

STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY
NORTHERN DISTRICT

SUPERIOR COURT

93-C-1243

[REDACTED]

v.

GORDON J. MacRAE, THE ROMAN CATHOLIC BISHOP
OF MANCHESTER, INC. and FATHER GERARD BOUCHER

**DEFENDANTS THE ROMAN CATHOLIC BISHOP
OF MANCHESTER AND FATHER GERARD BOUCHER'S
PROPOSED FINDINGS OF FACT AND RULINGS OF LAW**

I. Findings of Fact

1. Plaintiff [REDACTED] was born

[REDACTED]. He reached the age of majority on [REDACTED]

2. [REDACTED] attended public school at Hampton Academy in Hampton, New Hampshire during 1982 and 1983. He attended religious classes at Sacred Heart School in Hampton.

3. During that period, [REDACTED] alleges that he came to know Defendant Gordon MacRae ("MacRae") who encouraged him to become a full-time student at Sacred Heart.

4. MacRae had only recently been ordained. He came to Hampton in July 1982 to become the assistant pastor at Miraculous Medal Parish.

5. MacRae was transferred to St. Bernard Parish in Keene, New Hampshire on or about June 15, 1983 where he stayed until June 1987.

6. During the period 1982-1983, [REDACTED] alleges that on several occasions he was sexually molested by MacRae. [REDACTED] claims that MacRae hugged and kissed him intimately, fondled his sexual organs and encouraged him to fondle MacRae's sexual organs.

7. [REDACTED] began seeing a clinical social worker for New Hampshire Catholic Charities, [REDACTED] for therapy in September 1983. On or about October 26, 1983, [REDACTED] asked her about whether sexual advances from MacRae were appropriate.

8. Paterson informed [REDACTED] that MacRae's sexual advances were not appropriate and that they were a violation of the law. She informed [REDACTED] that she had to report MacRae to the authorities and asked to tell his parents.

9. As part of her treatment of [REDACTED] Paterson validated that [REDACTED] was not to blame for the incident and that MacRae was at fault.

10. As a result of this disclosure, Ms. Paterson stated that she "took the necessary steps through [Catholic Charities] to have a report of sexual abuse by MacRae filed with the

appropriate authorities." She "discussed this filing with both [REDACTED] and his parents."

11. In November 1983, [REDACTED] disclosed to Paterson the he had a "hit list" of people he wanted to harm because he perceived that they had harmed him. MacRae was always at the top of his "hit list" in capital letters.

12. In December 1983, [REDACTED] was admitted into Hampstead Hospital for psychological treatment. [REDACTED] stated at that time that he thought his problems stemmed from the incident with MacRae.

14. [REDACTED] previously had told [REDACTED] (then [REDACTED] in the spring of 1983 about his relationship with MacRae. [REDACTED] was a teacher at Hampton Academy. She helped [REDACTED] draft a letter to MacRae which told MacRae that [REDACTED] was uncomfortable with some of the things MacRae did.

15. After starting at Sacred Heart in the fall of 1983, [REDACTED] told a teacher, [REDACTED] that MacRae had molested him.

16. After August 1983, [REDACTED] had no further contact with MacRae.

17. In 1986, [REDACTED] again informed a counselor at school that he had been molested by MacRae. As a result, the incident was reported to DCYS.

18. Elizabeth Davis of DCYS conducted an investigation of [REDACTED] claims. The investigation included discussions with [REDACTED] and his parents. [REDACTED] disclosed to Davis that he had been molested by MacRae.

19. [REDACTED] parents consulted a lawyer in 1986 about possibly bringing a civil lawsuit on behalf of [REDACTED]. They decided not to pursue such an action at that time.

20. [REDACTED] did not commence the instant action until September 22, 1993.

21. [REDACTED] understood in 1983 that his rights had possibly been violated by MacRae.

22. [REDACTED] understood by 1986 at the latest that his rights had possibly been violated by MacRae.

