students of Marymount to ensure that no employee or student would endanger the health or well-being of any other student or person;
- (h) provide Class Members with a program or system through which the Abuse could be recognized, reported, and meaningfully addressed;
- (i) educate Class Members and staff in the use of a system through which Abuse would be recognized, reported, and meaningfully addressed;
- (j) investigate and pursue complaints of sexual, physical, or emotional abuse with due diligence;

- (k) take any and all reasonable steps to prevent and end sexual, physical, and emotional abuse upon learning of a complaint;
- (l) establish, implement, and enforce appropriate policies and procedures to ensure that Class Members would not be unnecessarily or inappropriately confined, isolated or restrained;
- (m) ensure that Marymount staff members, who were agents of the Defendants, were adequately educated, licensed and trained in order to fulfill their employment obligations in a manner that would not cause sexual, physical, or emotional harm to Class Members;
- (n) properly collect and maintain medical and administrative records;
- (o) report conduct which is contrary to the *Criminal Code of Canada* to the appropriate law enforcement agencies upon learning the particular of such conduct;
- (p) report information regarding child abuse or potential child abuse to the appropriate authorities; and
- (q) provide proper and reasonable treatment for students after learning that a student was abused, or after learning that a student had committed an act of self-harm related to the Abuse.

98. In addition to these duties, the Crown, by and through its agents including the Director of Child and Family Services, owed common law and statutory duties to Class Members to:

- (a) administer and enforce the provisions of the *CFSA* and its regulations;
- (b) license Marymount and monitor Marymount's compliance with the terms and conditions of its license in accordance with the *CFSA*;
- (c) advise agencies on the suitability of Marymount as a placement option for children in care, and other issues relating to the safety and appropriateness of Marymount;
- (d) ensure the development and establishment of services and practices and procedures, including practices and procedures relating to children's safety and security at Marymount;
- (e) receive and investigate reports of potential or suspected child abuse or threats to children in need of protection;
- (f) receive and investigate complaints from Class Members, their parents, and family members regarding conditions at Marymount;
- (g) supervise or direct the supervision of children in care;
- (h) protect children;
- (i) refuse to place, or prevent the placement, of children in environments where the Crown knew or ought to have known they would be exposed to the Abuse; and
- (j) ensure the development of appropriate placement resources for children.

99. At all material times, the Crown, due to the negligence of its agents, was in breach of the duties outlined above.

100. At all material times, the Defendants knew or ought to have known that, as a consequence of such failures, the Plaintiffs and the putative Class Members would suffer immediate and long-term damages.

101. The Defendants' breaches of the duties outlined above condoned, facilitated and/or encouraged the Abuse by staff against students, and by students against students.

102. Given the duty of care owed and the dependence of the Class on the Defendants, the Defendants condoning, facilitating and/or encouraging the Abuse perpetrated by students against other students, and the Defendant's failure to act to stop such abuse from occurring, the Defendants are liable for such abuse as if it had been perpetrated by the Defendants or their staff.

103. The damages suffered by putative Class Members were the immediate, direct, and proximate consequence of the Defendants' failures. But for the Defendants' breach of their duties toward the Class, the Abuse would not have occurred.

BREACH OF FIDUCIARY DUTY

104. Each Defendant had a fiduciary relationship with each child at Marymount through the establishment, funding, oversight, operation, management, supervision, control, maintenance and support of Marymount.

105. The Defendants owed putative Class Members fiduciary duties as minors in their sole care and control. In the context of the operation, management, and control of a group home and

school such as Marymount, the Defendants' fiduciary duties included a duty to care for and protect students, and to act in their best interests at all times.

