

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WILLIAM JOSEPH RICHARD and W.H.M.

PLAINTIFFS

AND:

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA**

DEFENDANT

Brought under the Class Proceedings Act

RESPONSE TO DEMAND FOR PARTICULARS

1 The Plaintiffs respond to the Defendant's Demand for Particulars, dated July 6, 2005 (the "Demand"), as set out below. This response is without prejudice to the Plaintiffs' right to provide further particulars following discoveries.

(a) Paragraph 1(a) of the Demand requests:

"The way or ways in which the Defendant is alleged to have been negligent in its operation or management of Woodlands School,"

Response:

- (i) Inadequate policies for prevention of sexual and physical abuse and the neglect of residents ("abuse" includes acts perpetrated by residents upon each other);
- (ii) Failure to enforce or otherwise apply abuse policy/policies;
- (iii) Lack of internal safeguards to prevent abuse by staff of Woodlands residents;
- (iv) Failure to employ reasonable supervision of the day to day operations of Woodlands;

- (v) Inadequate supervision of staff;
- (vi) Inadequate training of staff;
- (vii) Inadequate orientation of new staff;
- (viii) Failure to adequately investigate staff alleged to have abused Woodlands residents;
- (ix) Failure to adequately discipline staff found to have abused Woodlands residents;
- (x) Failure to adequately respond to concerns of parents that abuse of Woodlands residents was occurring;
- (xi) Failure to notify parents of incidents of abuse of Woodlands residents;
- (xii) Failure to deter abuse by employees by referral of incidents of abuse to local police officials; and
- (xiii) Failure to allow local police officials access to Woodlands to openly and freely investigate allegations of abuse of Woodlands residents.

(b) Paragraph 1(b) of the Demand requests:

“the acts or omissions that are alleged to amount to an actionable failure in the operation of management of Woodlands School;”

Response:

See paragraph 1(a) above.

(c) Paragraph 1(c) of the Demand requests:

“The specific fiduciary duties alleged to be owed by the Defendant to the Plaintiffs;”

Response:

The Defendant owed the Plaintiffs and class members a duty of loyalty. This duty arose from the peculiar vulnerability of the Plaintiffs and class members as disabled children who were under the Defendant’s care, and the Defendant’s discretionary power over them. This duty required the Defendant to not put its own interests, or the

interests of third parties, ahead of the Plaintiffs' and class members' interests in a manner that abused their trust. Woodlands was a "total institution" and it controlled virtually every aspect of the children's lives. The children were not a position to speak up on their own behalf. It was incumbent on the Defendant, as part of its duty of loyalty to these children, to ensure that persons who might advocate on their behalf were informed of abuse, so that the interests of the children were not disregarded in favour of the interests of others.

(d) Paragraph 1(d) of the Demand requests:

"The way or ways in which the Defendant is alleged to have breached those fiduciary duties,"

Response:

The Defendant treated abuse as strictly a personnel issue, to be handled inside the institution. In doing so, it favoured its own economic and reputational interests, and those of its employees, over the interests of the Plaintiffs and class members. It responded to allegations of abuse as exclusively an issue between management and employees. It routinely failed to take steps to maintain its duty of loyalty to the children under its care by reporting instances of abuse to persons or organizations outside of the institution who would have advocated on behalf of the children, including parents and the police. The Defendant acted to promote efficient and harmonious economic relations with its work force at the expense of the interests of the children who were the proper beneficiaries of that economic relationship. The Defendant consistently failed to take steps that might have cost it money or embarrassment if it had properly responded to allegations of abuse. On occasion, the Defendant's managers spoke to employees about allegations of abuse but the Defendant consistently treated this as an internal matter, without regard for the rights and interests of the children under its care. In treating abuse as solely a personnel issue, the Defendant was disloyal to the Plaintiffs and class members. It sacrificed the interests of the children under its care to its own interests as an employer.

- (e) Paragraph 1(e) of the Demand requests:

“The specific aspects of the operation or management of Woodlands School which are alleged to have failed to protect the residents from abusive conduct;”

Response:

See paragraph 1(a) above.

- (f) Paragraph 1(f) of the Demand requests:

“The reasonable measures that the Defendant should have taken in its operation and management of Woodlands School, including each standard that the Defendant should have met and when that standard became applicable;”

Response:

Woodlands lacked adequate safeguards to prevent abuse throughout its history. There was no fixed point of responsibility at Woodlands for accepting, managing and investigating complaints. It treated abuse as solely a personnel issue, and routinely failed to notify persons outside of the institution who would have advocated on behalf of the children, such as parents and the police. It failed to hold adequate training sessions to ensure that its employees fully understood their obligations to prevent and report abuse. All of these were reasonable measures that the Defendant could and should have implemented at any point during Woodlands' history, but it failed to do so.

- (g) Paragraph 1(g) of the Demand requests:

“The types and identities of employees, agents or other persons similarly confined in the institution that are alleged to have abused the residents of the Woodlands School;”

Response:

This information is within the Defendant's records. The Plaintiffs have not yet had access to this information. The Plaintiffs have had access to the McCallum Report on the Woodlands School which reads at page 18 "Names of the residents and staff involved with incidents will remain private... Similarly the identities of those involved in the sexual abuse will not be revealed." The Representative Plaintiff, WHM, has provided specifics as to the identities of his abusers at paragraphs 11D to 11I of the Amended Statement of Claim.


2. Paragraph 2 of the Demand requests:

"The Defendant demands particulars of any act of the Defendant that is alleged to have been. a) Harsh, b) Vindictive; Reprehensible, d) Malicious; e) High handed; f) Arbitrary, g) Deserving of condemnation; or h) Deserving of Punishment, And, in respect of each such act, please specify: i) When, Where; and By Whom Such act was committed."

Response:

Absent discovery, the Plaintiffs are not in a position to provide further particulars of this allegation beyond those set out above and in the Amended Statement of Claim.

Dated:

December 10, 2007
Plaintiffs' solicitor

This Response is filed by David Klein and Shauna Tucker of the law firm of Klein Lyons, whose place of business is 1100 – 1333 West Broadway, Vancouver, BC V6H 4C1.