

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
REGIONAL SENIOR)
JUSTICE WARKENTIN)
BETWEEN :)
ALVIN MCKAY)
Plaintiff)
- and -)
RALPH ROWE, THE SYNOD OF THE DIOCESE OF KEEWATIN)
and SCOUTS OF CANADA)
Defendants)
Proceeding under the *Class Proceedings Act, 1992*



ALVIN MCKAY

Plaintiff

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the Plaintiff for judgment regarding the Certified Common Issues in this class proceeding was heard on March 25, 2021 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 Judgment, and Ralph Rowe having been noted in default,

1. **THIS COURT ORDERS AND ADJUDGES** that the Class shall be defined as follows:

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 of Canada (aka Boy Scouts of Canada) and released these entities with respect to any and all alleged abuse by Ralph Rowe.

2. **THIS COURT ORDERS AND ADJUDGES** that the claims asserted by the Sexual Assault Class Members against the Synod of the Diocese of Keewatin and Scouts Canada were for negligence, breach of fiduciary duty and vicarious liability for the physical, mental and sexual abuse perpetrated by Ralph Rowe.

3. **THIS COURT ORDERS AND ADJUDGES** that the claims asserted by the Family Law Claimants against the Synod of the Diocese of Keewatin and Scouts Canada were for compensation 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”**.

4. **THIS COURT ORDERS AND ADJUDGES** that the claims asserted by the Sexual Assault Class Members against Ralph Rowe were for battery, assault and breach of fiduciary duty.

5. **THIS COURT ORDERS AND ADJUDGES** that the claims asserted by the Sexual Assault Class against Ralph Rowe were for compensation 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”**.

6. **THIS COURT ORDERS AND ADJUDGES** that the common issues are answered as follows:

- (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?**

Answer: By virtue of the answer to Common Issue 5 (below), it is not necessary to answer this question.

(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?

Answer: By virtue of the answer to Common Issue 5 (below), it is not necessary to answer this question.

(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?

Answer: By virtue of the answer to Common Issue 5 (below), it is not necessary to answer this question.

(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?

Answer: By virtue of the answer to Common Issue 5 (below), it is not necessary to answer this question.

(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?

Answer: Yes. The Synod of the Diocese of Keewatin and Scouts Canada are vicariously liable, on a joint and several basis, for the physical, mental and sexual abuse perpetrated by Ralph Rowe, if any, against the Sexual Assault Class Members during the class period provided that the abuse:

- a) was perpetrated on property owned by the Synod of the Diocese of Keewatin or Scouts Canada;
- b) was perpetrated during or in connection with activities organized by or affiliated with The Synod of the Diocese of Keewatin or Scouts Canada; or,
- c) was perpetrated in circumstances where the Sexual Assault Class Member's involvement with Ralph Rowe was materially influenced by the fact of Ralph Rowe being a priest of the Synod of the Diocese of Keewatin and/or a Scout leader with Scouts Canada.

- (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?**

Answer: It is not necessary to answer this question because the Sexual Abuse Class Members have withdrawn this theory of damages for this case.

- (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?**

Answer: The Family Law Claimants are 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 in an amount to be determined by agreement of the parties or by further Judgment of the Court. It is not necessary to answer the component of this question relating to "aggregate" determination of damages because the Plaintiff has withdrawn this theory of damages for this case.

7. **THIS COURT ORDERS AND ADJUDGES** that, by virtue of the disposition of the Certified Common Issues herein that a trial of the Certified Common Issues is no longer necessary.

8. **THIS COURT ORDERS AND ADJUDGES** that, for the purposes of the individual issues phase of this class proceeding, the Statement of Claim is to be amended to reflect this Judgment in the form attached hereto.

9. **THIS COURT ORDERS AND ADJUDGES** that the issue of notice of this Judgment shall be determined on a further motion to this Court.

10. **THIS COURT ORDERS AND ADJUDGES** that the manner of the determination of the individual issues arising out of this class proceeding pursuant to s.

25 of the *Class Proceedings Act, 1992* shall be determined on a further motion to this Court.

11. **THIS COURT ORDERS AND ADJUDGES** that the issue of costs and disbursements payable by the Defendants shall be addressed by further order of this Court.

A handwritten signature in blue ink, appearing to be 'Warkentin', is written above a horizontal line.

THE HONOURABLE JUSTICE WARKENTIN

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

ALVIN MCKAY

Plaintiff

- and -

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE

TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 11, 2017

Issued by _____
Local registrar

Address of
court office

TO: **Ralph Rowe**

AND TO: **The Synod of the Diocese of Keewatin**
915 Ottawa St., Box 567
Keewatin, Ontario
P0X 1C0
Canada

AND TO: **Scouts Canada**
1345 Baseline Road
Ottawa, Ontario
K2C 0A7
Canada

CLAIM

1. The plaintiff claims:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the class;
 - (b) a declaration that the defendant Ralph Rowe is liable to the plaintiff and the class members for the damages caused by his battery, ~~and~~ assault, ~~and~~ breach of fiduciary duty to the plaintiff and the class members;
 - ~~(c)~~ a declaration that the defendants the Synod of the Diocese of Keewatin and Scouts Canada breached their fiduciary and common law duties and are vicariously liable to the plaintiff and the class members for the sexual abuse and breach of fiduciary duty committed by Ralph Rowe;
 - (c) ~~(d)~~ a declaration that the defendants the Synod of the Diocese of Keewatin and Scouts Canada are liable to the plaintiff and the class members for the damages caused by their breach of fiduciary and common law duties and are vicariously liable for the sexual assault and battery committed by Ralph Rowe on the plaintiff and the class members where the sexual assault and battery was perpetrated:
 - (i) on property owned by the Synod of the Diocese of Keewatin or Scouts Canada;
 - (ii) during or in connection with activities organized by or affiliated with The Synod of the Diocese of Keewatin or Scouts Canada; or
 - (iii) in circumstances where the class member's involvement with Ralph Rowe was materially influenced by the fact of Ralph Rowe being a priest of the Synod and/or a Scout Leader with Scouts Canada.
 - (d) ~~(e)~~ damages for battery, and assault, ~~negligence, breach of fiduciary duty, and vicarious liability~~ to be determined in a process established by this Honourable Court pursuant to section 25 of the *Class Proceedings Act, 1992, S.O. 1992, c. 6; in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate*
 - (e) ~~(f)~~ prejudgment and postjudgment interest pursuant to the *Courts of Justice Act, R.S.O. 1995, c. C. 43, as amended;*
 - (f) ~~(g)~~ costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;

- (g) ~~(h)~~ pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (h) ~~(i)~~ such further and other relief as to this Honourable Court may seem just and appropriate in all the circumstances.

