

CANADA / JUDGMENT

Harrison v. Rayner Estate

2025 BCSC 2415

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2415 Harrison v. Rayner Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Harrison v. Rayner Estate,

2025 BCSC 2415

Date: 20251208

Docket: S220004

Registry: Vancouver

Between:

Dr. Nicholas John Harrison

Plaintiff

And

The Estate of Father Francis Joseph Rayner, Omi, The Order of The Oblates of Mary Immaculate in the Province of British Columbia,

Omi Lacombe Canada Inc., The Roman Catholic Episcopal Corporation of Prince Rupert also known as The Diocese of Prince George

British Columbia, The Estate of Bishop Emeritus John Fergus O'Grady, Omi, The Estate of Bishop Emeritus Hubert O'Connor, Omi, Bishop Emeritus Gerald Wiesner, Omi, Archbishop Emeritus Adam Joseph Exner, Omi, The Estate of Denis O'Mahoney, FPM, also known as Brother Leopold, John Doe, FPM, also known as Brother Paschal, The Presentation Brothers of Ireland, The Estate of Catherine Lillian Fowlie, and The Catholic Independent Schools Diocese of Prince George

Defendants

Before: The Honourable Justice Loo

Reasons for Judgment

Re: Pre-trial Applications to Adduce Similar Fact Evidence and to Amend the Notice of Civil Claim

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C.J. Onishenko, K.C.

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

November 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 8, 2025

Table of Contents

Introduction.. 4

The plaintiff's claims. 4

The application to adduce similar fact evidence. 5

Legal principles. 5

Application of the law to the facts. 6

Evidence regarding alleged abuse by persons other than the individual defendants. 6

Evidence regarding alleged abuse by Brother Leopold and Ms. Fowlie. 6

Conclusion as to similar fact evidence. 9

The application to amend the notice of civil claim.. 10

Legal principles. 10

Application of the law to the facts. 10

Removal and addition of text regarding an alleged culture of abuse. 10

New claim regarding dog incident 11

Allegations relating to punitive damages. 12

Amendments regarding the organizational structure of the Order of the Oblates of Mary Immaculate in the Province of British Columbia. 12

Amendments regarding evidence to be led from other students at the School 12

Conclusions as to amendments. 13

Introduction

- [1] In this action, the plaintiff claims damages arising from sexual and physical abuse allegedly suffered by him while he was a student at Sacred Heart Elementary School in Prince George (the "School") approximately 50 years ago.
- [2] On these applications, which I heard on Monday, November 10, 2025, the plaintiff seeks to adduce similar fact evidence and leave to amend his notice of civil claim.
- [3] On Thursday, November 13, 2025, I caused a memorandum to be sent to counsel in which I advised that the plaintiff would not be permitted to lead the proposed similar fact evidence, and that the application to amend was allowed in part. I stated in the memorandum that reasons for judgment would follow in due course. These are those reasons.
- [4] The trial of the action was scheduled to commence before me on Monday, November 17, 2025, but the action was ultimately settled in part, and the balance of the trial was adjourned.

The plaintiff's claims

- [5] The individual defendants referred to in the action as Brother Leopold and Father Rayner are alleged to have physically and sexually abused the plaintiff between 1973 and 1977, when the plaintiff was between five and ten years old.

- [6] The individual defendant referred to in the action as Brother Paschal is alleged to have physically abused the plaintiff in 1976 and 1977. The individual defendant Catherine Fowlie is alleged to have physically abused the plaintiff in 1978.
- [7] In addition to suing the alleged individual perpetrators, the plaintiff sues institutional defendants who are alleged to be liable to the plaintiff in both vicarious liability and direct negligence.

The application to adduce similar fact evidence

- [8] The plaintiff seeks to lead evidence from five non-party witnesses (collectively, the "Proposed Witnesses" and each one a "Proposed Witness") about abuse that they allege to have suffered while attending the School.

