

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

P.D.

Plaintiff

- and -

RICHARD ALLEN

Defendant

- and -

THE ROMAN CATHOLIC EPISCOPAL CORPORATION FOR THE DIOCESE OF SAULT STE. MARIE, IN ONTARIO, CANADA

Defendant

- and -

THE MOST REVEREND JEAN-LOUIS PLOUFFE D.D.

Defendant

) *Susan M. Vella, Danielle M. Szandtner and Gillian S.G. Scott* for the Plaintiff

) *Gregg Ellies* for the Defendant, Richard Allen

) *Harry W. McMurtry and Miriam Tepperman* for the Defendants,  
) The Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie in Ontario, Canada, and The Most Reverend Jean-Louis Plouffe D.D.

) **HEARD:** OCTOBER 27 TO 31,  
) NOVEMBER 10, 12 TO 14, 17 TO 21, 24  
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) FEBRUARY 4, 6, 10, 11, 18 TO 20, 23,  
) 2004

**Lissaman J.**

**REASONS FOR JUDGMENT**

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[1] This is an action for damages brought by the plaintiff ("PD") against Father Richard Allen ("Allen"), a priest of the Roman Catholic Church, the Roman Catholic Episcopal Corporation for the Diocese of Sault Ste. Marie, and the Most Reverend Jean-Louis Plouffe, Bishop of the Diocese of Sault Ste. Marie (the "Diocese" or the "Diocese defendants").

[2] The plaintiff, a former nun, retired teacher, and doctor of education (EdD) alleges damages suffered as a result of sexual abuse by the defendant Allen during the years 1957 to 1960 when PD was a young girl between the ages of 13 and 15 (the "childhood period" or the "childhood sexual abuse"). The plaintiff further alleges damages suffered as a result of a second period of abuse during the years 1978 to 1981 when PD and Allen had a sexual relationship (the "adult period").

[3] A third significant period in this litigation is the period between PD's first disclosure of Allen's abusive conduct in late 1991 and the time when Allen was sentenced criminally in 1994 (the "disclosure period").

[4] The defendants who, in Court, admitted inappropriate conduct by Allen during the childhood period, strenuously dispute any liability whatsoever for the adult period. Although not formally admitted at trial, the defendants did not significantly oppose the suggestion of vicarious liability for the childhood period. Nevertheless, the defendants strongly challenge the overall effect of the childhood abuse as alleged by the plaintiff.

[5] The plaintiff alleges pain and suffering and that the sexual abuse was a material contributing cause of her alcoholism, and that her alcoholism has led to her early retirement from teaching.

[6] The plaintiff alleges that the Diocese and the Bishop are vicariously liable for all her damages.

[7] The plaintiff seeks general damages of \$800,000, special damages of approximately \$1.4 million (mainly for past and future loss of income/loss of pension), aggravated damages and punitive damages.

### **Background Facts**

[8] The events in question cover most of the plaintiff's life over some 46 plus years, therefore it is necessary to set out the material facts in some detail.

[9] PD was born in Timmins, Ontario in July 1944, and, at the age of nine, moved with her family to North Bay. Her father served with the Canadian Forces during World War II and after the war worked as an automobile salesman in Timmins and North Bay. Her mother was a housewife and part-time organist at the Church. PD is the eldest of five children with three younger brothers and a younger sister. The two youngest siblings were born some 15 and 19 years after PD.

[10] There is some family history of acute alcoholism, in particular on her father's side. PD's father was an alcoholic. He was eventually able to achieve some measure of control over his alcohol problem around 1976 with the help of Alcoholics Anonymous ("AA"). Eight of PD's nine paternal uncles were described as alcoholics and one of five maternal uncles was similarly described. PD's mother was a social drinker. There is no evidence of alcoholism in the women on either side of the family, apart from PD.

[11] Church was an important part of PD's family life. The family was raised in the Catholic faith and attended Mass regularly. The boys sang in the choir. PD's mother played the organ, albeit at a different church. Priests were held in high esteem. The family was not wealthy and PD had to help out with chores around the home. When she was in her teens PD helped to take care of the younger children. As the eldest she held a position of responsibility within the family.

[12] PD's mother was hard-working and demanding. The plaintiff described her as having said, in relation to academic achievement, "if you can get 98%, you can get 100%." PD's mother worked to supplement the family income at various jobs until her fourth child was born in 1959 when PD was 15, after which time she stayed at home to take care of her children.

[13] At the material time, PD attended St. Joseph's College, a Roman Catholic secondary school in North Bay, as a day student. PD was an adequate student and was very involved in extra-curricular activities, including the Legion of Mary (a Catholic youth organization), student council, Brownies, and later Girl Guides. In each of these activities, the plaintiff took on a leadership role.

[14] It was at school in 1956 that PD likely first encountered the defendant Allen. Born in 1928, Allen was 27 years old when he was ordained a diocesan priest of the Roman Catholic Church in April 1956. After his ordination he was assigned to Pro-Cathedral in North Bay (the "Cathedral"). Allen lived at the rectory adjacent to the Cathedral in a room on one of the upper floors.

[15] As part of his duties, Allen was assigned by the Bishop (then Bishop Dignan) to be Chaplain at St. Joseph's College, the school attended by PD. His duties at the school included saying Mass periodically and giving weekly talks to the various classes on religious topics. He received a salary from the Diocese of \$50 per month. There is no evidence that Allen sexually abused PD at her school. PD would have attended lectures conducted by Allen and undoubtedly she would have perceived him as a person of spiritual and secular authority.

[16] In the summer of 1957 when she was 13, PD began to work at the rectory of the Cathedral. The rectory is a building adjacent to the Cathedral. The rectory serves as an administrative centre for the Diocese and also houses some of the Diocese personages. The Bishop and the Rector (Monsignor Devine) lived at the rectory, as did Allen and other curates. Some 12 or 13 individuals worked there. PD was not old enough to work anywhere else. Her work included a variety of mostly clerical tasks and included, *inter alia*, answering the phone, greeting visitors, cleaning, and selling religious articles and souvenirs to parishioners. PD testified that she enjoyed her work. She was paid ten dollars per month, just enough to cover her bus fare and her tuition to St. Joseph's.

[17] PD's job at the rectory brought her into close contact with Allen and other individuals at the rectory. She was often required to work alone. The facts adduced seem to indicate that PD was very much under the moral authority of Allen and the other ordained persons who worked at the rectory. Priests held a position as role models within the community. It was in this context that the sexual abuse took place.

### **The Childhood Sexual Abuse ~ 1957-1960**

[18] PD has a continuous memory of the childhood sexual assaults. In other words, this is not a case of recovered memory. Allen testified that his memory for the period from 1956 to 1970 is "extremely poor" due to a then severe alcohol problem. Allen claims he does not recall PD as a child or teenager or any of the assaults alleged from that period.

#### Location of the Abuse

[19] The evidence discloses that all the incidents of sexual abuse that occurred when PD was a minor took place in the rectory of the Cathedral or in a hallway connected to the rectory. During the school year, commencing in September 1957, PD worked at the rectory from seven to nine p.m. on weekdays and all day on weekends until nine p.m. As such there were numerous occasions when PD was working on her own in the evening at the rectory.

[20] Within the rectory, PD was particularly vulnerable just after she had dealt with a customer in the religious articles room. This was the most common location of the sexual assaults. Other locations within the rectory included: the secretaries' office, the laundry room, the basement area, the vault (where important records were kept), the kitchen, Monsignor Devine's office (when the Monsignor was not present), and once in Allen's room on the top floor of the rectory. There was also evidence of incidents in the hallway connecting the rectory to the adjacent Parish Hall. Wherever PD was on her own for a few minutes in the evening, an assault was possible.

#### Nature of the Sexual Abuse

[21] The evidence indicates that most of the assaults involved Allen grabbing and fondling PD's breasts or buttocks outside her clothing for short periods of time. There is evidence of Allen approaching PD from behind and pressing his crotch against her buttocks. There is also evidence of more invasive assaults where Allen would fondle PD's crotch under her skirt and outside her underwear and, on a few occasions, direct fondling of the vagina and several incidents of digital vaginal penetration. There was no oral-genital sexual activity and no intercourse.

[22] The assaults always occurred in the evening or late afternoon when it was dark outside. Typically, Allen would approach PD from behind or beside her while she was working on her homework or some other task. He would then touch and fondle her breasts under her jumper but over her blouse (she was not yet wearing a bra) while talking about some other subject altogether. PD would "freeze" while this was taking place until he stopped. Each incident would last from several seconds to several minutes. When PD was obliged to sell items to the public in the religious articles room, there would be a period of time after the customer left during which she was cleaning up when Allen would take advantage of the opportunity to assault her. This was a common location for the abuse.

[23] PD testified that she does not recall Allen seeming to be inebriated during the assaults nor does she recall alcohol being offered to her by Allen at this time.

[24] Consistently, the assaults were accompanied by demeaning statements such as, "you're not good looking and you haven't got a brain in your head, but you're ours and we love you." The plaintiff was made to feel stupid and awkward and ashamed and confused. If she complained to him, as she did on occasion, Allen would imply that there was something wrong with her. "What's the matter with you, settle down" and "What's wrong with you? This is fun," he would say. If PD tried to pull away, Allen would hold her and continue the inappropriate sexual touching.

[25] The facts seem to indicate that PD was very much under the authority of Allen.

[26] Because the assaults took place over a prolonged period of time, PD eventually devised certain strategies to avoid the assaults. She would strive to finish her work early and would avoid the religious articles room. She would prepare things in the religious articles room in advance to allow herself a very quick exit after a sale. She tried not to turn her back to the door or to Allen if he was present. On at least one occasion, she asked the Monsignor if she could refuse to go upstairs when requested, and later refused Allen's request to come upstairs.

[27] The plaintiff did not disclose the abuse to the Monsignor or to anyone else. When PD was hired to work at the rectory, Monsignor Devine told her that she was never to disclose anything she heard or saw there. She was also made to swear an oath of secrecy. It is not surprising that a young girl of 13 did not breach that oath.

[28] PD testified that she was aware that the behaviour seemed wrong and that the genital touching made her stomach sick. After one incident of genital touching, PD testified that she

threw up in the washroom four or five times. The plaintiff never told her mother, her brother, or any other person that she was feeling poorly. To those around her, PD appeared normal.

#### Duration of the Sexual Abuse

[29] The evidence disclosed that the abuse started "fairly early in the fall of grade nine" (September 1957) when the plaintiff was 13 and Allen was 29. The abuse continued to September 1958, then stopped for a school year while Allen was away teaching at Hearst Theological Seminary ("Hearst"). The abuse then recommenced in the summer of 1959 and continued until the summer of 1960. Throughout the period from 1957 until 1960 PD worked at the rectory. She testified that apart from Allen's abusive behaviour she enjoyed her job and did not contemplate leaving it.

[30] The abuse ended at some point during the summer of 1960, possibly early that summer. PD was more able to avoid Allen in the summer. She went away to work at a camp for part of the summer, and the presence of more daylight may also have been a factor. In the late summer of 1960, Allen was assigned to a parish in Temagami. He left for Temagami on or about September 1, 1960. PD testified that she didn't have any specific memories of Allen after the end of her grade 11 school year.

[31] The evidence showed that the character of the abuse did not change significantly during the three years, but there were factors related to PD's physical development as a young woman that made it more embarrassing to her, such as wearing a bra for the first time and getting her first period. The abuse was consistently accompanied by statements from Allen that were demeaning, increasing her confusion and sense of shame in particular when he stated that the problem lay with the plaintiff and not with Allen.

[32] The abuse took place over a total of approximately three years, interrupted by the ten months when Allen was away at Hearst from September 1958 to June 1959.

[33] The defendants submit, and it is true, that the plaintiff describes abuse during the period when Allen was absent from North Bay between September 1958 and June 1959. Allen was assigned to teach at Hearst during the 1958-59 school year. Therefore, from September 1958 to June 1959 Allen was not in North Bay. The evidence is clear and supported by records. The defendants submit that the plaintiff's credibility is called into question by her description of abuse during the period when Allen was teaching at Hearst. The plaintiff in her examinations for discovery failed to mention that Allen was absent during this period. The plaintiff described abuse during this period that was similar to the abuse during other periods, and did not distinguish this period in any particular way.

[34] The failure of the plaintiff to make reference to and distinguish this period does not materially affect her credibility with respect to the entirety of the childhood abuse. These are events that, at the time of her examination in 1999, occurred almost 40 years ago. They were events that were confusing, alarming, and little understood by a young girl of 13 to 16 years of age.

[35] The evidence suggests that the childhood sexual abuse took place substantially as the plaintiff relates.

#### Frequency of the Abuse

[36] It is estimated that there were 100 incidents during the childhood period. They were more frequent during the school year than during the summers when PD was better able to avoid Allen. PD testified that a week didn't go by without "having problems" with Allen.

[37] The abuse was more frequent in certain locations. In particular, as already mentioned, the religious articles room on the ground floor of the rectory where PD was obliged to go to sell baptismal certificates and religious souvenirs.

[38] In public places, PD's interaction with Allen was normal. This included visits to PD's family home.

#### Specific Incidents

[39] Some specific incidents of the sexual abuse warrant description. An incident in Monsignor Devine's office was the first occurrence of genital touching. It occurred in late 1957 or early 1958. It was approximately 9:00 p.m. when Allen called PD into the Monsignor's office. While talking about something irrelevant, Allen put his hand inside PD's underwear. When she pulled away, he said, "come here, come here, settle down, settle down." PD testified that she was confused and panicked. Later on, PD was able to avoid further assaults in the Monsignor's office by not entering the room when requested.

[40] On Christmas day 1959, PD was alone at the rectory except for Allen who was upstairs in his room. He requested PD come up to his room, asked her to sit on his lap and fondled her breast and inserted a finger or fingers into her vagina, pushing to the point that it hurt. PD was upset and asked to be allowed to stand up. She then went downstairs and hid in the washroom until she heard Allen go out. This incident prompted the plaintiff to ask of the Monsignor that she be permitted to refuse to go upstairs when requested by Allen.

[41] The vault is a small confined space in the rectory where important records of the parish are kept. The evidence indicates there were some 20 to 30 incidents when PD was fetching a record of some kind, in which Allen would follow her and use the opportunity to sexually abuse her. If Allen had sufficient time, these incidents included some genital touching.



[42] There was evidence of one incident in the laundry room. Allen approached PD from behind and fondled her breasts over her clothes. In addition, there were up to 10 incidents in the hallway connecting the Rectory to the adjacent Parish Hall, and a number of incidents in the kitchen, as PD was getting ready for Brownie meetings.

### Criminal Conviction

[43] Allen was eventually called to account in the criminal courts for these assaults. He was charged with indecent assault on March 12, 1993. After pleading guilty, Allen was convicted on March 28, 1994 of indecent assault relating to approximately 100 incidents with PD occurring between Jan. 1, 1958 and Sept. 1, 1960. He was sentenced to nine months imprisonment. The instant civil action against Allen was commenced in April 1997.

### Evidence of Contemporaneous Impact of the Abuse

[44] There is very little, or no, objective evidence of a negative impact of the abuse from the period during which it was occurring. Any evidence of a contemporaneous negative impact of the childhood sexual abuse derives from the plaintiff's testimony or from her revelations to the expert witness doctors.

[45] During the 1958-59 school year, PD was ill and home sick for approximately one month. This was the period during which Allen was not in North Bay. PD in her testimony did not connect this specific illness to the abuse but testified that the assaults made her stomach sick at other times.

[46] The plaintiff had no sleep disruptions during this period. She further testified that she had no difficulty with or change in her relationship with her parents or siblings. There was no change in her appetite nor any mood difficulties. The plaintiff and her brother testified that, although not yet dating, she had normal interaction with boys during this time.

[47] The plaintiff testified that, apart from Allen's behaviour, she enjoyed her job at the rectory and did not contemplate leaving it. The plaintiff did not withdraw from social contact but maintained her leadership role in the many activities in which she was engaged. Her faith never wavered.

