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BARRISTERS AND SOLICITORS / AVOCATS ET NOTAIRES

BRUCE V. GEOFFREY, B.A., LL.B.

January 11, 1994

DELIVERED BY HAND

WITHOUT PREJUDICE
PERSONAL & CONFIDENTIAL

Our Ref: 36453

Cornwall Police Services Board
P.O. Box 875
340 Pitt Street
Cornwall, Ontario
K6H 5T7

AND TO:

Carl Johnston
Cornwall Chief of Police
P.O. Box 875
340 Pitt Street
Cornwall, Ontario
K6H 5T7

AND TO:

Constable Heidi Sebalj
P.O. Box 875
340 Pitt Street
Cornwall, Ontario
K6H 5T7

Dear Sirs/Madam:

RE: Breach of Rights of David Silmsers

We are the Solicitors for David Silmsers. As I am sure you are aware Mr. Silmsers met with representatives of the Cornwall Police Force approximately twelve months ago and provided a detailed statement with respect to sexual assaults upon him by Father Charles MacDonald, the former parish priest of the St. Columbans Church in Cornwall, Ontario and further sexual assaults by a former probation officer Mr. Ken Seguin. At that time and on subsequent occasions Mr. Silmsers dealt with Constable Heidi

COMMUNICATIONS:

TELEPHONE (613) 237-4000
TELECOPIER (613) 237-4906
TELEX 053-3195 MSG CTR OTT

REPLY TO:

BANK STREET CHAMBERS
102 BANK STREET
OTTAWA, ONTARIO K1P 3N4

Sebalj. At the request of the Cornwall Police Department Mr. Silmsler provided a hand written statement detailing the sexual assaults upon him. This statement was retained by the Cornwall Police for the stated purpose of their investigation with respect to these sexual assaults upon our client.

Neither Mr. Silmsler nor any representative appointed by him was ever provided with a copy of his hand written statement. In addition, Mr. Silmsler was assured by Constable Sebalj that this statement would be held in the strictest confidence and only used within the context of the ongoing criminal investigation as against Father MacDonald and Mr. Seguin. At no time has Mr. Silmsler ever consented to the release or disclosure of the statement prepared by him to any third parties and specifically, to any media organization.

It has now come to our attention that the Cornwall Police have released Mr. Silmsler's hand written statement to members of the media without Mr. Silmsler's knowledge or consent. Specifically, the original statement and/or a photocopy of the statement was displayed on the January 6, 1994, 6:00pm edition of the Newline Broadcast of CJOH/CTV. Subsequent to this excerpts from the statement have appeared in both the Ottawa Citizen and the Ottawa Sun Newspapers and accordingly, it must be presumed that they are also in possession of a copy of this statement.

As I am sure you are also aware our client had entered into an agreement with the Roman Catholic Archdiocese whereby he agreed not to commence any civil proceedings as against Father Charles MacDonald, the St. Columbans Church or the Roman Catholic Archdiocese as a result of the sexual assaults upon him in return for payment of the sum of \$32,000.00. The major consideration for agreeing to accept a sum far below that which he would be entitled to within the context of a Court action was Mr. Silmsler's desire to avoid the adverse publicity and personal embarrassment and agony associated with a public trial. Since the time of the assaults upon him, he has suffered numerous and severe mental and physical damages which have now been aggravated and extended by this recent unauthorized media exposure.

We hereby provide notice that our client will be claiming damages as against the Cornwall Police Services Board, the Cornwall Chief of Police Carl Johnston, Constable Heidi Sebalj and, other Officers under the direction of Chief Johnston the names of whom are presently unknown to our client arising out of the numerous violations of our client's rights and breaches of relevant statutory provisions, which will be hereinafter summarized inter alia. Generally, it is our position that all of the above noted parties have failed to provide police services in accordance with the principal of recognizing the importance for respect of victims of crime and understanding their needs as is set forth in

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Section 1(1) of the Police Services Act, 1993.

CLAIM AS AGAINST THE CORNWALL POLICE SERVICES BOARD

- i) They failed to establish and monitor policies for effective management of the Cornwall Police Force in accordance with Section 31(1)(c) of the Police Services Act, 1993;
- ii) They failed to direct the Chief of Police and monitor his employment in accordance with Section 31(1)(b) of the Polices Services Act, 1993;
- iii) They breached the rights of David Silmsner afforded to him pursuant to Sections 7 and 29 of the Canadian Charter of Rights and Freedoms.