A. OVERVIEW

2. Ralph Rowe was a priest in the Synod of the Diocese of Keewatin (the "**Synod**") and a Scout leader with Scouts Canada. In or around the 1970s and 1980s, Rowe piloted an airplane into remote northern First Nations communities. Rowe's ostensible purpose in these communities was to provide spiritual services, guidance and leadership to predominantly First Nations youth on behalf of the defendants. Rowe led religious services and character building activities and provided training and leadership skills for young boys in these communities. However, throughout this time, Rowe's conduct was motivated by a sinister desire to gratify his improper sexual appetite for young boys.

3. Over this period, by virtue of the power and authority vested in him as a priest of the Synod and as a Scout leader, Rowe engaged in sexual grooming behaviour with young boys under his care and control. This grooming activity, culminating in heinous sexual acts, was perpetrated on hundreds of predominantly aboriginal youth in northern Ontario and Manitoba First Nations communities.

4. ~~Through the Synod and Scouts Canada's systemic negligence and breach of fiduciary duty,~~ Rowe's sexual predation continued for decades. By providing Rowe with the opportunity to abuse his power over these children in acts directly related to the

psychological intimacy inherent in his role as priest and Scout leader, the Synod and Scouts Canada are ~~also~~ vicariously liable for the conduct of Rowe.

B. THE PLAINTIFF AND THE CLASS

5. The Plaintiff, Alvin McKay (hereinafter referred to as "**Alvin**") is an individual residing in the City of Thunder Bay, in the Province of Ontario.

6. Alvin is a member of Kitchenuhmaykoosib Inninuwug First Nations, also known as Big Trout Lake First Nation

7. When he was a child between the ages of 5 and 7, Alvin was repeatedly sexually assaulted by Ralph Rowe.

8. The defendant the Synod of the Diocese of Keewatin is an incorporated body composed of representatives of parishes located in the Diocese of Keewatin.

9. The defendant Scouts Canada is a non-profit corporation created by special act of parliament on June 12, 1914. Scouts Canada is a national youth organization that offers services to youth across Canada.

10. The plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following persons:

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 other persons who were parents of a Sexual Assault Class Member 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.

C. THE SYNOD AND SCOUTS CANADA AND THEIR RESPONSIBILITY TO THE PLAINTIFF AND THE CLASS

i. The Synod of the Diocese of Keewatin

11. The Anglican Church of Canada has a national superstructure. The basic organizational unit of the Anglican Church is the diocese, of which there are approximately 30 covering all of Canada.

12. The Synod is an incorporated body composed of representatives of parishes located in the Diocese of Keewatin.

13. The Synod was incorporated pursuant to a special act of Parliament entitled *An Act to incorporate the Synod of the Diocese of Keewatin* (the "**Act**") assented to on July 20, 1908. Pursuant to the Act, the Synod has the power and authority over, among other things:

- (a) the administration, management and control of the property, affairs and business of the Synod; and
- (b) the appointment, functions, duties and elections of all officers, agents, and servants of the Synod.

14. The geographical scope of the Synod includes the northwestern portion of the province of Ontario and the northeastern portion of the province of Manitoba.

15. The Synod is at all material times responsible for the employment, licensing and supervision of priests, including Ralph Rowe. It had the power to select, control and dismiss Rowe. It had the right to exclusive service, determination of place of work, and control over Rowe's conduct and hours of work. The Synod was also responsible for paying the salary and other benefits to Rowe.

16. At all material times, the Synod was charged with administering to the spiritual and religious needs and affairs of those Anglicans and Anglican parishes within its geographical boundaries.

ii. Scouts Canada

17. The defendant, Scouts Canada, is a non-profit organization that is an incorporated body pursuant to the laws of Canada.

18. Scouts Canada was known as The Boy Scouts of Canada from June 12, 1914 to July 9, 1969, as Boy Scouts of Canada from July 9, 1969 to March 21, 2007 and as Scouts Canada from March 21, 2007 to the present. At all material times, The Boy Scouts of Canada, Boy Scouts of Canada, and Scouts Canada (hereinafter "**Scouts Canada**") carried on as the same corporation.

19. Scouts Canada is mandated with organizing and regulating the scouting movement within Canada. At all material times, Scouts Canada operated various

programs for children of various ages within Canada, including Beaver Scouts (children aged 5-7), Cubs Scouts (children aged 8-10), and Scouts (children aged 11-14).

20. Scouts Canada is responsible for the appointment of Scout leaders and implements programs for the benefit of youth who join as members.

21. It is also common for youth who are not accepted as members of Scouts Canada to participate in activities organized and led by Scout leaders. At all material times, this was known to and permitted by Scouts Canada.

iii. Rowe's Travel in Remote First Nations Communities

22. At all material times, Rowe was a priest in the Synod.

23. The Synod sponsored Rowe's training, ordained him to the priesthood and placed him in various parishes as a priest.

24. Rowe had ministerial responsibilities for the Synod in various First Nations communities. Rowe discharged his priestly functions and responsibilities, including those of a religious teacher, enabler, trusted confidante, child care giver, and religious leader. He provided childcare on church sponsored activities, sleepovers, camping, and related spiritual and recreational activities.

25. During this time, Rowe also occupied various roles in Scouts Canada. Rowe led groups of children in Beaver Scouts, Cub Scouts, and Scouts as a Scout leader.

26. In particular, as a Scout leader, Rowe led, organized, and planned events for children enrolled in Beaver Scouts, Cub Scouts, and Scouts and other children that joined Rowe on Scouts Canada activities.

27. Rowe was appointed by Scouts Canada and directed by the Synod to be in charge of Scouts Canada activities in northern Ontario First Nations communities. Rowe discharged his Scouts Canada functions and responsibilities, including by leading various Scouts Canada sponsored activities such as sleepovers, camping and related recreational activities.

28. The Synod sponsored Rowe's involvement in Scouts Canada and the Scouts Canada activities organized by Rowe and encouraged participation in Scouts Canada among its parishioners.

29. Between 1971 and 1987, Rowe travelled throughout isolated First Nations communities within the geographical boundaries of the Synod, including Fort Severn, Fort Hope, Sachigo Lake First Nation, Kitchenuhmaykoosib Inninuwug, Kasabonika Lake First Nation, Wunnumin Lake First Nation, Kingfisher Lake First Nation, Round Lake, Muskrat Dam Lake First Nations, Bearskin Lake First Nation, Wapekeka First Nation, Weagamow Lake, and Big Trout Lake.

30. The Synod provided Rowe with an airplane in order to promote the Synod and Scouts Canada in the remote northern First Nations communities. At all material times, the airplane used by Rowe was owned by the Synod.

