

COPY

2026 01G 4637 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

GERARD BAILEY

PLAINTIFF

AND:

HIS MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR

DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*, SNL 2001, c C-18.1

STATEMENT OF CLAIM

Overview

1. This is a proposed class proceeding for damages and other relief against His Majesty in Right of Newfoundland and Labrador arising from physical abuse perpetrated by members of the Christian Brothers against boys who resided at Mount Cashel Orphanage.
2. During the period relevant to this proceeding, children came to reside at Mount Cashel through a variety of arrangements. The Defendant's involvement in the funding, placement, supervision and continued use of Mount Cashel increased over time.
3. The Plaintiff alleges that the Defendant assumed responsibility for the safety and welfare of boys residing at Mount Cashel, knew or ought to have known of the risk of physical abuse perpetrated by Christian Brothers, and failed to take reasonable steps to protect them.

The Proposed Class

4. The proposed representative Plaintiff brings this action on his own behalf and on behalf of the following Class and Subclass:

Class	All persons, except Excluded Persons, who, while residing at Mount Cashel,
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suffered Physical Abuse perpetrated by an Irish Christian Brother.

Post- All Class Members who suffered Physical
December Abuse on or after December 8, 1975.
8th, 1975
Subclass

Definitions:

“Irish Christian Brother” means a member of the lay religious congregation known at different times as the Brothers of the Christian Schools of Ireland, the Irish Christian Brothers, the Christian Brothers of Ireland in Canada or the Congregation of Christian Brothers.

“Excluded Persons” means persons who have executed a release in favour of the Defendant concerning the claims advanced in this proceeding.

“Physical Abuse” means a non sexual assault, battery, trespass to the person or physical punishment that was unrelated to a legitimate disciplinary purpose or was excessive, abusive or grossly disproportionate.

The Proposed Representative Plaintiff

5. The Plaintiff, Gerard Bailey, is a resident of the Province of New Brunswick. At all times material to his claim, he was a resident of Newfoundland and Labrador. His address for service is care of Bob Buckingham Law, 81 Bond Street, St. John's, Newfoundland and Labrador, A1C 1T2.
6. Gerard Bailey was born in 1957. After his mother died, his father placed him at Mount Cashel in or about 1970, when he was 12 years old. He remained there until in or about 1973.
7. While residing at Mount Cashel, Gerard Bailey was repeatedly subjected to serious Physical Abuse by Christian Brothers, including beatings, punches, kicks and being dragged downstairs. The abuse caused physical pain, bruising, fear, humiliation and loss of dignity.
8. The Physical Abuse suffered by Gerard Bailey was unrelated to any legitimate disciplinary purpose or was excessive, abusive and grossly disproportionate.

9. At one point, the Plaintiff was brought to the Royal Newfoundland Constabulary to be interviewed by police. He was driven to the police station by Brother Kenny, who threatened him not to disclose anything to police. Gerard Bailey is proposed as the representative Plaintiff for the Class.

The Defendant

10. The Defendant, His Majesty in Right of Newfoundland and Labrador, was at all material times represented by, among others, the Minister of Justice, the Minister responsible for Public Welfare, Social Services or Child Welfare, the Director of Child Welfare and predecessor officials, and the Chief of Police for the Newfoundland Constabulary or Royal Newfoundland Constabulary.
11. The Defendant's address for service is Government of Newfoundland and Labrador, Department of Justice, Civil Division, Confederation Building, 4th Floor, East Block, PO Box 8700, St. John's, Newfoundland and Labrador, A1B 4J6.

Facts and Context

12. Mount Cashel was a residential institution for boys in the City of St. John's. It was operated by the Christian Brothers. The Christian Brothers exercised extensive authority over the boys' housing, discipline, work, recreation, communications, medical attention and daily lives.
13. Children came to reside at Mount Cashel through a variety of arrangements, including private admission by parents or guardians and placement, referral or support by the Defendant through its child welfare authorities.
14. The Defendant's involvement with Mount Cashel developed gradually. By at least 1952, the Defendant had begun taking steps to exercise greater oversight of Mount Cashel as a residential institution for children.
15. The Plaintiff pleads that, before 1964, some boys residing at Mount Cashel were wards, were placed there by public officials or were supported there by public funds. The surviving records are incomplete and do not permit the placement status of every resident to be determined.
16. The first documented admission of a ward of the Province to Mount Cashel occurred on or about April 1, 1966. Thereafter the Defendant increasingly used Mount Cashel as a placement resource for children for whom it had assumed child welfare responsibility.