Legal principles

- [9] The leading cases in this province governing the admission of similar fact evidence are the decision of the Supreme Court of Canada in *R. v. Handy*, 2002 SCC 56 and the Court of Appeal's decision in *J.G. v. Tyhurst*, 2003 BCCA 224.
- [10] More recently, Justice Riley, then of this Court, summarized the relevant principles, citing both *Handy* and *Tyhurst*, in *R. v. Carlson*, 2024 BCSC 1281, as follows:
- [58] The general rule, as stated by Justice Binnie in the leading case of *R. v. Handy*, 2002 SCC 56 at para. 55, is that similar fact evidence is presumptively inadmissible, and that the onus lies on the prosecution to rebut that presumption by establishing on a balance of probabilities that, in the context of a particular case, the probative value of the evidence in relation to a particular fact in issue outweighs the prejudicial effect of the evidence so as to justify its admission. The fact that propensity evidence is said to be admissible based on its relevance to some other issue at trial does not mean that it ceases to be propensity evidence: *Handy* at para. 59-68.
- [11] Further, Justice Riley held:
- [72] What is important is whether there are sufficient unifying features such that the probative value of the evidence exceeds its prejudicial effect. A key consideration will often be the extent to which the similarities or unifying features in the evidence diminish the possibility of mere coincidence.
- [12] In *Handy*, at para. 41, the Court held that the admissibility threshold is crossed where the connection between the similar fact evidence is so strong that "it would be an affront to common sense to suggest that the similarities were due to coincidence".

Application of the law to the facts

- [13] There are two categories of evidence that the plaintiff seeks to adduce from the Proposed Witnesses. I will address each in turn.

Evidence regarding alleged abuse by persons other than the individual defendants

- [14] The first category involves evidence from the Proposed Witnesses that does not involve the four individual defendants who are alleged to have abused the plaintiff. Rather, this evidence concerns allegations that the Proposed Witnesses were subjected to physical or sexual abuse by other individuals at the School.
- [15] The plaintiff has cited no authority for the proposition that similar fact evidence ought to be admitted in these circumstances. Indeed, this Court addressed this issue and rejected a similar argument in *Doe v. The Roman Catholic Archbishop of Vancouver*, 2023 BCSC 833 [Doe]. In that case, Justice Iyer, then of this Court, held at para. 22 that the fact that other men in the Church or other Catholic organizations abused other boys was not relevant to the defendants' liability.
- [16] In that case, as in this one, the plaintiff argued that the bigger the network of perpetrators, the more likely it is that the Church knew or reasonably ought to have known about it, making the proposed evidence relevant to the direct negligence claim, but Justice Iyer rejected that argument as well. She held:
- [23] Granting this amendment would open the door to an unbounded disclosure and discovery process, effectively the equivalent of a commission of inquiry into sexual abuse in the Catholic Church, not an individual negligence trial.
- [17] In my view, the Doe decision is apposite to this case and dispositive of this part of the plaintiff's application. His application to lead evidence of abuse allegedly perpetrated by individuals other than the individual defendants is dismissed.

Evidence regarding alleged abuse by Brother Leopold and Ms. Fowlie

- [18] The second category of evidence sought to be led by the plaintiff involves allegations that some of the Proposed Witnesses were abused by the individual defendants. Specifically, one of the Proposed Witnesses alleges that he was sexually abused by Brother Leopold. Three of the Proposed Witnesses allege that they were physically abused by Brother Leopold and one of the Proposed Witnesses alleges that he was physically abused by Ms. Fowlie. None of the Proposed Witnesses makes any allegations against Father Rayner or Brother Paschal.
- [19] Upon review of the evidence expected to be led from the Proposed Witnesses, I am unable to find that there are similarities or unifying features in the evidence that diminish the possibility of mere coincidence, as required by the jurisprudence.
- [20] Regarding the expected evidence from the Proposed Witness who alleges sexual abuse by Brother Leopold, there are no similarities or unifying features such that the probative value of the evidence exceeds its prejudicial effect. Although the allegations by both the plaintiff and the Proposed Witness regarding the sexual abuse that they suffered is detailed and specific, the only common element is an allegation of forced oral sex. Otherwise, the forms of abuse alleged to be suffered by the plaintiff and the Proposed Witness are dissimilar to

each other or are described so generically that no unifying features can be identified.