31. Rowe's contact with his victims arose out of his role as a priest in the Synod and as a Scout leader. He flew into remote northern First Nations communities in connection with his roles and obligations in Scouts Canada and the Synod. Rowe spent weeks or even longer periods of time in these communities.

32. In connection with his roles as a priest of the Synod and as a leader in Scouts Canada, Rowe took the plaintiff and the class members on camping trips and church outings and hosted children's activities and sleepovers in various cabins and Mission Houses. He also took children on trips in his airplane.

iv. Rowe's Sexual Assault of the Plaintiff and the Class Members

33. Through the power and authority conferred on Rowe pursuant to his role as a priest of the Synod and as a Scout leader, and in discharging those roles, Rowe engaged in sexually grooming behaviour and sexual activity with the plaintiff and the class.

34. The following are examples of common incidents of sexual abuse perpetrated by Rowe on the plaintiff and the class members:

- (a) In the course of administering his priest and Scout leader duties, Rowe played sexually inappropriate games with children. One game involved the children lining up at one end of the room. The lights would be turned off, and Rowe told the children to try to make it to the other side of the room without being touched. While the children ran across the room, Rowe would grab as many kids as he could. However, while grabbing the children, Rowe would inappropriately touch the boys' buttocks and genitals.
- (b) Rowe pretended to be flying with children in the airplane. Children would sit with him in the front, whereupon he would touch their legs and genitals.
- (c) Children frequently slept over at cabins or Mission Houses. In the middle of the night, Rowe would wake children, tell them to disrobe and would touch their genitals. Rowe also took children into his bed.

35. Rowe abused his authority as a priest of the Synod and Scout leader to commit sexual acts on the plaintiff and the class members, such as:

- (a) a progression of touching victims' backs and buttocks, and then putting his arm around their waists;
- (b) touching and rubbing victims' penises and anal areas over and under their pants;
- (c) pulling the victims' underwear closely around the victims' genitals;
- (d) tightly squeezing victims' genitals;
- (e) rubbing his penis against the victims' buttocks;
- (f) kissing the victims' penises;
- (g) giving and receiving oral sex from the victims;
- (h) sexual touching and fondling of the victims, including anal penetration of the victims with his fingers;
- (i) anal penetration of the victims with his penis;
- (j) forced manual stimulation of Rowe's penis by the victims;
- (k) waking victims in the night, telling them to disrobe and touching their genitals;
- (l) placing his testicles on the body of victims;
- (m) taking victims into his bed; and
- (n) physical violence when victims resisted.

~~36. At all material times, Scouts Canada and the Synod had actual or constructive knowledge of the sexual acts committed by Rowe.~~

37. In 1988, Rowe was convicted of ten counts of sexual abuse.

38. In 1994, Rowe pleaded guilty to 26 sex-related charges against more than a dozen boys in Ontario. Rowe was also convicted of 39 counts of indecent assault. Ralph Rowe was sentenced to six years in prison, but served less than five.

39. On May 18, 2005 Justice J.P. Little released a decision arising from a preliminary inquiry into 75 charges of sexual and indecent assaults against Rowe. Justice Little's reasons state that "[s]ome witnesses said that they tried to tell someone, at the time, but were met with disbelief because Mr. Rowe was then a man of God, a Reverend."

40. In a July 6, 2007 sentencing decision, Justice E.W. Stach summarized Rowe's history of abusing his status as a priest of the Synod and as a Scout leader as follows:

By way of overview I think it fair to say that from 1975 and continuously until the year end in 1987 Ralph Rowe adopted what, in retrospect, is fairly considered as a purposeful, premeditated, formulary and ultimately predatory approach towards the pursuit of his own personal sexual gratification. More dangerously he was well positioned and well armed to do so.

Protected and elevated by his priestly vestment he enjoyed both a ready entrée into dozens of remote First Nations communities in Northwestern Ontario and an aura of immediate trust. He exploited that. At the same time he enjoyed the cachet of a pilot and the lure of an airplane on floats in remote Aboriginal communities. Moreover, he held out to young persons the prospect of involvement in activities of Cubs and Scouts on remote Reserves - where there was little in the way of structured recreation - as a means of attracting vulnerable, trusting, young Aboriginal male children into his midst. He exploited all of these badges of authority and trust.

Regrettably the airplane provided him access to many First Nation's communities and he used it over a period of years that spanned decades, just as he misused the privilege and power of his offices throughout much of that time. Worst of all he exploited and sexually abused children of young age, vulnerable and trusting, who were utterly defenceless; who did not understand and could not understand what he was doing to them.

41. Justice Stach ordered that Rowe be imprisoned for 3 years in respect of one count to run concurrently with additional sentences of three years, one year and one year.

42. By reasons dated July 2, 2009, Justice Stach convicted Rowe of an additional six counts of indecent assault and sexual misconduct. Justice Stach permitted the introduction of similar fact evidence relating to Rowe's propensity to sexually assault

boys aged between 5 and 15 who were under his care and control. Justice Stach concluded that Rowe's sexual assaults of young boys were similar both broadly and in detail, and the degree of connectedness between the acts was "overwhelmingly compelling":

In the case before me the evidence of similar acts spans a broad period that dates from the early 1970's until approximately 1988. At first blush the mere span of that time might be said to detract from the issue of similarity. Throughout that entire period however Ralph Rowe occupied a position in the various First Nations communities in which he attended, both as a priest and as a Scout or Cub leader. The incidents of abuse, I should say the incidents of proven abuse, sexual abuse, are staggeringly large in number. They range in severity from relatively low level sexual assault, consisting of fondling-like activity, to the most serious end of the spectrum that being actual anal penetration. I have indicated that the spectrum of activity over that period was wide-ranging. Nevertheless the number of incidents both at the low, mid-level and high level of the spectrum of seriousness, take place with such frequency, that whether the activity alleged at this trial be at the relatively low end of the seriousness spectrum or at its upper levels, the details of individual events are quite often strikingly similar in their circumstances.

...

The evidence of similar facts is supported largely by actual convictions of the Court or Courts, and findings made by them, that from the beginning of that period until the end are consistent with an individual accused who engaged in grooming behaviour and in which he used his authoritative, used or misused his authoritative position as priest and Scout leader in a fashion that wreaked havoc on a vulnerable group of young aboriginal boys.

The analysis under the heading of 'similarity' does not require that all allegations be identical. Suffice to say that I view the issue of similarity both broadly and in detail. The degree of connectedness in my opinion is overwhelmingly compelling. Having said that I am no less aware now than before of the dangers of misuse of evidence of similar fact. I am no less mindful of the risk of misuse now than when I gave reasons on a similar *voir dire* in 2006. It is an issue in respect of which I must continue to be mindful and about which I am satisfied that I can appropriately instruct myself to do so.