[48] In the period immediately following Allen's departure for Temagami, the plaintiff experienced no sleep problems, no mood difficulties, no change in her relationship with her

parents or siblings, and she remained outgoing and responsible, although not as responsible as she could have been with respect to her schoolwork.

[49] The plaintiff testified that at various times during the childhood period she had difficulty urinating and wiping herself after urination. Because Allen touched her genitals she thought the assaults were somehow related to urination.

[50] As part of a ceremony welcoming the new chaplain to the school, the school children were made to sing or recite the poem, "Beautiful Hands of a Priest", in chapel. The plaintiff submits that the contrast between the substance of the poem and the abuse by Allen led to distress and confusion in the plaintiff's emotional and psychological state.

[51] The plaintiff's academic performance did not suffer during the years 1957-60. However, in June 1961, approximately ten months after the abuse ended, the plaintiff failed grade 12. For reasons which are set out in detail below, the evidence does not suggest that this was due to a delayed impact of the abuse.

### **Allen is not an active part of PD's life (1960-1977)**

#### **Failure of Grade 12**

[52] The plaintiff failed grade 12 in June 1961, because she did not write her final exams. Her explanation is that she was very involved in and more interested in extra-curricular activities. This led her to ignore her schoolwork and when exam time came around she chose not to study. At the exams themselves she merely copied the questions onto the blank answer sheets. After several days of this, she was found out and consequently failed. By her own testimony, the plaintiff does not in any way ascribe her failure of grade 12 to the sexual abuse or to problems associated with the defendant Allen. The plaintiff doesn't remember being "bothered" by failing grade 12.

[53] At various different times, the plaintiff has attributed her failure of grade 12 to the number and extent of extra-curricular activities in which she was involved. She was not interested in her schoolwork.

[54] As a result of failing, the plaintiff was obliged to repeat grade 12. She continued to attend the same school (St. Joseph's College), but as a boarding student rather than a day student. Her parents thought boarding at the school would permit her to concentrate more on her studies and it did. PD testified that she enjoyed being a boarder at St. Joseph's College because it gave her a new sense of freedom. It may also have freed her from some of her responsibilities around the house. PD continued to work at the Rectory.

#### **Boarding School**

[55] During her two years boarding at St. Joseph's, PD experienced no sleep or mood problems, suffered no further academic difficulties and maintained her leadership role on student council and in the Legion of Mary. She was a popular and gregarious student who, at times, would "butt heads" with the nuns at her school in her role as student council vice-president and later president. PD continued to work at the rectory until the end of her grade 13 school year in 1963.

[56] As she neared the end of high school, at the suggestion of Father McKee (another curate at the rectory and new Chaplain at St. Joseph's), PD decided to enter the convent.

#### Entering the Convent ~ PD entered the Convent more for practical reasons than spiritual reasons

[57] PD's decision to enter the convent was, according to her testimony, inspired more by convenience than any particular religious zeal. That is not to imply that she wasn't devout - she continued to attend Mass daily - but rather there were compelling practical reasons for entering the convent. The birth of her youngest sister, MC, and the fact that her parents had taken in a foster child meant that there was no bed for her at home. In addition, her tuition had not been paid and her boarding school would not release her report card for grade 13 until her tuition had been paid.

[58] Entering the convent provided her with a place to stay, it solved the problem of her tuition and report card, and the Order would also take care of her future tuition so she could begin to study at the post-secondary level. Furthermore, the dormitory for the novitiate nuns was next door to her boarding school and many of her friends were also entering the convent. Although she had never previously thought about entering a religious community, when Father McKee suggested the convent as a solution to her problems, for many reasons it made sense. In summary, the convent represented a convenient, practical and immediate resolution of her predicament.

#### Novitiate

[59] Notwithstanding her practical motives for entering the convent, PD's faith was strong and continued to grow during her novitiate. The novitiate is a three year period to prepare novice candidates to become nuns at the end of which they take their first vows, the vows of poverty, chastity and obedience.

[60] Her first year, 1963-64, PD attended teachers' college in North Bay and received her certification. The second year, known as the canonical year, PD lived at the Motherhouse studying religious life and vows. During this year, in December 1964, PD suffered some illness and was diagnosed with nervous gastritis.

[61] During the third year of her novitiate, 1965-66, PD worked as a teacher at Corpus Christi School in North Bay. In April 1966, while still teaching at Corpus Christi School, PD became ill and was unable to continue working. She was placed on bed rest for three weeks for nausea, vomiting and chronic cough. While studying for her vows, thoughts of Allen had surfaced for the first time since the childhood abuse had ended. In particular, in the context of studying for her vow of chastity, PD was confused and alarmed about her status as a virgin. She revealed to her confessor that she had been touched sexually by a priest when she was younger. This was likely the first disclosure of the abuse. Her confessor told her to put it out of her mind and to get on with her life. PD experienced some trouble sleeping and some nightmares around this time.

[62] In a letter to her General Superior ("Mother Superior") dated July 16, 1966, PD expressed some doubts about her vocation and asked to delay the taking of her first vows for a month.

#### PD's First Vows

[63] On August 15, 1966, following a delay of one month granted by her Mother Superior, PD swore her first vows and became a nun of the Sisters of St. Joseph of Sault Ste. Marie (the "Order").

#### Visits to Temagami

[64] In 1963, as part of a family-driving trip, PD visited Temagami and saw Allen for the first time since the abuse ended. There was no reactivation of symptoms of trauma. The visit was cordial and uneventful.

[65] Sometime during 1966, in the company of other nuns or nun candidates, PD visited Allen's parish in Temagami and saw him again over the course of two weeks, this time as a nun, a person with a specific position within the church. PD testified that she felt protected by her status as a nun. There was no reactivation of symptoms of trauma. PD testified that their relations were normal and the visit was uneventful.

#### PD Begins Teaching Full-time

[66] In September 1966, at the age of 22, PD began teaching at an elementary school in Sault Ste. Marie where she remained for two school years, later teaching in Thunder Bay and North Bay. This was the beginning of a lengthy period from 1966 to late 1977 when Allen played no active role in PD's life. She had largely succeeded in putting thoughts of the abuse out of her mind. In September 1968, PD began teaching at St. Elizabeth's elementary school in Thunder Bay and also enrolled in night classes at Lakehead University to take courses toward her B.A. This was a good period for PD. PD was a very competent teacher, able and willing to take on leadership roles. Her faith was deepening, her work was satisfying, and her education was advancing.

[67] In 1971 and 1972, over the course of two years, PD had a consensual sexual relationship with the principal of her school in Thunder Bay. PD testified that the childhood sexual abuse had no impact on this sexual relationship.

#### Allen is Hospitalized for Alcoholism

[68] On September 23, 1970, Allen was hospitalized in North Bay for complications arising from acute alcoholism. In particular, severe alcoholic liver disease, the result of many years of alcohol abuse. He was seriously ill and remained in hospital, both in North Bay and in Kingston, for approximately three months. He gradually recovered and was able to return to the Cathedral in January 1971. Allen testified that he did not take another alcoholic drink after September 23, 1970.

[69] Allen did, however, develop a dependency on prescription drugs for which he was eventually treated from January to March 1973 at the Hazelden treatment facility in Minnesota ("Hazelden"). His experience at Hazelden inspired him to return there in 1974 to take an addictions counsellor's course.

#### PD's Final Vows

[70] PD wrote to her Mother Superior on June 11, 1971 to defer the taking of her permanent, or final, vows. Instead, she renewed her temporary vows on June 20, 1971. Some ten months later, on April 2, 1972 PD swore her final vows of poverty, chastity and obedience. By that time, the relationship with her principal had ended.

#### The Beginning of PD's Alcohol Use

[71] The plaintiff first began to drink alcohol when the rules forbidding nuns from drinking alcohol were relaxed around 1972, when she was 28 years old. Between 1972 and 1974, her drinking was social and normally in the company of other nuns. The plaintiff concedes that the early social drinking is not connected in any way to the childhood sexual abuse. The plaintiff did not begin to drink because of the childhood sexual abuse.

#### PD is Misdiagnosed with MS

[72] In 1974, PD began to experience some health problems. She had been falling and dropping things and feeling unwell. Her doctors diagnosed *multiple sclerosis* ("MS"), a serious disease of the central nervous system. PD was devastated by the diagnosis and did not believe it. She was advised by her doctors not to teach.

[73] Not long after, it is not clear exactly when, it was determined that PD did not have MS but rather *myasthenia gravis*, a neuromuscular disorder characterized by muscle weakness and muscle fatigue. *Myasthenia gravis* is less serious than MS and is not degenerative. PD does not currently suffer from symptoms of *myasthenia gravis*. The misdiagnosis was a significant source of stress for PD and it is possible that she increased her use of alcohol around this time as a sedative. In consultation with her community it was decided that she would not return to active teaching but would instead enroll in full-time studies at the University of Waterloo ("Waterloo") with a view to completing her B.A. in psychology.

#### PD is Appointed to the Board of Directors of TV Ontario

[74] Also in 1974, in part because of some consultative work that she had done with the Ministry of Education, PD was appointed by the Premier of Ontario to the Board of Directors of TV Ontario ("TVO"). Her appointment at a young age to the Board of an important government-supported public television network is evidence of her intelligence, professional ability, leadership ability and capacity for hard work. She would serve on the Board until 1977.

#### PD's Use of Alcohol Increases

[75] When PD was appointed to the Board of TVO in 1974 her alcohol use increased, though still within a social context. She had access to alcohol on a more frequent basis, travelled frequently on Board business and was provided with an expense account which enabled her to buy her own alcohol. During this time she continued to study, earning her B.A. in psychology in 1975 from Waterloo, and her M.A. in applied psychology in 1976, also from Waterloo. It was around this time that PD ceased to wear the habit of a nun, primarily because she found her academic interactions with her fellow students were inhibited by her dress. Not wearing the habit also made it easier for her to buy her own alcohol without provoking comment.

#### Allen Begins Work as Alcohol Abuse Counsellor

[76] Allen, having completed an addictions counselling course at Hazelden in 1974, began to work as an alcohol abuse counsellor at St. Joseph's treatment centre in North Bay in February 1975. He resided in his own home and provided counselling services at the treatment centre. This became his primary religious mission.

#### PD is the Victim of other Sexual Assaults

[77] There are a number of unrelated incidents of sexual assault of which PD was the victim at various times. The admissibility of the evidence of the plaintiff's past sexual relations, both non-consensual and consensual (including the Thunder Bay school principal relationship), was

objected to by the plaintiff's counsel. After a *voir dire* to determine their admissibility I held they were admissible according to the new common law guidelines set down by the Supreme Court in *R. v. Seaboyer*, [1991] 2 S.C.R. 577.

[78] In June 1975 PD was in Waterloo completing some of her degree work when she was very unfortunately the victim of a sexual assault. J, a fellow student at Waterloo was giving her a ride in his car when he attempted to assault her. PD got out of the vehicle but was unable to escape him and was raped by the side of the road.

[79] The rape caused PD to drink to excess over a two-week period while she was waiting to determine if she was pregnant. In addition to the excessive drinking, PD isolated herself during this time. The facts adduced suggest that this drinking binge was related exclusively to the sexual assault by J and the anxiety of possibly being pregnant.

[80] Several incidents with two different individuals related to PD's work on the Board of TVO and occurred in 1975 or 1976. In one incident, while staying in a hotel in Sudbury, PD rebuffed the sexual advances of a TVO staff member. PD complained to the Board chair and the staff member was fired. Another incident, also in a hotel, involved one of her colleagues on the Board. PD was summoned to an ostensible meeting in his hotel room only to find her colleague naked. She was then forced to perform fellatio on him. There was a further incident on a different occasion with this same individual where PD was raped. She did not disclose these latter two assaults to anyone until much later.

[81] PD was also the victim of sexual assaults perpetrated by priests other than Allen. In 1976, she was raped by Father M. In 1976 or 1977 PD engaged in one act of sexual intercourse with Father B. It is ambiguous as to whether this was consensual or non-consensual sexual activity.

[82] There were also consensual sexual relationships with two other individuals in the 1980's.

### PD Begins her Doctoral Studies

[83] In 1976, having earned her M.A., the plaintiff enrolled in the doctorate of education (EdD) program at the University of Toronto. She studied both in Toronto and in North Bay. The solitary nature of her doctoral work contributed to her drinking pattern in the period around 1977. In August of 1977 she was staying at the Motherhouse in North Bay and working alone on her dissertation when she drank in an abnormal way. She bought a bottle of vodka and drank it over the course of several nights in her room alone. PD's abnormal drinking escalated rapidly that month. By the end of August 1977, she was drinking some alcohol every night.

[84] In her testimony, PD did not state that this episode of abnormal drinking occurred because of thoughts of Allen or because of anxiety related to thoughts of the childhood sexual abuse.

[85] As a nun who had taken a vow of poverty, there were practical obstacles to the plaintiff's use of alcohol. She was no longer wearing the habit, but she was provided with a very modest living allowance by the community and did not always have sufficient funds to buy her own alcohol. The plaintiff was able to drink on a more regular basis once she started to work on the Board of TVO, as she had an expense account and would stay in hotels when travelling for the Board. Significant travel was also a component of PD's consultancy work with the Ministry of Education, thus providing her with the opportunity to drink. The evidence shows that, at various points in her life, when the plaintiff had access to alcohol, the means to buy it, and the opportunity to drink it alone, she did so.

### **The Adult Relationship ~ 1978-1981**

[86] On Christmas day 1977, PD, who had heard from her parents that Allen was living on his own in North Bay, went uninvited to see him. She dropped in on him to wish him a happy Christmas. She described him as seeming very lonely. According to PD, the brief visit was cordial and she felt sorry for him.

[87] The defendant Allen's version of the Christmas day visit differs significantly from the plaintiff's. Allen testified that PD came into his home that day, immediately sat on his lap and initiated a sexual encounter. While the plaintiff disputes Allen's version of what happened that day, she admits that she initiated the renewal of social contact between them.

[88] Thus began a relationship that would span three years from early 1978 to July 1981. Allen had PD and her parents over for dinner on several occasions and reciprocal dinners were held at PD's family home. According to PD, Allen did whatever he could to insinuate himself into her life. He bought a typewriter and set it up in the basement so she could have a place to work on her dissertation. He bought a sewing machine for her use. And most significantly, he provided alcohol at his home for her to drink.

[89] At this time, PD was seconded to the Ministry of Education as a curriculum consultant and was working independently on her EdD. Allen was working as an addictions counsellor and saying Mass once a week at the convent where PD was living.

[90] According to the plaintiff, Allen began to invite PD to come over to see him. Sometimes she would come over, sometimes she would not. The plaintiff testified that she found it difficult to say 'no' to Allen. PD would visit Allen once or twice a week in early 1978 and more often as the year progressed. At his home, Allen would prepare one or more mixed drinks for PD and they would talk. The relationship soon became sexual. They did not always have sexual relations, but sexual contact between PD and Allen was a regular component of their interaction. PD would sometimes decline to have sex with Allen. There was no physical restraint or violence used when they had sexual relations. To Allen, PD appeared to consent to their contact and, on occasion, appeared to enjoy it. The plaintiff, on the other hand, submits that she felt coerced. The



plaintiff suffers from no sexual dysfunction and admits that she enjoyed some of the sexual encounters with Allen and others.

[91] When they were alone, the plaintiff called Allen "Dick" or "Richard". Allen was not always at home when PD would arrive. She would let herself in (she had been given a key) and would drink in Allen's home alone. She would also work on her dissertation when alone at Allen's home.

[92] On at least one occasion, PD drank herself insensible and Allen covered for her by providing an explanation for her absence from the Motherhouse. Allen did not advise PD to "take it easy" with her drinking, nor did he expressly encourage her to drink more, although he did prepare large drinks for the plaintiff on a regular basis. PD drank the alcohol provided by Allen and also bought her own alcohol during the adult period.

[93] The evidence indicates that the relationship was a mutually exploitative one. PD got access to alcohol and a quiet, private place to drink it. Allen got sex and companionship. The plaintiff described the relationship as private, but non-intimate. It is clear that Allen, on the other hand, had strong feelings for PD. Towards the end of the relationship he professed his love for her and asked her to marry him. She refused. Allen described the relationship as more than just sexual. They went to movies, the ballet, and restaurants together.

[94] Allen testified that by late 1980 he suspected that PD had an alcohol problem. He began to mark his liquor bottles. He found empty wine bottles in the garbage and noticed his own stocks becoming depleted. Allen had been trained to recognize the signposts of alcohol abuse. In addition, Allen knew that PD's father struggled with alcoholism. Allen did not provide alcohol counselling to PD's father, but they had attended AA meetings together.

[95] In July 1981, PD attended a retreat where she came to the realization that she was an alcoholic. Back in North Bay she consulted with her father and with Allen. Allen advised her to go to AA. According to PD, she ended the relationship in July 1981 because she had realized that it was not a healthy relationship. PD stopped drinking for a period of four or five months after the relationship ended.

[96] Allen's description of the end of the relationship differs from PD's description. Allen testified that PD came to him late one night in 1981 and revealed that she was once again involved with the Thunder Bay school principal. According to Allen, he asked for his key back at that point and the relationship was over.

[97] PD was a nun of the Order at all times during the adult period. Allen was a priest of the Diocese at all times during the adult period. He did not wear a collar and did not have a parish during the adult period. He said Mass once a week at PD's convent. He was capable of hearing PD's confession but did not. His primary religious mission at this time was providing addictions counselling services at St. Joseph's treatment centre. He was still paid a salary by the Diocese.

### **PD Struggles with Alcohol Abuse ~ (1981-1991)**

#### PD continues to abuse alcohol

[98] To the outside world, PD appeared to be an accomplished and highly educated teaching professional. Although briefly sober after the adult relationship with Allen ended, in 1982 PD began to drink again. She continued to work on her dissertation.

[99] There was evidence that PD had two sexual affairs around this time in 1982 or 1983. One with an individual named A, the other with Father B. The affairs were consensual and they did not occur at the same time.

[100] In 1983, PD successfully defended her thesis and was awarded her EdD degree.

#### Alcohol Interferes with PD's Ability to Work

[101] Towards the end of the 1983-84 school year, when PD was in Sudbury teaching high school at Marymount College, she was drinking heavily, almost daily. For the first time, her alcohol abuse interfered with her ability to teach. This was the first point at which her alcohol use became known within her professional community.

[102] She was absent frequently from work and, by May 1984, she let another teacher take over her class. When she was asked why she drank so excessively during this period, she responded that she didn't really know and that she did not feel confident teaching high school. When asked if there was any other reason, she answered she didn't know, that she didn't need a reason.

[103] In October 1984, PD was hospitalized for drinking related disorders. She was seriously ill. She disclosed to her Mother Superior that she had an alcohol problem. She remained in hospital for a month and did not return to work until January 1985.

[104] In January 1985, the plaintiff returned to her work for the Ministry of Education. As before, the work involved travelling around the province. Once again, this provided her with the opportunity to drink alone in hotel rooms and she did so.

#### The Westbury Hotel Incident

[105] In March 1985, while staying at the Westbury Hotel in Toronto, the plaintiff went on a severe binge over the course of a week. Her brother found her passed out in her hotel room. This led to her admission to the addiction treatment facility at Bellwood Health Services in Toronto ("Bellwood") where she was diagnosed as being alcohol dependant. During her treatment, PD was asked by her physicians about possible childhood sexual abuse. She did not disclose the childhood abuse.

[106] PD was released from Bellwood in April 1985 and immediately resumed drinking. Less than two months later, on the recommendation of the Order, PD was sent to the well-known addictions treatment facility Hazelden, in Minnesota. She remained there for over seven months. The treatment program included similar elements as the Bellwood program. At Hazelden, as at Bellwood, PD revealed to no one that she had been abused as a child by a priest. Among the Hazelden diagnoses were that PD had a tendency to worry excessively about other people's feelings and that she was given to perfectionism.

[107] After leaving Hazelden, PD testified that she can't remember if she felt better or not or whether she wanted to quit drinking, but she knew she didn't want to get caught again.

#### PD is asked to go on Leave of Absence from the Order

[108] Immediately after her release from Hazelden, PD resumed drinking. This came to the attention of the Motherhouse and, in March 1986, PD was asked to go on a leave of absence from her community. She never returned. She remained on leave of absence until July 1989 when she left the Order permanently. While on leave of absence, she remained under vows but did not live at the Motherhouse and did not receive any monies from the community.

[109] After going on leave, in July 1986, PD did a short stint in a treatment program for alcohol problems at Camillus Centre in Elliot Lake ("Camillus").

[110] In September 1986, PD took a position as a lecturer with Nipissing University in North Bay, but relapsed during the first week of school and was fired. When asked about why she relapsed, PD explained that she panicked about her ability to handle the job. In October 1986, she once again entered the treatment program at Camillus for two weeks. This was the beginning of almost a year of relative sobriety.

[111] She relapsed again in 1987 and for the next two years was alternately sober or drinking. She was working as a part-time teacher for the Nipissing Roman Catholic Secondary School Board. There was no evidence that PD entered any treatment programs during the period from 1987 to 1989.

#### PD Leaves the Order

[112] In 1989, at the age of 44, PD made the decision to leave the Order for good. Faced with renewing her leave of absence or with leaving the Order she reluctantly decided that she would put less pressure on herself if she left. She was concerned that she was causing trouble to the community, which, in turn, caused her anxiety. In July 1989, PD received her dispensation from religious vows.

#### PD gets Alcohol Counselling from Allen ~ Confronts Allen

[113] Leaving the Order did not stop PD from drinking. In fall 1990 after yet another relapse, and on the advice of her physician, Dr. Cuncins, PD applied for long term disability. As a condition of her payments, PD was required to receive counselling. She called St. Joseph's treatment centre and, remarkably, Allen was assigned as her counsellor. Allen, then aged 62, abruptly retired from St. Joseph's and instructed PD to meet him for counselling at his home. Allen had not given alcohol counselling to any other person in his home. A few sessions were held in his home and some sessions were missed before Allen went to Florida on vacation in October 1990. The treatment was not successful. PD felt angry and uncomfortable.

[114] After a drinking binge in early 1991, PD was admitted to North Bay Psychiatric Hospital on February 26, 1991, where she remained for five days. In a follow-up report authored by Dr. A.F.J. Bell dated March 27, 1991, Dr. Bell described her illness as follows: "She has a frightful history of alcoholism, and is a veteran of many treatment centres and therapists." He further noted that her prognosis was poor.

[115] Counselling with Allen resumed in May 1991, but PD was a reluctant patient. PD made efforts to change the venue for the sessions. Ultimately, PD confronted Allen with how she was uncomfortable getting counselling from him given their history together and his abusive conduct. Allen did not deny the conduct. He said he wasn't proud of it, but that he wasn't sorry.

[116] Although she was afraid of losing her pension, PD decided that she needed counselling from someone other than Allen. Dr. Cuncins and Allen referred her to Paul Smith, a psychologist in North Bay, whom she began to see in September 1991. Paul Smith continued to provide therapy to the plaintiff until 1997.

[117] It should be noted that in June 1991, PD was diagnosed with another relatively serious medical problem, *Tomaculous Neuropathy*. It is an hereditary nerve condition inhibiting motor function. PD's right foot, right hand, and eyelids are affected by the condition.

#### **The Disclosure Period ~ 1991-1994**

[118] PD began to see Paul Smith for therapy on September 4, 1991. The abuse by Allen during the childhood period and Allen's behaviour during the adult period quickly became live issues in her therapy. In a letter dated September 25, 1991 Mr. Smith wrote to PD's benefits administrator that "part of her [PD's] avoidant personality makeup has to do with several incidents of sexual abuse as well as several years of ritual abuse." PD testified that Paul Smith helped her to consider Allen's conduct responsible for her alcoholism.

[119] During an appointment with Dr. Cuncins on September 17, 1991, PD poured out the history of her relationship with Allen, including the childhood abuse. Shortly after the disclosure to Dr. Cuncins, PD disclosed the abuse to her AA sponsor 'Gary'. PD continued her therapy with Paul Smith and was relatively sober in late 1991 and into 1992. PD testified that she

experienced nightmares and flashbacks throughout the disclosure period from September 1991 to March 1994.

[120] There was evidence of a harrowing event, referred to in Dr. Cuncins' notes as a "rape", that occurred in late 1991 or early 1992.

[121] In May 1992, PD heard that Allen had been appointed to a new position within the Diocese as administrator at Corpus Christi Church. Upset at the possibility that Allen might be working in a parish again in close proximity with children, she approached Bishop Plouffe and disclosed in general terms the abuse from the childhood period. Allen was removed as administrator of Corpus Christi Church in June 1992 because of the allegations. Pursuant to Diocese policy, Allen was then sent for psychological and pastoral assessment at Servants of Paracletes in St. Louis ("Paracletes"). Although Allen was removed from Corpus Christi, he retained the faculties of a diocesan priest, as he does to this day. In other words, Allen can still say Mass, minister the sacraments and perform the other duties of a diocesan priest.

[122] At Paracletes, no amnesia was diagnosed in Allen in relation to the childhood period. It was at Paracletes that Allen advised his doctors that while he was in Temagami in the early 1960's he became aware that he had a reputation as a "little girl feeler." Allen testified that he knew it was a grave violation of trust and of Canon law to have abused PD as a child.

[123] Bishop Plouffe did not offer or provide any pastoral counselling or funds for therapy to PD. PD, who at this point was no longer a nun but was still a member of the Diocese, received no support from the Diocese.

#### PD Returns to Teaching, but Only Briefly

[124] In September 1992, PD returned to teaching at an elementary school in Powassan, but was unable to control her drinking. By October 1992 she was unable to continue, having used some 20 days of sick leave. In addition, concerned parents had begun to circulate a petition for PD's removal because of rumours of alcoholism which the plaintiff alleges were promulgated by Allen. The petition was never filed. She applied for a continuation of her long-term disability leave which was granted. She has not been able to return to teaching since that date. Faced with being terminated for "innocent absenteeism", PD officially resigned from teaching in June 1994. Her long term disability coverage ended in June 1993 and she has been living on the reduced income of a Teacher's Disability Pension since that time.

#### Criminal Proceedings

[125] In December 1992, PD was approached by the police who were investigating allegations of sexual abuse against Allen. The police had been led to PD by PD's younger sister, who, at the time, worked at Children's Aid. PD gave a statement in which she described the

childhood abuse substantially as it is recorded here. Around Christmas 1992, PD asked Bishop Plouffe for some assistance in the form of money for therapy but was refused.

[126] In March 1993, Allen was arrested and charged with indecent assault. PD was upset when Allen was charged. She felt confused, guilty, depressed and conflicted. She continued to abuse alcohol.

[127] In March 1994, about a year after he was charged, Allen pleaded guilty and was convicted of two counts of indecent assault concerning the childhood period in relation to PD and in relation to another victim. He was sentenced to nine months imprisonment.

[128] At least twice during that same year, PD entered treatment programs for alcoholism in North Bay. After Allen's conviction, PD applied for and received some monies from the Criminal Injuries Compensation Board.

### Impaired Driving Convictions

[129] The plaintiff has been convicted of driving while impaired on three occasions. In 1991, 1994 and most recently in 2002. Her licence to drive is currently suspended. The criminal record resulting from these convictions and, more particularly, the long periods during which she has been unable to drive have had a negative impact on her ability to work.

### Paul Smith

[130] PD ceased to see Paul Smith as her therapist in 1997. She testified that she was unable to follow his treatment regime and, because of her reduced income, was unable to pay him. Paul Smith did not give evidence at the trial.

### PD Today

[131] Other than six weeks with a therapist in 2003, the assessments related to this litigation, and occasional AA meetings, PD has been without therapeutic treatment since she stopped seeing Paul Smith in 1997. She continues to struggle with her alcoholism and is living on her reduced teacher's pension. PD feels compassion for Allen, but also anger, particularly in relation to Allen's refusal to apologize for his conduct after she confronted him in counselling in 1991.

[132] The plaintiff continues to suffer from alcoholism, depression, anxiety, low self-esteem, and feelings of mental distress including guilt, shame and blame. The plaintiff also

suffers from financial difficulties. She was obliged to sell her home because of her reduced financial circumstances.

[133] While not relevant for the purposes of the disposition of this trial, there was evidence of another stressful relationship in PD's life. In 1996 or 1997, PD took in a woman as a boarder who subsequently took advantage of PD's hospitality. The evidence suggests that this boarder has been a significant source of stress for PD during a time when she has more than enough stress in her life. The boarder has stolen from PD and has also borrowed money without paying it back. PD testified that the boarder has now moved out.

#### PD's Brother

[134] PD's younger brother, MD, testified that the family home was a happy place growing up. He testified that his father was a social drinker and that he never saw his father inebriated. The family was active in the church. MD testified that PD was a normal child, that he never saw her depressed and did not notice her avoid Allen. MD testified that after about 1990 PD seemed to withdraw from contact with him and made herself unavailable.

#### The Experts

##### Dr. Nina Josefowitz, Ph.D.

[135] Dr. Nina Josefowitz, Ph.D., appeared as an expert witness for the plaintiff. She is a registered psychologist, practicing outpatient psychotherapy and assessment in Toronto since 1981. She is also an Adjunct Professor at the Department of Adult Education, Community Development and Counselling Psychology Program at the Ontario Institute for Studies in Education at the University of Toronto (OISE).

[136] Dr. Josefowitz authored two reports of her opinions. The first report, dated July 11, 2003, is based on approximately seven hours of clinical interviews with the plaintiff (plus additional telephone interviews totalling one and a half hours), a review of documentation provided to her by the plaintiff's counsel, psychological test results, and a review of pertinent academic and professional literature. The second report, dated October 27, 2003, is a supplementary report responding to the reports of the defendants' experts.

[137] Dr. Josefowitz diagnosed the plaintiff as having alcohol dependence disorder, dysthymia (chronic depression), and post-traumatic stress disorder ("PTSD"). Dr. Josefowitz did not diagnose a personality disorder beyond feelings of inadequacy and feelings of shame. Dr. Josefowitz opined that PD's dysthymia has also included occasional major depressive episodes.

[138] Dr. Josefowitz estimates that PD's Global Assessment of Functioning ("GAF"), according to the *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., (American

Psychiatric Association: Washington, 1994) ("*DSM-IV*") scale, is 50, where 10 is non-functioning and 100 is superior functioning. In testimony, Dr. Josefowitz modified her opinion of PD's GAF to be "40 to 50". A GAF of 40 to 50 can be expressed as a serious impairment in social occupational functioning. Consequently, Dr. Josefowitz believes PD is not able to return to teaching.

[139] Dr. Josefowitz points to the multi-faceted nature of the harms suffered by PD from the childhood sexual abuse. The harms, or psychological impacts, include: feelings of inadequacy, reliance on dysfunctional coping styles, low self-esteem, and feeling that she was somehow to blame for what happened to her. According to Dr. Josefowitz, these harms were aggravated by the lengthy time over which the childhood abuse took place and by the significant developmental stages experienced by a young girl of 13 to 15 years.

[140] Dr. Josefowitz described the severity of the childhood abuse as "moderately intrusive". In coming to this conclusion, she pointed to such factors as the developmental age period of the victim (age 13 to 15), the duration of the abuse, the fact that some force was used, and the use of sarcasm by Allen.

[141] Dr. Josefowitz acknowledged that the childhood sexual abuse is not the sole cause of PD's alcoholism, but submits that it is a factor that, in combination with other factors, caused PD's alcoholism. Dr. Josefowitz points to four factors which caused or materially contributed to PD's alcoholism: (1) the childhood sexual abuse, (2) PD's genetic vulnerability (family history of alcoholism), (3) possible sexual assaults during PD's university years, and (4) adult sexual events with Allen.

[142] Dr. Josefowitz testified that if PD had suffered no childhood sexual abuse, then it is unlikely she would have developed alcohol dependency "as she did" (her words).

[143] Dr. Josefowitz concluded that PD started drinking heavily during the adult period. Dr. Josefowitz noted that the associated shame of the childhood abuse and the adult relationship interfered with PD's ability to obtain treatment. PD did not disclose the abuse to anyone at Bellwood or Hazelden, effectively delaying any possible recovery.

### Psychological Tests

[144] Dr. Josefowitz administered a number of psychological tests on the plaintiff and interpreted the results.

### MMPI-2

[145] The Minnesota Multiphasic Personality Inventory (MMPI-2) is the most widely used psychological test in North America. It is a criterion reference test designed to be as objective as possible. There are a number of scales which measure the respondent's



psychological status. PD's scores on the exaggeration scale were slightly elevated, suggesting some exaggeration, but were still within the valid range. See J.N. Butcher et al., *MMPI-2: Manual for Administration, Scoring, and Interpretation*, rev. ed. (U. of Minnesota Press, Minneapolis) at 32.

[146] PD's test results produced an elevated '4-9 profile'. PD's responses indicate she is suffering from a great deal of emotional turmoil across a variety of areas. PD is experiencing depression, feelings of sadness, lack of energy, and feelings of worthlessness. PD's responses further indicate that she is lacking in self-confidence and tends to be introverted and withdrawn. She tries to cope with her underlying feelings, but is overwhelmed.

### TSI

[147] The Trauma Symptom Inventory (TSI) is designed specifically to measure symptoms of Post-Traumatic Stress Disorder (PTSD). The results of this test suggested that PD copes with her trauma via defensive avoidance and has difficulty discriminating her needs and issues from those of others.

### PTSD

[148] PTSD is a psychological condition characterized by the development of specific symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threat to one's physical integrity (*DSM-IV*, p. 463). An extreme traumatic stressor for children can include developmentally inappropriate sexual experiences (*DSM-IV*, p. 464). The symptoms include, *inter alia*, persistent re-experiencing of the event, persistent avoidance of stimuli associated with the trauma, a general numbing of responsiveness, and persistent symptoms of increased arousal. The symptoms must persist for more than one month.

[149] Dr. Josefowitz believes that PD has suffered from two episodes of PTSD: in 1966 when thoughts of Allen surfaced during PD's novitiate, and in the early 1990's during the disclosure period.

### PAI

[150] Dr. Josefowitz was not able to offer a clinical interpretation of PD's Personality Assessment Inventory (PAI), because PD's answers were too inconsistent for the test results to be considered valid. Reasons for such inconsistency can include: carelessness, reading difficulties, confusion, or failure to follow the test instructions.

### Assessment of Impact of Abuse

[151] Dr. Josefowitz points to three factors which should be considered when assessing the impact of the abuse: pre-trauma vulnerability, severity of the assault, and the overall meaning of the sexual abuse.

[152] According to Dr. Josefowitz, PD's pre-trauma vulnerability includes: her family history of alcoholism, her responsible position within her own family, Allen's position as a priest who was held in high esteem, her faith, and her need to keep her job at the rectory.

[153] Dr. Josefowitz agreed with the defendants' expert that, generally, the more extreme the sexual assault the more serious the damage. Severity is influenced by a number of factors including: the age and developmental stage of the victim, whether force was used, the extent of the sexual contact, and the frequency and duration of the sexual contact.

[154] In her report, Dr. Josefowitz describes the severity of PD's childhood abuse as "moderately severe", pointing to PD's developmentally vulnerable age and the "three-year period" over which it took place.

[155] The overall meaning of the abuse refers to the meaning the individual attaches to the abuse. Abuse that is not at the severe end of the spectrum can have a significant impact if the victim attaches significant meaning to the abuse. The converse is also true.

[156] Dr. Josefowitz notes that PD's illness during grade ten "coincided with the escalation of the sexual abuse" and that PD now believes this was a psychological reaction to the abuse.

### The Adult Relationship

[157] Dr. Josefowitz opines that PD submitted to Allen as an adult because of his "grooming" her to submit during the childhood sexual abuse, essentially re-victimizing the plaintiff as an adult. She points out that female victims of childhood sexual abuse are statistically more likely to be the victims of sexual assaults as adults.

[158] PD ostensibly submitted to Allen's sexual advances. In exchange, she received alcohol and a place to work on her dissertation. Dr. Josefowitz described the "power dynamics" of the relationship as influenced by four factors: Allen's status as a priest, PD's status as a nun, the childhood sexual abuse, and PD's desire to complete her doctoral work.

[159] Dr. Josefowitz opines that the sexual contact during the adult relationship had a significant negative impact on the plaintiff's self-esteem. PD felt tremendous shame and guilt about the relationship and was self-critical about her own inability to stop drinking. Dr.

Josefowitz opines that PD became an alcohol abuser during the years of the adult relationship, specifically sometime during 1978 or 1979. Dr. Josefowitz believes that PD then advanced to the more serious alcohol disorder, known as alcohol dependence disorder, sometime during the disclosure period as a result of the stress of dealing with the criminal proceedings and associated feelings of guilt, blame and shame.

#### Future Treatment

[160] Dr. Josefowitz notes that alcoholism is notoriously difficult to treat. Any future treatment will need to occur in stages, first addressing the alcohol abuse and symptoms of depression and then, once PD is less symptomatic, addressing her underlying coping patterns. Dr. Josefowitz estimates that the plaintiff will require a period of time in a residential treatment facility followed by ongoing therapy and follow-up for at least five years. Even so, Dr. Josefowitz's prognosis is guarded, rendered somewhat more optimistic by the plaintiff's long history of significant accomplishment. The estimated costs of the future treatment are detailed below as summarized by the plaintiff's economic loss expert.

#### Issues Raised in Cross-Examination

[161] In cross-examination it emerged that Dr. Josefowitz's report does not make mention of some material facts. Dr. Josefowitz admitted that her report does not mention PD's description of herself during the years of childhood sexual abuse as very active and not depressed. Dr. Josefowitz submits that PD's participation in so many activities was a coping mechanism to avoid dealing with the abuse. The report also fails to mention that PD's faith was never shaken by the events. The report does not mention that PD loved working at the rectory, did not consider quitting her job and had no bad dreams while the abuse was occurring.

[162] In testimony, Dr. Josefowitz stated that she believes it is unlikely PD would have become an alcoholic if she had not been sexually abused as a child. In cross-examination, Dr. Josefowitz acknowledged that that opinion is not expressed in her report. The report points more squarely to the adult relationship as a cause of PD's alcoholism.

#### **Dr. Charles Cuncins, M.D.**

[163] Dr. Charles Cuncins is PD's family physician in North Bay and has treated PD since 1989. He was called as a witness by the plaintiff. He was qualified to give expert evidence as a general practitioner experienced in treating alcoholic and alleged sexual disorders.

[164] Dr. Cuncins opined that PD is not fit to return to teaching and the possibility of her beating her alcohol problem is poor without a change in her motivation. Dr. Cuncins lays the blame for PD's alcoholism on the sexual abuse by Allen.

**Dr. Percy Wright, Ph.D.**

[165] Dr. Percy Wright, Ph.D., appeared as an expert witness for the defendants. Dr. Wright is a clinical psychologist at the Mental Health Centre Penetanguishene (Oak Ridge Division). Dr. Wright's practice focuses primarily on forensic psychology assessments in relation to criminal matters. Dr. Wright did not interview PD or administer psychological tests on her. He appeared exclusively to dispute Dr. Josefowitz's conclusions with respect to the interpretation of PD's psychological test results.

[166] In particular, he questioned Dr. Josefowitz's characterizations of PD's MMPI-2 results. PD generated a 4-9 profile, with elevated "T" scores of 84 and 79. Such a profile, according to Dr. Wright, would typically suggest an individual coming from a discordant family, prone to sensation-seeking, substance abuse and manifest poor judgment under stress. Dr. Wright indicated that PD reported family discord on her MMPI-2 in the 99th percentile. In his report dated September 24, 2003, Dr. Wright expressed "extreme disagreement" with Dr. Josefowitz's non-traditional interpretation of PD's MMPI-2 profile.

[167] Dr. Josefowitz acknowledges that her interpretation of PD's 4-9 profile is non-traditional. In Dr. Josefowitz's opinion, PD's behaviour is not consistent with a traditional 4-9 profile because a person may enjoy some novelty in their life without being predominantly a sensation-seeking individual. In addition, Dr. Josefowitz submits that the MMPI-2 is not designed primarily to assess victims of childhood sexual abuse.

**Dr. Philip Klassen, M.D.**

[168] Dr. Philip Klassen, M.D. appeared as an expert witness for the defendants. He is a doctor and psychiatrist and Deputy Physician-in-Chief with the Centre for Addiction and Mental Health (formerly known as the Clarke Institute) in Toronto. He is also an Assistant Professor in the Departments of Psychiatry and Medicine at the University of Toronto.

[169] Dr. Klassen has testified numerous times before Ontario courts, generally in the realm of criminal sexual behaviour.

[170] Dr. Klassen testified that the childhood sexual abuse experiences do not appear to have had a significant affect on PD's academic or social function during the time when it was

occurring. PD's marks in school remained adequate; PD continued to participate in her many activities and held leadership roles in most of them; PD expressed no sense of relief when Allen left for Hearst and the childhood abuse finally stopped in the late summer of 1960. Dr. Klassen opines that this evidence suggests that PD was able to manage or parcel off the emotional impact of the childhood sexual abuse.

[171] Dr. Klassen further pointed out that there was no apparent re-victimization when PD visited Allen in Temagami in 1966. Dr. Klassen testified that, if the childhood abuse continued to be a stressor at that time, one would normally expect some symptoms of trauma to emerge. In PD's discussions with Dr. Klassen and in her testimony before this Court, she said the 1966 visit caused no symptoms. Dr. Klassen pointed out that sexual experiences throughout PD's life do not appear to have triggered symptoms of trauma related to the childhood abuse.

[172] Dr. Klassen pointed out that PD faced some significant difficulties in her family of origin, including a demanding and exacting mother, an alcoholic father, and other relatives with alcohol problems.

[173] Dr. Klassen submitted that PD appears to have made numerous important life decisions impulsively, including her decision to enter the convent (by PD's own evidence, she did not enter the convent to escape from Allen-related trauma or stress), and her decision to pursue her EdD. Dr. Klassen also pointed out the plaintiff's tendency to overextend herself. He described her as "ambitious" and "leaderly". He submitted that it is not clear that PD's tendency to overextend herself is referable to the actions of Allen.

[174] Dr. Klassen diagnoses no psychosis in PD. Dr. Klassen indicated in his report that PD has some maladaptive personality traits, some beneficial and some detrimental. According to Dr. Klassen, PD is ambitious and industrious, somewhat sensation-seeking, somewhat headstrong, at times passively defiant, has somewhat superficial relationships, a tendency to overextend herself, and a tendency to make decisions impulsively

### Alcohol Use

[175] Dr. Klassen indicated in his report that the course of any alcohol abuse disorder tends to be one of increasing dysfunction in a waxing and waning fashion. The transition from alcohol use to abuse is often difficult to pinpoint. Dr. Klassen indicated that, according to the *DSM-IV*, a person can be considered to suffer from an alcohol abuse disorder when they meet *any one* of the following factors: failure with respect to a major role obligation; alcohol-related legal problems; alcohol use in situations that are physically hazardous; or persistent alcohol abuse despite knowledge of social or occupational problems caused by the alcohol use.

[176] Dr. Klassen also set out the diagnostic criteria for the more serious disorder, alcohol dependence. A person can be considered to be alcohol dependent, according to the *DSM-IV*, when they exhibit *three or more* of the following: tolerance to alcohol; symptoms of withdrawal when not drinking; use in larger amounts (or for longer periods) than intended; unsuccessful efforts to control use; significant time devoted to obtaining alcohol or recovering from it; sacrificing important social, occupational or recreational activities; and continued abuse despite knowledge that there is a problem. Only a small subset of those with alcohol abuse disorder will go on to develop alcohol dependence disorder.

### PD's Trajectory

[177] Dr. Klassen testified that there is no question that alcohol has interfered significantly with PD's life trajectory.

[178] Dr. Klassen indicated that the onset of alcohol use by PD circa 1972 does not appear to be related to Allen. During most of her years in the convent, PD functioned well socially, educationally and occupationally. Dr. Klassen described the period from 1974 to 1977 as the beginning of PD's alcohol abuse. PD began to use alcohol as a stress reliever and as a sedative in the mid 1970's. Contributing factors to PD's alcohol use during this time were boredom, conflict about her status as a nun, and loneliness.

[179] Dr. Klassen described a further escalation in PD's drinking during the adult period. PD's increased access to alcohol and the opportunity to drink contributed to her increased intake during the adult relationship. Dr. Klassen noted a brief de-escalation following the end of the adult relationship in 1981, but concluded that PD's drinking continued to increase shortly thereafter. Dr. Klassen puts PD as meeting the *DSM-IV* criteria for alcohol abuse disorder sometime in the early to mid 1980's.

[180] Dr. Klassen wrote in his report that PD's ability to work appears to have been compromised largely at times when her alcohol use was most significant. Dr. Klassen believes that PD's decision to leave the Order may not have been helpful because the Order provided PD with structure in her life, but he acknowledges that alcohol interfered in her relationship with the Order.

[181] Dr. Klassen agrees with Dr. Josefowitz that there is a significant statistical correlation between childhood sexual abuse and the later development of alcoholism. Dr. Klassen agrees with Dr. Josefowitz that PD's worst decade of functioning was the 1990's. He submits that, depending on how the indicia are characterized, PD probably met the *DSM-IV* criteria for alcohol dependence disorder by the early 1990's.

### The Adult Relationship

[182] Dr. Klassen concluded that the adult relationship was not characterized by an imbalance of power between Allen and PD. He noted that PD consistently described Allen as lonely and pathetic; that she retained the capacity to decline sexual contact at times; that the relationship was more utilitarian as opposed to being predicated on trauma; and, that the relationship may have been mutually exploitative. Dr. Klassen testified that he cannot characterize the adult relationship as abusive.

#### Assessment of Impact of Abuse

[183] Dr. Klassen wrote in his report that an individual's response to a stressor (in this case, the childhood sexual abuse) varies in relation to a number of factors:

- (a) the intrusiveness, duration and extent of the stressor. Dr. Klassen concluded that the duration was "significant", and the intrusiveness "mild to moderate";
- (b) the extent of the individual's social supports (including treatment);
- (c) the nature of the relationship between the perpetrator and the victim (a betrayal of a trust relationship may result in more significant trauma);
- (d) the individual's family environment;
- (e) the individual's coping resources;
- (f) the presence of other psychiatric disorders;
- (g) gender; and
- (h) the existence of prior trauma.

[184] Dr. Klassen opines that PD did not attach significant meaning to the abuse at the time it was occurring. Dr. Klassen notes that PD did not appear to have re-experienced the trauma upon seeing Allen in Temagami in 1966 or on exposure to other sexual experiences. Dr. Klassen indicates that PD did appear to suffer some distress related to the childhood abuse in 1966 around the time of studying for her first vows. Dr. Klassen opines that this distress did not amount to PTSD. Dr. Klassen testified that it is not clear to him that PD has ever met the criteria for PTSD.

[185] Dr. Klassen notes that the childhood abuse did not seem to have had an identifiable negative impact on PD's educational history, as she had earned a doctoral degree by 1983. Dr. Klassen further notes that the childhood abuse did not appear to have had an identifiable negative impact on PD's sexual function.

[186] Dr. Klassen believes it is reasonable to conclude that the disclosure of the abuse and the attendant legal proceedings during periods of time in the 1990's may have contributed to her psychological distress and compromised her ability to maintain employment during that time. He indicates, however, that the impact was time-limited and is no longer active.

[187] Dr. Klassen indicated in his report that the overall identifiable negative impact on PD of the childhood sexual abuse by Allen appears to have been "relatively slight or modest".

Dr. Klassen testified that there are no indicia to suggest that the childhood sexual abuse contributed to PD's alcoholism.

### Psychological Test Results

[188] Dr. Klassen had read Dr. Josefowitz's report, including PD's psychological test results, before he prepared his own. In his report, he acknowledges that he is not a psychologist and does not consider himself qualified to interpret psychological test results, but states that he does have some familiarity with aspects of psychological testing and a great deal of exposure to persons with similar MMPI-2 profiles. Dr. Klassen expressed that Dr. Josefowitz's interpretation of PD's 4-9 profile "bears little or no resemblance" to traditional 4-9 profiles or to PD and her history as he knows it.

### Issues Raised in Cross-Examination

[189] Dr. Klassen testified that the secrecy surrounding the adult relationship was a stressor for PD, because of the forbidden nature of the relationship. Dr. Klassen admitted there was a close temporal association during the period from 1992 to 1994, between heavy alcohol use by PD and symptoms of trauma related to disclosing the abuse and dealing with the criminal proceedings. Dr. Klassen admitted that there is *prima facie* validity to the proposition that childhood sexual abuse is likely to be a contributory factor to the later development of a substance abuse disorder.

[190] Although Dr. Klassen testified in examination in chief that it was possible for PD to return to work, in cross-examination he testified that, without treatment, he had concerns about her ability to return to sustained work.

[191] Dr. Klassen testified that he was not able to give an opinion as to whether it was likely PD would still have become an alcoholic if she had not been sexually abused as a child.

### Limits on Dr. Klassen's Assessment

[192] Dr. Klassen expressed in his report certain limits on his assessment. Dr. Klassen did not speak directly with anyone other than PD. A considerable amount of time has elapsed since the childhood sexual abuse and PD has related the events to numerous people at numerous times. Dr. Klassen opines that repeated evaluations or disclosures can themselves produce some reshaping of memories.

### Tom Strezos, C.A.



[193] Tom Strezos is a chartered accountant and certified business valuator who heads the Business Valuations and Litigation Support practice at Toronto-based Mintz & Partners Financial Services. He was called by the plaintiff's counsel as an expert witness on the quantification of economic loss. He testified that PD's past and future income loss amounts to some \$1.387 million, including the alcohol treatment costs detailed below. His evidence was not disputed by the defendants who submit there can be no economic loss if causation is not proven.

[194] In his report, Mr. Strezos summarized the costs of a future treatment program for PD's alcoholism. He relied on Dr. Josefowitz's estimates of the required treatment and associated costs for his base figures. His conclusions are as follows:

<u>Treatment</u>	<u>Present value of future cost</u>
Alcohol treatment (30-day program)	\$6,200
Alcohol treatment (six-week residential program)	\$9,300
Individual therapy (first three years)	\$21,454
Individual therapy (next two years)	\$6,610
Group therapy (first two years)	\$1,935
Psychotropic medication (first three years)	<u>\$1,716</u>
<b>Total</b>	<b>\$47,215</b>

### Positions of the Parties

#### Plaintiff (Childhood Assaults)

[195] The plaintiff alleges sexual assault, battery and breach of fiduciary duty by Allen during the childhood period.

[196] With respect to the childhood assaults, PD submits that once a criminal conviction is proved then the plaintiff has *prima facie* discharged her burden of proof for the conduct that was the subject of the criminal conviction. The criminal conviction was for Allen's conduct from January 1, 1958 to September 1, 1960. The plaintiff also alleges wrongful conduct in the fall of 1957.

[197] PD submits that Allen stood in a fiduciary relationship to her. Allen was assistant parish priest at her family's church and chaplain at her school for the school year 1956-57. PD submits that Allen held a position of power and authority in relation to PD and that he abused that position of trust. PD's counsel submits that the abuse consisted of approximately 100 incidents of repeated touching of PD's genital area, buttocks and breasts, as well as digital

penetration on less frequent occasions. PD submits that the sexual contact was non-consensual and that PD was a minor at all material times.

[198] PD submits that Allen was an employee of the Diocese and the impugned conduct took place on premises owned by the defendant Diocese.

#### Vicarious Liability of the Diocese ~ Childhood Assaults

[199] The plaintiff submits that both Allen and PD were employees of the Diocese at all material times during the childhood period. The Diocese vested Allen with job-related and spiritual authority and created a special opportunity for Allen to develop a trust relationship with the children of the parish and of St. Joseph's school.

#### Submissions by Plaintiff ~ Alleged Adult Assaults

[200] The plaintiff alleges sexual assault, battery and breach of fiduciary duty by Allen for the adult period. The plaintiff alleges that Allen occupied a position of ongoing influence and power over PD, inherent in his position as her childhood sexual perpetrator and as a diocesan priest. In consequence, PD submits that she was in a position of psychological vulnerability, aggravated by her growing addiction to alcohol during the adult period.

[201] The plaintiff alleges that Allen engaged in an exploitative relationship dominated by the provision of alcohol in exchange for sexual gratification. PD submits that Allen willingly supplied her with alcohol even after he knew that she had an alcohol problem.

[202] PD concedes that she appeared to consent to the sexual contact, but argues that her consent was not genuine. In support, the plaintiff relies on *Norberg v. Wynrib*, [1992] 2 S.C.R. 226, a case in which an adult male doctor took advantage of a psychologically weak patient who was addicted to prescription drugs.

[203] The plaintiff argues that Allen's intent with respect to the adult sexual contact is not relevant, but rather that his position of relative power over PD vitiates her consent.

[204] The plaintiff alleges that Allen had a religious duty to foster and not to harm her spiritual health and that he breached that duty. The plaintiff contends that she owed no similar duty to Allen.

#### Vicarious Liability of the Diocese ~ Alleged Adult Assaults

[205] The plaintiff submits that the relationship of psychological intimacy and psychological power that developed between Allen and PD during the childhood period extended

into the adult period. PD argues that Allen remained a diocesan priest with the same duties, vows and promises as he had during the childhood period. PD submits that the Diocese, through the Bishop, retained ultimate power and control over Allen and the alleged sexual assaults were committed within the scope of his employment. Allen's employment during the adult period was as an alcohol addictions counsellor.

#### Direct liability of the Diocese for the negligent mishandling of PD's 1992 disclosure

[206] PD submits that Bishop Plouffe, as the directing mind of the Diocese, is liable for his negligent mishandling of her disclosure to him in 1992 of Allen's abusive conduct. The plaintiff submits that Bishop Plouffe breached his own clergy sexual misconduct protocols when he failed to offer pastoral support or financial support for therapy to PD at that time.

[207] The plaintiff further submits that her distress, humiliation and hardship was aggravated by the callous disregard of the Diocese, particularly in light of the fact that Allen was provided with counselling and pastoral assessment at Paracletes, and in light of the fact that Allen retains the faculties of a diocesan priest.

#### Causation

[208] PD submits that the childhood sexual abuse, combined with other tortious and non-tortious events, caused her to develop alcoholism. PD submits that her alcoholism by 1992 caused her to retire from teaching. In support, the plaintiff relies on *Athey v. Leonati*, [1996] 3 S.C.R. 458, [1996] S.C.J. No. 102, in which it was held that a tortfeasor's conduct does not have to be the sole cause or even the dominant cause of an injury, but rather it must only be a necessary contributing cause that is more than *de minimis*, to justify imposing liability for the whole of the injury on the defendant.

[209] PD further submits that it is not possible to find that she would have become an alcoholic if she had not been abused as a child.

[210] The plaintiff submits that the childhood sexual abuse, in combination with other factors, caused her to develop depression, dysthymia, anxiety, low self-esteem, and feelings of shame and blame.

[211] PD submits that the adult relationship is also a contributory factor to the development of PD's alcoholism. Allen's conduct enabled PD to increase significantly her alcohol intake because she was provided with access to alcohol and the opportunity to drink it at Allen's house.

[212] PD's counsel points out that all three experts agree that the 1990's were PD's worst functioning years, that her use of alcohol increased during that decade, and that symptoms of

trauma emerged in the early 1990's in relation to disclosure of the childhood abuse. The experts agree that alcohol abuse is PD's main barrier to further employment.

[213] The plaintiff argues that PD is a thin-skull victim for whom the childhood sexual abuse is inherent in her original position.

[214] The plaintiff argues that, prior to 1992, her teaching career was not in jeopardy, pointing out that she was able to rebound from previous alcohol-related career interruptions in 1986 and 1990.

### Damages

[215] The plaintiff claims general, aggravated, and punitive damages for psychiatric disorders and disturbances caused by the childhood sexual abuse including: alcoholism, PTSD, depression/dysthymia, anxiety, low self-esteem, and mental distress including feelings of shame and blame. PD submits that a non-pecuniary damages award should reflect the frequency, intrusiveness, and duration of the sexual assaults and that she should be compensated for pain and suffering while the abuse was ongoing, while she was studying for her first vows, and throughout the 1990's to the present.

[216] With respect to aggravated damages, PD submits that she should be compensated for the humiliating, oppressive and malicious aspects of Allen's conduct, including: the breach of trust, the frequency of the abuse, PD's age during the childhood period, Allen's use of demeaning language, and Allen's knowledge that what he was doing was wrong.

[217] The plaintiff further claims special damages for past and future income loss. The plaintiff points out that the defendants did not dispute the income loss calculations made by Mr. Strezos. The past and future income loss calculation arrived at by Mr. Strezos amounts to some \$1.387 million, primarily for loss of teaching income and loss of pension benefits. Plaintiff's counsel also submitted an alternative calculation based on different assumptions (regarding, *inter alia*, retirement age) and arrived at an alternative figure for past and future economic loss of approximately \$951,000.

[218] The plaintiff also claims for past treatment costs incurred with Paul Smith and future treatment costs in order that PD might have a reasonable chance at recovery from her injury. Those costs are set out in the reports of Dr. Josefowitz and Mr. Strezos, and amount to some \$47,215.

[219] The plaintiff also advances an OHIP subrogated claim for treatment by Dr. Cuncins and other doctors related to alcoholism and to childhood sexual abuse, the total of which amounts to \$11,008.80.

[220] The plaintiff claims punitive damages for that period of the childhood abuse not covered by the criminal conviction, namely, September to December 1957. PD further argues

that Allen maintains the designation of "Father" and retains the faculties of a diocesan priest and that a punitive damages award would send out a message of general deterrence to society and to the Diocese.

### Prejudgment Interest

[221] The plaintiff claims prejudgment interest from 1964 to the date of judgment. The plaintiff selects 1964 because that is the period during which PD is alleged to have first suffered PTSD related to the childhood abuse. In other words, the first manifestation of psychological harm of the childhood sexual abuse. The plaintiff submits that the Court should exercise its discretion under the *Courts of Justice Act*, R.S.O. 1990, c. C-43 to award prejudgment interest over a period of 40 years because of the insidious nature of childhood sexual abuse and its surrounding veil of secrecy.

### Defendant Allen

[222] The arguments of the defendant Allen were adopted by the defendant Diocese and *vice versa* except where expressly noted.

### Submissions of the Defendant Allen ~ Childhood Assaults

[223] The defendants concede that Allen stood in a fiduciary relationship to PD during the childhood period. Allen does not seriously dispute the plaintiff's version of the childhood sexual abuse and submits that the plaintiff is entitled to an award of "minor damages" for Allen's conduct.

[224] Counsel for Allen argues that the childhood sexual abuse had only a limited impact on the plaintiff between 1958 and 1966. As proof of that he points to a dearth of evidence suggesting an impact, including: no evidence prior to the disclosure period that PD consumed alcohol in relation to memories of the childhood abuse; PD herself has never testified that she drank because of thoughts of the childhood abuse; PD did not avoid the rectory (PD testified she went to the rectory as often as she could); PD did not complain to anyone within the rectory; PD was a highly functioning young person; PD enjoyed school and had a positive view of herself; PD was not depressed; PD had no problems with concentration or with sleeping; PD had no problems with boys; PD's faith was unaffected and in fact deepened. Counsel for Allen noted that in other cases of childhood sexual abuse, the impact was immediate and profound: See *J.R.S. v. Glendinning*, [2004] O.J. No. 285 (Sup.Ct.); *Doe v. O'Dell*, [2003] O.J. No. 3546 (Sup. Ct..

[225] Counsel for Allen submits that PD's original complaint in the initial stages of the disclosure period was directed more to the adult relationship than to the childhood abuse. Allen was never charged criminally in relation to the adult relationship.

[226] Allen submits that there are inconsistencies in PD's evidence. Counsel for Allen points out that PD initially neglected to disclose her sexual relationship with the Thunder Bay school principal, both in examination for discovery and later to the expert doctors; that PD minimized the state of discord in her family home; and that PD consistently referred to abuse during her grade ten year (when Allen was away at Hearst).

### Adult Relationship

[227] Counsel for Allen acknowledges that once sexual contact is proved, the onus shifts to the defendant to prove consent. He submits, however, that once ostensible consent is proved, the onus shifts back to the plaintiff: See *Non-Marine Underwriters, Lloyd's of London v. Scalera*, [2000] 1 S.C.R. 551. He submits that PD testified that she appeared to consent to the sexual contact. He further submits that it was reasonable for Allen to believe PD was consenting.

[228] Allen submits that in order for the plaintiff to recover damages relating to Allen's conduct during the adult period, she must prove that he breached a legal duty. Allen submits there are two kinds of legal duty that could be operative: a fiduciary duty or a duty of care in negligence. He submits that the evidence discloses neither a fiduciary duty nor a duty of care in negligence.

[229] Allen submits there was no imbalance of power in the relationship. Allen submits that PD both initiated the adult relationship and, according to her testimony, ended it. He submits that PD was capable of and did at times refuse to engage in sexual activity, both when she had been drinking and not drinking.

[230] Allen submits that the provision of alcohol to PD may not have been wise, but it was not legally wrong. He submits that PD took steps to hide her alcohol use from Allen, for example, by re-filling marked liquor bottles with water. Allen submits that he was not the exclusive source of PD's alcohol during the adult period. He further submits that Allen's home was not the exclusive location of PD's drinking during this time. There was evidence that PD drank alone in her room at the convent. Counsel for Allen submits that alcohol consumption did not always accompany the sexual contact.

### Evidence of Causation

[231] Allen submits that there is no evidence PD's alcoholism is caused by the childhood sexual abuse. He submits that, by PD's own testimony, she agrees that she did not once drink because of conscious thoughts of the childhood abuse prior to the disclosure period. He points out that PD herself did not make any connection between her alcohol use and the childhood sexual abuse until after she began to see therapist Paul Smith.

[232] He points out incidents where PD *did* turn to alcohol in times of stress, including the 1974 misdiagnosis of MS and the 1975 rape by J. He also points to times of loneliness and boredom in PD's life when she turned to alcohol, such as while working on her dissertation and while travelling on board business for TVO.

[233] Allen agrees that PD is unemployable because of her alcohol problem. He submits that PD was rendered unemployable by alcohol abuse long before the re-emergence of the childhood sexual abuse allegation in 1992. He points out that, as early as 1983, alcohol interfered with PD's ability to work, and that, by 1985, it had caused a serious disruption in her work life (the Westbury Hotel incident and subsequent treatment programs at Bellwood and Hazelden). Counsel for Allen submits that the plaintiff has not discharged her burden of proof of causation.

### Damages

[234] Allen submits that PD is entitled to an award of general damages for pain and suffering for the childhood period and for pain and suffering during the disclosure period. With respect to aggravated damages, he submits that PD is entitled to an award "on the low side" proportional to the general damages. With respect to punitive damages, Allen submits that the only applicable period, namely September to December 1957, is not sufficiently supported by evidence to justify an award of punitive damages.

[235] Allen submits that PD is not entitled to her economic loss claim because causation has not been proven.

### Prejudgment Interest

[236] Allen submits that it would be inappropriate to award prejudgment interest to the plaintiff for a 40 year period. He argues that it would be unfair to give the plaintiff the benefit of the discoverability rule in relation to her cause of action but to impose prejudgment interest from a date before the plaintiff even knew she had a cause of action.

### Diocese Defendants

#### Childhood Assaults

[237] Counsel for the Diocese submits that PD is entitled to an award of "modest damages" for the childhood sexual abuse only.

[238] Counsel for the Diocese submits that the childhood abuse did not materially contribute to the plaintiff's alcohol abuse disorder.

[239] As evidence, the Diocese points to the following: PD does not connect her drinking to the childhood abuse; PD did not drink to cope with stress caused by the childhood abuse; PD did not drink to forget the childhood abuse; PD did not begin to drink until more than ten years after the childhood abuse had ended; PD's alcohol abuse disorder developed more than 20 years after the childhood abuse ended; and, by PD's own account, she suffered no symptoms of distress related to the childhood abuse between 1966 and 1992.

[240] The Diocese submits that PD has not proved that she has the more serious alcohol disorder, known as alcohol dependence disorder. They submit that if the plaintiff does now suffer from alcohol dependence disorder, she would have developed it even without the emergence of symptoms of trauma related to the childhood abuse during the disclosure period. Dr. Klassen testified that PD's symptoms of trauma during the disclosure period were related, *inter alia*, to the childhood abuse, but were short-lived and not a cause of any dependence disorder.

#### Vicarious Liability of the Diocese for the Childhood Abuse

[241] At the trial, counsel for the Diocese did not significantly dispute the vicarious liability of the Diocese for the abuse of a child by a priest in these circumstances, but did not admit it. After the conclusion of the final arguments in this case, the Supreme Court of Canada, on March 25, 2004, released its decision in *John Doe v. Bennett*, [2004] S.C.J. No. 17, a case which considers that very issue. Counsel for the Diocese then sent a letter to the Court and the other parties formally conceding vicarious liability for the childhood abuse, which letter is dated March 29, 2004, and reads as follows:

With respect to the childhood period, the Diocese formally concedes that it is vicariously liable for Father Allen's breach of fiduciary duty. (As you know, we have not vigorously contested this claim.)

#### Vicarious Liability of the Diocese for the Adult Relationship

[242] The Diocese submits that no alleged liability can attach vicariously to the Diocese for the adult period because there is no connection between Allen's employment and the alleged unauthorized acts. Allen's employment was as an alcohol addictions counsellor and he did not, at that time, offer any counselling in his home.

[243] They further submit that the relationship was more conjugal in character than it was defined by any sense of religious hierarchy. As evidence, they point to: both parties called each other by their first names; Allen was not PD's spiritual adviser or confessor; and, Dr. Klassen testified that there was no power gradient in the relationship



[244] The Diocese submits that the relationship between Allen and PD was a secret relationship between a priest and a nun. The Diocese submits it had no knowledge, nor is there any allegation of direct knowledge by the Diocese regarding Allen's conduct during the adult period.

#### PD's Alcohol Use

[245] The Diocese submits that PD's heavy drinking was entrenched prior to the disclosure period. They submit that the plaintiff has not proved that the childhood sexual abuse caused her alcoholism and, therefore, the plaintiff is not entitled to her economic loss claim.

[246] Counsel for the Diocese argues that a statistical correlation between childhood sexual abuse and substance abuse does not amount to evidence that PD's alcoholism was caused in part by Allen's conduct during the childhood period.

[247] Counsel for the Diocese points to other factors which it submits caused PD's alcoholism, including: her enjoyment of alcohol and its positive effect on her mood; her lack of motivation to stop drinking; loneliness; boredom; anxiety about remaining a nun; loss of community once she left the order; health problems (MS misdiagnosis, *myasthenia gravis*, *tomaculous neuropathy*, problems related to menstruation); personal setbacks (primarily professional setbacks); sexual assaults by other perpetrators; PD's personality profile as described by Dr. Wright (sensation-seeking); genetic factors (PD's family history of alcohol abuse); and PD's tendency to over-extend herself.

#### Direct liability of the Diocese for the alleged negligent handling of PD's 1992 disclosure

[248] The Diocese submits that a voluntary policy to provide counselling does not equal a duty of care to provide counselling. Absent such a duty of care, they submit there can be no negligence. In addition, they submit that PD has no damages in relation to this alleged tort because PD was at that time already receiving counselling from Paul Smith and continued to do so for a further five years until 1997.

#### Damages

[249] The Diocese submits that an appropriate award of general and aggravated damages would be in the range of \$25,000 to \$50,000. In support, counsel for the Diocese submits various cases where the victim was an adolescent girl sexually abused in circumstances that included a breach of trust. Those awards range between \$7,500 and \$75,000, not including aggravated or punitive damages.

[250] With respect to aggravated damages, the Diocese submits that PD may be entitled to a "modest award" of aggravated damages to be included in the quantum of general damages.

[251] The Diocese submits that PD is not entitled to punitive damages as she meets none of the factors set out in *Whiten v. Pilot Insurance Co.*, [2002] S.C.J. No. 19 at para. 113, to justify an award of punitive damages. Counsel for the Diocese further submits that they cannot be held vicariously liable for punitive damages relating to Allen's conduct where there is no independent actionable wrong committed by the Diocese: See *W.R.B. v. Plint*, [2003] B.C.J. No. 2783 (C.A.).

### Prejudgment Interest

[252] The Diocese submits that prejudgment interest should run from the date of issuance of the Notice of Action, in this case April 1, 1997. This, they submit, is typically the date selected in cases of historical sexual abuse. Counsel for the Diocese points out that prior to amendments made in 1989 to the prejudgment interest regime in the *Courts of Justice Act* it was only possible to award prejudgment interest from the date of issuance of the statement of claim. The Diocese further submits that the interest rate should be a blended one.

### Analysis and Conclusions

[253] The defendants have conceded that Allen breached his fiduciary duty to PD by sexually assaulting her as a child. They concede that she is entitled to damages for that breach. The defendants did not seriously dispute the plaintiff's evidence with respect to the childhood abuse. Indeed, Allen offered no evidence in relation to that period. I find that the abuse took place as set out earlier in these reasons. In particular that there were approximately 100 assaults over the course of several years, interrupted for the ten month period Allen was away at Hearst. PD was aged 13 to 16 during that period. The assaults consisted of sexual touching and fondling of the breasts, buttocks and genitals, and several incidents of vaginal digital penetration.

### Causation

[254] The plaintiff must prove on the civil standard of a balance of probabilities that the defendant's conduct caused or was a necessary contributing factor to her injury: *Athey v. Leonati*, *supra*. Causation is a question of fact.

[255] The traditional test for causation is the "but for" test. That is: would the plaintiff have suffered her injuries but for the wrongful conduct of the defendant? The Supreme Court has recognized that the "but for" test is not always workable where the possible causes of an injury are numerous: *Athey*, at para. 15.

[256] Where the possible causes of a plaintiff's injury are numerous, it will be sufficient for the plaintiff to prove that the defendant's conduct materially contributed to the plaintiff's injury. A material contribution is a contribution to the injury that is more than *de minimis*. It does not have to be the sole cause, nor even the dominant cause of the injury, but must be a necessary contributing factor.

### The Burden of Proof

[257] Critical to a determination of the issue of causation is the burden of proof. The burden of proof lies with the plaintiff: See *Cottrelle v. Gerrard*, [2003] O.J. No. 4194 (C.A.); see *Snell v. Farrell*, [1990] 2 S.C.R. 311, 72 D.L.R. (4th) 289. Some jurisprudence has held that the burden should shift in specific circumstances. In a 1952 case on causation, the Supreme Court held that the onus should shift where it is impossible to determine which of two morally blameworthy tortfeasors caused the plaintiff's injury (two hunters shot in the direction of the plaintiff at the same instant: See *Cook v. Lewis*, [1952] 1 D.L.R. 1 (S.C.C.)). The policy basis behind the rule in *Cook v. Lewis* is that blameworthy actors should not, through their own fault, be permitted to deprive a plaintiff of recovery for his/her injury. Later jurisprudence has confined *Cook v. Lewis* to very narrow circumstances (where a finite number of defendants are responsible for the whole of the plaintiff's injury, although it cannot be determined precisely which defendant is to blame).

### The Law in the U.K.

[258] The law in the U.K. has swung back and forth between a more relaxed approach to proof of causation and the traditional approach where the burden of proof always remains with the plaintiff.

[259] In *McGhee v. National Coal Board*, [1972] 3 All E.R. 1008 (H.L.), an employee whose job it was to clean kilns eventually got dermatitis because his employers did not provide showers at work. It was not possible to prove which employer's failure actually led to the injury and, therefore, on the traditional "but for" test, the plaintiff's claim failed in the lower courts. However, the House of Lords held the plaintiff was entitled to recover where the actions of two morally blameworthy defendants led to the injury, even where the plaintiff could not prove which defendant caused the injury. The majority held that the plaintiff must only prove a material increase to the *risk* of injury to succeed. The minority held that once a breach of duty is proved, then the onus shifts to the defendant to prove that the breach did not cause the injury.

[260] The minority approach in *McGhee* was essentially overturned by the House of Lords later decision in *Wilsher v. Essex Area Health Authority*, [1988] 1 All E.R. 871 (H.L.). In particular, the reverse onus minority approach from *McGhee* was expressly disapproved of. In *Wilsher*, Lord Bridge clarified the law when he found, at 882, "the onus of proving causation lies on the pursuer or plaintiff."

[261] A recent decision of the House of Lords, *Fairchild v. Glenhaven Funeral Services Ltd.*, [2002] 3 All E.R. 30, [2002] 3 W.L.R. 89 (H.L.), purports to revive the relaxed standard of

causation originally set down in *McGhee*. In *Fairchild*, workers who had been exposed to asbestos fibres at several different places of employment eventually got cancer. The cancer could have been caused by one fibre or many fibres and the medical evidence established that it was not possible to establish which fibre caused the injury. Lord Bingham set out certain conditions that may justify a relaxed standard of proof of causation. One of those conditions (at 92) is that "any cause of [the injury] other than the inhalation of asbestos dust at work can be effectively discounted[.]"

[262] It is clear then that *Fairchild* does not have application to the fact situation in this case. In this case there are numerous probable causes of PD's alcoholism other than the tortious conduct of Allen during the childhood period. Those other causes cannot be "effectively discounted".

#### The Probable Causes of PD's Alcoholism

[263] The probable causes of PD's alcoholism include: violent sexual assaults (rape by J in 1975, rape by Father M in 1976, and rapes by the TVO board member in 1975 or 1976); sexual relationships, particularly with Catholic priests (including the adult relationship with Allen); a family history of alcohol abuse; the MS misdiagnosis and other serious health problems (including *tomaculous neuropathy*); and many other non-tortious stressors.

#### The Law in Canada ~ Burden of Proof

[264] Sopinka J. in *Snell v. Farrell, supra*, discussed the burden of proof and held, at 301 (cited to D.L.R.):

[t]he legal or ultimate burden remains with the plaintiff, but in the absence of evidence to the contrary adduced by the defendant, an inference of causation may be drawn although positive or scientific proof of causation has not been adduced.

In this case the defendant Allen has offered no evidence in relation to the childhood period and, therefore, Sopinka J.'s comments from *Snell* might suggest that an adverse inference may be drawn, but not necessarily in relation to causation.

[265] In *Snell*, it was the failure of the defendant doctor to adduce evidence that was strictly within his power *in relation to causation* that led to the adverse inference. In my opinion, Allen's evidence for the years 1957 to 1960 would neither add to nor take away from the analysis of whether his tortious conduct caused PD's alcoholism. That determination lies in this case with the evidence from the plaintiff and from the expert witnesses. Allen was a passive and pliable witness, all too willing to agree to almost anything put to him. All his testimony was thus unreliable.

[266] For the foregoing reasons, this is not an appropriate case in which to relax the standard of proof of causation. The burden remains with the plaintiff.

The Law in Canada ~ Causation

[267] *Athey* does not alter the requirement that a plaintiff must prove causation on a balance of probabilities: See *Athey* at para. 13. Even when the tortious conduct is alleged only to be a necessary contributing cause of the injury, as in this case, causation must still be proved on a balance of probabilities. Once causation is proved, *Athey* does impose full liability on the defendant in circumstances where the injury is indivisible.

[268] Major J. in *Athey* held, at paras. 21-25, that apportionment between tortious and non-tortious causes of an injury is neither possible nor appropriate where the injury is indivisible and if a defendant is found to have caused or materially contributed to the indivisible injury, then the defendant will be fully liable for it.

[269] The test for causation is not to be applied too rigidly. Sopinka J. in *Snell*, at 328 and Major J. in *Athey*, at para 16, both quoted with approval the words of Lord Salmon from *Alphacell Ltd. v. Woodward*, [1972] 2 All E.R. 475 at 490 (H.L.), where His Lordship found that causation is "essentially a practical question of fact which can best be answered by ordinary common sense".

[270] The Ontario Court of Appeal recently revisited the issue of causation and *Athey* in *Cottrelle, supra*. Sharpe J.A., writing for the Court, held at para. 26 that, "*Athey* does not excuse the plaintiff from proving on a balance of probabilities that but for the defendant's [tort], the plaintiff would not have suffered the loss."

[271] Therefore, in summary, the burden of proof is on PD and PD must prove causation on a balance of probabilities, a practical question of fact best answered by ordinary common sense.

[272] It is an open question as to whether *Athey* should have application to cases where the cause of the injury is by definition multi-factorial, such as psychological injuries. It will never be possible to determine with any kind of certainty the precise origin of a psychological injury. This is particularly true when the injury develops over a long period of time and is influenced by numerous different factors. The situation is made even more complicated when the psychological injury is alleged to have caused a disorder such as alcoholism which itself can have multiple causes that are both psychological and physiological.

**Central Issue**

[273] The central issue in this trial is whether the childhood abuse was a necessary contributing factor to the plaintiff's alcoholism.

[274] For the reasons that follow, I find that it was not.

[275] The sexual abuse ended in 1960. From the end of the abuse until April 1966, the plaintiff largely managed not to think about the abuse. PD experienced some distress while studying for her first vows. Realizing that the abuse was sexual in nature, she was concerned that she might not be a virgin. She became ill and was unable to continue teaching. The swearing of her first vows was delayed for one month. After swearing her first vows in August 1966, the plaintiff testified that she did not think about the abuse in any kind of active way until she began to see Paul Smith in September 1991.

[276] According to her own testimony, the plaintiff began to use alcohol around 1972 without any reference to the childhood abuse. According to her testimony, at no point from the beginning of her alcohol use in 1972 to the beginning of September 1991 did PD expressly link her alcohol use to the childhood abuse.

[277] One has to ask how many times over the 30 or more years from 1960 to 1991 PD picked up and consumed an alcoholic beverage because of thoughts of Allen's conduct during the years of the childhood abuse. The answer, according to the evidence, is that there were very few, if any, such occasions prior to the disclosure period. Of course, the absence of a direct connection is not fatal to her claim; it is never that simple. However, there must be some evidence linking her alcohol use to the childhood abuse. Further complicating the analysis, is that prior to 1991, PD did not herself see any connection between the childhood abuse and her alcohol use.

#### The plaintiff disclaims the connection between the childhood abuse and her alcoholism

[278] At various points in her testimony, the plaintiff herself has disclaimed any connection between her alcoholism and the childhood sexual abuse. The plaintiff forthrightly admits that when she began therapy with Paul Smith in early September 1991, she did not yet see a connection between the childhood sexual abuse and her alcoholism. The plaintiff admits that, while undergoing alcohol treatment programs at Bellwood and Hazelden, she did not recognize a connection between her alcohol abuse and the childhood sexual abuse, this despite being expressly asked about it. It was only after she began to see Paul Smith that she began to link the childhood sexual abuse to her alcohol problem. One cannot help but wonder what role Paul Smith played in the plaintiff eventually being of the opinion that the childhood sexual abuse led to her alcoholism in whole or in part. Paul Smith did not give evidence at this trial.

[279] There was significant expert testimony in this trial and, to be sure, theirs was not an easy task. Inevitably, all the experts had difficulty distinguishing between the role played by the childhood sexual abuse and the role played by Allen generally. Where their evidence is in conflict, I prefer the evidence of Drs. Klassen and Wright to the evidence of Dr. Josefowitz. In particular, I was not convinced by Dr. Josefowitz's non-traditional interpretation of PD's elevated '4-9' profile. In addition, selective omissions of relevant circumstances from her report did not enhance the reliability of her testimony. On more than one occasion, I had to direct Dr. Josefowitz not to advocate for the plaintiff.

[280] As I have stated, the plaintiff did not make the alcohol/childhood abuse connection before she commenced therapy with Paul Smith. Of course, the fact that the plaintiff did not herself make the connection is not dispositive of the issue. It is not obligatory to her claim for the plaintiff to come right out and say that she drank because of Allen and the sexual abuse and, in some ways, she may be the person least well-equipped to see a connection. However, in order to establish a causal link between the abuse and the alcoholism there must be some evidence suggesting a causal connection before the finding can be made.

[281] I *am* convinced that the plaintiff now believes that, but for the abuse, she would not have become an alcoholic. The plaintiff's subjective belief in causation is evidence that may go to causation, but does not on its own amount to proof of causation.

[282] There is no evidence that the plaintiff used alcohol in response to overt thoughts of the childhood abuse before September 1991. The only evidence of alcohol use in relation to the childhood sexual abuse before September 1991 is inferential. In addition, the expert witnesses of both parties were unable to say that PD would not have become an alcoholic if she had never been sexually abused as a child. Dr. Josefowitz did testify that she believes PD would not have developed alcohol dependency "as she did" were it not for the childhood abuse, however that opinion was not included in her report.

#### Situations in which the Plaintiff has turned to Alcohol

[283] In contrast, there is ample evidence of other stressful situations in the plaintiff's life that triggered alcohol use. As early as 1974, when she was misdiagnosed with MS, the plaintiff turned to alcohol as a sedative and stress-reliever. It is clear from the documentary evidence of the period that the MS misdiagnosis was a devastating event in her life. Her doctors advised her to stop teaching and she did. The misdiagnosis caused her to alter her career path and return to study at university.

[284] In June 1975, PD was sexually assaulted by J. She testified that for two weeks following the assault she drank to excess while waiting to learn if she had become pregnant.

[285] PD was on the Board of TVO from 1974 to 1977. The plaintiff testified that her work on the Board of TVO gave her greater access to alcohol, the means to buy it through her expense account, and the opportunity to drink it in private, generally in hotels while travelling on Board business.

[286] In August 1977, PD turned to alcohol while working on her dissertation in North Bay. She testified that she was lonely and bored and she bought alcohol to drink at home alone. The facts adduced consistently suggest that the plaintiff enjoys drinking alcohol and I so find.

[287] The evidence suggests that the plaintiff was already an alcoholic or fast heading toward alcoholism when she re-met Allen in late 1977.

### **Fiduciary Duty ~ Adult Relationship**

[288] I find that Allen's conduct during the adult relationship was certainly morally wrong, but not legally wrong. Plaintiff's counsel has submitted that Allen owed a fiduciary duty to PD as a priest of the Diocese of which she was a member and a nun. I cannot agree.

[289] A fiduciary duty is one of a species of duty by which the law seeks to protect vulnerable persons in transactions with others. Certain traditional categories have been established which will give rise to a presumption of fiduciary duty: See *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, [1994] S.C.J. No. 84. One of the traditional categories is priest/penitent. In my view, the adult relationship between PD and Allen was not that of priest/penitent. Allen was not her pastor. He did not hear her confession. He did say Mass from time to time at her convent but there is no specific evidence that PD heard or did not hear those Masses. The evidence suggests their relationship was secular in nature. I agree with Dr. Josefowitz and Dr. Klassen that the relationship was mutually exploitative. The adult relationship was not that of priest/penitent.

[290] Having found that the relationship does not fit into an established fiduciary relationship category, I turn now to the analysis outside the established categories. La Forest J. in *Hodgkinson v. Simms* at para. 33, stated that, "outside the established categories, what is required is evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party." There is no evidence of a mutual understanding between the parties that Allen agreed to relinquish his self-interest and act solely on behalf of PD.

[291] To help recognize a fiduciary relationship, certain indicia are set out in *Frame v. Smith*, [1987] 2 S.C.R. 99 at 136, by Wilson J.:

Relationships in which a fiduciary obligation have been imposed seem to possess three general characteristics:

- (1) The fiduciary has scope for the exercise of some discretion or power.
- (2) The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
- (3) The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

[292] In my view, Allen did not, during the adult period, have the scope for the exercise of some discretion or power. Even if he did, the evidence reveals that Allen could not unilaterally exercise that power or discretion to affect PD's legal or practical interests. PD retained the power to refuse to engage in sexual contact; PD drank alcohol purchased by Allen but also drank alcohol that she had purchased herself; she drank her own alcohol both at Allen's home and



elsewhere (primarily the convent); PD initiated the relationship and, by her testimony, ended it. I note that the plaintiff in *Norberg v. Wynrib, supra*, initially refused the doctor's sex-for-drugs proposition and only acquiesced when she had no other means of acquiring the drugs to which she was addicted.

[293] There was much testimony by and on behalf of the plaintiff on the subject of Canon Law and the application of religious law. Courts are and should be reluctant to intervene in and interpret spiritual matters: See *V.B. v. Cairns*, [2003] O.J. No. 2750 at paras. 131-135 (Sup. Ct.). Allen acknowledged in his testimony that he breached his "priestly duty" to PD. In my view, both Allen and PD knew that the adult relationship was against the teachings of the Catholic Church.

[294] I find that there was no fiduciary duty as between Allen and PD during the adult relationship.

### **Consent ~ Adult Relationship**

[295] PD has admitted that she appeared to consent to the sexual contact during the adult relationship, but argues that her consent was not genuine. I do not agree.

[296] LaForest J. in *Norberg v. Wynrib, supra* at 250, found:

[I]n certain situations, principles of public policy will negate the legal effectiveness of consent in the context of sexual assault. In particular, in certain circumstances, consent will be considered legally ineffective if it can be shown that there was such a disparity in the relative positions of the parties that the weaker party was not in a position to choose freely.

[297] The evidence does not disclose a significant disparity in the relative positions of the parties during the adult relationship. In many respects, PD was an empowered and impressive person. PD was an intelligent and educated 33 year-old woman. PD had already participated in a consensual sexual relationship as an adult (the Thunder Bay school principal). The plaintiff was in a position to choose freely (she drank elsewhere, she bought her own alcohol, at times she refused sexual contact). The evidence does not disclose a relationship where there was a significant imbalance of power. The plaintiff initiated the relationship and ended it. The plaintiff described Allen as "lonely and pathetic". That is not the sort of terminology one associates with the powerful party in an unbalanced relationship.

[298] I find that PD was a willing participant in the adult relationship. I find that her consent was genuine and that there was no sexual assault and battery in relation to the adult period.

### **PD's Alcohol use after the Adult Relationship**

[299] The evidence of PD's alcohol use after the adult relationship is voluminous. Alcohol first interfered in a serious way with PD's teaching in early 1984 to the point that she had to be replaced by another teacher. In October 1984 she was hospitalized for drinking-related disorders. In March 1985, after the Westbury Hotel incident, PD entered a succession of treatment programs: first at Bellwood, then at Hazelden. After each of the treatment programs, including a seven month stint at Hazelden, PD immediately resumed drinking. In March 1986, PD was asked to go on leave of absence from her community due to alcohol abuse. In July 1986, PD entered another treatment program at Camillus. In October 1986, after a brief unsuccessful attempt to return to teaching (at Nipissing University), PD entered the treatment program at Camillus for a second time. From 1987 to 1989, PD continued to struggle with alcoholism, albeit without revisiting a treatment program.

[300] In July 1989, PD left the Order because of alcohol. At this low point in her life PD met the criteria for alcohol dependence as set out in the *DSM-IV*, *supra*, detailed earlier in these reasons. Specifically, and at a minimum: (1) she was unable to control her alcohol use; and (2) she had sacrificed an important social activity (the Order); and (3) she continued to abuse alcohol despite knowledge that she had a problem (knowledge gained, no doubt, while in one of her many treatment programs).

[301] I find as a fact that PD was an alcoholic by 1984 at the latest (the date when alcohol first interfered in a serious way with her ability to teach). It is entirely possible that PD was an alcoholic well before that.

[302] I further find as a fact that PD was a "crumbling skull" alcoholic by July 1989 (the date she left the Order). There was significant testimony on the subject of alcoholism. Without a doubt, alcoholism is a pernicious disorder. It is clear that alcoholism is a progressive disorder. Points along the spectrum of alcohol abuse may have certain labels, such as "alcohol abuse disorder" or "alcohol dependence disorder". After a certain point, a point which for reasons of legal clarity I have chosen to label "crumbling skull" alcoholic, a person is rendered unable to fulfill major role obligations. That point, for PD, was July 1989.

[303] In fall 1990, after yet another relapse, PD applied for long-term disability. Dr. Cuncins described her prognosis at that time as "guarded". In March 1991, Dr. Bell, PD's treating psychologist from an alcohol treatment program in North Bay, described PD in a report as having "a frightful history of alcoholism, and [PD] is a veteran of many treatment centres and therapists."

[304] I have chosen the unwieldy term, "crumbling skull" alcoholic, for reasons of legal clarity. Major J. in *Athey*, *supra* at paras. 34-35, describes the "crumbling skull" doctrine as follows:

The "crumbling skull" doctrine is an awkward label for a fairly simple idea. ... The so-called "crumbling skull" rule simply recognizes that the pre-existing condition was inherent in the plaintiff's "original position". The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. [cites omitted]

[305] The injury from PD's alcoholism was already manifest by July 1989 to the point that it was having a debilitating effect on her ability to teach. Even without the childhood sexual abuse, alcohol abuse would have forced PD to retire from teaching. PD was not a "thin skull" victim, but rather a "crumbling skull" victim before the childhood sexual abuse became a live issue and source of stress in her life after September 1991.

[306] The plaintiff's economic loss claim, therefore, must fail. The plaintiff has not proven on a balance of probabilities that the childhood sexual abuse was a necessary contributing factor of her alcoholism.

### **Vicarious Liability of the Diocese for the Childhood Abuse**

[307] The Diocese defendants conceded in their March 29, 2004, letter that they are vicariously liable for the tortious conduct of Allen during the childhood period. The vicarious liability of the Diocese for the childhood abuse was, in any event, clear. Both Allen and the plaintiff worked at the rectory. The Diocese was their employer. The unauthorized conduct took place on their premises. The test from a trilogy of Supreme Court decisions, *Bazley v. Curry*, [1999] 2 S.C.R. 534, *Jacobi v. Griffiths*, [1999] 2 S.C.R. 570, and *K.L.B. v. British Columbia*, [2003] 2 S.C.R. 403, recently affirmed by a unanimous Supreme Court in *Bennett, supra* at paras. 18-21, is amply satisfied. The Diocese is vicariously liable for the tortious conduct of Allen during the childhood period.

[308] While it is not necessary to find that the defendants had actual knowledge of the wrongful conduct in order to ground vicarious liability, it is nevertheless shocking that 100 incidents of abuse could take place over such a long period of time in a rectory where the Bishop and the Monsignor resided and numerous individuals worked. It almost defies credulity that the people in charge of the rectory did not know of the close association between Allen and PD. The Diocese, like Admiral Nelson at the Battle of Copenhagen in 1801, chose not to see what was going on in their midst.

[309] Apart from the perhaps willful blindness of 1957 to 1960, the Diocese and its representatives behaved in a most callous way to the plaintiff. One must not forget that, on at least one occasion in the confessional box, PD told her confessor about what had happened to her and was told to forget about it and get on with her life. I find this conduct protective of Allen and without doubt not in the best interest of PD.

### **Direct Liability of the Diocese**

[310] The plaintiff argues that the Diocese is directly liable for its negligent mishandling of PD's disclosure of the childhood abuse in May 1992. She further alleges that the Diocese breached their own clergy sexual misconduct protocol when they failed to provide any support to PD following her disclosure.

[311] Here again, the conduct in question is pastoral conduct which courts should be reluctant to second guess. Furthermore, I agree with the submission of the defendants that a self-imposed protocol does not necessarily amount to a duty of care. The conduct of the Bishop was callous and may have operated to aggravate PD's injury with respect to her pain and suffering from the childhood abuse, but it does not amount to negligence. The claim for direct liability of the Diocese is dismissed. Aggravated damages are dealt with in greater detail below.

### **Damages ~ Generally**

[312] Every case must be decided on its own facts. Any comparison of damages awards can serve only as guideposts on the road to an appropriate award.

[313] In *Doe v. O'Dell, supra*, a young boy aged 12 to 13 was subjected to horrific abuse by a Roman Catholic priest who befriended and then sexually assaulted him. The defendant stood in a fiduciary relationship to the victim. The abuse consisted of sodomy, oral sex and anal intercourse. The plaintiff's injuries were profound and included vomiting, teeth-grinding, nightmares, anxiety, academic dysfunction, sexual dysfunction, sexual disorientation, and alcohol dependence. The plaintiff was awarded \$175,000 in general and aggravated damages and approximately \$1.2 million in pecuniary loss. I note that a Notice of Appeal has been filed in this case.

[314] In *J.R.S. v. Glendinning, supra*, three brothers, initially ranging in age from six to eleven and raised in a devoutly Roman Catholic family, were sexually abused over the course of five years by a Roman Catholic priest. The defendant stood in a quasi-parental role to the children. The defendant introduced the plaintiffs to alcohol and tobacco. The abuse consisted of oral sex, masturbation, fellatio, genital fondling, body painting and the encouragement of inappropriate sexual activity. One of the brothers in turn abused his own young sister, herself a plaintiff. The plaintiffs' injuries were numerous and included substance abuse, sexual dysfunction, sexual disorientation, PTSD, male prostitution, unemployment and depression. Two of the plaintiffs were each awarded \$200,000 in general damages of which \$25,000 was aggravated damages, a third was awarded \$175,000 (again including \$25,000 in aggravated damages), and the young sister was awarded \$50,000. Pecuniary damages were also awarded.

[315] In *D.F.M. v. J.D.*, [2000] O.J. No. 559 (Sup. Ct.), a young girl was sexually abused in circumstances that included a breach of trust. From the age of 12 to 15, she was abused by an uncle. The abuse consisted of fondling, digital penetration, masturbation and cunnilingus. The uncle stood *in loco parentis* to the victim. Her injuries were psychological and included,

*inter alia*, a distrust of men, anxiety, nightmares, flashbacks, fear and anger. The plaintiff sued her uncle some 20 years later and was awarded \$75,000 in general damages and \$15,000 in aggravated and punitive damages.

[316] In *S.L. v. S.A.*, [1999] O.J. No. 1267 (Gen. Div.) (QL), a girl aged 12 to 16 was sexually abused by a much older male friend. The defendant breached his fiduciary duty to the plaintiff. The abuse included fondling, intercourse and fellatio. The victim, who believed she was in love with the defendant, ostensibly consented to the abuse and continued to have on and off relationships with the defendant for many years. Her injuries were psychological and included depression, distrust of men, loss of identity and inability to form personal relationships. She was awarded general damages of \$25,000.

[317] In *S.P. v. F.K.*, [1996] S.J. No. 839 (Q.B.), starting at the age of five, a girl was sexually abused by her father over the course of nearly 11 years. The abuse consisted of digital penetration as well as sexual touching and fondling of the breasts and genitals. Her injuries were psychological and included severe depression, anxiety, feelings of worthlessness and low self-esteem. The plaintiff was awarded \$75,000 in general damages, \$25,000 in punitive damages and \$50,000 in pecuniary damages for lost earning capacity.

### **PD's Damages**

[318] Having made the findings I have made, I deal with damages as follows: I award general damages to compensate for: (1) the childhood years 1957 to 1960; (2) the period surrounding PD's preparation for her first vows from April to August 1966; (3) the disclosure period starting with therapy with Paul Smith in September 1991 and terminating after Allen's criminal conviction and sentencing in March 1994; and (4) a residual period of pain and suffering from March 1994 to the present and which is ongoing.

[319] I award non-pecuniary damages for the childhood abuse at \$125,000.00 which award will bear prejudgment interest at the rate set out in the *Courts of Justice Act* for the appropriate quarter as of September 17, 1991 (9.1%). The request for a blended interest rate by the defence is rejected.

[320] I find that September 17, 1991 or thereabouts is the date the cause of action arose. September 17, 1991 was the date PD disclosed the abuse to Dr. Cuncins. This is the point at which the plaintiff, through the exercise of reasonable diligence, ought to have known that she had a claim to advance. There is of course no limitation on a breach of fiduciary duty, therefore the plaintiff's claim is not statute barred.

[321] The assessing of non-pecuniary damages in the case at bar was not an easy task because of the nature of the battery sustained by PD. I have chosen a number that is an attempt to compensate PD for the completely unacceptable treatment by a person she clearly trusted and looked up to.

[322] Counsel for the plaintiff strongly urged me to compensate her client for the post-adult years and particularly for the loss of income/loss of pension caused by early retirement (approximately \$1.34 million), but I am unable to do so because of my finding on causation. It is clear that PD retired because of her alcohol problems. What has not been proven is that the childhood sexual abuse was a necessary contributing factor to her alcoholism.

### **Aggravated Damages**

[323] Aggravated damages are intended to compensate the plaintiff for injuries due to outrageous behaviour by the defendants. In particular, to compensate for injury to the plaintiff's feelings, dignity, pride or self-respect. Binnie J. in *Whiten v. Pilot Insurance*, *supra* at para. 116 held:

Aggravated damages are the proper vehicle to take into account the additional harm caused to the plaintiff's feelings by reprehensible or outrageous conduct on the part of the defendant.

Aggravated damages are within the traditional compensatory rubric of civil damages, to make the plaintiff whole for injuries that are not properly compensable by ordinary damages.

[324] In *Bob v. Bellerose*, [2003] B.C.J. No. 1468 (C.A.), leave to appeal to S.C.C. refused [2003] S.C.C.A. No. 408, an award of aggravated damages of \$75,000 made by the trial judge was upheld by the B.C. Court of Appeal. Huddart J.A., writing for a majority, quoted with approval the following passage of Lord Devlin from *Rookes v. Barnard*, [1964] 1 All E.R. 367 (H.L.) at 407:

[I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.

Newbury J.A. dissented on the quantum of aggravated damages, holding that \$75,000 was too high a figure in part because aggravated damages have generally been limited to cases of sexual assault or wrongful dismissal, of which *Bellerose* was neither.

[325] In the instant case, the plaintiff as part of general damages claims aggravated damages. I am of the opinion that this is an appropriate case for aggravated damages which I set at \$75,000 to express the Court's view of the conduct of Allen and the Diocese in this case. Allen's attitude during the childhood abuse, when he told the plaintiff that the problem was hers

and that she should enjoy it, is just the sort of despicable conduct that will attract aggravated damages. Allen's refusal to apologize for his conduct is also blameworthy. This amount will bear interest in accordance to the date and amount set by me with respect to damages

[326] I award aggravated damages not only for the childhood period but also for the somewhat thoughtless treatment by the Diocese after PD reported her abuse to the Bishop in May 1992. PD's condition probably could have been helped if she had received considerate and kind treatment by the Diocese after disclosure (although not to the point that she could return to teaching). I find the Diocese treatment of PD after disclosure as indifferent almost to the extent of callousness and indicative of the Diocese's attitude of no liability.

### **Punitive Damages**

[327] As far as punitive damages are concerned, it is not appropriate to award them against Allen because he has already been punished albeit criminally and a further deterrent is not needed. As far as the Diocese is concerned, to award punitive damages I would have had to find actual knowledge of Allen's conduct which I have not done. Therefore, there will not be punitive damages against either Allen or the Diocese.

### **Special Damages**

[328] The plaintiff claims special damages, in particular with respect to past and future counselling for her alcoholism. Most of these claims in view of my findings are dismissed.

[329] The claim for \$47,200 for future treatment for alcoholism is dismissed. This should not be taken to mean that the Court discourages the plaintiff from seeking help to overcome her alcohol problem. The claim is dismissed because I have found that the defendants are not legally responsible for her alcoholism. The Court recognizes that the plaintiff has a serious alcohol disorder and encourages her to seek treatment for it. The Court also recognizes that the plaintiff has a significant history of achievement and sincerely hopes she is able to gain some control over her alcohol problem.

[330] The claim by the plaintiff with respect to the subrogated OHIP claim in the amount of \$11,008.80 has given me some concern, as it appears to relate only to treatment for alcohol abuse. Therefore, the subrogated OHIP claim is dismissed.

[331] In my view, the plaintiff's claim with respect to the past counselling costs of Paul Smith, totalling \$9,770, cannot be allowed in its entirety in view of my finding on the issue of causation. However, it is appropriate to award special damages in relation to a portion of the Paul Smith counselling. I fix the amount of special damages related to past counselling for sexual abuse at \$7,500 to bear interest from September 1, 1994, at the rate of 4.3% and in a manner that is in accordance with the *Courts of Justice Act*, s. 128(3). I have selected the date of September 1, 1994 as a date that falls at the midpoint of PD's counselling with Paul Smith.

[332] I have found that the plaintiff continues to suffer distress related to the childhood sexual abuse and therefore it is appropriate to award special damages for future counselling. I fix the amount of \$3,000 to assist PD in obtaining personal counselling outside what is available from OHIP. There shall be no prejudgment interest on this amount.

**Summary of Damages**

[333] In summary, the gross amount of the judgment is as follows:

Non-pecuniary (general) damages	\$125,000 plus prejudgment interest
Aggravated damages	\$ 75,000 plus prejudgment interest
Pecuniary damages (past counselling)	\$ 7,500 plus prejudgment interest
Pecuniary damages (future counselling)	<u>\$ 3,000</u>
	<u><b>\$210,500.00</b></u>

[334] Postjudgment interest shall run on all of the above including the prejudgment interest: See *Canadian Imperial Bank of Commerce v. Graat* (1997), 14 C.P.C. (4th) 1 (C.A.) in accordance with the *Courts of Justice Act* from the date of the order.

[335] Bearing in mind my finding with respect to vicarious liability, Allen and the Diocese are jointly and severally liable for all of the plaintiff's damages. The action against Bishop Plouffe is dismissed without costs.

[336] My endorsement from the Record in this case is as follows:

Judgment for the Plaintiff against the Defendants, Richard Allen and the Diocese, is for \$210,500 plus interest as provided in these Reasons pursuant to the *Courts of Justice Act*.

**In the Alternative**

[337] If I had found that Allen and the Diocese, vicariously, were responsible for the continued alcoholism resulting in PD taking early retirement I would be allowing her \$200,000 for general damages. Her special damages, in addition to the amounts allowed in this judgment, would also include the future alcohol counselling claim (\$47,200), the subrogated OHIP claim (\$11,008.80) and the diminution and pension benefits claim at the reduced rate proposed by counsel for the plaintiff in her closing submissions (\$950,832).



Costs

[338] Counsel should make an appointment to see me in chambers to discuss any offers and costs issues, if any.

[339] Before disposing of this matter, I would be remiss if I did not express my thanks to counsel for their able advocacy all of which contributed materially to a very orderly trial. I also must mention the services of the Court Service Officers whose attention and thoughtfulness was most appreciated.

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Lissaman J.

**Released:** July 14, 2004

**SCHEDULE 'A'**

Cases relied on or referred to by counsel:

**Plaintiff:**

*Athey v. Leonati*, [1996] 3 S.C.R. 458  
*B.(P.) v. B.(J.H.)* (1998), 51 B.C.L.R. (2d) 259 (S.C.)  
*B.(P.) v. B.(W.)* (1992), 11 O.R. (3d) 161 (Gen. Div.)  
*Bazley v. Curry*, [1999] 2 S.C.R. 534  
*C.D. v. R.D.*, [2003] O.J. No. 281 (Sup. Ct.)  
*C.P.S.O. v. Boodoosingh* (1993), 12 O.R. (3d) 707 (C.A.)  
*Cho v. Cho* (2003), 36 R.F.L. (5TH) 79 (Sup. Ct.)  
*Cugliari v. White* (1998), 38 O.R. (3d) 641 (C.A.)  
*Cunningham v. Wheeler*, [1994] 1 S.C.R. 359  
*Doe v. O'Dell*, [2003] O.J. No. 3456 (Sup. Ct.)  
*E.D.G. v. Drozdick* (1993), 77 B.C.L.R. (2d) 106 (C.A.)  
*E.D.G. v. Hammer*, [1998] B.C.J. No. 992 (S.C.)  
*E.D.G. v. Hammer*, [2003] 2 S.C.R. 459  
*F.W.M. v. Mombourquette*, [1996] N.S.J. No. 260 (C.A.)  
*Fairchild v. Glenhaven Funeral Services Ltd.*, [2002] UKHL 22 (H.L.)  
*G.(E.D.) v. D.(S.)* (1993), 77 B.C.L.R. (2d) 106 (C.A.)  
*G.B.R. v. Hollett*, [1996] N.S.J. No. 345, leave to appeal to S.C.C. refused [1996] S.C.C.A. No. 541  
*H.L. v. Canada*, [2002] S.J. No. 702 (C.A.)  
*Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130  
*J.B. v. R.B.*, [1994] O.J. No. 324 (Gen. Div.)  
*J.R.S. v. Glendinning*, [2004] O.J. No. 285 (Sup. Ct.)  
*John Doe v. Bennett*, [2002] N.J. No. 218 (Nfld. C.A.)  
*John Doe v. Bennett*, [2004] S.C.J. No. 17 (S.C.C.)  
*K.(A.) v. Kennedy*, [2002] CarswellOnt 345 (Sup. Ct.)  
*K.A.T. v. J.H.B.*, [1998] B.C.J. No. 1141 (S.C.)  
*Lister et al. v. Hesley Hall Ltd.*, [2001] U.K.H.L. 22  
*M.(A.) v. Ryan*, [1997] 1 S.C.R. 157  
*M.B. v. British Columbia* (2000), 230 D.L.R. (4th) 567 (S.C.C.)  
*M.M. v. R.F.*, [1997] B.C.J. No. 2914 (C.A.)  
*McKee v. College of Psychologists* (1994), 95 B.C.L.R. (2d) 62 (C.A.)  
*N.B. v. Blank*, [1998] O.J. No. 2544 (Gen. Div.)  
*Non-Marine Underwriters, Lloyd's of London v. Scalera* (2000), 185 D.L.R. (4th) 1 (S.C.C.),  
(*sub. nom. Scalera v. Oppenheim*)  
*Norberg v. Wynrib*, [1992] 2 S.C.R. 226  
*Peeters v. Canada*, [1994] 1 F.C. 562 (F.C.A.)  
*R. v. Ewanchuk*, [1999] 1 S.C.R. 330  
*R. v. Gauthier* (1995), 100 C.C.C. (3d) 563 (B.C.C.A.)

*R. v. Gruenke*, [1991] 3 S.C.R. 263  
*R. v. Matheson* (1990), 44 O.R. (3d) 557 (C.A.)  
*R. v. Seaboyer*, [1991] 2 S.C.R. 577  
*Re: College of Physicians & Surgeons of Ontario and K.* (1987), 59 O.R. (2d) 1 (C.A.)  
*S.A.D. v. E.E.P. Estate*, [2003] B.C.J. No. 2337 (S.C.)  
*Sarah Jane Doe v. Hirt*, [1993] B.C.J. No. 902 (S.C.)  
*Sills v. CAS of Belleville* (2001), 53 O.R. (3d) 577 (C.A.)  
*T.L. v. T.R.W.* (1997), 36 B.C.L.R. (3d) 165 (S.C.)  
*T.W.N.A. v. Clarke*, [2001] B.C.J. No. 1621 (S.C.)  
*Toronto (City) v. C.U.P.E.*, [2003] S.C.J. No. 64 (S.C.C.)  
*W.B. v. Plint*, [2001] B.C.J. No. 1446 (S.C.), var'd [2003] B.C.J. No. 2783 (C.A.)  
*Weingerl v. Seo*, [2003] O.J. No. 4277 (Sup. Ct.)  
*Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595  
*Y.(S.) v. C.(F.G.)*, [1997] 1 W.W.R. 229 (B.C.C.A.)

**Defendants:**

*6771122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983  
*A.(C.) v. C.(J.W.)* (1998), 60 B.C.L.R. (3d) 92 (C.A.)  
*A.D. v. M.D.*, [2000] O.J. No. 248 (Sup. Ct.)  
*A.M. v. B.P.*, [1999] O.J. No. 1256 (Gen. Div.)  
*B.(J.D.) v. M.(F.)*, [1998] CarswellOnt 3731 (Gen. Div.)  
*Bazley, supra*  
*Bennett (C.A.) , supra*  
*Bennett (S.C.C.) , supra*  
*Bonnington Castings Ltd. v. Wardlaw*, [1956] A.C. 613 (H.L.)  
*C.A. v. Critchley* (1998), 166 D.L.R. (4th) 475 (B.C.C.A.)  
*Continental Insurance Co. v. Dalton Cartage Co.*, [1982] 1 S.C.R. 164  
*Cottrelle v. Gerrard*, [2003] O.J. No. 4194 (C.A.)  
*D.F.M. v. J.D.*, [2000] O.J. No. 559 (S.C.J.)  
*D.J.B. v. A.R.B.*, [1997] B.C.J. No. 2041 (S.C.)  
*D.W. v. Canada (Attorney General)* (1999), 187 Sask. R. 21 (Q.B.)  
*E.D.G. , supra*  
*Jacobi v. Griffiths*, [1999] 2 S.C.R. 570  
*K.(W.) v. Pornbacher* (1997), 32 B.C.L.R. (3d) 360 (S.C.)  
*K.L.B. v. British Columbia*, [2003] S.C.J. No. 51 (S.C.C.)  
*M.(K.) v. M.(H.)*, [1992] 3 S.C.R. 6  
*M.M. v. R.F, supra*  
*March v. Stramare (E. and M.H.) Pty. Ltd.* (1991), 171 CLR 506 (Aust. H.C.)  
*Miller v. Minister of Pension*, [1947] 2 All E.R. 372 (K.B.)  
*Mombourquette, supra*  
*Norberg, supra*  
*O'Dell, supra*  
*Ortega v. 1005640 Ontario Inc. (c.o.b. Calypso Hut 3)*, [2002] O.J. No. 1196 (Sup. Ct.)

*Peixeiro v. Haberman*, [1997] 3 S.C.R. 549

*Plint, supra*

*R.R. v. Mealing*, [2000] CarswellOnt 5437 (Sup. Ct.)

*S.L. v. S.A.*, [1999] O.J. No. 1267 (Gen. Div.)

*Scalera, supra*

*Smith v. Waterfall* (2000), 50 O.R. (3d) 481 (C.A.)

*T.W.N.A. v. Clarke, supra*

*V.P. v. Canada (Attorney General)*, [2000] 1 W.W.R. 541 (Sask. Q.B.)

**COURT FILE NO.:** 97-CU-121279  
**DATE:** 20040714

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

P.D.

Plaintiff

**- and -**

RICHARD ALLEN

Defendant

**- and -**

THE ROMAN CATHOLIC EPISCOPAL  
CORPORATION FOR THE DIOCESE OF  
SAULT STE. MARIE, IN ONTARIO, CANADA

Defendant

**- and -**

THE MOST REVEREND JEAN-LOUIS  
PLOUFFE D.D.

Defendant

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REASONS FOR JUDGMENT

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Lissaman J.

Released: July 14, 2004

