

CANADA / JUDGMENT

T.W.N.A. et al v. Clarke et al

2001 BCSC 1177

COURT

Supreme Court of British Columbia

DECIDED

9 August 2001

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Source record

2001BCSC1177

Citation: Aleck et al v. Clarke et al Date:

20010809

2001 BCSC 1177 Docket:

C886397

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TERRANCE WAYNE NELSON ALECK,
EAJ
AND
GBS
PLAINTIFFS

AND:

DEREK CLARKE, ANTHONY WILLIAM HARDING,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE
MINISTER OF INDIAN AND NORTHERN AFFAIRS
DEFENDANTS

AND:

THE ANGLICAN CHURCH OF CANADA,
THE ANGLICAN DIOCESE OF CARIBOO,
THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE SYNOD OF THE ANGLICAN DIOCESE OF CARIBOO
AND
DEREK CLARKE
THIRD PARTIES
- A N D -

Docket:

C986621
Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ERM
PLAINTIFF

AND: DEREK CLARKE,
THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE SYNOD OF THE ANGLICAN DIOCESE OF CARIBOO,
AND
HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE
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AND: THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA,
THE SYNOD OF THE ANGLICAN DIOCESE OF CARIBOO
AND
DEREK CLARKE
THIRD PARTIES

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE WILLIAMSON

Counsel for the Plaintiffs: P.R.A. Grant

B. O'Reilly

A.M. Early

Counsel for Her Majesty the Queen in Right of Canada: M.R. Taylor, Q.C.

J. Mules

A. Maclure

R.S. Whittaker

Counsel for The Anglican Church of Canada: G.E.H. Cadman, Q.C.

H.D. Craig

Counsel for The Synod of The Anglican Diocese of Cariboo: D.C. Harris

R.A. Finlay

Dates and Place of Trial: March 27-31,

Apr.3-7,10-14,19,20,25-28,

May 1-3,

Oct.2-6,10-13,23,26,27,30

Nov.6-10,14-17,

20-22,24,30, 2000.

Jan.10-11,25,26,29-31,

Feb.1,2,2001.

Vancouver, B.C.

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INTRODUCTION

- [1] In this trial, as the style of cause indicates, two actions were heard together. The original seven plaintiffs in the Aleck case and ERM were all resident students at St. George's Indian Residential School (St. George's) in Lytton, British Columbia in the 1960s. During the time that they were resident at the school, they were physically and sexually assaulted repeatedly by their dormitory supervisor, the defendant Derek Clarke. Many years later, Clarke was convicted of criminal offences and incarcerated.
- [2] Two of the plaintiffs were also sexually assaulted by Reverend Anthony Harding, at one time the principal of St. George's, now deceased.
- [3] The parties have agreed upon the issue of liability. I will refer to that agreement in more detail subsequently.
- [4] During the trial, four of the plaintiffs in the Aleck action settled. This trial, then, is a determination of the damages that should be awarded to the remaining plaintiffs in that action and to ERM as a result of the injuries they sustained by reason of the sexual, physical, emotional and psychological abuse perpetrated upon them at St. George's.
- [5] The defendant Canada, of course, is a defendant by reason of its constitutional responsibility for Native Indians. The Church defendants and third parties are here because Canada contracted with the Anglican Church to administer the school.

- [6] In August of 1999, after another trial before this court involving the same individual and institutional defendants, Madam Justice Dillon found that the Church and Canada were each liable for damages suffered by a different plaintiff. See: *F.S.M. v. Clarke*, [1999] 11 W.W.R. 301 (BCSC), hereinafter *Mowatt*. In that case, liability was apportioned 60% to the Church and 40% to Canada.
- [7] In this case, the plaintiffs submit that there is evidence which was not before Madam Justice Dillon. The parties are nevertheless bound by the agreement on liability referred to in paragraph 3 above. That agreement states, in part, that:
1. For the purpose of resolving liability in *Aleck et al* each of the Defendant Her Majesty the Queen in Right of Canada ("Canada") and the Third Parties, the Anglican Church of Canada, the General Synod of the Anglican Church of Canada (together referred to as "General Synod"), the Anglican Diocese of Cariboo and the Synod of the Diocese of Cariboo (together referred to as "Diocese of Cariboo") will admit liability against it as found by the trial court in *Mowatt*. Canada will admit liability to the Plaintiffs founded on negligence and vicarious liability, as found in *Mowatt*. The General Synod and the Diocese of Cariboo will admit third party liability, joint and several, to Canada founded on negligence and vicarious liability, as found against each of them, jointly and severally, as defendants in *Mowatt*.
 2. Each plaintiff in *Aleck et al* will be entitled to claim damages against the Defendant Canada in accordance with the findings of liability in negligence and vicarious liability in *Mowatt*.
 3. Contribution and indemnity as between the Defendant Canada and the Third Parties General Synod and the Diocese of Cariboo in *Aleck et al* for damages for any plaintiff as determined under clause two (2) will be in accordance with the determination of liability as between Defendants and as between Defendant and Third Party in *Mowatt* based on the findings of negligence and vicarious liability.
 4. The contribution and indemnity as between the Defendant Canada and the Third Parties General Synod and the Diocese of Cariboo referred to in clause three (3), above, will be subject to adjustment on the basis of the ultimate determination as between defendants and as between defendant and third party on appeal in *Mowatt* and, specifically, the ultimate determination of the court on vicarious liability, negligence and breach of fiduciary duty, to the extent applicable, and the Plaintiffs agree to be bound by such ultimate determination. Adjustment will also occur having regard to clause thirteen (13) herein.
- [8] The agreement sets out similar provisions with respect to the ERM action. Paragraph 13 gives the parties liberty to apply should there arise issues of damages not common to *Mowatt*.
- [9] The plaintiffs are all male and are all now in their late thirties or early forties. All were repeatedly physically and sexually assaulted during their stay at St. George's. The plaintiffs seek general, aggravated and punitive damages. They say they were robbed of their childhood, that as a result of the persistent physical and sexual abuse in circumstances in

which they were virtually captives, their lives have been devastated. They say that the evidence discloses that as a result of their suffering they have had their personal and emotional lives irreparably damaged, that their income earning ability has been slashed, that they have been robbed of their cultural origins, and that their self-esteem has been virtually destroyed. They seek substantial damages.

THE PLAINTIFFS

[10] I start with a review of the evidence called by the five plaintiffs, including their own testimony and that of other lay witnesses who testified on their behalf. I will deal in detail with the psychiatric and psychological evidence called by all parties later in these reasons.

E.A.J.

[11] The first witness was the plaintiff EAJ. At the time of this trial, EAJ was 37 years old. He started at St. George's at age six. He testified about his life before age six when he lived with his family on a ranch between Lytton and Lillooet in the interior of British Columbia, and about his relationship with his extended family throughout his youth. He described the home in which he lived, his recollection of his grandmother, other members of his family, and his relationships with his three brothers and four sisters. He described his close relationship with one of his uncles. Not surprisingly, he has limited memory of events before he went to St. George's. While at St. George's he was separated from his family except for his trips home every summer. He said that his mother, who had also been a residential student at St. George's, counselled him that if he was to get along at St. George's, he should mind his own business and not bother others. He was a resident of the school from age six until age 15.

[12] At about eight or nine, he went from residing in the junior dormitory to the intermediate dormitory, where the defendant Derek Clarke was the supervisor. Dormitory supervisors exercised almost complete authority and control over the children. Dillon J. found, at p. 306, that:

The dormitory supervisors oversaw all of the boys' activities from the moment that each awoke until bedtime except for school instruction. They were on duty for 24 hours, residing in rooms near the dormitory. Their duties included: supervising prayers throughout the day; escorting to meals; supervising daily and weekend chores; ensuring personal and environmental hygiene; supervising homework and play time; putting to bed at night; enforcing discipline; taking on outings; and ensuring attendance at church service. Treats from parents were stored and allocated by the dormitory supervisor. Discipline including strapping was done by the supervisor sometimes in the dorm and sometimes in the principal's office. Failure to follow daily prayers or attend religious services was cause for discipline.

[13] EAJ testified that some months after he moved to the intermediate dormitory, Clarke arranged a work task that required him to go to Clarke's room. There Clarke sexually assaulted him for the first time. Many similar assaults followed. They included fondling of

EAJ by Clarke, forcing EAJ to fondle Clarke, and anal rape. He described the latter as "making me scream - he just treated me like a dog". He testified that when Clarke "was done fucking me" he gave him a chicklet and told him not to tell anyone. He said that after the first incident, he left and went to his bed where he lay down and cried. He said he looked out the window and watched the other kids having fun.

- [14] He testified that he felt confused and scared. He said that he felt hatred for Derek Clarke and, importantly, for his own mother. Questioned as to why he felt hatred towards his mother, he said that he hated her for "bringing me to that school".
- [15] EAJ said that he was assaulted many times but that he had no idea how many. He said that these assaults always included anal rape, and in cross-examination he said he was forced to perform oral sex. He also described physical abuse at the hands of Clarke. He was candid that these punishments sometimes followed wrong-doing on his part. He described stealing some alcohol from the principal's residence and being subsequently strapped by Reverend Harding. He also described being strapped by Clarke when he had been caught running around the hills during a time when he was not suppose to leave the school property. He said that he and the others were spanked with ping pong paddles until the paddle broke, after which the punishment continued with a slipper. During such spankings, his trousers were at his ankles. No other adults were present.
- [16] After some years, EAJ was taken to the office of the principal of the public school in Lytton, Joseph Chute. At this time, Reverend Harding was present. Apparently a number of children were called in to the principal's office one by one and asked if they knew anything about what Mr. Clarke might be doing to the children.
- [17] EAJ testified that he was asked whether Clarke was sexually assaulting him and that he told the principal, Mr. Chute, that that was true. He said that during this meeting, Reverend Harding was standing in the door between the office of the secretary and the principal's office.
- [18] He said that as far as he knew, after that disclosure Clarke was no longer at the school. But he said that his family was not informed and nothing was done for him to assist him in dealing with the trauma he had experienced.
- [19] He said that the next time he told anyone about these assaults was when he was interviewed by an R.C.M.P. officer when he was living in the Okanagan in the second half of the 1980s.
- [20] EAJ testified at length about his inability to hold a lengthy job, and about his abuse of drugs and alcohol. Fortunately, for the last nine years, after some time in a treatment centre on Vancouver Island, he has remained sober. He has not, however, found permanent employment.
- [21] EAJ also testified about his difficulties in his personal relationships. He has problems with sexual matters, and has difficulty trusting those who would be intimate with him. He testified that the first woman with whom he had an intimate relationship eventually

committed suicide. He then had a lengthy relationship with a second woman, by whom he had a daughter C. It was a stormy relationship which, after she learned of his disclosure of the sexual abuse at St. George's, included her suggesting that he was homosexual and that he had, while incarcerated for impaired driving, had sexual relationships with other men. That relationship eventually broke up, apparently with some acrimony including a custody battle.

