

CANADA / JUDGMENT

S.A.S. #1 v. Quigley

2025 BCSC 2301

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2301 S.A.S. #1 v. Quigley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.A.S. #1 v. Quigley,

2025 BCSC 2301

Date: 20251124

Docket: S241763

Registry: Vancouver

Between:

S.A.S. #1

Plaintiff

And

Alfred Patrick Quigley, The Roman Catholic Bishop of Kamloops, A Corporation Sole, Catholic Independent Schools of Kamloops Diocese, Bishop Emeritus Lawrence Sabatini, CS, Bishop Emeritus David John James Monroe, The Roman Catholic Episcopal Corporation of Prince Rupert also known as The Diocese Of Prince George British Columbia, The Catholic Independent Schools Diocese of Prince George, formerly The Catholic Public Schools of The Vicariate Apostolic Of Prince Rupert, Vancouver College Limited, St. Thomas More Collegiate Ltd., The Roman Catholic Archbishop Of Vancouver, A Corporation Sole, and The Catholic Public Schools of the Archdiocese of Vancouver

Defendants

And

Alfred Patrick Quigley

Third Party

- and -

Docket: S248072

Registry: Vancouver

Between:

S.A.S.B.

Plaintiff

And

Alfred Patrick Quigley, The Roman Catholic Bishop of Kamloops, A Corporation Sole, Catholic Independent Schools of Kamloops Diocese, Bishop Emeritus Lawrence Sabatini, CS, Bishop Emeritus David John James Monroe, The Roman Catholic Episcopal Corporation of Prince Rupert also known as The Diocese of Prince George British Columbia, The Catholic Independent Schools Diocese of Prince George, formerly The Catholic Public Schools of The Vicariate Apostolic of Prince Rupert, Vancouver College Limited, St. Thomas More Collegiate Ltd., The Roman Catholic Archbishop Of Vancouver, A Corporation Sole, and The Catholic Public Schools Of The Archdiocese Of Vancouver

Defendants

And

Alfred Patrick Quigley

Third Party

- and -

Docket: S248073

Registry: Vancouver

Between:

S.A.S.C.

Plaintiff

And

Alfred Patrick Quigley, The Roman Catholic Bishop Of Kamloops, A Corporation Sole, Catholic Independent Schools of Kamloops Diocese, Bishop Emeritus Lawrence Sabatini, CS, Bishop Emeritus David John James Monroe, The Roman Catholic Episcopal Corporation of Prince Rupert also known as The Diocese of Prince George British Columbia, The Catholic Independent Schools Diocese of Prince George, formerly The Catholic Public Schools of The Vicariate Apostolic of Prince Rupert, Vancouver College Limited, St. Thomas More Collegiate Ltd., The Roman Catholic Archbishop Of Vancouver, A Corporation Sole, and The Catholic Public. Schools of The Archdiocese of Vancouver

Defendants

And

Alfred Patrick Quigley

Third Party

Before: Associate Judge Robertson

Reasons for Judgment

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No other appearances

Place and Date of Hearing:

Vancouver, B.C.

October 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 24, 2025

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- [1] The plaintiffs in these three actions involving damages for sexual abuse seek to have the trials on the issue of liability in each of their actions heard with each other prior to their damages claims, with ancillary relief as to the implied undertaking of confidentiality and admissibility and use of evidence for that purpose.
- [2] The defendants oppose having liability heard together, arguing primarily that the unique circumstances of each of the plaintiff's allegations as will have to be proven at trial effectively means that the issues are uncommon and not sufficiently interwoven to justify having the claims heard together, and that the prejudice in having them joined outweighs any benefit.