23. [REDACTED] suffered an injury sufficiently serious in 1983 to apprise him that a possible violation of his rights had occurred.

24. [REDACTED] had actual notice that MacRae had been reported to DCYS by Catholic Charities for the conduct [REDACTED] complained of.

25. [REDACTED] parents were fully apprised by Ms. Paterson and DCYS of MacRae's conduct against [REDACTED] in 1983.

26. Based on [REDACTED] allegations against MacRae, [REDACTED] parents could have commenced a civil action against MacRae by 1986 on [REDACTED] behalf.

27. [REDACTED] is not mentally incompetent within the meaning of RSA 508:8.

II. Rulings of Law

1. "Once the defendant has established that the statute of limitations would bar the action, the plaintiff bears the burden of raising and proving that the discovery rule is applicable to an action otherwise barred by the statute of limitations. Glines v. Bruk, 140 N.H. 180, 181 (1995).

2. The statute of limitations began to run on [REDACTED] action when he suffered an injury, even if "nominal", that "was sufficiently serious to apprise [him] that a possible violation of his rights had taken place." Rowe v. John Deere, 130 N.H. 18, 21-23 (1990).

3. The standard to be applied to whether an injury is sufficiently serious to apprise a person that a possible violation of his rights occurred is an objective one. Blackowiak v. Kemp, 546 N.W.2d 1 (Minn. 1996).

4. When [REDACTED] acknowledged or appreciated the nature and extent of the harm "is not relevant to the ultimate question of the time at which the complainant knew or should have known that he/she was sexually abused." Id.

5. As a matter of law, one is "injured" if one is sexually abused. Id.

6. "The standard of reasonable diligence is an objective or external one that is the same for all individuals." Dreischalick v. Dalkon Shield Claimants Trust, 845 F.Supp. 310, 314 (W.D.Pa. 1994).

7. An inability to comprehend that a situation had been abusive does not toll the statute of limitations. ABC v. Archdiocese of St. Paul, 513 N.W.2d 482, 486 (Minn.App. 1994).

8. ██████████ claimed ignorance of his legal rights in 1983 does not toll the statute of limitations. United States v. Kubrick, 100 S.Ct. 352, 359 (1979).

9. ██████████ had an affirmative duty to investigate the cause of his alleged injuries. Fries v. Chicago & Northwestern Transp. Corp., 909 F.2d 1092, 1095 (7th Cir. 1990)

10. ██████████ need not "have fully discovered the nature and extent of the [wrongdoing] before [he was] on notice that something may have been amiss. Inquiry notice is triggered by evidence of the possibility of [wrongdoing], not full exposition of the [wrongdoing] itself." Kennedy v. Josephthal & Co., 814 F.2d 798, 802 (1st Cir. 1987).

11. RSA 508:8 expressly provides a savings statute for minors to bring causes of action within two years after reaching the age of majority.

12. RSA 508:8 expressly provides a savings statute for persons who are mentally incapacitated to bring causes of action within two years after the mental incapacity was lifted.

13. ██████████ was not mentally incapacitated within the meaning of RSA 508:8.

14. [REDACTED] action against Defendants is time-barred.
RSA 508:4.

Respectfully submitted,

THE ROMAN CATHOLIC BISHOP OF
MANCHESTER, INC. AND FATHER
GERARD BOUCHER

By Their Attorneys:

SHEEHAN PHINNEY BASS + GREEN,
PROFESSIONAL ASSOCIATION

Dated: July __, 1996

By: _____
James E. Higgins
Robert R. Lucic
Post Office Box 3701
Manchester, NH 03105-3701
(603) 627-8136

I hereby certify that on the ____ day of July, 1996, copies of the within Defendants' Requests for Findings of Fact and Rulings of Law were hand delivered to William W. Cleary, Esquire, Peter A. Gleichman, Esquire, Mark A. Abramson, Esquire, Robert Upton II, Esquire and mailed by first class mail, postage prepaid to Gordon J. MacRae, pro se.

James E. Higgins