43. By reasons dated July 6, 2007, Rowe was found guilty of 5 counts of indecent assault. Justice Stach concluded that the prestige and cachet conferred on Rowe by virtue

of his role as Scout leader and priest enabled him to commit sexual assaults of young boys:

It is nevertheless uncontested that he was at all material times a functionary of the church, an organizer and leader of boy scout and choir groups in some remote communities, and a pilot. Ralph Rowe visited several remote First Nations communities in those capacities, Weagamow Lake and Wunnumin Lake among them. He often 'stayed over' for a few days at a time, usually at the Mission House in the community he was visiting.

...

Leaders of cubs and boy scouts, priests, and pilots are important positions in Canadian communities. Some cachet or prestige attaches to each of these callings. For one person to be engaged in all 3 capacities in a remote fly-in community is extraordinary.

44. In 2009, Rowe was brought before the courts again on six new charges of indecent assault and one count of sexual assault. He was sentenced to a one-year sentence concurrent to the sentence he was already serving.

45. A 2012 guilty plea brought Rowe's tally of convictions to nearly 60 sex crimes and resulted in a two-year conditional sentence to be served under house arrest. All told, Rowe was found or pleaded guilty to sexual offences perpetrated on dozens of young boys.

D. THE PLAINTIFF'S EXPERIENCE

46. The proposed representative plaintiff, Alvin McKay, was born on January 20, 1978 in Sioux Lookout, Ontario.

47. Throughout his childhood, Alvin and his family moved throughout various northern Ontario First Nations communities.

48. In or around the ages of 5 to 7, Alvin lived in Kitchenuhmaykoosib Inninuwug, also known as Big Trout Lake First Nation Reserve, Ontario ("**Big Trout Lake**").

49. At this time, Ralph Rowe led a Scouts Canada group and conducted religious services in Big Trout Lake.

50. Rowe flew into Big Trout Lake in his airplane and stayed for several weeks at a time. During his stay, Rowe led various Scout events with the male children of Big Trout Lake.

51. During this time, Alvin joined Scouts Canada as Beaver Scout.

52. Alvin participated in many Scout events and activities that were led by Rowe.

53. Many of the Scout activities led by Rowe took place in the Big Trout Lake Mission House. At all material times, the Big Trout Lake Mission house was operated, maintained, and funded by the Synod.

54. For example, Rowe taught Alvin and other children enrolled in Scouts how to read and cook in the Mission House. Alvin and the other children enrolled in Scouts also played hockey in the Mission House basement.

55. Rowe also took Alvin and other children enrolled in Scouts on camping trips to a cabin in the woods.

56. During these activities, Rowe misused his position of power, authority and trust over Alvin vested in him as a priest by the Synod and by Scouts Canada. Over the course of their relationship, Rowe took Alvin aside into various different places and performed

various sexual acts on him. The private places where these acts occurred included rooms in the Mission House, the Mission House basement, and a cabin in the woods.

57. Rowe's sexual assaults on Alvin included:

- (a) touching Alvin's penis and buttocks on top of and under his clothes;
- (b) anal penetration by Rowe on Alvin with Rowe's finger;
- (c) anal penetration by Rowe on Alvin with Rowe's penis; and
- (d) oral intercourse by Alvin with Rowe's penis.

58. The sexual assaults identified in paragraph 59 took place at least three to four times.

59. The consequences suffered by Alvin arising from these sexual assaults are severe and long-lasting, and include:

- (a) anxiety and depression;
- (b) trouble sleeping almost every night;
- (c) severe trust issues, particularly with individuals in positions of authority.
- (d) alcoholism and other substance abuse;
- (e) trouble entering into intimate relationships; and
- (f) difficulty connecting intimately with partners.

60. Alvin has been taking anti-depressants for approximately 10 to 15 years. He has also taken Imovane to help him sleep at night.

D. CAUSES OF ACTION

i. Negligence

(a) ~~Scouts Canada~~

~~61. Scouts Canada had sole jurisdiction over Rowe in his capacity as Scout leader. Scouts Canada owed a duty of care to the plaintiff and to the class.~~

~~62. Scouts Canada owes a duty of care to all children enrolled in Scouts Canada and all children that participate in activities sanctioned by Scouts Canada and otherwise organized by Scout leaders.~~

~~63. Rowe was employed by Scouts Canada. At all material times, Scouts Canada had the legal duty to control, discipline, direct, supervise, and intervene in Rowe's acts as a Scout leader.~~

~~64. Scouts Canada accepted control over the plaintiff and the class members during Scouts Canada activities. Scouts Canada operated, managed, sponsored and ought to have properly supervised activities sanctioned by Scouts Canada or otherwise organized by Scout leaders.~~

65.— ~~The duty of care is informed by the power imbalance between Scouts Canada and children enrolled in activities sanctioned by Scouts Canada or otherwise organized by Scout leaders, and in particular, the vulnerability of such children vis-à-vis Scouts Canada. Scouts Canada had power and influence over these children who were vulnerable and dependent on Scouts Canada for their developmental and recreational needs.~~

66.— ~~Scouts Canada had direct contact with the plaintiff and the class. Scouts Canada reached out to children and involved them in participation within Scouts Canada activities. Scouts Canada organized, encouraged, authorized, condoned, and promoted direct interaction between its agents and representatives, including Scout leaders, and the plaintiff and the class members. It organized, encouraged, authorized, condoned, and promoted activities, including recreational and developmental activities, for the benefit of the plaintiff and the class members.~~

67.— ~~Scouts Canada encouraged obedience of the Scout youth, including the plaintiff and the class members, to Scout leaders such as Rowe.~~

68.— ~~Scouts Canada knew or ought to have known that Rowe was sexually abusing the plaintiff and the class members. It was aware that Rowe was frequently engaged in activities with young boys, and it was reasonably foreseeable that there was a risk of harm to the plaintiff and the class.~~

69.— ~~The reasonable standard of care expected in the circumstances required Scouts Canada to:~~

- (a) — properly screen, investigate, and vet Rowe's background and character prior to accepting him as a Scout Leader;
- (b) — have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;
- (c) — follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;
- (d) — have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;
- (e) — follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;
- (f) — have in place appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well being of the plaintiff and the class;
- (g) — follow appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well being of the plaintiff and the class;
- (h) — have in place appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue sexual abuse allegations against Rowe with due diligence;
- (i) — follow appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue sexual abuse allegations against Rowe with due diligence;
- (j) — have in place appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;
- (k) — follow appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;
- (l) — have in place appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination of Rowe for his propensity to commit sexual assaults;
- (m) — follow appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination, for Rowe's propensity to commit sexual assaults;
- (n) — have in place appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;