Nature of the Claims

- [3] The defendant, Alfred Patrick Quigley ("Quigley"), is a former Christian Brother educator who, from 1970 to 2014, worked in various schools associated with the catholic church, including Vancouver College in Vancouver (1970 to 1971), St. Thomas More in Burnaby (1972 to 1980), O'Grady High School in Prince George (1990 to 1995) and St. Ann's Academy in Kamloops (1995 to 2014).
- [4] The plaintiffs in the three actions allege that they were sexually groomed and abused by Quigley, while he was employed at St. Ann's Academy. Specifically:
- a) S.A.S.#1 alleges a continuum of sexual grooming and abuse by Quigley that culminated in a sexual assault in or around 2013, with the grooming alleged to have occurred when Quigley was a guidance counsellor to S.A.S.#1 as a student, and the assault allegedly occurring after S.A.S.#1 had graduated and occurring off school grounds when Quigley invited S.A.S. #1 to watch a movie with him.
 - b) S.A.S.B. alleges a continuum of sexual grooming and abuse by Quigley in or around 2005 and 2006 when S.A.S.B. was in the seventh grade, and Quigley was working as a guidance counsellor, teacher, and sports coach. The alleged acts occurred during after hours basketball activities, and when Quigley was counselling S.A.S.B., occurring both on and off the school premises;
 - c) S.A.S.C. alleges a continuum of sexual grooming and abuse commencing in 2008 and continuing until 2012, when Quigley was first tutoring S.A.S.C., and then acting as student advisor, occurring outside of school hours but on school premises and at Quigley's residence;
- [5] In each of the notices of civil claim, the plaintiffs make allegations against the Kamloops Defendants that, during the relevant time periods, they had the responsibility for and opportunity to control the vetting, screening, appointing, training, managing, disciplining and dismissing of educators such as Quigley and knew or ought to have known of the risk of harm that Quigley posed to students by way of sexual grooming and abuse.
- [6] Particulars of those allegations include that in or around 2004 a 13 year old student's parent complained to the St. Ann's school administration that Quigley was engaged in behaviours recognized as sexual grooming of their own son (the "2004 Complaint"), and that the school administration failed to investigate the complaints or take any remedial action to restrict or limit Quigley's contact with children, and instead defended Quigley and shunned the complainants.
- [7] The plaintiffs allege that the Kamloops Defendants are vicariously liable for the actions of Quigley.

- [8] With respect to the Vancouver Defendants, Prince George Defendants and the schools other than St. Ann's, all of whom were involved with the employment of Quigley prior to the alleged incidents involving the plaintiffs, the plaintiffs allege that those defendants' failure to properly train, manage, and supervise Quigley "emboldened" him to continue his predations in the following years, including when he was later employed at St. Anne's, leading to his abuse of the plaintiffs.
- [9] The plaintiffs also allege that all of the institutional defendants are directly liable to the plaintiffs given that they, among other things:
- a) knew or ought to have known of the foreseeable risk of harm to the plaintiffs by Quigley;
 - b) failed to take any reasonable steps to prevent the foreseeable risk of harm, were grossly negligent, negligent, wilfully blind, reckless, and/or were acting in breach of their fiduciary duties to the plaintiffs in failing to prevent the harm; and
 - c) were complicit in an operational culture of entrenched clericalism, with reference to Canon Law, and distorted practices (including silencing witnesses, complainants and whistle blowers) that implicitly promoted the psychosexual immaturity of religious institute brothers and enabled the perpetuation of sexually deviant behaviours, which is a direct cause of the alleged wrongful acts, and which enabled perpetrators to continue to commit sexual abuse.
- [10] The notices of civil claim also include the following allegations under the heading of "Similar Fact Evidence" (with the paragraph numbers removed, as they are numbered differently in each notice of civil claim):

At all material times, Quigley was a habitual sexual predator with hebophilic and/or ephebophilic propensities wherein he experienced arousal from sexual acts with nonconsenting vulnerable male adolescents.

Quigley engaged in patterned or habitual predatory behavior wherein he would befriend male students accessed through the institutional defendants' educational operations, gaining their trust and the trust of their families and communities. Quigley gravely breached that trust in sexually abusing male adolescents.

Quigley's stature in the greater Roman Catholic community ensured the boys' loyalty and secrecy. Collectively, the plaintiff references the above-described behavior as the "Habitual Behavior".

- [11] Default judgment has been taken against Quigley in each of the actions. No discoveries or trial dates have been scheduled with that scheduling being largely dependent upon the results of this application. The plaintiffs do indicate that they currently intend to file a notice requiring trial by jury.

Legal Framework

- [12] The legal framework for applications such as this is not contentious.
- [13] Rule 22-5(8) provides the court with jurisdiction to order trials to be heard together, or on the same day. The court in *Callan v. Cooke* 2020 BCSC 290 ("Callan") summarized the applicable tests and factors for consideration as follows:
- [122] An order under Rule 22-5(8) engages the discretion of the court. The order is discretionary and regard must be given to the administration of justice when considering an application to consolidate actions.
- [123] The law to be applied in applications under Rule 22-5(8) is well-settled, and ably set out by Master Kirkpatrick in *Merritt v. Imasco Enterprises Inc.*, (1992) 2 C.P.C. (3d) 275. There are two questions that must be addressed. The first question is: do common claims, disputes and relationships exist between the parties? That determination is made on a review of the pleadings. The second question is: are the actions so interwoven that separate trials at different times before different judges would be undesirable and fraught with problems and expense? This question involves a consideration of factors beyond the pleadings.
- [124] The factors to consider when making a determination on consolidation or ordering that actions be heard together include whether the consolidation will:
- 1) create a saving in pre-trial procedures;
 - 2) reduce the number of trial days taken up by the actions heard together;
 - 3) avoid serious inconvenience to a party being required to attend a trial in which they only have a marginal interest;
 - 4) save the time and witness fees of experts;
 - 5) dispose of all actions at the same time due to common issues of fact or law;
 - 6) avoid a multiplicity of proceedings; and
 - 7) whether the degree of commonality and intertwining of issues outweighs the prejudicial factors raised by the party opposing consolidation;
- bearing in mind:
- 8) the relative stages of the actions;
 - 9) whether the trial will be delayed and prejudice one or some of the parties; and
 - 10) whether the refusal to consolidate risks inconsistent results.

(See: *Merritt*; *Insurance Corporation of British Columbia v. Sam* (1998), 24 C.P.C. (4th) 338; *Liu v. Tsai*, 2017 BCSC 221 (Master))

- [14] It is the applicant who bears the onus to establish that, having regard to these non-exhaustive factors, it is in the interests of justice to have the matters heard together, or to put it another way, establish that such an order will "make sense in the circumstances": 0081092 BC Ltd. v. Callahan, 2024 BCSC 864, at para. 27; Raymond James Investment Counsel Ltd. v. Clyne, 2018 BCSC 720, at para. 40.
- [15] The plaintiffs also emphasize the distinction between consolidating proceedings and having trials heard together as is being sought here, as recently noted in Ecoasis Developments LLP v. Sanovest Holdings Ltd, 2025 BCSC 991 with the question ultimately being whether making the order is in the interests of justice:
- [39] I draw a distinction, as do the applicants, in relation to an application to join trials, as distinct from an application to consolidate multiple extant proceedings into one. Consolidation is most appropriate where the commonality in issues and parties in the multiple actions "will mean that the disposition of one action will necessarily dispose of the issues in the other": see Liu v. Tsai, 2017 BCSC 221 at para 3; Raymond James Investment Counsel at para. 39; Discovery Enterprises Inc. v. Ebco Industries Ltd., 2001 BCSC 235 at para. 23. That same test need not be met for a joinder order where the matters are to be heard together, which is the main order sought in this proceeding.
- [40] In exercising its discretion under Rule 22-5(8), the court must ultimately decide whether the degree of commonality and intertwinement of the issues outweighs prejudice to the party opposing joinder. Put another way, the ultimate question is whether an order joining actions, to be heard together, "makes sense" and is in the interests of justice: Simmonds v. The Corporation of the City of Victoria, 2016 BCSC 951 at para. 25; 0081092 BC Ltd. v. Callahan, 2024 BCSC 864 at para. 56; Wu v. Li, 2023 BCSC 1205 at para. 20.
- [16] Underlying each of those principles is the object of the Rules as set out in R. 1-3 to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Analysis

Are the claims, disputes and relationships common

- [17] As noted, whether there are common claims, disputes and relationships between the parties is determined based on a review of the pleadings.
- [18] I agree with the defendants that a determination of any issue in one action will not necessarily determine the outcome in the others given that the threshold issue of whether each plaintiff was abused by Quigley will still need to be determined. For the purpose of this application, the plaintiffs do not take issue with the proposition that the deemed admission arising from the default judgment taken against Quigley is only an admission against him and not the other defendants such that, in each action, the plaintiff will have to prove at trial that the abuse itself occurred, in addition to establishing in each case that the other defendants are liable on the grounds alleged against them: see VLM v. Dominey, 2022 ABQB

299, at para. 45, rev'd on other grounds 2023 ABCA 261.

- [19] The notices of civil claim as summarized above plead common claims, disputes and relationships between the parties, particularly in respect of the claims as against the Kamloops Defendants as to their vicarious and direct liability, and all the defendants as to their direct liability including with respect to the allegations that their failure to take remedial action earlier in the employment of Quigley, given what they knew or ought to have known, emboldened him to continue his predations, in addition to the particulars as to their alleged tortious acts and/or breach of fiduciary duties as claimed, notwithstanding that the factual underpinning to each abuse claim may involve different circumstances.
- [20] There is sufficient commonality of claims, disputes and relationships between the parties as alleged in the pleadings in each action to answer the first question in the affirmative.

Are the actions sufficiently Interwoven that separate trials are undesirable

- [21] Turning to the second question, the factors referenced in Callan that are particularly relevant to the competing sides' positions, although restated for ease of reference, are:
- a) Whether, as argued by the plaintiffs, the joinder of the liability trials is economical both as to time, convenience and cost, in that it will reduce the number of trial days and create a saving in pre-trial procedures, along with reduction in the fees for witnesses and experts, and will avoid a multiplicity of proceedings involving many of those same witnesses. Further, the joinder will avoid the risk of inconsistent results as will occur with multiple proceedings;
- versus,
- b) Whether the benefit of having the matters heard together, having regard to the economies noted, fails to outweigh the potential prejudice to the defendants, including any inconvenience to a party being required to attend a trial in which they only have a marginal interest, and prejudice given admissibility disputes specific to the plaintiffs' ability to give similar fact evidence in each others' actions.

- [22] As to the other referenced factors they are largely neutral. For example, the actions are all at the same stage with no discoveries or trials scheduled and, given the commonality of the parties other than the plaintiffs, there is no obvious time benefit or prejudice due to delay to any particular party regardless of the order made.

The economies of having the trials heard together

- [23] For the plaintiffs' part, they argue that it is in the interest of justice to have the trials heard together given the economies, both as to the financial costs and time requirements including that of witnesses, the parties, and the court, of having separate trials versus having them heard together.

- [24] Specifically, the plaintiffs argue that if all three actions run separately, each plaintiff will need 25 days for trial, for a total of 75 days. If there is a common trial on liability, it is anticipated that the liability trial will take 30 days (the plaintiffs failed to provide the times estimates for each damages trial thereafter, but suggested that it would not bridge that 45 day difference).
- [25] Much of the time savings arises from the overlap of witnesses on liability specifically. For the most part the only obviously different witnesses in each action would be the plaintiffs themselves, and perhaps a few collateral witnesses to liability. However, even those witnesses may overlap if they were to testify in each others' cases, as the plaintiffs seek to do. That would, of course, be subject a determination of admissibility of similar fact evidence, which I address further below.
- [26] The plaintiffs also anticipate having an expert give evidence as to Canon Law, which, if such expert only has to provide such evidence once, it will result in cost savings.
- [27] The defendants did not argue that there would not be time or cost savings, but did dispute the impact of it, suggesting that it may not be an overall significant factor as it would not necessarily be more convenient to schedule a 30 day liability trial, versus three separate 25 day trials at different times. They also note that while there may some expert evidence on liability it will be limited.
- [28] The more contentious argument by the plaintiff is that given the larger claim of systemic/operational negligence involving all institutional defendants, it is an "onerous and a serious economic barrier" for each plaintiff to have to "reinvent the (proverbial) wheel" by attempting to conduct the same extensive documentary and oral examinations for discovery in each action. Further, given those claims, there is a risk of inconsistent findings on what are identical issues, involving identical witnesses.
- [29] One of the defendants' arguments was in fact that not only will the determination of whether a sexual battery occurred be fact dependent for each plaintiff, that proving vicarious liability will also be fact dependent. However, the defendants also argue that there will be precedential value from those findings in the other actions that do concern common issues. In other words, they argue that the trials, if separate, will allow common issues as resolved in the first case as "precedent" for the others, without tying all issues together, but at the same time being vague as to what may or may not be determinative as binding precedent.
- [30] The defendants suggest that the impediment as to the economic impact of three different discovery processes can be addressed by orders waiving the implied undertaking of confidentiality to allow evidence to be used, however the plaintiffs argue that is essentially giving the defendants the benefit without the consequences in that limits will then being imposed on the plaintiffs' discovery rights, without any of the limits to the defendants at trial, enabling them to take second and third kicks at the can on liability given the ambiguity as to what findings would and would not be binding on subsequent presiders or juries.

The prejudicial impact of having the trials heard together

- [31] Turning then to the prejudice to the defendants if the matters are heard together, the defendants argue that the defendants will be significantly prejudiced, including if the plaintiffs' file a jury notice as indicated, in hearing similar fact and general propensity evidence of each of the plaintiffs', when such evidence may be inadmissible at trial.
- [32] General propensity evidence is presumptively inadmissible: *R v. Handy*, 2002 SCC 56.
- [33] The defendants argue that whether, in this case, such evidence will ultimately be admissible at trial cannot be determined on this evidence, or on this application. Rather, the proper process, the defendants argue, will be for the trial judge to conduct a voir dire to determine if such evidence ought to be heard: see *D.H. v. The Seminary of Christ the King*, 2022 BCSC 2444 ("D.H."), at paras. 8-9. The defendants argue that any order made at this stage cannot usurp the trial judge's role to later determine admissibility.
- [34] The court in *Callan* described the concern as follows:
- [126] Relying on *R. v. Handy*, 2002 SCC 56, the defendant Cooke submits that adducing the proposed "similar fact" evidence is an effort to lead general propensity evidence inadmissible at law. In attempting to obtain an order that all actions be heard at the same time, it is the defendant Cooke's submission that the plaintiffs are, in effect, seeking to avoid the similar fact evidence rule and usurping the function of the trial judge to rule on the admissibility of the evidence in each case.
- [127] The defendant Cooke contends that there is no evidence that hearing the actions together will save money and no suggestion that a single expert will speak to the psychological damage of each of the plaintiffs, nor an allegation that each of the plaintiffs or other witnesses that might be called can speak to common issues.
- [128] In his response, counsel for the defendant Cooke made the helpful suggestion, with which counsel for the plaintiffs agreed, that if I were to accede to the plaintiffs' application, rather than ordering the actions to be heard at the same time, I should simply order that they be set for hearing at the same time, leaving it to the trial judge to decide if he or she would hear them together after a voir dire to determine whether the evidence of the plaintiffs should be admitted as similar fact evidence.
- [129] As I am not in a position at this juncture to determine whether the evidence of the plaintiffs *Callan*, *Thiessen* and *Piers* will be admissible as similar fact evidence, I will adopt the suggestion of counsel for the defendant Cooke and order that the trials in the three actions commenced by these plaintiffs be set for hearing at the same time. I leave it to the trial judge hearing the cases to determine whether they should be heard together.
- [35] A similar argument was made in *D.H.*, where the plaintiffs similarly advanced claims for "systemic wrongs" committed by the defendants which the plaintiffs argued made them directly liable for the later sexual battery as allegedly occurred. The court noted as follows:

- [7] Both plaintiffs make a claim for what is described as "systemic wrongs". These claims are set out in the amended notice of civil claim at paragraphs 25 to 30. These claims, by my reading, directly engage issues of similar fact evidence. The defendants in their pleading say that these claims for systemic wrongs are not legally relevant and are not justiciable. In *University of British Columbia v. Moscipan*, 2015 BCSC 1162 [Moscipan], Master Muir declined to make an order that two fraud actions be heard together on the basis that the evidence from one action could be construed as evidence of the propensity of the defendant to commit the frauds alleged in the other: Moscipan at para. 32. She found there was a potential of prejudice, but here, similar fact evidence is directly engaged in each of the actions, rather than avoided.
- [8] If I made an order that the two actions be heard at the same time, setting aside the severance issue, that order is always subject to the directions of the trial judge. If I were to make an order that liability in the two actions be heard at the same time, the trial judge could vacate or vary that order if they determined that the order resulted in a de facto finding by me that similar fact evidence does apply. Of course, I would not make such an order because the similar fact evidence issue is such a crucial and central issue in these two actions.
- [36] In commenting upon the order made in Callan, namely that the trials would be scheduled to proceed at the same time, leaving the trial judge to determine the admissibility question at the commencement of the trial and determine then if the trials should continue to be heard together, Associate Judge Harper noted that the court was without the benefit of knowing how that creative result had actually played out. Similarly, I am without that benefit.
- [37] Regardless, Associate Judge Harper expressed concern that making such an order would mean that the same dispute would "simply be kicked down the road to the trial judge" (at para. 12), concluding as follows:
- [18] The ideal outcome on this application is not apparent. In fact, there is no ideal outcome. I think optimally, a decision along the lines of Callan would be appropriate, but only if the two actions were at a similar stage of development. There are alternative types of orders to Callan, such as a provision that the evidence in one action is admissible in the other action, subject to the right of any party to dispute the admissibility of the evidence and subject to the directions of the trial judge. That would be an analogous type of order, or that the order is without prejudice to the arguments of all parties regarding similar fact evidence. This is similar type of wording to the orders that the defence do not object to as set out in their respective application responses.
- [38] The defendants make the same argument here as were made in D.H., emphasizing that any order made on this application will be subject to the discretion of the trial judge. Thus, the prejudice that will result if the evidence is found to be inadmissible on voir dire, and the trial judge determines that the trials should not be joined, leaving counsel to "sort out which matter proceeds and which is to be rescheduled, potentially years down the road", making

the process more inefficient with more delay than if the trials had been scheduled separately in the first instance, and leading to the disappointment of at least two of the three plaintiffs.

[39] The plaintiffs argue that the risk of a trial ruling against the plaintiffs on the propensity and similar fact evidence is minimal in that any prejudice can be addressed even if it is a trial by jury through the trial judge's instructions to the jury. The plaintiffs referred the court to the following excerpt from the Canadian Criminal Jury Instructions addressing such evidence, arguing that this often arises given that there can be multiple complainants and counts in issue:

2. It is a fundamental principle of the criminal law that the evidence against an accused in one count in an indictment may not be used to prove the guilt of that accused in another count in the indictment. An accused may only be convicted of an offence on the basis of evidence that they committed that offence, and not on the basis of an inference that because the accused committed some other offence, they must also have committed this offence. You must consider each count in the indictment separately, and you may not use the evidence against [the accused] in one count to prove (his/her/their) guilt on another count.

2A. It is particularly important for you to remember that you cannot use the conduct of an accused in relation to one count in an indictment to form an opinion that the accused was the type of person who might engage in the criminal activity related to the allegations of the second count.²

[40] The plaintiffs argue that a similar instruction could be given to the jury in this case. Of course, the fact that there can be jury instructions given does not mean that such similar fact and propensity evidence will be found to be admissible. Ultimately, that is a matter for the trial judge to determine when the trial judge hears the full argument on admissibility. I am not in that position.

[41] The defendants also argue that there will be inconvenience to the plaintiffs in that a portion of each others trial, specifically concerning each plaintiffs' claims to sexual battery, will be irrelevant to their own claim.

Overall Interests of Justice

[42] I agree with the plaintiffs that there is no substantial inconvenience to the defendants in having the trials heard together as they will be participating in each trial. While the defendants suggest that the plaintiffs and the plaintiffs' witnesses will be inconvenienced, the plaintiffs clearly do not share that view in bringing this application. Similarly, the disappointment of two of the plaintiffs if the trial judge determines that only one matter may proceed to trial if the order is made is a risk that the plaintiffs are willing to accept. Those are not determining factors.

- [43] I do, however, share the defendants' concerns, and the concerns of Associate Judge Harper, as raised in D.H. and Chief Justice Hinkson in Callan as to the inability on this application to determine what evidence may or may not be inadmissible in each other's actions.
- [44] Absent that concern, I would have no hesitation in finding that the plaintiffs satisfy the onus upon them to establish that the matters are sufficiently interwoven and connected that the benefits, including the cost and time savings and with the risk of inconsistent results, particularly given the commonality of the claims made against the institutional defendants for systemic negligence and conduct that created the environment that emboldened and/or enabled Quigley to commit sexual battery, assuming such battery is found to have occurred, that the trials should be heard at the same time. The 2004 Complaint is also relevant to that consideration in that it is a very specific allegation as to a report being made of conduct which, it is alleged, was not investigated, evidence that will feature in each of the plaintiffs' trials. I could not see from the reasons in D.H. or Callan that a similar allegation had been made in those cases.
- [45] Any prejudice must also be balanced against these particular plaintiffs' and witnesses' vulnerabilities given the nature of the claims themselves. The experiences of those affected by trauma when traversing the legal processes can inflict and further exacerbate that trauma. Having to testify repeatedly in multiple trials, if the similar fact or propensity evidence is admitted, risks that result, for the plaintiffs, and potentially for the witnesses to the 2004 Complaint whose evidence is not subject to the same argument as to admissibility.
- [46] The question then is whether the potential prejudice arising from the uncertainty as to how the similar fact or propensity evidence will be dealt with tips the scale such that the plaintiffs cannot meet the onus upon them.
- [47] I note that while Associate Judge Harper ultimately dismissed the joinder application in D.H., and declined to make an order along the lines of what was done in Callan, she acknowledged that if the actions before her "were at a similar stage and severance was not required, the result in Callan might be appropriate" (at para. 11).
- [48] Here, although liability and damages are effectively being severed, the claims are at a similar stage, and very much in their infancy. It is, the plaintiffs argue, the determination of this application that has prevented the actions from moving forward as scheduling will be directly affected.

Conclusion and Order

- [49] I agree that any order by me made would be subject to the discretion of the trial judge. The determination as to the admissibility of similar fact or propensity evidence, including whether any issues arising in that respect can be addressed through jury instructions, is one for the trial judge to determine and not one I can make on this application.

- [50] In the unusual circumstances of this case, including the likelihood of evidence of the 2004 Complaint being led in each of the actions and uncertain determination of how the similar fact and propensity evidence will be dealt with, the creative solution adopted by Chief Justice Hinkson in Callan, is one that is appropriate to be employed here.
- [51] To the extent that it may mean a loss of the trial for two plaintiffs if the court determines that all matters cannot proceed given the issue as to the similar fact or propensity evidence, and significant inconvenience and delay at that time, the effects of that would be felt by the plaintiffs more than the defendants. The plaintiffs appear willing to take that risk.
- [52] I expressed concern to the parties during submissions that such an order is effectively no order at all given the uncertainty it creates. However, it will allow the plaintiffs to proceed with scheduling of discoveries and trial which has been largely stymied pending the outcome of this application, and provides some certainty for pre-trial processes.
- [53] While I appreciate that this may bring uncertainty when the trial commences, as noted, that is a risk the plaintiffs appear willing to take. To order anything more definitive at this stage, however, could improperly impact the trial judge's ability to deal with these admissibility issues.
- [54] In summary, I make the following orders:
- a) The trials with respect to liability only in each of S.A.S. #1 v. Quigley et al (BC Supreme Court, Vancouver Registry Action No. S241763), S.A.S.B. v. Quigley et al (BC Supreme Court, Vancouver Registry Action No. S248072) and S.A.S.C. v. Quigley et al (BC Supreme Court, Vancouver Registry Action No. S248073) (collectively, the "Actions") shall be set for hearing at the same time, without prejudice to the trial judge's determination at the commencement of the trial as to whether the Actions ought to continue to be heard together after a voir dire to determine the admissibility of the plaintiffs' similar fact evidence in each other's actions (the "Similar Fact Evidence").
 - b) Subject to the trial judge's discretion and determination as to the admissibility of the Similar Fact Evidence, and subject to their determination that the trials of the Action ought not to be heard together or such further directions as the trial judge may make:
 - i. The trial of the Actions will continue as separate actions, with nothing in this order being construed to be merge or consolidate the claims;
 - ii. The parties are released from the implied undertaking of confidentiality, and such implied undertaking is waived between the Actions; and
 - iii. The parties in each of the Actions are at liberty to obtain copies of and make use of discovery transcripts and any other documents listed by any adverse party as it relates to liability in the same manner as if that evidence originated in the party's action, for the purpose of trial and pre-trial procedures, subject to the claims of privilege.

- [55] The parties did not have an opportunity to argue costs when they were before me. This seems an appropriate case to order costs of this application in the cause. If the parties disagree with that result, they may make written submissions, not to exceed 5 single spaced pages each, within 21 days of the issuance of these Reasons. The parties may discuss amongst themselves a schedule, with the intent being that all submissions are to be received within 21 days. Those submissions are to be filed, and emailed to trial scheduling copying all counsel, with a request that they be directed to me.
- [56] If no such submissions are made, or the parties each agree prior to the expiry of the 21 days, the order will be for costs of the application in the cause.

"Associate Judge Robertson"

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Prepared on 27 October 2026 · Esheria