- [221] Regarding the allegations of physical abuse by Brother Leopold, there are no similarities or unifying features between the expected evidence to be given by the Proposed Witnesses and the evidence expected from the plaintiff, beyond the fact that all of the evidence involves physical beatings, usually with a leather strap. One of the Proposed Witnesses is expected to testify that he was grabbed by the ear; two of the Proposed Witnesses describe sexual acts occurring in or connected to a tunnel between the school and the adjacent cathedral; another Proposed Witness is expected to testify that he was grabbed by the testicles while being beaten. None of these elements is found in the plaintiff's evidence.
- [222] Finally, the expected evidence from the Proposed Witness who claims that he was physically abused by Ms. Fowlie contains no unifying features in relation to the plaintiff's allegations against Ms. Fowlie. While the Proposed Witness alleges that he was hit with a ruler, the plaintiff alleges that he was whipped with an extension cord.
- [233] The plaintiff submits that assessing similarities and dissimilarities for the purpose of determining the admissibility of similar fact evidence is subject to a different threshold when it comes to child sexual abuse. He submits that the similarities in this case are that all of the Proposed Witnesses were students, and that the individual defendants committed breaches of trust. However, he has provided no authority in support of the proposition that these types of similarities are sufficient to meet the threshold required by the case law. Indeed, this argument is inconsistent with the decision in *R. v. Blake*, 181 C.C.C. (3d) 169, 2003 CanLII 13682 (O.N.C.A.), which is cited with approval in *Carlson* at para. 91.
- [244] In *Blake*, the similarities identified by the trial judge were that the evidence of both the complainant and the similar fact witnesses involved children ten years of age or younger being subjected to "genital touching" that occurred "in private". The accused's evidence and that of one of the similar fact witnesses was that the perpetrator said he was sorry and that it would not happen again: *Blake* at para. 62.
- [255] On appeal, the Court held that the trial judge erred in ruling the evidence of the two prior incidents admissible. The majority held that the trial judge had framed the question in issue "too widely", thereby allowing too broad a "gateway" for admission. Another error was in relying on "generic similarities" in the evidence: para. 49. In my view, this case is similar to *Blake* in that any similarities between the plaintiff's evidence and the evidence of the Proposed Witnesses are generic.
- [266] The plaintiff also relies on the decision in *R. v. Shearing*, 2002 SCC 58 and submits that, in that case, "although the sexual acts with various complainants were not particularly distinctive, the similarity or underlying unity lay in the circumstances of the appellant's abuse of authority as a cult leader". However, this submission misreads *Shearing*. The unifying feature in that case was not simply that the appellant was a cult leader; rather, the Court found that the allegations against him involved the same *modus operandi*. The Court held:

55 The combination of spiritualist imagery (achieving higher states of awareness) and horror stories (invasion of young girls by disembodied minds), and the supposed prophylactic power of the appellant's sexual touching to ward off these horrific threats is, to say the least, distinctive.

[27] Therefore, in *Shearing*, there was a distinctive unifying feature which gave probative value to the proposed similar fact evidence.

[28] In *Carlson*, the Court held that the more generic the similarities in conduct relied upon by the Crown, the lower the probative value of the evidence, and the greater its prejudicial effect. While dissimilarities do not necessarily make the evidence inadmissible, they are still relevant in the weighing of probative value versus prejudicial effect. Framing the similarities in abstract or generic terms tends to "mask" or obscure any such dissimilarities: paras. 92-93.

[29] In my view, the principles set out above from *Blake* and *Carlson* apply to the similar fact evidence sought to be led in this case. Characterizing the evidence of the Proposed Witnesses as being similar to that of the plaintiff because they and the plaintiff were all allegedly abused by persons in positions of trust at the same school masks or obscures the dissimilarities between the evidence and allows too broad of a gateway for admission. Generic similarities are not sufficient to meet the threshold.

[30] I conclude that there are insufficient similarities or unifying features in this case, and that the probative value of the proposed evidence exceeds its prejudicial effect. The evidence of the Proposed Witnesses that they were abused by Brother Leopold or Ms. Fowlie is not admitted.

Conclusion as to similar fact evidence

[31] For the reasons set out above, the plaintiff's application to adduce evidence from five Proposed Witnesses regarding abuse allegedly suffered by them at the School is dismissed.

The application to amend the notice of civil claim

Legal principles

[32] In *Peterson v. 446690 B.C. Ltd.*, 2014 BCSC 1531 at para. 37, this Court summarized the general principles arising on an application to amend pleadings as follows:

[37] Finally, the general principles arising on an application to amend pleading can be summarized as follows:

- (a) Amendment to pleadings ought to be allowed unless pleadings fail to disclose a cause of action or defence: *McNaughton v. Baker*, [1988] 24 B.C.L.R. (2nd) 17 [(C.A.)].
- (b) Amendments are usually permitted to determine the issues between the parties and ought to be allowed unless it would cause prejudice to party's ability to defend an action: *Levi v. Petaquilla Minerals Ltd.*, 2012 BCSC 776.

- (c) The party resisting an amendment must prove prejudice to preclude an amendment, and mere, potential prejudice is insufficient to preclude an amendment: *Jones v. Lululemon Athletica Inc.*, 2008 BCSC 719.
- (d) Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy.
- (e) Courts should only disallow an amendment as a last resort: *Jones, McNaughton, Innoventure S & K Holdings Ltd. et al. v. Innoventure (Tri-Cities) Holdings Ltd. et al.*, 2006 BCSC 1567.

Application of the law to the facts

- [33] There are five proposed amendments which were disputed in the hearing before me. All the other proposed amendments are agreed to, and I will not address them in these reasons.