17. By approximately 1970, Mount Cashel increasingly accepted children referred by the Department of Social Services. By 1971, almost all residents were under the care of the Defendant and the Province was Mount Cashel's major source of funding.
18. By 1971, the Defendant had participated in a review of Mount Cashel's administration and management and was aware of deficiencies concerning individualized care, social work capacity, staffing and supervision.
19. By 1972, officials of the Defendant were aware that communication between Mount Cashel and the Department of Social Services was poor, that departmental workers had limited access to the boys and that Mount Cashel lacked staff with appropriate social work training. The Defendant nevertheless permitted the role of the social worker assigned to Mount Cashel to be restricted largely to administrative matters.
20. Through its statutory child welfare responsibilities and its increasing role in the funding, placement, regulation, inspection, supervision and continued use of Mount Cashel as a residential institution for children, the Defendant assumed responsibility for taking reasonable care to protect boys residing at Mount Cashel from foreseeable Physical Abuse.

Physical Abuse at Mount Cashel

21. Physical Abuse at Mount Cashel was frequent, severe and systemic. It included beatings, slaps, punches, kicks, striking boys with straps and other objects, dragging boys, humiliating punishments, threats and other physical assaults.
22. The Physical Abuse exceeded any lawful or socially accepted form of discipline applicable at the time. Many assaults were unrelated to discipline, were inflicted for trivial reasons, were grossly disproportionate or were motivated by anger, humiliation, domination or cruelty.
23. Physical Abuse was committed openly and repeatedly. Christian Brothers, staff members and boys could observe assaults, injuries, fear and recurring patterns of violence. Injured boys attended the sick bay or otherwise came to the attention of adults without adequate investigation or protection.
24. The Christian Brothers maintained an atmosphere of fear, secrecy and intimidation. Boys were threatened with punishment or retaliation if they complained and had no safe, independent or effective method of reporting abuse.

The Defendant's Knowledge and Response

25. The Defendant knew or ought to have known of the risk and occurrence of Physical Abuse through its placement and funding relationships, inspections, institutional reviews, the limited access given to social workers, complaints, injuries and its statutory and operational responsibilities for child protection.
26. In or about October 1974, several boys attended the Defendant's Social Services offices on Harvey Road and reported extensive physical abuse at Mount Cashel, together with misconduct of a sexual nature by a Christian Brother. The social services representative indicated that other complaints had already been received and that the matter would be investigated.
27. In or about October 1975, two boys residing at Mount Cashel reported further serious allegations of sexual abuse to the same social services representative. They were again advised that other complaints had been received and that the matter would be examined.
28. On December 8, 1975, a volunteer at Mount Cashel reported child abuse to the Director of Child Welfare. The contemporaneous child welfare record included a report that a nine year old boy had recently been beaten by a Christian Brother and had bruises on his body.
29. A police investigation followed. The investigating officer prepared a report dated December 18, 1975 concerning serious physical and sexual abuse. He was later directed to prepare a second report, dated March 3, 1976, which omitted the allegations of sexual abuse and addressed assaults and excessive discipline by Christian Brothers.
30. The Hughes Inquiry found that the handling of the investigation was contrary to accepted police policies and that the investigating officer was directed to prepare a second report that removed references to child sexual abuse.
31. The Defendant failed to conduct and preserve a complete and good faith investigation, failed to ensure that material information reached responsible officials, failed to take adequate child welfare action, failed to warn parents or guardians, failed to remove children from danger and failed to prevent Christian Brothers implicated in abuse from continuing to exercise authority over boys.
32. For the Post December 8, 1975 Subclass, the Defendant had actual knowledge of credible allegations demonstrating that the Christian Brothers' treatment of boys at Mount Cashel presented a serious and continuing danger. Its inadequate investigation, suppression and failure to take protective action materially increased the risk that Physical Abuse would continue.