106. The Defendants stood *in loco parentis* in respect of each student at Marymount.

107. Each putative Class Member is or was subject to the power imbalance between students and staff at Marymount. Class Members are or were vulnerable by virtue of:

- (a) the Class Members being children in care, children in need of protection, children in foster care, or wards of the Crown;
- (b) the Class Members being minors;
- (c) the Class Members being racialized individuals, often Indigenous, with linguistic, cultural, and social barriers to integration;
- (d) the Class Members being subjected to multiple and intersecting causes of marginalization and disenfranchisement, including racial, gendered, sexual, and socioeconomic factors, and involvement with the child welfare and/or youth criminal justice systems;
- (e) the Class Members being vulnerable by reason of past physical, sexual, or emotional abuse, or substance abuse;
- (f) the Class Members being separated from their communities, homes, parents, and families and physically prevented from leaving Marymount without permission;
- (g) the Class Members being entirely dependent on the Defendants for food, clothing, and other necessities;

- (h) the Class Members being unable to contact their parents or Crown authorities without assistance or permission from Marymount staff;
- (i) the physical isolation of the Marymount campus and the inability of Class Members to leave of their own accord;
- (j) the Class Members wish to fit in and not to be singled out for punished or further Abuse; and
- (k) the Class Members' wish to avoid being suspended, expelled, or reported to police.

108. As minors living permanently under the care and control of the Defendants, the Class Members were inherently vulnerable to the Defendants. The Defendants owed the highest, non-delegable, fiduciary, moral, statutory, and common law duties including, but not limited to, the duty to ensure that reasonable care was taken of students at Marymount; the duty to protect students at Marymount; and the duty to protect students from intentional torts perpetrated against them while at Marymount.

109. The Defendants are liable if these non-delegable and fiduciary duties were performed negligently, tortiously, or in a manner that preferred the Defendants' interests over those of Class Members. Among other things, the Defendants were responsible:

- (l) for the promotion of the health, safety, and well-being of Class Members during the Class Period;

- (m) for the care and supervision of all Class Members while they resided at Marymound during the Class Period; and
- (n) for the supply of all the necessities of life to Class Members during the Class Period.

110. At all material times, the Class Members who were students at Marymound were entirely and exclusively within the power and control of the Defendants and were subject to the unilateral exercise of the Defendants' power or discretion.

111. By virtue of the relationship between the minor Class Members and the Defendants being one of trust, reliance and dependence, the Defendants owed a fiduciary obligation to ensure that the residents of Marymound were treated respectfully, fairly, safely, and in all ways consistent with the obligation of a party standing as a fiduciary toward an individual under his or her care or control.

112. At all material times, the Defendants owed a fiduciary duty to the Class Members at Marymound to act in the best interests of those individuals and to protect them from the Abuse.

113. Class Members were entitled to rely and did rely upon the Defendants to their detriment to fulfill their fiduciary obligations, the particulars of which include, but are not limited to:

- (a) the Defendants, their employees, and staff applied inappropriate, unreasonable, and disproportionate acts of physical punishment against Class Members;
- (b) the Defendants, their employees, and staff physically and sexually assaulted Class Members;

- (c) the Defendants, their employees, and staff facilitated, encouraged, or failed to prevent the use of inappropriate, unreasonable, or disproportionate acts of physical, sexual, and emotional abuse between Class Members;
- (d) the Defendants failed to properly monitor and supervise Class Members;
- (e) the Defendants, their employees, and staff failed to report or failed to investigate reports of Abuse against Class Members;
- (f) the Defendants, their employees, and staff actively discouraged the reporting of Abuse and belittled, denigrated, or otherwise disregarded Class Members who reported Abuse;
- (g) the Defendants failed to provide adequate medical care, including psychological and psychiatric support, to Class Members;
- (h) the Defendants, their employees, and staff actively discouraged Class Members from seeking medical or psychiatric treatment, and belittled or denigrated Class Members who requested treatment;
- (i) the Defendants failed to employ properly trained, licensed, or qualified employees for the care of vulnerable children;
- (j) the Defendants failed to properly screen candidates for employment at Marymount;
- (k) the Defendants failed to report injuries and the causes thereof sustained by students at Marymount;

- (l) the Defendants failed to safeguard the physical and emotional needs of the Class Members; and
- (m) the Defendants permitted an atmosphere that threatened Class Members with severe physical punishments, including violence.