Removal and addition of text regarding an alleged culture of abuse

- [34] Paragraph 40 of the Factual Basis in the proposed amended claim contains allegations that "the Institutional Defendants, collectively and individually, were complicit in a culture of entrenched clericalism and secrecy surrounding the abuse of children ". The proposed amendment removes four lines of text and adds nine new words.
- [35] A party is entitled to remove words from a pleading unless an admission is being withdrawn. It is not contended that any admission is being withdrawn and, in my view, the proposed amendment does not change the paragraph's overall meaning. For these reasons, the amendment is allowed.

New claim regarding dog incident

- [36] Paragraph 30 of the Factual Basis in the proposed amended claim contains an allegation that the plaintiff was coerced to observe a sexual act between one of the individual defendants and a dog.
- [37] The defendants argued that the plaintiff was seeking to advance a new allegation on the eve of trial, and that they would be prejudiced by the proposed amendment.
- [38] However, the evidence demonstrates that this was not the first time that the defendants knew of this allegation. A list of documents including documents relating to the dog incident was delivered by the plaintiff in June 2025. Further, the plaintiff has written a book and screenplay, of which the defendants were aware, and the incident in question is described in the screenplay.
- [39] In any event, and more importantly, the defendants have indicated that they intend to use this incident to attack the plaintiff's credibility by arguing that, although it was set out in the screenplay, no claims with respect to it were made in the action until now.

[40] Defendants' counsel did not deny that their cross-examination of the plaintiff would refer to the dog incident. It would be unfair if the defendants could cross-examine the plaintiff on his failure to bring this allegation sooner, while precluding him from advancing the allegation in the action at this time.

[41] For these reasons, the application to amend this paragraph is allowed.

Allegations relating to punitive damages

[42] Paragraph 14 of the Legal Basis in the proposed amended claim sets out allegations that, according to the pleading, give rise to punitive damages. In part, these allegations concern steps taken by the institutional defendants to conceal or "cover up" the abuse alleged to have taken place at the School.

[43] The defendants submit that these allegations cannot form the basis of punitive damages, but in my view this submission is incorrect. It is clear on the authorities that one of the considerations that may give rise to punitive damages is "whether the defendant concealed or attempted to cover up its misconduct": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 113. As such, the amendment is allowed.

Amendments regarding the organizational structure of the Order of the Oblates of Mary Immaculate in the Province of British Columbia

[44] At para. 7 of its Factual Basis, the proposed amended claim contains a new paragraph regarding connections between the "Missionary Oblates of Mary Immaculate", located in Rome, and the structure of the Oblates' ecclesiastical provinces in Canada. Since the claim against the Oblates of Mary Immaculate has been settled, this proposed amendment is moot, and I decline to address it.

Amendments regarding evidence to be led from other students at the School

[45] As described above, the plaintiff sought on this application to adduce evidence from the Proposed Witnesses who allege that they were abused by the individual defendants and by other individuals at the School.

[46] In my view, this part of the application to amend ought to be decided in the same way as a similar application was decided by Justice Iyer in *Doe*, cited above.

[47] In respect of the alleged abuse of proposed witnesses by the individual defendants in *Doe*, Justice Iyer held that the allegations that the individual defendants abused boys other than the plaintiff was probative of the individual defendants' liability. However, she also held that the fact that other men in the Church may have abused other boys was not relevant to the plaintiff's claims: paras. 18, 22.

- [48] In this case, the amendments which allege that the individual defendants in this case abused boys other than the plaintiff are allowed for the reasons set out in Doe. The fact that I have concluded above that there are insufficient similarities or unifying features in this case to allow the similar fact evidence does not preclude the plaintiff's entitlement to amend his pleading in this regard. The allegations are potentially relevant and probative per Doe even though, as a result of the analysis required by Tyhurst and Handy, I have ruled that the evidence of the Proposed Witnesses is inadmissible.
- [49] The allegations of abuse of the Proposed Witnesses by men other than the individual defendants are not allowed for the reasons set out in Doe--that these allegations are not relevant to the plaintiff's claims.

Conclusions as to amendments

- [50] As stated in my memorandum to counsel dated November 13, 2025:

The plaintiff's application to amend his pleadings is allowed, except as follows:

- (a) the amendments to Part 3 of the proposed First Amended Notice of Civil Claim at paras. 8(h) and 9(b) are not allowed; and
- (b) the amendments to Part 3 of the proposed First Amended Notice of Civil Claim at para. 9(c) are allowed with respect to Leopold only, so that the sub-paragraph shall read:
"Experiencing sexual abuse perpetrated by Leopold; and".

"Loo J."

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