- ~~(o) — follow appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~
- ~~(p) — have in place appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(q) — follow appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(r) — ensure that the standards of conduct, policies and procedures, and any changes in standards of conduct, policies and procedures were communicated and properly understood throughout Scouts Canada;~~
- ~~(s) — ensure that the decision making process concerning the management of incidents of sexual misconduct against youth is consistently applied;~~
- ~~(t) — ensure that the investigative processes concerning incidents of sexual misconduct against youth is consistently applied;~~
- ~~(u) — have in place appropriate standards of conduct, policies and procedures to communicate incidents of suspected child abuse and criminal acts against children to the authorities;~~
- ~~(v) — follow appropriate standards of conduct, policies and procedures to communicate incidents of suspected child abuse and criminal acts against children to the authorities;~~
- ~~(w) — have in place appropriate standards of conduct, policies and procedures to ensure that all relevant Scouts Canada sanctioned events are communicated to parents or guardians of Scout youth and that Scout youth should only attend these sanctioned events, thereby preventing Scout leaders from holding unsanctioned events where they may commit acts of sexual misconduct against Scout youth;~~
- ~~(x) — follow its standards of conduct, policies and procedures to ensure that all relevant Scouts Canada sanctioned events are communicated to parents or guardians of Scout youth and that Scout youth should only attend these sanctioned events; and~~
- ~~(y) — have in place appropriate standards of conduct, policies and procedures to ensure that victims of abuse receive appropriate counselling and treatment~~

~~70. — Scouts Canada breached the standard of care on a class wide, systemic basis, in the following respects:~~

- (a) ~~failing to properly screen, investigate, and vet Rowe's background and character prior to accepting him as a Scout leader;~~
- (b) ~~failing to have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- (c) ~~failing to follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- (d) ~~failing to have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- (e) ~~failing to follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- (f) ~~failing to have in place appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well-being of the plaintiff and the class;~~
- (g) ~~failing to follow appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well-being of the plaintiff and the class;~~
- (h) ~~failing to have in place appropriate standards of conduct, policies and procedures to investigate and pursue sexual abuse allegations against Rowe with due diligence;~~
- (i) ~~failing follow appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue sexual abuse allegations against Rowe with due diligence;~~
- (j) ~~failing to have in place appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse;~~
- (k) ~~failing follow appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;~~
- (l) ~~failing to have in place appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination, for Rowe's propensity to commit sexual assaults;~~
- (m) ~~failing to follow appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination, for Rowe's propensity to commit sexual assaults;~~
- (n) ~~failing to have in place appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~

- ~~(o) — failing to follow appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~
- ~~(p) — failing to have in place appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(q) — failing to follow appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(r) — failing to ensure that the standards of conduct, policies and procedures, and any changes in standards of conduct, policies and procedures were communicated and properly understood throughout Scouts Canada;~~
- ~~(s) — failing to consistently apply the decision making process concerning the management of incidents of sexual misconduct against youth;~~
- ~~(t) — ensuring consistent investigative processes concerning incidents of sexual misconduct against youth;~~
- ~~(u) — failing to have in place appropriate standards of conduct, policies and procedures to communicate incidents of suspected child abuse and criminal acts against children to the authorities;~~
- ~~(v) — failing to follow appropriate standards of conduct, policies and procedures to communicate incidents of suspected child abuse and criminal acts against children to the authorities;~~
- ~~(w) — failing to have in place appropriate standards of conduct, policies and procedures to ensure that all relevant Scouts Canada sanctioned events are communicated to parents or guardians of Scout youth and that Scout youth should only attend these sanctioned events, thereby preventing Scout leaders from holding unsanctioned events where they may commit acts of sexual misconduct against Scout youth; and~~
- ~~(x) — failing to have in place appropriate standards of conduct, policies and procedures to ensure that victims of abuse receive appropriate counselling and treatment~~

~~71. — Scouts Canada knew or ought to have known that, as a consequence of the above-documented failures, that the plaintiff and the class would suffer immediate and long term harm. Such harm was not too remote as it was a direct consequence of Scouts Canada's failures.~~

(b) — The Synod of the Diocese of Keewatin

~~72. — The Synod had sole jurisdiction over Rowe in his capacity as priest of the Synod. The Synod owed a duty of care to the plaintiff and to the class.~~

~~73. — The Synod owes a duty of care to all of its parishioners and others coming in to contact with its priests in the ordinary course of their ministry.~~

~~74. — The Synod ordained the Anglican priests within the geographical boundaries of the diocese and had control over their affairs. At all material times, the Synod had the legal duty to control, discipline, direct and intervene in the acts of its priests.~~

~~75. — The Synod managed, operated and ought to have properly supervised its parishes, including Mission Houses.~~

~~76. — The Synod had power and influence over its parishioners, who were vulnerable and dependent on the Synod for their spiritual needs.~~

~~77. — In particular, by virtue of its power and authority over children in its parish, the Synod owes a duty of care to children in its parish. The duty of care is informed by the power imbalance between the Synod and children in its parish, and in particular, the vulnerability of such children vis-à-vis the Synod.~~

~~78. — The Synod had direct contact with its parishioners. The Synod reached out to children and involved them in participation within the Synod. The Synod organized, encouraged, authorized, condoned, and promoted direct interaction between its representatives, including priests and children in its parish. It organized, encouraged,~~

~~authorized, condoned, and promoted activities, including religious and recreational activities, for the benefit of children in its parish.~~

~~79. The Synod encouraged obedience of the children in its parishes, including the plaintiff and the class members, to priests such as Rowe.~~

~~80. The Synod knew or ought to have known that Rowe was sexually abusing the plaintiff and the class. It was aware that Rowe was frequently engaged in activities with young boys, and therefore it was reasonable foreseeable that there was a risk of harm to the plaintiff and the class members.~~

~~81. The reasonable standard of care expected in the circumstances required the Synod to:~~

- ~~(a) properly screen, investigate, and vet Rowe's background and character prior to accepting him into the diocese;~~
- ~~(b) have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- ~~(c) follow its standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- ~~(d) have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- ~~(e) follow its standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- ~~(f) have in place appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well being of the plaintiff and the class;~~
- ~~(g) follow its standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well being of the plaintiff and the class;~~

- ~~(h) — have in place appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue allegations of sexual abuse against Rowe with due diligence;~~
- ~~(i) — follow its standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue allegations of sexual abuse against Rowe with due diligence;~~
- ~~(j) — have in place appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse;~~
- ~~(k) — follow its standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse upon learning of a complaint;~~
- ~~(l) — have in place appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination of Rowe for his propensity to commit sexual assaults;~~
- ~~(m) — follow its standards of conduct, policies and procedures to take appropriate disciplinary action, including termination of Rowe for his propensity to commit sexual assaults;~~
- ~~(n) — have in place appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~
- ~~(o) — follow its standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~
- ~~(p) — have in place appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(q) — take reasonable steps to follow its standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported; and~~
- ~~(r) — have in place appropriate standards of conduct, policies and procedures to ensure that victims of abuse receive appropriate counselling and treatment~~