- [22] Since 1994 he has been with the same woman, his wife. She has three children by a previous marriage, and his daughter C has lived with them for the past four years.
- [23] Although he now appears to be in a stable relationship, EAJ still manifests emotional difficulties. He has outbursts of anger against his wife and against his children which he says are brought on by nothing which is their doing. He ends these by leaving the house for some time until he cools down and eventually coming back and apologizing to his wife and children.
- [24] Every once in awhile, perhaps three times a year, he disappears into the mountains for three or four or as many as five days. He testified that he does this to "clear my head - to shout out my anger - to feel at peace with myself". He said the mountains are a place where he can cry by himself and no one bothers him.
- [25] He testified that after he stopped drinking, he sat down with his mother after dinner one evening and told her that he had to deal with the sexual abuse to which he had been subjected to at St. George's. This was the first time he had discussed this with his mother. He said that he apologized to her for saying that he hated her and told her how he had blamed her wrongfully for what he had gone through. He said that that marked a change in his relationship with his mother, that he realized that he loved her and should not have treated her as he did. He said they now get along better.
- [26] EAJ still finds it uncomfortable to go into the Town of Lytton. He must do so because his mother and other members of his family live there but, he testified, he finds as many excuses as he can to avoid or to limit his stays in Lytton.
- [27] EAJ was cross-examined thoroughly. A number of questions put to him raised suggestions that there are reasons other than his experience at St. George's School which are causes of his difficulties in life.
- [28] First, a number of questions were put to him about the early death of his father, when EAJ was five or six years old, and the impact that had upon him. Questions were put to him about his ambivalence concerning the character of his father and indeed, as to whether his father was in fact his biological father at all.
- [29] EAJ's sexual relationships with woman were reviewed in detail. Referring to his first intimate relationship, it was suggested, and he agreed, that in many respects he held himself partly responsible for her suicide.

- [30] As mentioned, EAJ's second serious relationship (with G's mother) ended principally because when she learned about his sexual abuse in the residential school, she "threw it in [his] face".
- [31] It was also suggested through questions in cross-examination that EAJ's difficulties in his relationship with his mother were because she disagreed with his drinking. He conceded that until about the age of 28, he was a heavy drinker and that his mother was opposed to that. He was also questioned extensively about his employment record. It was suggested that he really did not want full-time employment, rather he wished to work from time to time in order to acquire credits with respect to unemployment insurance so that he could take long periods off to pursue his own interests, including his many trips to the mountains.
- [32] It was suggested to him in cross-examination that a factor in his discomfort about going to Lytton was that as a young man he had been involved in frequent fights and that those with whom he had been involved still frequented Lytton and therefore were a threat to him. He denied this was so.
- [33] He was also cross-examined about the details of the sexual assaults upon him by Clarke. In cross-examination, he said that he had been forced to perform oral sex on Clarke, and that Clarke had performed oral sex upon him. The language used by the witness was more graphic than I am using here. Counsel asked him to explain why he had not said in-chief that oral sex had been involved. EAJ replied that he was not comfortable talking about these matters, that he hated reliving those events, and in effect he said as little as possible to get through the repetitive telling of his experience necessitated by the litigation process.
- [34] He was also cross-examined as to why he had said that Clarke used a towel "to wipe us down" after the sexual assaults. The witness replied that Clarke "always wiped his victims down". It was suggested to him in cross-examination that to know this he must have been discussing these events with other plaintiffs or other victims and that indeed he was confusing their experiences with his. The witness said that this was not true and that he used the expression "us" to give him a sense of not going through this experience alone. He conceded that he did not really know whether Clarke used a towel to wipe other victims down.
- [35] Asked why he could tell this story to the elementary school principal but not to his mother, he said that it was principally because he blamed her, indeed hated her, for "signing me in and leaving me" at St. George's.
- [36] He was also cross-examined on the distance of the ranch where he lived, 25 Mile Ranch, from Lytton and any schools. The suggestion here was that the reason that he went to St. George's was that no school was proximate to where he would have otherwise been living with his mother at the 25 Mile Ranch.

[37] In re-direct examination, EAJ testified that neither the moving of his first girl friend from Canada when he was sixteen, nor the custody battle that he had with C.'s mother, caused him to have nightmares or caused an increase in his abuse of alcohol or drugs. Questioned about his relationship with his bosses in various jobs, and with the principal of St. George's School, he testified that he believes he does have trouble with people in authority and that one result of that is a desire to find a way to be self-employed.

[38] He denied that his discomfort about going to Lytton had to do with former drinking buddies being there, testifying that he has former drinking buddies in both Lillooet and at the Fountain Reserve but that he has no difficulty visiting those places.

S.M.

[39] The second witness was SM, EAJ's sister. She was born at 25 Mile Ranch and is two years older than EAJ.

[40] She described EAJ as a happy child and described their life at 25 Mile Ranch before he went to St. George's. Certainly, the picture she painted was of a happy extended family involved in fishing, farming, and a great deal of play. She said that her brother got into no more or less trouble with his elders than did she.

[41] She went to St. George's two years ahead of EAJ. She said that they would go home to 25 Mile Ranch for the summers. She testified that when he was around ten or eleven years old, she noticed a change in him. She said he was not as much fun as he used to be, that he kept to himself more. She said that when he had the opportunity he would go away with his Uncle rather than stay with his mother and siblings.

[42] It is apparent that S.M. has dreadful memories of St. George's. She missed her brothers and sisters and although some of them were in the school, she saw very little of them.

[43] She gave a graphic description of being taken from 25 Mile Ranch in September to the school. She said she did not want to go and tried to hold onto anything to prevent being dragged to the car. She said she kicked at the car.

[44] When she first arrived there, she was told by a supervisor that she had to be there because they were too "isolated" where they lived. Her response was that there was no "ice" there. She said she was told that if she did not go to the school, her parents would go to jail and that she would never see them again. She described the principal, Reverend Harding, as being angry all the time. She said he banged doors and would frequently become red in the face with anger.

[45] She testified that the staff of St. George's called the students "savages" and "heathens". She said that occasionally at the beginning of the year students would bring things, in particular, food. She said her group would bring dried fish, natives from further south would bring smoked dried fish, and that children from the north would bring dried seaweed. They would trade them back and forth. She testified that if they were caught, what they had brought was

thrown into the trash can and they were told, "... that is where it belongs", that such food was what heathens ate, and that was not what they were at St. George's to learn.

- [46] She said that they were required to attend church in the chapel regularly, but that she would faint or throw up from what she thought later was some sort of allergy, possibly to the incense. She said when she fainted, a supervisor dragged her out and told her that she was evil and had the devil in her and that was why she could not stay in church. She testified that the supervisor asked her if she had ever been burned and she said that she had been burned, once in the foot, around a fire when she was younger. She said the supervisor told her, "That's what it feels like when you burn in hell, except it's all over and that's where you're going." She testifies that to this day, she worries about "the devil in her".
- [47] She also testified about the attitude of St. George's staff to native languages. Once, while listening to two other girls converse, a supervisor who observed that she was listening, smacked her on the ears and dragged her to bed. She said the supervisor hit her head on the bed rail and told her to stay in bed because she should not "listen to that kind of trash". Ms. M. cried frequently throughout her testimony.
- [48] In cross-examination, she said that she is still very afraid, or would be, in church but that she tells herself she does not believe in God and does not attend.

TERRANCE WAYNE NELSON ALECK

- [49] The next witness was Terry Aleck, one of the plaintiffs. He was born in 1956, so was 34 years old at the time he testified. He is married and has two daughters. He was one of six children.
- [50] He spent the first years of his life at a ranch at the 14 mile mark on the same road which continues on to 25 Mile Ranch where the plaintiff, EAJ, lived. Aleck lived with his paternal grandparents, a number of aunts, uncles and cousins. He had a good recollection of the ranch and of the activities of the children in that period. He was happy, well fed and content.
- [51] After some years he moved briefly to Vancouver where his mother worked in a fish cannery. He lived in what seemed to be a communal house with his brother and his mother, a house that housed a number of other cannery workers. After that he went to live with his maternal grandparents at Kanaka Bar, a Reserve on the Trans-Canada Highway in the Fraser Canyon. Here again, he developed a close relationship with his grandfather, this time his maternal grandfather. There were also other members of the extended family living there. He remembers fishing in the Fraser River with his uncles and described a "friendly, warm, caring atmosphere, with a lot of joking and laughing around the table".
- [52] He said his grandparents spoke their native language but that although he understood it, and still does a little, he cannot recall whether at that age he could speak it.

- [53] He described a rite of passage he went through with his grandfather, which essentially involved leaving him with a fire to fend for himself for three or four days in the woods. He testified as to how that incident brought him closer to his grandfather.
- [54] He remembered being taken to St. George's School to enter Grade 1 and to live in the residence. He said that his mother and his aunt took him, along with his cousin John, to the school where they were met by Canon Wickenden, then the Principal. When they were taken to the dormitory, he said that he and John cried for a long time, feeling hurt after his mother and aunt left. He said no one told him why he was going there nor how long he would be there.
- [55] He described the routine in the residential school in terms that would be reminiscent of a military boot camp. He said the beds had to be carefully made every morning before breakfast with the sheet so tight that if a dime did not bounce, the supervisor tore the bedding off and the bed had to be re-done. All students were kept from going down for breakfast until all the beds were perfect or at least to the supervisor's liking.
- [56] He described the food as poor, and testified that often the breakfast, which in the junior dormitory was always mush, was often served with sour milk. Lunches were baloney sandwiches on white bread or peanut butter and jam sandwiches.
- [57] He described some of the suppers and said none of the children liked them, either how the food smelled or tasted, and that sometimes he threw his dinner under the table.
- [58] He described in detail the routine in the junior school. He also described certain punishments, such as being forced to clean stairways running from the basement to the fourth floor with a toothbrush, being forced to sit in the corner in front of the class wearing a dunce's cap, and having been caught chewing gum, having the gum stuck to the end of his nose in front of the class while the teacher beat him on the fronts and backs of his hands and arms.
- [59] He first came under the control of the defendant Clarke when he moved to the intermediate dormitory in the third year he was at the school. There he was sexually assaulted. He was sexually abused by Clarke repeatedly for the next four years.
- [60] He described in detail the first time that he was assaulted. He said that after the boys had had a bath, their entire bodies were checked by Clarke to make sure they were clean. On this occasion, he was kept back while the other children were sent to bed. He said that he was taken to Clarke's room and that Clarke went into his bathroom and came out with a towel and a container of vaseline.