CLAIM AS AGAINST THE CORNWALL CHIEF OF POLICE, CARL JOHNSTON

- i) He failed to ensure that members of the Police Force carried out their duties in accordance with the Police Services Act, 1993 and the Regulations thereto in a manner that reflected the needs of the community pursuant to Section 41(1)(b) of the Police Services Act, 1993;
- ii) He failed to ensure that the Cornwall Police Force provided community oriented police services in accordance with Section 41(1)(c) of the Police Services Act, 1993;
- iii) He failed to ensure that reasonable measures to prevent unauthorized access to the records in his institution were defined, documented and put into place in accordance with Section 3(1) of the Regulations to the Municipal Freedom of Information and Protection of Privacy Act;
- iv) He failed to ensure that only those individuals who needed access to a record for the performance of their duties had access in accordance with Section 3(2) of the Regulations to the Municipal Freedom of Information and Protection of Privacy Act;
- v) He failed to give notice of his intention to release records to the public in accordance with Section 5(2) of the Municipal Freedom of Information and Protection of Privacy Act;
- vi) He failed to refuse to disclose personal information to the public in circumstances which constituted an unjustified

invasion of personal privacy in accordance with Section 14(1)(f) of the Municipal Freedom of Information and Protection of Privacy Act;

- vii) He failed to consider the circumstances as set out in Section 14(2) of the Municipal Freedom of Information and Protection of Privacy Act when he agreed to release confidential information to members of the public;
- viii) He failed to give the proper notice in accordance with Section 21(1) of the Municipal Freedom of Information and Protection of Privacy Act to a person affected by the release of confidential information prior to granting a request for access;
- ix) He contravened Section 48(1) of the Municipal Freedom of Information and Protection of Privacy Act;
- x) He failed to exercise good faith in disclosure and failed to take reasonable care that prior notice was given to an affected person prior to releasing confidential information;
- xi) Alternatively, he was negligent in allowing members of the Police Force over whom he has charge, care and responsibility to release confidential information to the public and specifically to members of the news media;
- xii) He is liable in respect of torts committed by members of the Cornwall Police Force under his direction and control in the performance or purported performance of their duties.

CLAIM AS AGAINST HEIDI SEBALJ AND OTHER UNNAMED CORNWALL POLICE OFFICERS

- i) She/They failed to assist a victim of crime in accordance with Section 42(1)(c) of the Police Act, 1993;
- ii) By releasing confidential information in their possession and control to members of the media She/They committed an improper use of confidential information, invaded the privacy of David Silmsler, intentionally inflicted mental suffering on David Silmsler and further, committed a breach of confidence of David Silmsler;
- iii) In the alternative, She/They were negligent by allowing the unauthorized release of confidential information in their care and control to members of the media;

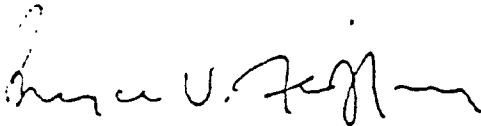
- iv) She/They failed to preserve the secrecy of information obtained in the course of their duties contrary to Section 108(2) of the Police Services Act, 1993;
- v) She/They breached the oath of security She/They took upon the assumption of their duties as a Police Officer, taken pursuant to Section 45 of the Police Services Act, 1993, as prescribed by Ontario Regulation 144/91;
- vi) She/They committed an offence under Section 111 of the Police Services Act, 1993.

My client's major concern with respect to this matter is attempting to minimize the public exposure of his identity and the details of the assaults against him. Accordingly, we do not wish to be forced to commence civil proceedings as against the above noted parties however, I would ask that the appropriate representative contact my office within seven days in order that we may enter into discussions with respect to the potential resolution of this unfortunate incident. I am especially concerned that the additional exposure of the unauthorized disclosure of confidential information given by the victim of a sexual assault may cause other persons in similar circumstances to hesitate to report crimes to the authorities.

Thank you for your anticipated cooperation.

Yours very truly

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Bryce V. Geoffrey
/jmt