~~82. — The Synod breached the standard of care on a class wide, systemic basis, in the following respects:~~

- ~~(a) — failing to properly screen, investigate, and vet Rowe's background and character prior to accepting him into the diocese;~~

- ~~(b) — failing to have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- ~~(c) — failing follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively train Rowe;~~
- ~~(d) — failing to have in place appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- ~~(e) — failing to follow appropriate standards of conduct, policies and procedures to adequately, properly and effectively supervise Rowe;~~
- ~~(f) — failing to have in place appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well-being of the plaintiff and the class;~~
- ~~(g) — failing to follow appropriate standards of conduct, policies and procedures to ensure that Rowe would not endanger the health or well-being of the plaintiff and the class;~~
- ~~(h) — failing to have in place appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue allegations against Rowe of sexual abuse with due diligence;~~
- ~~(i) — failing to follow appropriate standards of conduct, policies and procedures to prevent sexual abuse and to investigate and pursue allegations against Rowe of sexual abuse with due diligence;~~
- ~~(j) — failing to have in place appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse;~~
- ~~(k) — failing to follow appropriate standards of conduct, policies and procedures to prevent and end physical, sexual or psychological abuse;~~
- ~~(l) — failing to have in place appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination of Rowe for his propensity to commit sexual assaults;~~
- ~~(m) — failing to follow appropriate standards of conduct, policies and procedures to take appropriate disciplinary action, including termination of Rowe for his propensity to commit sexual assaults;~~
- ~~(n) — failing to have in place appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~
- ~~(o) — failing to follow appropriate standards of conduct, policies and procedures to use reasonable care to ensure the safety, well being and protection of the plaintiff and the class;~~

- ~~(p) — failing to have in place appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported;~~
- ~~(q) — failing to follow appropriate standards of conduct, policies and procedures to provide the plaintiff and the class with a program and system through which abuse would be recognized and reported; and~~
- ~~(r) — failing to have in place appropriate standards of conduct, policies and procedures to ensure that victims of abuse receive appropriate counselling and treatment.~~

~~83. — The Synod knew or ought to have known that, as a consequence of the above documented failures, the plaintiff and the class would suffer immediate and long-term harm. Such harm was not too remote as it was a direct consequence of the Synod's failures.~~

ii. — Breach of Fiduciary Duty

~~(a) — Scouts Canada~~

~~84. — Scouts Canada owed the plaintiff and the class members, as children in its care and control, a fiduciary duty which included a duty to care for and protect them and to not put its interests ahead of the interests of the plaintiff and the class members.~~

~~85. — Amongst other things, Scouts Canada was solely responsible for:~~

- ~~(a) — the promotion of the health, safety and well being of the plaintiff and the class members through Scouts Canada activities;~~
- ~~(b) — creating, planning, establishing, facilitating, initiating, operating, financing, supervising, controlling or regulating the activities led by Rowe as a Scout leader; and~~
- ~~(c) — the care and supervision of the plaintiff and the class members that participated in activities led by Rowe as a Scout leader.~~

~~86. — At all material times, the plaintiff and the class members were entirely and exclusively within the power and control of the Scouts Canada or its agents, and were subject to the unilateral exercise of the Scouts Canada's or its delegate's power or discretion.~~

~~87. — By virtue of the relationship between the plaintiff and the class members as children and Scouts Canada, being one of trust, reliance and dependence, Scouts Canada owed a fiduciary obligation to ensure that the plaintiff and the class members were treated in all ways consistent with the obligations of a party standing in *loco parentis* to an individual under his or her care or control.~~

~~88. — The plaintiff and the class members were entitled to rely and did rely upon Scouts Canada to their detriment to fulfill its fiduciary obligations, the particulars of which include, but are not limited to, those duties set out in paragraph 71, above.~~

~~89. — At all material times, Scouts Canada owed a fiduciary duty to the plaintiff and the class members to act in the best interests of those individuals and to protect them from any abuse, including but not limited to, mental, emotional, physical, sexual or otherwise.~~

~~90. — In failing to give proper consideration and to take reasonable steps to protect the plaintiff and the class members from sexual abuse, Scouts Canada breached its fiduciary duty on a class-wide and systemic basis by failing to meet its obligations set out in paragraph 72, and by:~~

~~(a) — failing to properly screen and supervise Rowe;~~

~~(b) — failing to safeguard the physical and emotional needs of the plaintiff and the class;~~

- ~~(c) — failing to consider whether the plaintiff and the class were at risk;~~
- ~~(d) — failing to adequately warn or protect the class; and~~
- ~~(e) — putting its own interests ahead of the interests of the plaintiff and the class by ignoring, remaining wilfully blind and permitting the conduct of Rowe in order to avoid trouble, scrutiny and unwanted publicity.~~

~~(b) — The Synod of the Diocese of Keewatin~~

~~91. — The Synod owed the plaintiff and the class members, as children in its care and control, a fiduciary duty which included a duty to care for and protect them and to not put its interests ahead of the interests of the plaintiff and the class members.~~

~~92. — Amongst other things, the Synod was responsible for:~~

- ~~(a) — the promotion of the health, safety and spiritual well being of the plaintiff and the class members;~~
- ~~(b) — creating, planning, establishing, setting up, initiated, operating, financing, supervising, controlling and regulating the activities led by Rowe as a priest; and~~
- ~~(c) — the care and supervision of the plaintiff and the class as they participated in activities led by Rowe as a priest.~~

~~93. — The Synod owed a fiduciary duty to the plaintiff and the class members based on the trust reposed in the church and its representatives as spiritual leaders of the Anglican community.~~

~~94. — The Synod engendered and fostered a culture requiring parishioners, and in particular, First Nations parishioners, to trust and follow priests ordained in the Anglican faith.~~

~~95.— At all material times, the plaintiff and the class members were entirely and exclusively within the power and control of the Synod or its agents, and were subject to the unilateral exercise of the Synod's or its delegates' power or discretion.~~

~~96.— By virtue of the relationship between the plaintiff and the class members as children and the Synod, being one of trust, reliance and dependence, the Synod owed a fiduciary obligation to ensure that the plaintiff and the class members were treated in all ways consistent with the obligations of a party standing in *loco parentis* to an individual under his or her care or control.~~