- [61] He said that Clarke had him lie naked on the bed with his back to Clarke, that Clarke took his clothes off and got into bed behind him. He said that Clarke fondled him all over his body and kissed him all over his body. He said that Clarke then took the vaseline container and wiped some "on my bum area". He said that Clarke then took his (Aleck's) left hand and "had me reach back" and touch his penis.
- [62] Aleck said that he felt the penis was hard although he never saw it. He said Clarke then started putting the penis between his legs, "humping me that way" and "whispering in my ear and saying, it's okay, it's okay" and that he then started to put his penis "in my bum". He said that he started to cry because it really hurt and that Clarke had him crying into a pillow. He said it all took a long time and that Clarke kept at it, "until white stuff came out of him".
- [63] Aleck was nine years old.
- [64] He testified that for the next four years while he was in the intermediate dormitory, Clarke assaulted him as much "as he possibly could". He said generally the assaults were as he had described above, although on a couple of occasions, Clarke performed oral sex upon him.
- [65] Aleck said he never told anyone because he did not know how to talk about it. He said he did not know how to put words to what was going on. He also said that Clarke was "our supervisor, and if you said anything against the supervisor you got punished".
- [66] He said in the four years living under Clarke's supervision the only period he was free of the assaults was when he was sick with mumps, then measles, and then finally the 'flu and was eventually in hospital. Once he recovered and returned to the school, he was assaulted again "until I left".
- [67] He left St. George's in 1969 because his father showed up in June of his Grade 6 year and said that he was taking the family to Seattle. Aleck, his brother Dwayne and his father then moved to Seattle where Aleck attended junior high school for Grade 7, 8 and 9, and a senior high school for Grade 10.
- [68] At the end of Grade 10, he and Dwayne decided to move and live with their mother, who was by then living with another man in Peschastin, in eastern Washington State. After a few months, they returned to Kanaka Bar and began attending high school in Lytton.
- [69] Aleck testified, however, that the sexual assaults by Clarke did not end when he left St. George's. He said that while he was living in Seattle, Clarke contacted Aleck's father while visiting Seattle and took Dwayne and Aleck out. He said that four times, twice in 1970 and twice in 1971, he was sexually assaulted in Seattle by Clarke in a similar manner to the assaults which took place at St. George's.

- [70] Aleck also described certain incidents of a bizarre sexual nature, that have troubled him since his experiences with Clarke. One such incident involved his breaking into a school in Seattle, lighting a number of candles, running up and down the hall masturbating, and subsequently leaving, but leaving the candles burning so that eventually the school caught fire.
- [71] He also described a period during his time in Seattle when he would insert anything round and smooth in his anus, using vaseline. He also described two incidents involving girls. The first was an incident with his sister, Sherri, when he was 16 and she was about eight, during the time they were living in Peschastin in Washington State. His mother's common-law husband had been drinking and had frightened the children, causing them to run in various directions to escape his anger. He said that he and Sherri ended up together behind a tree. Sherri was wearing only shorts and a tee-shirt. She was scared and shaking. He said that he hugged her from behind, and then found himself starting to put his hand inside her panties. She told him to stop. He stopped.
- [72] Finally, he described an incident which occurred when he and his family had returned to the Lytton area. He testified he was walking home with a bad hangover when a female relative of his called him and said that she desperately needed a babysitter so that she could go to town to buy some supplies. She had two babies who were sleeping in a crib. He said he would baby-sit the children and she left.
- [73] He said the babies awoke and that they needed their diapers changed. He testified that he had been told where "the pampers" were and that he cleaned up the babies, but found that before he put on the new diapers he started to touch "their private area" (both were female). He said that very quickly, he said to himself, or felt a jolt of fear run through him and he asked himself, "what the fuck am I doing?" He said he put the diapers on the babies and ran out of the room shaking worse than he had been from the hangover. He said that he smoked and smoked until the woman returned and then he ran and did not tell anyone about the incident until much later when he attended a treatment centre.
- [74] Mr. Aleck also testified the he participated in a number of "gang-rapes" of women in the Lytton area. He said this happened about four times and that in at least one of the cases he facilitated the event. He testified that he carries a great deal of shame and guilt about those incidents.
- [75] Aleck then reviewed his work history and his education history. Without going into a great amount of detail, it is clear that until he entered into his present relationship, he lived a fairly peripatetic life. He held a number of jobs, initially labouring jobs, but after completing high school, he took a number of courses which led him to family violence counselling, and counselling of young persons. He also worked for awhile assisting Band councils to document their cultural history.

- [76] Aleck testified at length about his relationship with his father. Although he had lived most of his life, when he was not at St. George's, with his mother, for a time he lived in Seattle (for almost four years) with his father. He described his father as friendly, social, playing the guitar and singing with family and friends in the evenings, and happy to take the children to various functions such as concerts and rodeos. However, he said that when his father was drinking, he would be mean, and on a few occasions would "cuff me around". It seems that Aleck left Seattle not so much because of his relationship with his father, but because of the violence and gang mentality of the teenagers in the area where he went to high school. As noted, Aleck left Seattle and went to Eastern Washington to live with his mother, and shortly after they returned to the Lytton area. Aleck had little contact with his father thereafter, testifying that only once since leaving Seattle did he see his father at Kanaka Bar where Aleck eventually lived. He said his father died in January 1975.
- [77] He also testified about his relationship with his mother. He said that at times she was a good housekeeper, made sure that the family was provided with food, and that the laundry was done. However, she too had an alcohol problem and he said that when she was drinking these things were not done.
- [78] After the family returned to Kanaka Bar in the Fraser Canyon from the U.S.A., it appears that it was his maternal grandmother, more than his own mother, who took the main maternal role in the family.
- [79] Aleck testified at length about his substance abuse. He said he started drinking when he was nine years old and living at Kanaka Bar, which was after the defendant Clarke had commenced his sexual assaults of Aleck. He testified that from that time until 1978, he drank repeatedly and became involved in drugs. He also said that from 1978 to 1985, that is to say from age 22 to 29, he did not drink.
- [80] However, in 1985, after he separated from a woman with whom he had had a lengthy relationship, he started drinking again. He continued to drink until December 1986, at which time, for a number of reasons, he came to understand that he had to stop using drugs and alcohol in an abusive way. In January 1987, he attended the Round Lake Treatment Centre and remained there until mid-February of the same year. Since that time he has been sober.
- [81] Aleck testified at some length about his relationship with Robin, his present wife, which commenced shortly after he completed the Round Lake program. They have two children.
- [82] He testified about his love for her, but also that he sometimes has "a hard time with her" which he says comes from his jealousy of her previous relationships and from his inability to talk about his sexual relationship with her. He says that he is never comfortable discussing his sexuality.

- [83] He blames this on his abuse at St. George's School. Indeed, he says that the residue of the sexual abuse has had a major impact upon his family life and continues to do so. With some emotion, he described what he perceives as his failure to be a good parent to his daughters. He said he wants them to have a normal life and that they cannot because, as he put it, "I don't know how to be a parent". He says that there is so much anger and rage in him, "so much garbage" that it interferes with his parenting. He says it is difficult for him to play with his children or to have them physically close. He says that only recently has he been able to talk to them about how they are doing in school. This he relates in his mind to the abuse visited upon him by the defendant Clarke.
- [84] Aleck stresses the difficulty which he has with authority figures. For example, he testified that he was frightened of the counsel for both the Church and Canada who were present in the courtroom. He blames this irrational fear of authority figures upon the repeated sexual abuse which he suffered at the hands of authority figures at St. George's.
- [85] Aleck said that as a result of the assaults upon him, he has suffered all his life from nightmares. He said that after the assaults commenced, he was subject to bed-wetting that continued into adulthood. He testified that when he wet the bed at St. George's, the supervisor, the same Derek Clarke, "would stuff my face in the wet sheet" in front of the other intermediate boys who, he said, all laughed at him.
- [86] He also said that as a result of these assaults and the distress which they caused, he was unable to concentrate on his school work and, in his view, that had an impact upon the quality of his education.
- [87] In cross-examination, Aleck testified about his relationship with his wife, Robin. He described his family as now "very close". As had been the case with the first witness, EAJ, Aleck was cross-examined about other traumatic or troubling events in his life which it is suggested may have contributed to his present psychological condition. Thus, his relationship with his father, including his father's use of alcohol and occasional physical punishment, was explored. The alleged infidelity of his mother was also explored in detail.
- [88] At one point, Aleck responded very angrily that it was the sexual, physical, and emotional abuse he suffered at St. George's that was responsible for his present condition. He said it was wrong to suggest that by now he has recovered, and that he, in fact, "has a very long way to go". He said that he had "literally been taken away from his parents, from his cultural identification". He said that they "took everything and sexually abused me". He denied that he had been abandoned by his parents, testifying that he believes they had no choice. He was also very definite that the word "parent" included his grandparents and his extended family.