Causes of Action

A. Direct and Systemic Negligence

33. By reason of its statutory child welfare responsibilities, its operational involvement in the funding, placement, supervision, inspection and continued use of Mount Cashel as a residential institution for vulnerable children, and the responsibility it thereby assumed for their safety and welfare, the Defendant owed all Class Members a duty to take reasonable care to protect them from foreseeable Physical Abuse by Christian Brothers.
34. The acts and omissions complained of were operational acts and omissions in the administration of child welfare, policing, investigation and institutional oversight. They did not arise from a protected core policy decision.
35. The Defendant breached the applicable standard of care. Particulars of its negligence include:
 - a. placing, referring, supporting or permitting children to remain at Mount Cashel without reasonably determining whether they were receiving safe and adequate care;
 - b. failing to establish and enforce reasonable standards for the care, supervision, discipline and protection of boys at Mount Cashel;
 - c. failing to adequately assess, supervise, monitor and investigate Christian Brothers entrusted with authority over children;
 - d. failing to conduct adequate visits and inspections or to obtain sufficiently detailed and reliable reports concerning the treatment of residents;
 - e. failing to implement reasonable recommendations concerning intake, population, staffing, social work and institutional supervision;
 - f. permitting Mount Cashel to restrict the access and functions of social workers and failing to provide an independent person to whom boys could safely complain;
 - g. failing to respond reasonably to visible injuries, sick bay attendances, reports and other indicators of Physical Abuse;
 - h. failing to investigate and act upon the complaints made in 1974 and 1975;
 - i. suppressing, altering, omitting, minimizing or failing to preserve information concerning abuse at Mount Cashel;

- j. failing to ensure that information concerning abuse was communicated to responsible ministers, child welfare officials, parents, guardians and other persons responsible for the safety of the boys;
 - k. failing to remove children from danger, restrict the authority of abusive Christian Brothers or provide appropriate medical, psychological and other support;
 - l. failing, after at least December 8, 1975, to take reasonable steps to prevent further Physical Abuse of the Post December 8, 1975 Subclass; and
 - m. such further and other negligence as may be established by the evidence.
36. The Physical Abuse and resulting injuries were reasonably foreseeable. The Defendant's acts and omissions caused or materially contributed to the Physical Abuse suffered by Class Members.

B. Breach of Fiduciary Duty

37. Through its statutory powers, institutional role and assumption of responsibility for Mount Cashel, the Defendant exercised discretionary power capable of affecting the safety and fundamental interests of the Class Members. The Class Members were children, were vulnerable and were unable to protect themselves from the exercise or non exercise of that power.
38. The Defendant owed the Class Members fiduciary duties to exercise its powers loyally for their protection, to act in their best interests in matters affecting their safety and welfare, and not to prefer governmental, institutional, reputational or financial interests over their protection from abuse.
39. The Defendant breached those duties by failing to use its powers to protect the Class Members, permitting them to remain under the authority of persons who physically abused them, and suppressing, minimizing or inadequately investigating abuse to avoid scrutiny, expense, embarrassment or criticism.

C. Vicarious Liability

40. Further or in the alternative, the Plaintiff pleads that the Christian Brothers carried out child welfare and custodial functions entrusted to them by the Defendant.
41. The authority, control, intimacy and dependency inherent in those functions created and materially enhanced the risk of Physical Abuse. The assaults were sufficiently connected to the duties and power assigned to the Christian Brothers that it is fair and just for vicarious liability to attach.

42. By reason of the foregoing, the Defendant is vicariously liable for the assaults, batteries and other tortious acts committed by Christian Brothers against Class Members.

D. Negligent Investigation and Failure to Protect

43. For the Post December 8, 1975 Subclass, the Defendant's duty of care required it, after receiving credible and specific reports of abuse, to conduct a competent, complete and good faith investigation and to take reasonable protective action based on the information obtained.
44. The Defendant breached that duty by terminating, diverting or limiting the investigation, directing or permitting reports to be altered, omitting material allegations, failing to preserve and communicate information, failing to act under child welfare legislation and failing to prevent implicated Christian Brothers from continuing to exercise authority over children.
45. Had the Defendant acted reasonably, the danger at Mount Cashel would have been exposed, children would have been removed or protected, abusive Christian Brothers would have been restricted or removed and Physical Abuse of the Post December 8, 1975 Subclass would have been prevented or reduced.