~~97.— The plaintiff and the class members were entitled to rely and did rely upon the Synod to their detriment to fulfill their fiduciary obligations, the particulars of which include, but are not limited to, those duties set out in paragraph 83, above.~~

~~98.— At all material times, the Synod owed a fiduciary duty to the plaintiff and the class members to act in the best interests of those individuals and to protect them from any abuse, including but not limited to, mental, emotional, physical, sexual or otherwise.~~

~~99.— In failing to give proper consideration and to take reasonable steps to protect the plaintiff and the class members from sexual abuse, the Synod breached its fiduciary duty on a class wide and systemic basis by failing to meet its obligations set out in paragraph 84, and through:~~

- ~~(a) — failing to properly screen and supervise Rowe;~~
- ~~(b) — failing to safeguard the physical and emotional needs of the plaintiff and the class;~~
- ~~(c) — failing to protect the plaintiff and the class members from harm;~~

- ~~(d) — failing to consider whether the plaintiff and the class were at risk;~~
- ~~(e) — failing to adequately warn or protect the class; and~~
- ~~(f) — putting its own interests ahead of the interests of the plaintiff and the class by ignoring, remaining wilfully blind and permitting the conduct of Rowe in order to avoid trouble, scrutiny and unwanted publicity.~~

~~100. — The plaintiff and the class members were entirely within the power and control of the Synod and were subject to the unilateral exercise of the Synod's power and discretion.~~

~~(e) — **Ralph Rowe**~~

~~101. — Rowe owed the plaintiff and the class members, as parishioners and children in his care and control, a fiduciary duty which included a duty to care for and protect them and to not sexually abuse them.~~

~~102. — Amongst other things, Rowe was responsible for:~~

- ~~(a) — the care and supervision of the plaintiff and the class members that participated in activities led by Rowe as a Scout leader;~~
- ~~(b) — spiritual and religious guidance of the plaintiff and the class members;
and~~
- ~~(c) — the care and supervision of the plaintiff and the class they participated in activities led by Rowe as a priest.~~

~~103. — By virtue of the relationship between the plaintiff and the class members as children and Rowe, being one of trust, reliance and dependence, Rowe owed a fiduciary obligation to ensure that the plaintiff and the class members were treated in all ways~~

~~consistent with the obligations of a party standing in *loco parentis* to an individual under his or her care or control.~~

~~104. The plaintiff and the class members were entitled to rely and did rely upon Rowe to their detriment to fulfill his fiduciary obligations.~~

~~105. The sexual abuse by Rowe of the plaintiff and the class members occurred in the context of his "priest and penitent" and "Scout and Scout leader" relationship with the class and constituted a breach of Rowe's fiduciary duty on a class-wide basis.~~

iii. Vicarious Liability

101. ~~106.~~ Scouts Canada and the Synod are vicariously liable for the sexual assault and breach of fiduciary duty committed by Ralph Rowe on the Sexual Assault Class Members where the sexual assault and battery was perpetrated:

- a) on property owned by the Synod of the Diocese of Keewatin or Scouts Canada;
- b) during or in connection with activities organized by or affiliated with The Synod of the Diocese of Keewatin or Scouts Canada; or
- c) in circumstances where the Sexual Assault Class Member's involvement with Ralph Rowe was materially influenced by the fact of Ralph Rowe being a priest of the Synod and/or a Scout Leader with Scouts Canada.

(a) Scouts Canada

102. ~~107.~~ The relationship between Rowe and Scouts Canada was close and direct:

- (a) at all material times, Ralph Rowe was employed by Scouts Canada or was otherwise the agent or a volunteer of Scouts Canada;
- (b) Scouts Canada exercised or ought to have exercised control over Rowe including the power of assignment and supervision, the power to remove him as a Scout leader and the power to discipline him; and
- (c) at all material times, Rowe was reasonably perceived as an agent of Scouts Canada.

103. ~~108.~~ Rowe was afforded the opportunity to abuse his power over and sexually assault young boys enrolled in Scouts Canada by virtue of his status as a leader in Scouts Canada:

- (a) involvement with young boys was an expected role for a Scout leader;
- (b) as a Scout leader, Rowe was placed in direct contact with young boys;
- (c) Rowe was required to organize activities during which he was accompanied by young boys;
- (d) all of Rowe's opportunities to sexually assault young boys in his Scout troupes came by way of his appointment and placement as a Scout leader;
- (e) the sexual assaults committed by Rowe on young boys enrolled in Scouts Canada and otherwise in attendance at activities led by Rowe as a Scout leader took place while the young boys were participating in activities associated with, sponsored by and under the banner of Scouts Canada;
- (f) by virtue of his role with Scouts Canada, Rowe was conferred with power over children enrolled in Scouts Canada, including power over young boys to organize, discipline, and train them; and
- (g) by virtue of his power and authority as Scout leader, Rowe was allowed and encouraged to exercise a degree of control over children that was parental in nature.

104. ~~109.~~ Rowe's sexual assaults were directly related to the psychological intimacy inherent in his role as a Scout leader:

- (a) Scouts Canada encourages physical and psychological intimacy between Scout leaders and young boys;

- (b) Scout leaders and young boys enrolled in Scouts Canada are in a parent-like and role-model relationship;
- (c) Rowe, as a Scout leader, taught young boys enrolled with Scouts Canada and otherwise in attendance at events led by Rowe as a Scout leader the differences between right and wrong and Rowe represented an authority figure to them;
- (d) this psychological intimacy encouraged the young boys' submission to Rowe's abuse and increased his opportunity to sexually abuse young boys; and
- (e) on Scout activities, such as camping, Rowe was required to supervise young boys enrolled in Scouts Canada in intimate activities, such as bathing and toileting, changing clothing, and sleeping at night.

105. ~~110.~~ Scouts Canada conferred significant power on Rowe relative to his victims:

- (a) Scouts Canada requires the exercise of power and authority for its own successful operation, and it encourages Scout leaders to stand in a position of respect;
- (b) Scouts Canada's operations and methods suggested that young boys enrolled in Scouts Canada and those otherwise in attendance at activities led by Rowe as a Scout leader should emulate and obey Rowe;
- (c) Rowe was also able to satisfy the young boys' parents that their children were in good and appropriate hands while in his care and control by virtue of his status as a Scout leader;
- (d) by virtue of Rowe's status as a Scout leader in remote northern First Nations communities, Scouts Canada conferred on Rowe an enormous degree of power relative to his victims;
- (e) Rowe worked as a Scout leader in geographically isolated areas, which enhanced the opportunity for, extent, and frequency of sexual assaults contributing to their remaining unchecked for years;
- (f) there were few other authority figures in the remote northern First Nations communities; and
- (g) Rowe had significant stature because of his position as a Scout leader, both to his victims and their parents.