- [89] When a statement in examination for discovery that his parents had abandoned him "big time" was put to him, he countered saying that he had his grandparents, a response which I inferred illustrated the cultural difference between a society that purports to enshrine the nuclear family and a culture that is characterized by close-knit extended families.
- [90] Asked whether his schooling at St. George's had prepared him appropriately for later school and subsequently for work, he replied that it had "barely". The cross-examination continued on rather minuscule points. Aleck was challenged because he had said in-chief that the first time he was raped by Clarke was after the evening bath and he had been told to remove his towel, whereas in examination for discovery, he had said that Clarke had "removed all his clothes". Having testified that after the anal rape his "bum hurt", he was cross-examined on whether he had seen a doctor because of the pain. He was also challenged about his statement that when he had masturbated in Seattle he had "freaked out" when he saw the ejaculation, because if he had been raped by Clarke, as he testified, he must have known about seminal fluid. I found such cross-examination less than helpful to any attempt to grasp the horrific effect of these repeated rapes of nine and ten year old children.
- [91] Cross-examination also brought out his drug use, the fact that an incident which he described in a Seattle theatre was in an adult theatre although he was not an adult at the time, and that he had committed some other offences, including the fire about which he had testified, and some shoplifting.
- [92] He was also cross-examined at length about his relationship with his stepfather and the fact that the stepfather had been violent towards him. He agreed that he had said in discovery that his stepfather had "beat the shit out of him" and was alcoholic and violent. But he also testified that once his stepfather found out about the school abuse, he was "very, very sorry and apologized to me". He said this occurred after his session at the Round Lake Treatment Centre.
- [93] Counsel attempted through cross-examination to demonstrate that Aleck, in fact, had lost neither his cultural roots nor his language. He was referred to a chant which he had performed in court the previous day as an example. Aleck responded by testifying about steps that he has taken to re-immersing himself in his cultural heritage.
- [94] Cross-examination by counsel for the Anglican Church sought to bring out parts of the St. George's experience that were "enjoyable". Thus, Aleck was asked whether he had participated in Cubs and Scouts, played sports, picnicked, fished and hiked. He agreed that he did these things and that there were some enjoyable times. While the response to such questions serves to underline the honesty of the witnesses, the content cannot minimize the effect of the rapes.

- [95] Aleck was also taken through various counselling records in which there were suggestions that he had felt abandoned by his parents. He conceded that the Church had provided counselling for a couple of years for victims of the St. George's experience. He also conceded that he had told counsellors that in his life there was "no consistent parental figure".
- [96] On re-direct examination, he said that although the Church provided counselling in Lytton for about two years in the mid-90s, he only attended a couple of times.

Robin Aleck

- [97] The next witness was Aleck's wife Robin. Their relationship commenced in 1988, and they married in November 1989. They have two daughters, born in 1990 and 1992, and Mrs. Aleck is a teacher at Lytton Elementary School. They live by the Stein River on Reserve property in a five bedroom house, which they have lived in since 1992.
- [98] Mrs. Aleck testified that they have a stable relationship which, in her view, will continue. As she put it, she is in it to stay. It was clear from her evidence that she is deeply committed to her husband. She described the relationship, however, as a roller-coaster, although she testified that there are "enough good times to outweigh the bad".
- [99] She described Aleck's relationship with his daughters, and with three other children who lived with them for lengthy periods of time. She described their residence, which sits on a one-acre parcel of land, in detail. She said there is a large garden with plants, vegetables, fruit trees, and herbs. She testified that Aleck has built a sweat lodge on the property and that there is a playground or child space. She described it as a "full yard".
- [100] Her description of drying fruit and meat, canning, drying and freezing food, was reminiscent of Aleck's description of his childhood prior to St. George's.
- [101] She described in some detail Aleck's sexual inhibitions. In particular, she emphasized that he is extremely shy about his body and has difficulty being naked around other people, including her. She says that he showers compulsively. She also said that he is obsessed with the relationships which she had with other men before she met him. Further, she says that he fails to understand the boundaries of physical contact with women other than her.
- [102] She stressed that he has never hit her physically as, she testified, he knows that if that happened she would leave him. However, she said he has flashes of fierce anger in which he swears at her or the children profusely. She testified that he is a different personality in public than he is at home. This has caused some stress in their relationship because in the community he is seen as a counsellor and healer, frequently helping other people to deal with the difficulties in their lives. Mrs. Aleck sees this as somewhat hypocritical and while she supported these activities on his part in the beginning, she has come to not support them until such time as he can deal with the problems in his own relationships. She described a number of instances in which he reacted inappropriately, in her view, incidents ranging in time from early in their relationship to during the course of this trial.

- [103] The defendants objected to some of this evidence, suggesting it was evidence of her feelings which were not relevant to damages in this case. However, I permitted this evidence because, in my view, it came squarely within those points in the pleadings dealing with the alleged impact of the physical, emotional, sexual and psychological abuse at St. George's upon Aleck's ability to have intimate relationships, or to relate to people generally.
- [104] Mrs. Aleck testified that when Aleck has his angry outbursts, she quickly separates the children from him.
- [105] Asked about whether he talks in his sleep, she said that she has never heard him scream but that she does hear words like, "help me" or "no". She also described what she called "a strange scream" which he makes while sleeping with his mouth closed, a scream she described as way back in the throat but loud enough to wake her.
- [106] With respect to his employment, she said that when he starts a new job, or a new contract position, he always attacks it with great enthusiasm. She said that at those times he is full of energy, but that eventually he loses his enthusiasm for a particular position and begins to look for something else.
- [107] Questioned about the therapy which the two of them have undergone together, and which he has undertaken on his own, she said that it is of some help to him. She pointed out, for example, that since January 1, 2000, he has had weekly, rather than monthly, therapy and that in general he has been calmer.
- [108] Mrs. Aleck testified that he has taken her to many of the places that he remembers from his childhood, locations such as 14 Mile Ranch, Kanaka Bar, and places in the Stein Valley. She said, however, that he has never taken her to the site of St. George's although it is only about seven minutes away.
- [109] In cross-examination, Mrs. Aleck said that there are not too many times when Aleck is not under stress of some sort. She said that she cannot be sure how stressful he finds his work because she has asked him not to discuss his counselling cases with her, fearing a breach of confidentiality. But she did say that "all his jobs are stressful" and that he uses music as a release from stress.
- [110] She said good times with him are usually associated with being away from the community of Lytton. So, for example, she described him being happier and them being happier together when visiting 14 Mile Ranch, the west coast of Vancouver Island, her grandparents' home in Washington State where they have summer vacations, or the Stein Valley. She said that while some of these places are only 14 or 15 miles from Lytton, they are not within the community.
- [111] Mrs. Aleck says that Aleck sometimes talks of moving away from Lytton but that they have not done so as it is her view that his troubles would simply follow him.

- [112] She was asked if she agreed that it is men more than women, in her experience, who tend to be violent or, at least, verbally violent, or prone to outbursts of anger and rage. She said that she thought that was so but that the people in her life who exhibit that anger are First Nations people who attended residential schools.
- [113] Mrs. Aleck testified about her knowledge of Ruby Dunstan, the sometime Chief of the Lytton Band who, earlier evidence had alleged, had made life difficult for Aleck. Mrs. Aleck said that, in her view, Ruby Dunstan was trying to show him to the community without his mask. She said that her actions have been a stress to Aleck but she, Mrs. Aleck, seemed to dismiss Dunstan's impact by saying that she is another person who attended residential schools and, as a result, is angry, lashing out without thinking things through.
- [114] She testified that this court process has been part of Aleck's stressors for the whole 12 years that she has known him (the proceedings were commenced in 1988). She testified that she has never known him without the stress of these proceedings and that she finds it difficult to separate the proceedings themselves from the stress caused by him having to stand in public and repeat in detail what happened to him at St. George's.
- [115] At a number of points in her evidence, she testified about the impact of the residential school on the entire community. For example, when asked if she had been advised by counsellors that she and her husband should take time alone without their children, she said they had received such advice but the difficulty was in obtaining appropriate child care. She said that child care "in the wounded Lytton community" is a difficult problem. She said it is hard to find a home free of alcohol and its attendant violence, or without a sexual offender present in the home.
- [116] Mrs. Aleck said that her daughters are doing well in school, but she exhibited considerable concern about her oldest daughter, who she described as a perfectionist, who has "zero self-confidence" as she feels her father does not love her. She testified that her daughter's striving for perfection is an attempt to obtain her father's approval.

E.R.M.

- [117] The next witness was the plaintiff ERM, who was 46 years of age at the time he testified. He was at St. George's for eight years from 1961 to 1969.
- [118] Prior to going to St. George's, he was raised by a large extended family in the community of Nahamanak, or the homestead as I should perhaps describe it, which is on the west side of the Fraser River across from Siska, a community about eight miles south of Lytton.
- [119] At Nahamanak, he lived with his mother and father, his grandparents, at least two uncles, a number of his siblings (he was the youngest of eight) and a number of cousins. Using an aerial photograph of the area which was an exhibit in the proceedings, he described in considerable detail the homestead with its four gardens, its proximity to a fishing site on the Fraser River, and its separation from Siska on the west side of the river. In order to go from Siska to Nahamanak, one drove a car down to the station on the Canadian National

Railroad, walked a path to the Canadian Pacific Railway line, and walked across the Fraser River via the railway bridge. One then walked through a railway tunnel and finally along a path to the clearing where the homestead was situated.

- [120] He said that the extended family was largely self-sufficient, with four gardens in which they grew vegetables (which were preserved and canned), and with ample fish caught in the Fraser River during the Adams River run which were dried, or canned and stored. He recited a number of memories of incidents during that period.
- [121] He described his relationship with his father as somewhat distant as his father spent a lot of time working for the railroad, where he worked throughout his working life, and said that when he was home he was working in the garden or fishing. He said as a small child he wasn't permitted to go down to the fishing site at the river, although he was when he was older. He said that his relationship with his mother was somewhat similar to that with his father as there was "not much interaction" between us. He said this was because she had a house full of children, grandchildren, nieces and nephews and that she therefore worked all day doing domestic chores.
- [122] He described the close relationship that he had with one of his grand-uncles who lived on the homestead, and described several memories of that uncle.
- [123] He also said that at that stage of his life his parents and his grandparents spoke to him in the Thompson language. He said that he understood it, and that they rarely spoke to him in English. However, he said that when his older siblings came home from St. George's, they spoke to him in English.
- [124] In summary, he described his life at the Nahamanak homestead, prior to as he put it "them coming to get me to take me to St. George's" as happy and filled with a large extended family.
- [125] He recalled his first arrival at St. George's when he was about six years old. He did not understand when he arrived that he would be left there and after he realized it he cried, saying he wanted to go home. His mother was not among the group that took him to St. George's.
- [126] He described in detail the various dormitories, of which he said there were four: the junior, the junior intermediate, the senior intermediate, and the senior dormitories. He spent the first two years in the junior dormitory.
- [127] He described a number of the teachers and staff, some of whom were very nice to him and of whom he has fond memories, and some of whom were mean. He described disturbing incidents involving those who were mean. For example, he testified that when he arrived back in the fall, darker skinned because of having spent the summer in the sun, one teacher refused to believe he was clean, took a scrub brush, and scrubbed him until his arms were sore, all the while, calling him a "dirty Indian".

- [128] It was when he was in the junior intermediate dormitory, about three years after his arrival, that he first met Derek Clarke, the supervisor of that dormitory. At that time he had never been sexually abused. Derek Clarke sexually abused him. He described in detail the events which would always take place after the evening bath. The boys, wrapped only in a towel, were always inspected by Clarke to see whether they were clean. He knew, if he were put to the back of the line-up, that he had been singled out to spend time with Clarke that evening.
- [129] The first time it happened, he was taken to Clarke's room where a towel was spread out on the bed. He was told to lie down on the towel. He did not know what was going to happen. He said on that first occasion, Clarke kissed him, touched him "all over" and took the boy's penis in his mouth. He said he had a bristly beard and that it felt like sandpaper.
- [130] ERM testified that the second time Clarke went further, repeating what he had done before, but this time Clarke applied vaseline to the boy and to himself and attempted anal intercourse. Apparently it was unsuccessful.
- [131] He said from then on, this abuse took place two or three times a week for a couple of years.
- [132] ERM testified that during these incidents, he would look out the window and "disappear" by which he said he meant that in his mind, he would go away so as not to have to be there. He said he felt confused, scared and ashamed and that he didn't want to tell anyone because he feared if he did, they would not have anything to do with him, that they would feel it was his fault.
- [133] He also said that, in all other respects, he liked Clarke who was kind to him, taking him on weekend excursions and providing him with candy.
- [134] He disclosed these incidents only after he attended at the Nechako Treatment Centre in about 1995. He did not report the matter to the police until the winter of 1996-1997.
- [135] He said that after that first assault, he never wanted to go to St. George's. He said that when he was away from the school, and was returning, he'd cry as soon as he came over the hill and saw the school. He told his parents and his extended family that he didn't want to go to the school but he never told them why.
- [136] After he left the school in 1969, he never returned until 1999, when he visited the site. The school had since burned down. The chapel still stands, he testified, although it is not used. He said that he went into the chapel and found it scary because it had been out of bounds when he was a student and he was "looking over my shoulder" expecting a priest to admonish him. To his surprise, despite its abandoned and dirty condition, it still smelled as it had the last time he was there in 1969.
- [137] As with other witnesses, he testified as to the food which was served at St. George's and how he did not like it. He said "I guess I was always hungry" and described incidents of breaking into the root cellar, or vying to assist the bakery truck driver when he came, in exchange for donuts.

- [138] ERM testified that he began drinking during the years he was at St. George's, although it was at home during the summers when his whole family drank and partied. He developed a serious alcohol problem until he eventually quit drinking in 1985.
- [139] He described in detail the incident that led him to quit drinking, an incident in which he destroyed his brother-in-law's car on the same day that his brother-in-law became intoxicated and died as a result of becoming sick and filling his lungs
- [140] He also testified that he was a victim of a second series of sexual assaults by one Brigden, who was a counsellor at Kumsheen Secondary School which ERM attended in the mid-70s. This abuse happened during a year which he lived with a number of other boys in Brigden's residence. He said it happened two or three times a month on weekends, always when there was "a lot of booze and pot flying around". He said that during these incidents he was always drunk.
- [141] He then described his sexual relationships with women from his first encounter when he was 13 or 14 through a number of women until he entered into a relationship with his now wife in about 1981. They began to cohabit in the winter of 1982-1983, subsequently married, and have been together since.
- [142] ERM is a qualified journeyman carpenter. He described his education in some detail including, eventually, after considerable experience and various courses working in the carpentry area, following a four year work and course program at Cariboo College leading to his obtaining his journeyman's certificate in 1994.
- [143] Throughout the 80s and early 90s, he worked off and on as a carpenter. However, he testified that as a journeyman, he has been unable to find work as the employers prefer to hire less qualified people and pay \$10 an hour instead of \$16.
- [144] In-chief, ERM testified about what he called his difficulty with people in authority. He reviewed his employment record, and named a number of his bosses or supervisors and set out the reasons he had difficulty with them. He said that he frequently became frustrated and angry with them, that as a result of the experience at St. George's he simply did not like or was unable to accept people who constantly told him what to do and how to do it.
- [145] He also testified about his relationship with his children and, with some emotion, described how he struggles in that relationship. He finds it difficult to be sympathetic to them and often becomes angry with them, even when they have hurt themselves. He pointed out that when they are in difficulty, they always go to their mother and never to him. He says that he cannot hold them. When they are hurt, he treats them the way he was treated at St. George's, which is to say that when they get hurt, his response is "Why weren't you watching what you were doing?" and so forth, a response he describes as typical of St. George's.

- [146] He also described at some length his relationship with his wife, a relationship that started in 1981 or so, and, as he put it, "got serious" in the winter of 1982-1983. He said that in the early part of the relationship in the mid-1980s, they drank a great deal, partying every weekend or at least twice a month.
- [147] He said when they were drinking, the relationship was characterized by verbal abuse, and on at least one occasion he physically pushed her.
- [148] After 1985, the time when they both quit drinking, he said there were still, and are still, frequent arguments. He testified that she wants him to do things - to get a job, to spend more time at home. He said that his response to this is similar to his response to those in authority and jobs. He resents her telling him what to do.
- [149] He also described how he is obsessively angry and jealous about her relationships with other men. He always thinks she is "fooling around", an obsession that echoes the testimony of Mr. Aleck.
- [150] ERM also described at length what he called his abnormal sex drive and his mistreatment of his wife sexually. He testified that their sexual relationship is characterized by him getting what he wants regardless of what she wants. He said that he has no idea of "what my role as a man is", and that it never "dawned" on him how he should conduct himself as a man sexually, a problem that he said remains today.
- [151] He also testified about three incidents in the lives of his children involving sexual abuse. He said there have been two occasions when his son was sexually abused, and one when his daughter was sexually abused. All three of the incidents, he testified, have been extremely difficult for him because he was "watching and hearing what" his children were going through. He said these incidents caused him to be aware of and to recall that which he did not want to remember, that is to say, how he was abused at St. George's.
- [152] He described about half a dozen incidents when he attempted, or came close to attempting, suicide. On at least two of these occasions, he ended up in the hospital. He described in some detail not caring what happened - not caring if he died. He said he has been ashamed and felt those around him would be better off if he were dead. He testified that he was "ashamed of the pain I've caused my family". He added "...these are the people I love and they are the ones I was hurting".
- [153] Towards the end of examination in-chief, he gave a concise statement of what his experience at St. George's, including the sexual assaults, has done to him:

I hate people in authority. ... in the residential school we were always told what to do. We had chores and we had to do it seven days a week, ten months a year and it was every day, we never got a rest. We always had chores we had to do. We had to do it. We had to do it. And I hated it. I hated it because they were - they'd tell us when to go to bed, they would tell us when to wake up. They would tell us when to eat, what to eat, what to wear, what to do in school - I - it's pissing me off just talking about it.

[154] He went on to describe the continuing effect of the residue of the sexual assaults upon his family:

... I wish I could tell you what it's like - it's a hard one for me to describe. Because I want her I guess in a sense a lot of times I want her [his wife] to spend a lot of time with me, to hear what I have to say, to hear that I love her, and my sexual experience, my sexual relationship with her is it's my way or the highway. In the relationship that I have with [his wife] it's everything that I say has got to be my way. No compromise, no middle ground or nothing. It's my way or the highway. And it's been like that throughout the 18 years that we've been together. And for my children, my oldest daughter is 13. It really hurts, it really hurts when I see other men playing with my kids. It really hurts because I can't do that with my children. Because I'm always scared that I'll harm them or I'll abuse them. That when my kids ask me for a hug I - it makes me feel uncomfortable. Or when they ask me for help I tell them go see mom or I ignore them. And it's hard. It's hard because everything that I'm doing to my children has been done to me. And I see that. But I don't know how to stop.

[155] He was cross-examined by counsel for the Diocese and he agreed he couldn't remember ever being eager to learn. He said that this was right from the start of St. George's, well before the incidents with Derek Clarke. He described relationships he had with other boys at the school, and some things that he enjoyed about the school, although I took from his evidence that anything he enjoyed was rather lukewarm.

[156] Cross-examined about things he had said to Dr. Daylen (an expert who assessed him on behalf of the defendants, and who testified), he agreed that he told her alcohol was supplied to him by family members. He said that when he first left St. George's, he drank "wherever the booze was, wherever a party, I drank to get drunk". He also talked about the death of a number of males close to him: a close friend, his brother-in-law, and another friend who died in a motor vehicle accident. The object of this cross-examination appeared to be to establish that he had difficulty making male friends because of these deaths and a resulting fear that if he became close to people he would have to suffer their loss. He agreed he may have said something along this line to Dr. Daylen. But he also made it clear that it is men to whom he has a difficult time getting close, a difficulty which I understood him to imply arises from the abuse he suffered at the hands of a man at St. George's.

[157] He conceded that alcohol has played a destructive role in his life with women prior to his present relationship. He also testified that the sexual abuse he sustained subsequently at the hands of Mr. Brigden would not have occurred had he not been drunk.

- [158] ERM also said in cross-examination that he told Dr. Daylen he dropped out of Grade 12 due to "drinking and partying" and that for the same reason he failed the track program at Cariboo College.
- [159] He also said he told Dr. Daylen that he never felt "unconditionally loved" except by his wife, and that two of his sisters had attempted suicide.
- [160] ERM was also cross-examined by counsel for Canada. He discussed his drumming and agreed that the demands on him by the community with respect to drumming sometimes interfered with the time he could spend with his family. He agreed that he and his wife had talked of relocating but that they concluded that would be robbing their children of their extended family and culture.
- [161] He became angry during this cross-examination, exclaiming that 20 of his 46 years had been robbed by the Church and the State. That, he said, was almost half his life.
- [162] He said that he has a hard time understanding his mother, who speaks little English, because his family and way of life were taken from him. While his older brothers and sisters learned their native language from their grandmother, she died before he could have that benefit. He said that his family was not able to pass it on to him as they were separated by the residential school system and in effect taught to give up their family.
- [163] He agreed that after an incident at the Bonaparte Reserve involving intoxication and a gun, he was made a ward of the court. His mother and sister were present at the court proceedings which resulted. But, he testified, that at the time of that event, no family member was able to offer to support him.
- [164] He said that his level of anger, which interferes with his family relations, can be triggered by stressful events. He agreed that his wife's family does not like him and that he has had "run-ins" with a couple of members of her family. He is upset, he said, by the demands which his wife's family places upon her.
- [165] He testified that he had always had concerns about his wife's fidelity, but he said that "today, I trust her".
- [166] In re-direct examination, he said that both of his sisters who attempted suicide had themselves attended residential schools.

MM

- [167] MM, ERM's mother, was called as a witness. She was born in May of 1914, and testified through an interpreter in the Thompson language.

- [168] She described life at Nahamanak with her family prior to ERM's attendance at St. George's. She said that she moved there in 1928 when she moved in with her husband, whom she married in 1929. She described their farm and their self-sufficiency and said that they produced everything except flour, sugar and salt. Her husband worked steadily for the C.N. Railway for most of his life.
- [169] She testified that her husband drank once in awhile but never when working. She said that he worked six days a week for the first part of the marriage and then eventually five days a week.
- [170] Asked why she sent her children to St. George's, she said that when the older children first went, the Indian Agent had come to her and told her that they all had to go and that if they didn't, she risked going to jail. She said that because she was afraid of the Indian Agent she only had to be told that once, and that thereafter she always let the children go.
- [171] She said that during the ten months that the children were at St. George's, other than holidays, she only saw them about four days a year.
- [172] She became very emotional when asked if, after ERM started at St. George's, he changed. She testified that after he went to the residential school, he was all right for awhile but they then started to see a significant change. She said that he didn't listen to his family members anymore. She said "that's when I lost my son" and said that she and her husband "have a lot of hurt because they were doing what they were doing and we lost our son."
- [173] MM was not cross-examined. In submissions, I understood counsel to suggest that it was for reasons of compassion that this was so. In any case, the result is that her evidence concerning ERM's life before St. George's is uncontradicted.

PM

- [174] The next witness was PM, ERM's wife. She was born September 30, 1966 and met ERM in 1981 at a pow-wow. They were friends for about 18 months before they started going out. She was still in high school. She said it was 1983 when "we fell for each other." They moved in together with ERM's sister for about two months at Skuppah and eventually moved to ERM's mother's house in Siska. She said that at the beginning of their relationship, things were okay, but that after awhile, ERM got into drugs and alcohol and the relationship deteriorated. She described in some detail the anger with which ERM sometimes treats her and frequently treats their three children. She said that in the early years, he would "drink to get drunk." She also said that he was very controlling and throughout the 1980s he made all the decisions. She said that about three years ago, his controlling behaviour stopped.

- [175] She also described at least two occasions in which she knows he was unfaithful to her. She reviewed their sexual relationship in some detail and described his sexual needs in a manner reminiscent of Aleck's wife's description of her husband's needs. PM also confirmed what her husband had said - that is to say, that their sexual relationship was one that was geared to meet his demands regardless of her feelings.
- [176] It is apparent, despite the problems PM described, that she is determined to make the marriage work. She said when they married in 1982, and indeed even before they were sexually active, she knew they would always be there for each other no matter what. She intends to stand by him because "my love for him in my heart is just and strong".
- [177] She also described his suicide attempts, and in particular, the incident when he took sleeping pills (about which he had testified) when she was present.
- [178] She also made a strong statement about the impact upon her and her children which she believes resulted from the abuse her husband sustained at St. George's. She said that her children were innocent and didn't ask to be treated the way they were by their father nor, she testified, did her husband ask as a child to be treated as he was at the residential school. As she put it, "my kids were born into this residential garbage".
- [179] She described two incidents in which her husband physically assaulted her. She said that sometime after each he apologized and said he would never do it again. This was before a period in which they separated for about nine months in 1997.
- [180] She said she knows that it is the sexual abuse at St. George's School that has caused her husband to be the way he is because, among other things, he told her during one of the suicide episodes that his problems were all "in this book". The "book" was a notebook in which he had written that he could not handle things in his life and in which he went on to describe the sexual abuse he had suffered at the hands of Derek Clarke.
- [181] Finally, PM testified that as a child, she lived in the home of alcoholics. As a result, she has consumed alcohol only six times in her life. She testified that alcohol was "never for me" and said that "raised with alcohol around her every day" she grew "to hate that way of life".
- [182] Asked if her husband had talked to her about his experiences at St. George's, and specifically whether he had mentioned Derek Clarke, she said that he first discussed those incidents with her in about the fifth year of their relationship. She said that whenever he discussed it, he always mentioned Derek Clarke by name.
- [183] PM was cross-examined only briefly. She said that when her husband first told her about St. George's School, he did not mention sexual assault. She said it was probably about a year after the first mention of St. George's that that topic came up. She testified that her husband had also mentioned Mr. Bridgen to her.

GBS

- [184] The final plaintiff to testify was GBS. He was one of the original plaintiffs who commenced the action in 1988. Born in 1961 in Lytton, he lived with his family on Indian Reserve 17, not far from Lytton. He went to Lytton Elementary School for Grades 1 and 2. He failed the latter and repeated the year. At the beginning of Grade 3, he went to the residence at St. George's, although he continued as a student at Lytton Elementary School. He did not fail any other grades, and graduated from Grade 12 in 1980.
- [185] He has no recollection of his father, but lived at Indian Reserve 17 with his mother and seven of eight siblings (one brother had died in infancy).
- [186] GBS was a very soft spoken and cautious witness. He paused long before answering questions, and a number of times, when discussing the assaults he suffered at St. George's, he broke down in tears.
- [187] Although he did not remember his father, there were two step-fathers in his life. He described both of them as "treating us [the children] good".
- [188] He said that, at times, he recalled his mother drinking with others when he was young, but that it was not too often. He doesn't remember her as being violent, although he says she got loud on occasion.
- [189] The family had contact with his mother's brothers frequently. One of those brothers is EAJ, one of the other plaintiffs.
- [190] His recollection is that he was enrolled in St. George's School because he had been missing too much school. When he was first enrolled, he was in Grade 3 at Lytton Elementary School and was placed in the junior dorm. In Grade 4, he was moved to the intermediate dorm and was there for Grades 4 through 6. In Grades 7 and 8 he was in the senior dorm.
- [191] He recalls his first impression of St. George's and says that the environment was very different and from what he was used to and that he was afraid. His brother was in the same dormitory. Another brother attended the school later, but they were never in the same dormitory.
- [192] Although he doesn't recall the names of the dormitory supervisors in the junior dormitory, he does remember being frightened and homesick.
- [193] When he moved to the intermediate dorm, he had heard about Derek Clarke. He said that Clarke would spank students with a large leather slipper, with their pants pulled down. He said that happened to him once when he was found in a place which was out of bounds.

- [194] He said at first he thought Clarke was just like the other supervisors - not too bad. However, sometime after Christmas, during his first year in the intermediate dorm, he found himself assigned to the weekend chore of cleaning Derek Clarke's room. The first time this happened, he said Clarke followed him into the room and started "to feel me up around my privates". He said that he was scared and did not know what to do. However, that was all that happened and Clarke left. He said nothing like that had ever happened to him before.
- [195] The weekend chores were assigned by the boys entering their name opposite one task on a sign up sheet. One of the tasks was to clean Clarke's room. GBS found that Clarke had filled in his name opposite that chore. About the third time he had to do the task, Clarke followed him into the room. He said that Clarke grabbed him from behind, and then told him to take his clothes off and lie on the bed. He said he was scared and did as he was told.
- [196] He then said he felt Clarke lying on top of him with no clothes on. He said that Clarke rubbed vaseline on his bottom and "had sex with me". He said that Clarke had an orgasm.
- [197] GBS testified that he went blank. He said "I went to a different place - I wasn't there - my mind wasn't there". When GBS gave this testimony, he was literally shaking in the witness box.
- [198] He said that afterwards Clarke gave him a towel, told him to clean up, and let him go. He said he went back to the dormitory, lay on his bed and cried himself to sleep.
- [199] These assaults were repeated for a period of one and a half years. He said that at first the assaults in Clarke's room took place about twice a month, but later were reduced to about once a month. Each time, Clarke entered GBS's name opposite the task of cleaning Clarke's room. GBS said he tried to avoid that job by signing up for different jobs, but Clarke would change the names on the list.
- [200] On one occasion, GBS was assaulted by Clarke away from St. George's. This took place when he was taken to Vancouver by Clarke, with four or five other boys, on a weekend outing. The boys stayed in Clarke's room or apartment which he had in Vancouver. Clarke put the other boys in one room, and assaulted GBS in the second room in the same manner as described above.
- [201] GBS's response to all this was to feel scared, alone, ashamed, and hurt. He said at times he blamed himself and asked what he had done to deserve that treatment and what he could do to stop it.
- [202] In one attempt to stop going to Clarke's room, he took his name off the chore list where Clarke had entered it. As a result, Clarke made him clean the urinals in the washroom with a tooth brush.
- [203] Finally, GBS simply stayed at home rather than returning to St. George's. It was as a result of this, that the Principal of St. George's, Rev. Harding, went and spoke to the Principal at Lytton Elementary School, Mr. Chute. Chute called GBS into his office to ask him why he

had not been returning to the residence. He said that at that time he told Chute and Harding what Clarke had been doing. He couldn't remember his exact words, but said he remembered saying that Clarke had "bum holed" him. He said he understood that to mean "two guys having sex".

- [204] He said that Harding told him not to return for a couple of weeks but then to come back to the residence. He remained home for two weeks and when he returned to St. George's, Clarke was gone.
- [205] He said that Harding and Chute did nothing further to assist him. They offered no help, no counselling, and did not tell his mother or family.
- [206] GBS does not drink. He formerly did. His first experience with alcohol was in the dorm at St. George's residence, but he said that that happened only once. However, from Grades 8 through 12, he drank regularly on weekends, drinking to the point of passing out in order, he said, to "blank out the assaults". After Grade 12, his drinking gradually decreased until he stopped in 1985 or 1986, when he first became a father and was told by one of his older brothers that as he now had family responsibilities, he should "smarten up".
- [207] He experimented with marijuana during his high school years but said that the drug did nothing for him and he stopped using it before he quit drinking.
- [208] GBS described a number of flash back situations where events or things reminded him of the assaults he had sustained at St. George's residence. He said that he did not do well in high school because he has always had a fear of adult teachers and it took a long time for him to accept them. Once he did, he managed to pass but it was too late, he testified, to do really well.
- [209] After graduating from high school, he worked briefly for Lytton Lumber Mill in 1982 and then returned there in 1984. He has worked for the same employer since.
- [210] He has also had one steady relationship since becoming an adult. He said the woman with whom he has lived in a common-law relationship for some 15 years was his first girlfriend. He said he first noticed her in high school but they did not get together until 1983.
- [211] He said that his common-law wife is the only woman with whom he has ever had a sexual experience, and in fact, the only other sexual experience he has had was the assaults suffered at the hands of Clarke.
- [212] He says that he talks to his wife a lot, but not about Derek Clarke.
- [213] He says that as result of his experience with Clarke, he is not outgoing and prefers to do things at home. He is concerned that he holds his boys back, because he keeps them with him rather than letting them go out in the world to do things, out of fear that what happened to him will happen to them. He remains, he testified, nervous among strangers or nervous among groups of people in small areas.

- [214] He testified the worst thing in his life was the sexual abuse inflicted upon him by Derek Clarke.
- [215] GBS was cross-examined by counsel for Canada. He said that as a young child, before St. George's, he shared a bedroom with a number of members of his family, and his bunk bed with his younger brother Alfred. He said that at times, the older siblings looked after the younger.
- [216] His younger brother was eventually apprehended (presumably by Social Services personnel) and died while he was still under the care of that Ministry.
- [217] Questioned about whether his family was "impoverished" he said he would not use that word to describe his family. "We had enough money" he said. He conceded the house had no bathroom, the family had no car, and the children had few store bought toys.
- [218] He said that while living at home, he walked to school which was about half a mile from his home. He said at first, his mother walked him to school but subsequently he walked with three of his older brothers. He said that he often missed school at Lytton Elementary in the winter because of weather problems.
- [219] As with other witnesses, a number of things he allegedly said to Dr. Daylen were put to him. He agreed that he had said many of those things, but denied saying some of them. He implied that Dr. Daylen misunderstood some things such as the friendship he had with a girl from St. George's after the two of them had moved on to high school. That unfortunate young woman died in a fire. GBS testified, however, that by that time they were not really close. He also denied that he had told Dr. Daylen his mother did not demonstrate physical affection.
- [220] GBS was also cross-examined about the "incidents" with Derek Clarke. The point of the cross-examination seemed to be to demonstrate that there was no, or minimal, violence. GBS said that Clarke did grab him and put him on the bed, but he did not allege in-chief or in cross-examination any further acts of violence.
- [221] He testified that the assaults by Clarke have always been with him and he denied that he had told Dr. Daylen that as an adult he rarely remembered what had happened to him at the hands of Clarke.
- [222] He conceded in cross-examination that when his first child was stillborn, it was upsetting both to him and to his wife.
- [223] In re-direct examination, GBS repeated that there were a number of other things which Dr. Daylen reported him as saying which he did not say to her.

NM

- [224] GBS's wife, NM, testified. She was born in 1967. She never attended St. George's, but went to school in Lytton until partway through Grade 10. She has been GBS's common-law wife for about 15 years. They live on the west side of the river across from Lytton on Reserve land. They have four children, three boys and a girl.
- [225] NM testified that GBS distanced himself from the babies and would not have much physical contact with them. The caring of the children was left to her. She testified that now that the children are older, he has more to do with them.
- [226] Her description of their marriage was somewhat different than GBS's. He said that he talks a great deal with her. She said that communication is one of the difficulties in their marriage. She says that because of the poor communication, because he is too controlling, because they argue about money, and because of her view that he yells too much at the children, she has from time to time considered leaving him.
- [227] She said that GBS does not like her to go out or have relationships with other people. He does not attend her family gatherings with her and the children. His circles of friendship, she implied, are limited to his own family. She participates in his family gatherings.
- [228] In cross-examination, she conceded that he loves all the children, that he does play with them and does help them with their school work. She said, however, that he does not appreciate that she "works" when she stays home to care for the children while he works at the mill.
- [229] She also said that he has a tendency to spoil the children.

THE PSYCHIATRIC/PSYCHOLOGICAL EVIDENCE**Dr. Ingrid Söchting**

- [230] Dr. Ingrid Söchting testified on behalf of three of the plaintiffs. She was retained to do an assessment and to prepare a report setting out her impressions of the psychological status and functioning of EAJ, Aleck, and ERM. She was asked in particular to set out her opinion on the extent to which the psychological, physical and sexual abuse they sustained at St. George's have contributed to what problems they may now have. She also recommended specific avenues of therapy for each of these plaintiffs.
- [231] Dr. Söchting has a Ph.D. in Clinical Psychology. She was educated in Denmark and France, and obtained a Diploma in Psychology from the University of Copenhagen in 1986. She went on to obtain her Bachelor of Arts, Master of Arts, and Ph.D. at Simon Fraser University. She became a member of the College of Psychologists of British Columbia in 1997.

- [232] In her various reports she set out that since 1994, she has specialized in the assessment and treatment of anxiety disorders including post-traumatic stress disorder. She has designed and implemented treatment programs in hospitals, developed and implemented post-sexual trauma treatment plans for First Nations people, and implemented such programs in the Lower Mainland and Northwestern British Columbia. The material shows that she is familiar with several aspects of First Nations' cultural practices.
- [233] Dr. Söchting was challenged in a determined fashion in cross-examination. She acquitted herself well. She was adamant that her conclusions were based not only upon the utilization of various recognized psychological tests, but principally upon her clinical assessment based upon an interview and the review of collateral information. She impressed me as a careful witness who responded directly and candidly to questions put to her on cross-examination. In short, I found her credible.
- [234] For example, she was challenged as to why, knowing that the plaintiff Aleck's mother had consumed alcohol around the time of his birth, she did not pursue the possibility of fetal alcohol effect. She was clear that she did consider such a possibility, but that her clinical judgement based upon her observations confirmed by collateral information led her to conclude that pursuing that aspect would not be worthwhile.
- [235] Similarly, when questioned about why she did not include in her report the fact that two sets of psychological tests had been conducted for one plaintiff, Dr. Söchting gave a plausible explanation. She said that the first test had been administered in a partly unsupervised fashion, leading to an invalid result. The subject was re-tested and the results of that test were also invalid. She testified that it was inappropriate to compare or discuss two sets of invalid results. However, she did inform counsel that there had been two incidents of testing.
- [236] She testified that she included everything in her report that she understood the court would be required to know, that is to say, every relevant fact underlying her opinion. I am satisfied that this is so.
- [237] As a third example, counsel pressed her on the fact that although the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4th edition, (the "DSM-IV") describes a diagnosis for post-traumatic stress syndrome, there is no diagnosis in that document for partial post-traumatic stress syndrome.
- [238] Throughout her report, and in her testimony, Dr. Söchting had used the latter. She testified that it was true that the DSM-IV does not include a partial category. But she said as the literature in the area used such a nomenclature, in her view it would be wrong to pay no attention to specific symptoms because they were not sufficient in number, or listed in particular groups, and therefore did not come within a specific diagnosis in the DSM-IV. I found this approach appropriate.

- [239] EAJ was assessed by Dr. Söchting. She interviewed him for six hours and had him complete the Minnesota Multifacit Personality Inventory (MMPI) and the Trauma Symptom Inventory (TSI). She also reviewed a number of other documents including his statement to the RCMP in 1987, and various medical records.
- [240] Although on the tests EAJ produced a valid profile, Dr. Söchting was of the view that these results should be interpreted with caution because the subject disclosed an unusual number of psychological symptoms. She concluded that he had suffered from a complex trauma reaction as a result of the abuse he suffered, in particular at the hands of Clarke. She described a complex trauma reaction as similar to post-traumatic stress syndrome but broader. She concluded, however, that he did suffer from post-traumatic stress disorder (PTSD) and that he had, as a result of the assaults sustained at St. George's, been profoundly damaged in his psychological development.
- [241] She said that as a result of his PTSD, he attempted to distance himself from his inner turmoil by using alcohol, engaging in risky behaviour, and by a rigid and inflexible approach to work and leisure.
- [242] She attributed these characteristics to the combined effects of the sexual abuse at St. George's and the lack of social support for him at the time, as well as later.
- [243] She was of the opinion (challenged vigorously by counsel for Canada) that had EAJ stayed longer in his home environment, maintaining regular contact with his family and culture, it is highly unlikely he would have developed his present psychological problems.
- [244] Dr. Söchting also assessed Mr. Aleck. She interviewed him for five hours in November of 1999. In January of 2000, she had him complete the MMPI and the TSI. She also reviewed collateral information including Aleck's statement to the R.C.M.P., some other psychological reports from 1989 through 1991, some educational transcripts, and medical records. She found that Aleck's test results were invalid due to his responding in an exaggerated manner. She testified, however, that "invalid" results still had some value to her in her assessment, demonstrating that he is a person in "great distress".
- [245] She concluded that the results disclose that he is "a person who feels overwhelmed by their trauma and feels uncertain about their identity and internal psychological state". She also said that his high score on one of the scales reflects the fact that he is having "unwanted thoughts both about his own abuse but also about the anti-social acts he committed that cause him distress and guilt".
- [246] Dr. Söchting concluded from the data she obtained through the interview and the TSI that Aleck has suffered or suffers from major depressive disorder in remission, a number of specific difficulties, and a partial post-traumatic stress disorder.