114. Children living or attending school at Marymount have a reasonable expectation that the Defendants will act in their best interests with respect to their care by virtue of the following:

- (a) the common law and statutory duties of authorities, actors, group homes, foster homes, and individuals governed by the *CFSA*,
- (b) the well-established expectations of a minor child receiving educational or foster-care services in a Canadian group home or boarding school;
- (c) the involuntary placement of students at Marymount;
- (d) the complete dependence of students on Marymount for the necessities of life;
- (e) the relative isolation of Marymount and the inability of students contact their parents or legal guardians; and
- (f) the vulnerability of students at Marymount, particularly racialized students and students with disabilities.

115. The Defendants knew, or ought to have known, that as a consequence of their operation, care and control of Marymount, students would suffer both immediate and long-term physical, mental, emotional, and psychological harm as a result of the Defendants' breach of their fiduciary duties.

116. The Defendants' failure to fulfill their fiduciary duties outlined above condoned, facilitated, and/or encouraged the Abuse perpetrated by students or staff against other students. Given the fiduciary duty owed and the dependence of the Class Members on the Defendants, the Defendants' act of condoning, facilitating, and/or encouraging the Abuse perpetrated by students against other students, and the Defendants' failure to act to stop such Abuse from occurring, the Defendants are liable for such Abuse as if it had been perpetrated by the Defendants or their staff.

DAMAGES

1. The Defendants knew or ought to have known that as a consequence of their negligent operation of Marymount and mistreatment of the Class, those individuals would suffer significant mental, emotional, psychological, spiritual, and cultural harms which would adversely affect their relationships with their families and the community at large.

2. Class Members were and are physically, mentally, emotionally, spiritually, and culturally traumatized by their experiences at Marymount. As a result of the negligence and breach of fiduciary duty of the Defendants and their failure to provide proper and adequate care or supervision, the Class Members have suffered damages that include, but are not limited to:

- (a) Physical pain and suffering;
- (b) Permanent physical injuries;
- (c) Emotional, physical, and psychological pain and suffering;
- (d) Impairment of mental and emotional health and wellbeing;

- (e) Impaired mental development;
- (f) Impaired ability to participate in relationships;
- (g) Loss of Indigenous language and culture;
- (h) Alienation from family members;
- (i) Depression, anxiety, emotional distress, and mental anguish;
- (j) Development or exacerbation of mental, psychological, and psychiatric disorders;
- (k) Loss of self-esteem and feelings of humiliation and degradation;
- (l) Impaired ability to obtain and maintain employment, including business opportunities, resulting either in lost or reduced income and ongoing loss of income;
- (m) Impaired ability to deal with persons in a position of authority;
- (n) Impaired ability to trust other individuals or sustain relationships;
- (o) Requirement for medical or psychological treatment and counselling;
- (p) Impaired ability to enjoy and participate in recreational, social, and employment activities;
- (q) Loss of competitive advantage in the labour market;
- (r) Loss of friendship and companionship;

- (s) Sexual disorientation; and
- (t) Loss of general enjoyment of life.

3. As a result of the Abuse, Class members have required and will continue to require, medical treatment, psychological or psychiatric treatment, counselling, or other care. The Plaintiffs and other Class Members, or many of them, will require future medical care and/or rehabilitative treatment, or have already required such services, as a result of the Defendants' conduct and the Abuse for which they claim complete indemnity, compensation and payment. But for the Defendants' conduct and the Abuse, such treatment would not be necessary.

PUNITIVE AND EXEMPLARY DAMAGES

4. The Defendants and their agents, employees and servants had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses suffered by Class Members during the Class Period. Despite this knowledge, the Defendants continued to permit the perpetration of grievous harm against Class Members.

5. In allowing the Abuse to take place unhindered, and in condoning such abuse, the Defendants acted in a high-handed and callous manner toward Class Members which warrants a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. The Defendants conducted the affairs of the Marymound with wanton disregard for Class Members' interests, safety and well-being.

6. This action is commenced pursuant to the *The Class Proceedings Act*, C.C.S.M. c. C130.

7. The Plaintiffs propose that the trial of the within action take place in Winnipeg.

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