106. ~~111.~~ The relationship between Rowe and Scouts Canada was close and direct.

Rowe was ~~reasonable~~ reasonably perceived as an agent of Scouts Canada. The connection between Rowe and Scouts Canada created and enhanced the risk of child sexual assault.

(b) The Synod of the Diocese of Keewatin

107. ~~112.~~The relationship between Rowe and the Synod was close and direct:

- (a) Ralph Rowe was employed by the Synod;
- (b) the Synod had the power of assignment and supervision over Rowe;
- (c) the Synod had the power to remove Rowe from his post; and
- (d) the Synod had the power to discipline Rowe.

108. ~~113.~~The Synod provided Rowe with the opportunity to abuse his power:

- (a) Rowe was invested by the Synod with power, confidence and authority of the church and was accorded with respect as a representative and extension of the church;
- (b) priests, including Rowe, must be involved with all parishioners, including children, in carrying out their roles within the church;
- (c) by virtue of his role as priest of the Synod and the expectations thereby placed on him, Rowe was required to be placed in direct contact with children for lengthy periods of time;
- (d) the activities organized by Rowe in which he was accompanied by children were activities in which he was required to organize and control young boys in his capacity as a priest of the Synod;
- (e) Rowe was expected to supervise children in intimate activities, including spiritual matters and in matters ancillary to his church-sponsored overnight activities with young boys;
- (f) Rowe's sexual assaults took place during activities sanctioned by the Synod and while Rowe was exercising his priestly powers conferred on him by the Synod; and
- (g) by virtue of his power and authority as a priest, Rowe as allowed and encouraged by boys' parents to exercise a degree of control over them that can only be described as parental in nature.

109. ~~114.~~Rowe's wrongful acts were directly related to the psychological intimacy inherent in his role as a priest:

- (a) Rowe's role as a priest of the Synod placed him in a position of intimacy and power over children;
- (b) the Synod encouraged psychological intimacy between a priest and the members of his congregation;
- (c) the Synod encouraged Rowe to stand in a position of respect and suggested that the children should emulate and obey Rowe;
- (d) Rowe taught the children right and wrong, represented God, and his congregation was to accept his instructions in spiritual matters;
- (e) by virtue of his role as a priest in the Synod, Rowe was able to satisfy parents that their children were in good hands while in his care and control;
- (f) Rowe's psychological intimacy encouraged his victims' submission to abuse and increased his opportunity to abuse; and
- (g) the personal identities of members of the congregation of the Synod were closely intertwined with their faith and its institutional expression, which nurtured trust in the Synod's hierarchy from a young age, thereby granting the Synod and Rowe considerable power and control.

110. ~~115.~~ The Synod conferred on Rowe an enormous degree of power relative to his victims:

- (a) the Synod conferred Rowe with power over church youth;
- (b) the power imbalance was intensified by the geographically isolated parishes in which Rowe worked, greatly increasing the opportunities for, and the extent and frequency of, the sexual assaults, and contributing to their remaining unchecked for many years;
- (c) the communities were devoutly religious and placed the Synod in the centre of their daily lives;
- (d) there were few other authority figures in the remote northern First Nations communities;
- (e) Rowe had enormous stature because of his position as a priest of the Synod, both to the young boys and their parents;
- (f) given his centrality in the communities as a result of his position as priest of the Synod and the disparity in lifestyles between himself and his congregation, the plaintiff and the class perceived him as a "god" and as a celebrity, and as a result had open access to children in his congregation; and

- (g) the awe in which Rowe was held by the community at large due to his role as a priest of the Synod contributed to his ability to control his victims and thus satisfy his appetite for sexual assault of boys in his congregation.

111. ~~116.~~The relationship between Rowe and the Synod was close and direct. Rowe was reasonably perceived as an agent of the Synod. The connection between Rowe and the Synod created and enhanced the risk of child sexual assault.

iv. Assault and Battery

112. ~~117.~~Rowe is liable to the plaintiff and the class members for assault and battery. As more particularly described herein, Rowe intentionally physically and sexually abused the plaintiff and the class members, and such abuse consisted of intentional and direct physical contact.

E. DAMAGES SUFFERED BY THE CLASS

113. ~~118.~~~~Each defendant~~Rowe knew, or ought to have known, that as a consequence of ~~their~~ his tortious conduct, its negligence, breach of fiduciary duty and vicarious liability, the class members would suffer significant physical, mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and the community at large.

114. ~~119.~~ As a result of Rowe's the defendants' tortious conduct negligence, breach of fiduciary duty and vicarious liability, the class members suffered and continue to suffer damages which include, but are not limited to the following:

- (a) physical consequences such as anal lacerations and bleeding, and broken bones and skin;
- (b) emotional and psychological damages;
- (c) exacerbation of mental disability and deprivation of healing opportunities;
- (d) impairment of mental and emotional health and well-being;
- (e) an impaired ability to trust other persons;
- (f) an impaired ability to participate in normal family affairs and relationships;
- (g) alienation from family members;
- (h) depression, anxiety, emotional distress and mental anguish;
- (i) pain and suffering;
- (j) a loss of self-esteem and feelings of humiliation and degradation;
- (k) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;
- (l) an impaired ability to deal with persons in positions of authority;
- (m) an impaired ability to trust other individuals or to sustain relationships;
- (n) a sense of isolation and separateness from their community;
- (o) a requirement for medical or psychological treatment and counselling;
- (p) an impaired ability to enjoy and participate in recreational, social and employment activities;
- (q) an impaired ability to engage in spiritual communities and beliefs;
- (r) loss of friendship and companionship;
- (s) suicide attempts and suicide;
- (t) alcoholism and drug dependency;

- (u) sexual disorientation; and
- (v) loss of general enjoyment of life.

~~120. The class members' damages were exacerbated by the defendants' failure to provide appropriate counselling and treatment.~~

115. ~~121.~~ As a result of the injuries referred to above, the class members have required and will continue to require further medical treatment, rehabilitation, counselling and other care. The plaintiff and other class members, or many of them, will require future medical care and rehabilitative treatment, or have already required such services, as a result of the defendants' conduct.

116. ~~122.~~ This action is commenced pursuant to the *Class Proceedings Act, 1992*.

117. ~~123.~~ The trial of the action should take place in the city of Thunder Bay, in the Province of Ontario.

May 11, 2017

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SCHEDULE "A"
PROVINCIAL STATUTES: FAMILY MEMBER CLAIMS

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.

ALVIN MCKAY and RALPH ROWE, THE SYNOD OF THE
Plaintiff and DIOCESE OF KEEWATIN and SCOUTS
CANADA
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Thunder Bay
Proceeding under the *Class Proceedings Act, 1992*

**AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM**

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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JUDGMENT

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