Damages Suffered

46. As a result of the acts and omissions of the Defendant, Class Members suffered physical injury, pain, fear, humiliation, betrayal, psychological and emotional harm, loss of dignity and other losses. The nature and degree of harm varied among Class Members.
47. Particulars of the damages suffered by Class Members include, where applicable:
- a. impairment of the opportunity to experience a safe and normal childhood;
 - b. physical pain, injury and suffering;
 - c. mental suffering, fear, humiliation and anguish;
 - d. impairment of mental health and emotional well being;
 - e. loss of dignity, trust and self esteem;
 - f. loss of enjoyment of life;
 - g. distress caused by memories of mistreatment;
 - h. interpersonal and relationship difficulties;

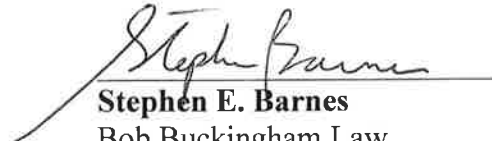
- i. impairment of education, employment and earning capacity;
 - j. past and future treatment, counselling and care expenses; and
 - k. such further and other losses as may be established by the evidence.
48. The Defendant's conduct, including its failure to protect vulnerable children and its inadequate investigation and suppression of credible reports of abuse, was high handed, callous and reprehensible and warrants aggravated and punitive damages.

Relief Sought

49. The Plaintiff seeks the following relief on his own behalf and on behalf of the proposed Class:
- a. an order pursuant to the Class Actions Act certifying this proceeding as a class action and appointing Gerard Bailey as representative Plaintiff for the Class;
 - b. the costs of providing notice to Class Members and administering this proceeding for their benefit;
 - c. an aggregate monetary award pursuant to section 29 of the Class Actions Act, where appropriate;
 - d. general damages, including pecuniary and non pecuniary damages;
 - e. special damages;
 - f. aggravated damages;
 - g. punitive damages;
 - h. prejudgment and post judgment interest pursuant to the Judgment Interest Act;
 - i. costs; and
 - j. such further and other relief as counsel for the Plaintiff may seek and this Honourable Court deems just.

50. The Plaintiff seeks to have this action tried before the Supreme Court of Newfoundland and Labrador, General Division, sitting at St. John's, Newfoundland and Labrador.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 20th
day of July, 2026.


Stephen E. Barnes
Bob Buckingham Law
Solicitor for the Plaintiff
Whose address for service is:
81 Bond Street
St. John's, NL A1C 1T2

TO:

Government of Newfoundland and Labrador
Department of Justice, Civil Division
Confederation Building, 4th Floor, East Block
PO Box 8700
St. John's, NL A1B 4J6

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this 21
day of July, 2026.



COURT OFFICER

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NOTICE TO DEFENDANT

You are hereby notified that the Plaintiff may enter judgment in accordance with the Statement of Claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within ten days after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at 309 Duckworth Street, St. John's, Newfoundland and Labrador, a Defence and unless within the same time a copy of your Defence is served upon the Plaintiff or the Plaintiff's solicitor at the stated address for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the Statement of Claim and the sum of \$_____ for costs to the Plaintiff or the Plaintiff's solicitor within ten days from the service of this notice upon you, then this proceeding will be stayed.

TO:

Government of Newfoundland and Labrador
Department of Justice, Civil Division
Confederation Building, 4th Floor, East Block
PO Box 8700
St. John's, NL A1B 4J6

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AFFIDAVIT OF SERVICE

I, _____ of _____, in the Province
of Newfoundland and Labrador, make oath and say as follows:

51. On _____ at _____ A.M./P.M., I served
_____ with the Statement of Claim by leaving a copy with
_____ at
_____.

52. I was able to identify the person by means of

_____.

SWORN TO at the City of St. John's, in the
Province of Newfoundland and Labrador,
this _____ day of _____, 2026,
in the presence of: