

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
REGIONAL SENIOR
JUSTICE WARKENTIN

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Friday, THE 25th
DAY OF MAY, 2018

BETWEEN:

ALVIN MCKAY

Plaintiff

- and -

RALPH ROWE, THE SYNOD OF THE DIOCESE OF KEEWATIN
and SCOUTS CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

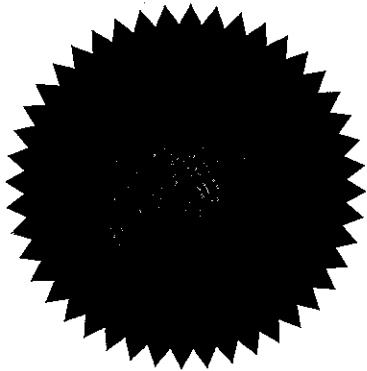
ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding, was heard on May 25, 2018, at 125 Brodie Street North, Thunder Bay, Ontario.

ON BEING ADVISED that the plaintiff, the Synod of the Diocese of Keewatin and Scouts Canada consent to this order, and Ralph Rowe having been noted in default,

ON READING the pleadings in this action and the motion records of the parties,

1. THIS COURT ORDERS that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.



2. **THIS COURT ORDERS** that the Class is defined as:

All persons who were alive as at May 11, 2015 who allege that they were sexually abused by Ralph Rowe in the geographic boundaries of the Anglican Diocese of Keewatin between 1975 and 1987 except the Excluded Persons ("Sexual Assault Class Members"); and

all persons who were parents of Sexual Assault Class Members as of the date of the alleged abuse of their child, who were alive as at May 11, 2015, that have standing pursuant to s. 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, or equivalent legislation in other provinces and territories as set out in Schedule "A" (the "Family Law Claimants").

"Excluded Persons" are all Sexual Assault Class Members and their respective Family Law Claimants who, as of May 11, 2017 had fully and finally settled their claims against the Synod of the Diocese of Keewatin and Scouts Canada (a.k.a. Scouts of Canada a.k.a. Boy Scouts of Canada) and released these entities with respect to any and all alleged abuse by Ralph Rowe.

3. **THIS COURT ORDERS** that Alvin McKay be and hereby is appointed as the representative plaintiff for the Class.

4. **THIS COURT ORDERS** that Koskie Minsky LLP and Watkins Law P.C. be and hereby are appointed as counsel to the Class.

5. **THIS COURT ORDERS** that the claims and rights of action asserted on behalf of the Sexual Assault Class Members against Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada are negligence, breach of fiduciary duty, and vicarious liability, and a derivative claim on behalf of the Family Law Claimants.

6. **THIS COURT ORDERS** that the common issues be and hereby are certified as:

- (1) Did the Synod of the Diocese of Keewatin and/or Scouts Canada owe a duty of care to the Sexual Assault Class Members to protect them from any alleged physical, mental or sexual abuse allegedly perpetrated by Ralph Rowe?
- (2) If the answer to (1) is "yes", did the Synod of the Diocese of Keewatin and/or Scouts Canada breach their duty of care?
- (3) Did the Synod of the Diocese of Keewatin, Scouts Canada, and/or Ralph Rowe owe a fiduciary duty to the Sexual Assault Class Members?

- (4) If the answer to (3) is "yes", did the Synod of the Diocese of Keewatin, Scouts Canada, and/or Ralph Rowe breach their fiduciary duty?
- (5) Are the Synod of the Diocese of Keewatin and/or Scouts Canada vicariously liable for any alleged physical, mental or sexual abuse perpetrated by Ralph Rowe?
- (6) Can the amount of the Sexual Abuse Class Members' damages be determined in whole or in part on an aggregate basis? If so, is it appropriate to do so in this case, and in what amount per Sexual Abuse Class Member?
- (7) Are the Family Law Claimants entitled to recovery pursuant to section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3 and/or the equivalent legislation in other provinces? If so, can some or all of these amounts be determined on an aggregate basis? If so, is it appropriate to do so in this case, and in what amount per Family Law Claimant?

7. **THIS COURT ORDERS** that any other proceeding commenced in Ontario in respect of the subject matter of this action be and hereby is stayed.

8. **THIS COURT ORDERS** that no other proceeding may be commenced in Ontario in respect of the subject matter of this action without leave of this Court.

9. **THIS COURT ORDERS** that the form of notices attached hereto as Schedules "B" and "C" are approved.

10. **THIS COURT ORDERS** that Class members may opt out of the class proceeding by delivering a signed opt out form, substantially in the form attached hereto as Schedule "D", or some other legible written request to opt out (the "Opt Out Form"). The Opt Out Form must be delivered to class counsel by email, mail or facsimile and must be received or post marked, if delivered by mail, within one hundred and twenty (120) days of this order (the "Opt Out Deadline").


11. **THIS COURT ORDERS** that no Class member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.

12. THIS COURT ORDERS that class counsel may make non-material changes to the notice and the Opt Out Form as are necessary and desirable upon receipt of the consent of the Synod of the Diocese of Keewatin and Scouts Canada.

13. THIS COURT ORDERS that the manner of notice attached hereto as Schedule "E" is approved.

14. THIS COURT ORDERS that notice shall be complete no later than thirty (30) days from the date of this order.

15. THIS COURT ORDERS that the cost of notice shall be evenly split between the plaintiff and the Synod of the Diocese of Keewatin and Scouts Canada.



THE HONOURABLE JUSTICE WARKENTIN

ENTRE 0 BOOK
INSUIT _____ REGISTRAR _____
DATE MAY 31 2018
No. 5019 PER
No. _____ POUR _____

SCHEDULE "A"

ALBERTA

Tort-feasors Act, R.S.A. 2000 c. T-5

Loss of consortium through injury

2.1 (1) When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse of that married person of the society and comfort of that married person, the person who inflicted the physical harm is liable in an action for damages by the spouse or in respect of the deprivation.

2.1 (2) The right of a spouse to bring the action referred to in subsection (1) is in addition to, and independent of, any right of action that the married person has, or any action that the spouse in the name of the married person has, for injury inflicted on the married person.

ONTARIO

Family Law Act, R.S.O. 1990, c. F.3

Right of dependants to sue in tort

61. (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

Damages in case of injury

(2) The damages recoverable in a claim under subsection (1) may include,

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) actual funeral expenses reasonably incurred;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
- (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and

(e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred.

QUÉBEC

Civil Code of Québec (S.Q. 1991, c. 64), Articles 454, 1457, 1607, 1609, 1614, 1615, 1616, 2926 and 2930.

SCHEDULE "B"

WERE YOU ABUSED BY RALPH ROWE?

If YES, A Class Action May Affect Your Rights.

A court authorized this notice. You are not being sued.

- You could be affected by a class action against Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada.
- Your rights are affected, and you have a choice to make now. This notice is to help you make that choice.
- Koskie Minsky LLP and Watkins Law P.C. were appointed by the court as the lawyers for victims of Ralph Rowe. You should call them at ● or email them at ● to get more information.
- If you have already filed a lawsuit and have fully and finally settled your claims related to abuse by Ralph Rowe, you are not part of the class. Please refer to the class definition on page ● for further information.

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in this lawsuit and wait for the outcome. Share in possible money or other benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue on your own about the same legal claims in this lawsuit.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit and get no benefits from it. Keep rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't receive any money or benefits. But, you keep any rights to sue Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada on your own about the same legal claims in this lawsuit. You will have to retain your own lawyer at your own cost.</p>

- Lawyers must prove the claims against Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada at a trial or a settlement must be agreed. If money or benefits are obtained you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit, you must ask to be removed by •.
- Call • or email • to get more information.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....Page ●

1. Why was this notice issued?
2. What is this lawsuit about?
3. Why is this a class action?
4. Who is a member of the Class?
5. What is the Plaintiff asking for?
6. Is there any money available now?

YOUR RIGHTS AND OPTIONS.....Page ●

7. What happens if I do nothing?
8. What if I don't want to be in the Class?

THE LAWYERS REPRESENTING YOU.....Page ●

9. Do I have a lawyer in the case?
10. How will the lawyers be paid?

A TRIAL.....Page ●

11. How and when will the Court decide who is right?
12. Will I get money after the trial?

GETTING MORE INFORMATIONPage ●

13. How do I get more information?

BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a class action. This means that the lawsuit meets the requirements for a class action and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against the Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada on your behalf are correct. This notice explains all of these things.

A judge of the Ontario Superior Court of Justice is currently overseeing this case. The case is known as *McKay v. Ralph Rowe et al.* (Court File No. CV-17-0239-00). The person who sued is called the Plaintiff. Ralph Rowe, the Synod of the Diocese of Keewatin and Scouts Canada are the Defendants.

2. What is this lawsuit about?

The lawsuit says that the Synod of the Diocese of Keewatin and Scouts Canada are responsible for the abuse by Ralph Rowe.

The Court has not decided whether the Plaintiff or the Defendants are right. The lawyers for the Plaintiff will have to prove the claims in Court.

If you are having a difficult time dealing with these issues you can call [number] (TTY: [number]) for assistance.

3. Why is this a class action?

In a class action a person called the “representative plaintiff” (in this case, Alvin McKay) sued on behalf of people who have similar claims. All of these people are a “Class” or “Class members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Class includes:

All persons who were alive as at May 11, 2015 who allege that they were sexually abused by Ralph Rowe in the geographic boundaries of the Anglican Diocese of Keewatin between 1975 and 1987 except the Excluded Persons ("Sexual Assault Class Members"); and

all persons who were parents of Sexual Assault Class Members as of the date of the alleged abuse of their child, who were alive as at May 11, 2015, that have standing pursuant to s. 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, or equivalent legislation in other provinces and territories as set out in Schedule "A" (the "Family Law Claimants").

"Excluded Persons" are all Sexual Assault Class Members and their respective Family Law Claimants who, as of May 11, 2017 had fully and finally settled their claims against the Synod of the Diocese of Keewatin and Scouts Canada (aka Scouts of Canada) and released these entities with respect to any and all alleged abuse by Ralph Rowe.

5. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class.

6. Is there any money available now?

No money or benefits are available now because the Court has not yet decided whether Ralph Rowe, the Synod of the Diocese of Keewatin or Scouts Canada did anything wrong, and the parties have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for a share.

YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself before a possible trial, and you have to decide this by ●.

7. How do I include myself in the lawsuit?

If you do nothing, you will automatically remain in the lawsuit. You will be bound by all Court orders, good or bad. If money or other benefits are awarded by the court or if the parties agree to a settlement, you will be notified about how to ask for a share.

8. How do I exclude myself from the lawsuit?

If you want to exclude yourself from the lawsuit, you must send a letter to the address below, postmarked no later than ●, that says you want to be excluded from the class action *McKay v. Ralph Rowe et al.* Include your name, address, telephone number, and signature. You can also get an Opt Out Form at [website]. You must mail your inclusion request or Opt Out Form postmarked by ● to: [address], or send it by email at: [email].

If you choose to opt out and you wish to pursue a claim, you will be responsible for your own claim and will have to retain a lawyer at your own expense.

Call [number] (TTY: [number]) if you have any questions about whether to get out of the Class, and if so how to do it.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto and Watkins Law P.C. from Thunder Bay to represent you and other Class members as "Class Counsel." You will not be charged for these lawyers unless there is a settlement or judgment granted by the court. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid?

Class Counsel will only be paid their fees if they win at trial or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or may be paid separately by the defendants.

A TRIAL

11. How and when will the court decide who is right?

If the lawsuit is not dismissed or settled, the Plaintiff will have to prove the claims at a trial that will take place in the Province of Ontario. During the trial, a court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or the Defendants are right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiff obtains money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website, [website], as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information at [website], by calling toll free at [number] (TTY: [number]), or writing to: [address], or by email at: [email].

SCHEDULE "C" SHORT FORM NOTICE

Ralph Rowe Abuse Survivors Class Action

- Are you a survivor of abuse by Ralph Rowe or a parent of a survivor? If so (and if you have not fully and finally settled your claim), you may be a class member in the class action which has now been certified by the court. The lawsuit seeks money (damages) and other benefits for class members.
- Please contact us at [email address] or [telephone number] and visit [website] to get more information about this class action and your rights.
- Class members are automatically included in the class action, unless they take steps to exclude themselves (opt out) by [opt out deadline]. If you want to stay in the class action, do nothing.
- If you opt out, you will not be part of the lawsuit and you will not be able to share in any money or any other benefit obtained for the class if the lawsuit is successful. If you wish to pursue your claim on your own, you will have to retain a lawyer at your own expense.

SCHEDULE "D"

OPT OUT FORM

To: ●

This is NOT a claim form. Completing this OPT OUT FORM will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

*McKay v. Ralph Rowe, the Synod of the Diocese of Keewatin
and Scouts Canada*

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that there may be a limitation period that applies to my individual claim, and that I may have to commence my individual claim within a specified time period or it may be legally barred.

I understand that the certification of this class proceeding suspended the running of any applicable limitation periods from the time the class proceeding was filed. Any applicable limitation periods will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any applicable limitation period and for taking all necessary legal steps to protect any claim I may have, at my own expense.

Date:

Name of Class member:

Signature of Class member Opting Out:

Telephone number and email address:

SCHEDULE "E"

THE NOTICE PLAN

Notice of certification shall be provided as follows:

- (1) By placing the long form notice on class counsel's website.
- (2) Class Counsel will provide a copy of the long form notice to The Ralph Rowe Survivors Group Nishnawbe Aski Nation Community Wellness Program.
- (3) By placing the short form notice in the Thunder Bay Chronicle Journal, the Kenora Daily Miner and News and the Winnipeg Free Press.
- (4) Class counsel shall retain a skip tracer or other professional to identify the contact information of certain agreed upon individuals, being individual complainants in criminal decisions relating to Ralph Rowe for whom no civil action was commenced, and class counsel shall send to each individual the long form notice at the last known address identified in the searches.
- (5) By forwarding the notice to any Class member who has contacted class counsel.

ALVIN MCKAY v. RALPH ROWE ET AL.

Court File No.: CV-17-0239-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Thunder Bay

ORDER

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