- [247] As noted elsewhere, Dr. Söchting said that while "partial" post-traumatic stress disorder is not a diagnosis, it is used as a term to facilitate communication among health care professionals when a patient meets several but not all of the DSM-IV criteria for PTSD.
- [248] Dr. Söchting concluded that the abuse suffered by Aleck at St. George's caused him to suffer several psychiatric disorders which interfere with his functioning, and cause him distress and embarrassment. She set out a number of treatment recommendations, and concluded that with appropriate treatment, his long term prognosis is "fair to good". She was positive about his insight into his difficulties and the resourcefulness that has led him to seek psychological help.
- [249] The third plaintiff assessed by Dr. Söchting was ERM. She interviewed ERM, administered and assessed psychological tests, and reviewed a number of relevant documents and clinical records. In her interview, she observed a "mild form of dissociation, and reported "much crying as he spoke about his low regard for himself".
- [250] In reviewing his history with Dr. Söchting, ERM reported that while he experienced some verbal abuse from his parents when they were drinking on weekends, he did not experience any physical or sexual abuse. He also described his close relationship with his grand uncle. He recounted his experiences with Clarke, and his lack of any reporting of that abuse until he went to a drug and alcohol treatment centre in 1995.
- [251] Dr. Söchting concluded that ERM attempted to cope with the sexual abuse by dissociating, but that over time the effects of that abuse led to "a slow erosion of his positive self" to the point where he became suicidal. She was told of three suicidal incidents, and concluded ERM remains at risk for suicide. She also concluded that but for the sexual abuse, ERM would not have become severely depressed, and would not have abused alcohol as he did.
- [252] She summarized her findings in the following words:

The psychological, physical and sexual abuse suffered by [ERM] at St. George's has been detrimental to his formation of a healthy and positive sense of self. It has also caused him to suffer from several psychiatric disorders which to this day continue to interfere with his life. Most importantly, his depression due to a belief that he is the cause of the problems in his family, places him at risk for suicide. In addition to a number of psychiatric disorders, he has also suffered damage often seen in victims of prolonged and severe childhood sexual abuse. This damage includes, but is not limited to, suicide attempts, revictimization, parenting deficits, and attempts to regulate his inner emotional state by acting out his frustrations. Hence, it is apparent that the sexual abuse has profoundly damaged him as a person. At present, he externalizes his inner tension by forcing sexual activities within his marriage. He has not recovered from any of his problems. Although he has demonstrated an ability to refrain from alcohol use, he has relapsed several times, and remains at risk for a relapse especially as he has to confront his abuse during the litigation process. It is my opinion that he was not particularly vulnerable to develop the problems he currently has in the absence of having gone to St. George's and been a victim of severe sexual abuse.

[253] Partly because she considers ERM a serious risk for suicide, Dr. Söchting recommends five years of therapy, including two years of family therapy.

Dr. Susan Penfold

[254] Dr. Penfold was retained on behalf of the plaintiff GBS to conduct a psychiatric assessment and to provide an opinion concerning the psychological impact of the sexual abuse sustained by him while a student at St. George's. Dr. Penfold is a Professor in the Division of Child Psychiatry at the University of British Columbia. She qualified in England as a physician in 1960 and registered with a specialty in psychiatry in British Columbia in 1967. In her report, she stated that a major focus of her practice is "assessment and treatment of the effects of child sexual abuse throughout the lifespan".

[255] She took a personal history from GBS, and reviewed his medical, educational and occupational history.

[256] The factors, which in her opinion, should be taken into account when considering the impact of sexual abuse upon a child include:

... the child's pre-existing adjustment; the age when the abuse began; the relationship of the child to the perpetrator; the severity of the abuse; the duration and frequency of the abuse; the use of force or threats by the perpetrator; concurrent physical or psychological abuse - not necessarily by the perpetrator; the degree of captivity and helplessness of the child; the availability of adults for nurturing, support and guidance; the availability of parent or caretaker support at the time of disclosure; the child's perceived need to keep the abuse secret.

[257] Much of the evidence in the trial related to the above list of factors. With respect to GBS, Dr. Penfold review hospital records which showed a number of hospital admissions as an infant. Dr. Penfold thought that his multiple hospital admissions in the years before he entered St. George's, as well as the financial stresses in his family and his mother's drinking, may have had an effect upon him. After reviewing the above factors as they pertain to GBS, Dr. Penfold concluded that he suffers from post-traumatic stress disorder, a personality disorder, and alcohol abuse in sustained full remission. She stated that in her opinion "it is obvious that [GBS] is still vastly influenced by the trauma of sexual abuse". She described his social relationships as characterized by an isolated lifestyle, testified that he is intimidated by authority figures, and that he needs help to develop relationships in which he is not afraid to communicate his feelings.

[258] She found that GBS was deprived of consistent parenting "from his mother or other extended family members". She said that as people learn to parent from their own parents or parent figures and as GBS largely missed this experience, he has difficulties in parenting his own children.

- [259] While recognizing that GBS has a stable job, she noted that his position as a lumber stacker is susceptible to lay-offs or technical change. She concluded, therefore, that he required occupational and vocational therapy to prepare him for the possibility of having to change jobs.
- [260] She also recommended, given the PTSD, personality disorder, and alcoholic past, GBS would need six months to a year off work to follow a course of appropriate therapy.
- [261] In her summary, she stated that GBS was "badly damaged" by the prolonged sexual abuse in circumstances in which he was captive in the residential school. She reported that all areas of his functioning have been affected. She included in these areas psychological health, social skills, his marital relationship, his parenting and other family relationships, as well as his spiritual beliefs and occupational and vocational choices.
- [262] I add here that Dr. Penfold was subject to a sustained attack by the defendants because of her admission that she herself is a survivor of sexual abuse. Having reviewed her responses to this line of cross-examination, as well as her reports and the submissions of counsel on this point, I am not persuaded that that fact is such as to render her opinion invalid. In short, I reject that submission.

Dr. Judith Daylen

- [263] Dr. Judith Daylen was retained by the defendant Canada to provide an opinion on the likely impact of the sexual assaults committed upon the four plaintiffs during their time at St. George's. Dr. Daylen is a Clinical and Consulting Psychologist who specializes in Forensic Psychology. For each plaintiff, Dr. Daylen reviewed a considerable body of materials including pleadings, psychological files from earlier assessments, examinations for discovery, medical records, educational records, and so forth. She also conducted a lengthy interview with each of the plaintiffs.
- [264] She was alert to the fact that, as these assessments were done in the context of civil litigation, there were possible biases in reporting because of potential financial gains or vindication. She testified, however, that she found no such problems or biases with any of these plaintiffs.
- [265] Dr. Daylen was also concerned about discrepancies between some of the plaintiffs' descriptions of their experiences in the interviews when compared and contrasted with evidence given in the various examinations for discovery.
- [266] With respect to the plaintiff EAJ, Dr. Daylen considered his relationship with his extended family prior to his attendance at St. George's critical. She was particularly concerned about his relationship with his mother and stated in a report that it is questionable "whether or not he had formed a strong bond with her" prior to his attending the residential school. In cross-examination, however, she conceded that if his sister's evidence (SM) was correct, then EAJ's testimony that he felt safe and secure in his early family home is more

consistent with his having formed an appropriate bond with his family.

- [267] Nevertheless, after reviewing her interview notes and test results, and observing that while EAJ exhibits an oppressed mood as well as anger, hostility and resentment, she concluded that any difficulties in his psychological functioning are "primarily due" to factors other than the sexual abuse. She did agree that the sexual assaults have "negatively affected [EAJ's] self-esteem and self-perception". She found that his history of substance abuse is due primarily to factors other than sexual assaults. She recommended a psychiatric consultation and a consideration of anti-depressant medication. She recommended "approximately 50 - 75 one hour sessions" being made available to him over an extended period of time.
- [268] Dr. Daylen also assessed Terry Aleck. She conducted a lengthy interview with him, reviewing his history in considerable detail, and conducting psychological testing.
- [269] In considering the impact of the sexual assaults upon Aleck, it was her opinion that his experiences within his family of origin played a major role in his psychological development. She wrote that "it is unclear to me how the context (i.e. the St. George's Residential School) in which the sexual assaults occurred may have contributed to the impact of the sexual assaults" other than to note that he was in effect in a captive situation. She conceded that these circumstances "have likely contributed to some extent" to his difficulties.
- [270] In her opinion, Aleck initially responded to the abuse with anxiety, but over time he accepted the abuse as being "normal". Dr. Daylen testified that this acceptance reduced the impact of those assaults. It was also her view, however, that the sexual assaults have played a role in Aleck's ongoing experiences of anxiety, anger and paranoia. Her principal conclusion is that Aleck's psychological concerns "relate primarily to other factors" [other than the sexual assaults] including his negative experiences, as she saw them, with his family of origin. It was also her opinion that the sexual assaults had "little causal significance, in regard to his substance abuse".
- [271] In her assessment of ERM, which also involved a review of his history, a lengthy interview, and psychological testing, Dr. Daylen concluded that ERM's psychological difficulties relate primarily to "deeply ingrained dysfunctional aspects of his personality". She does not assign a significant causal role to the sexual assaults in regard to his suicidal tendencies, perhaps because she assumed, for the purposes of her report, that ERM experienced only two incidents of sexual assault - incidents that she said included fondling and kissing, one incident of fellatio and one incident of attempted anal intercourse. ERM testified at this trial that after the first attempted intercourse, the assaults continued about twice a week for a couple of years. For reasons set out in paragraphs 284(?) and 285 below, I accept his testimony and reject her assumption of two assaults.

- [272] She also notes that, because ERM has engaged previously in therapy which has not been particularly effective, it may now be counter-therapeutic for him to engage in further therapy focussed upon his history of abuse. She does recommend further psychiatric evaluation to consider the use of medication to treat his ongoing "depressive affect".
- [273] Dr. Daylen conducted a similar evaluation and assessment of GBS. She reviewed documents, reviewed his personal history, assessed his psychological status and conducted psychological testing.
- [274] She concluded that while GBS experienced considerable stress and anxiety related to the sexual assaults at the time, he developed a capacity to deal with these matters and to put them to the back of his mind. She concluded that he currently does not suffer any diagnosable medical disorder. She found, however, that he continues to experience anxiety when reminded in some way of the sexual assaults and that he continues to experience embarrassment and shame over them. She concludes that bringing closure to this matter is "likely to be therapeutic" for GBS.

A Note on the Psychiatric/Psychological Evidence

- [275] Fourteen years ago in *Sengbusch v. Priest* (1987), 14 B.C.L.R. (2d) 26, at p. 40, McEachern C.J.S.C. (as he then was), observed that too often expert witnesses, competent to give opinion evidence, provide opinions in areas in which the court with proper assistance from counsel is able to reach a proper conclusion upon commonplace problems. In *Sengbusch*, the Chief Justice quoted Dickson J. (as he then was) in *R. v. Abbey*, [1982] 2 S.C.R. 24 at p.42:

An expert's function is precisely this: to provide the judge and jury with a ready made inference which the judge and jury, due to the technical nature of the facts, are unable to formulate.

- [276] I am not ruling, as occurred in *Sengbusch*, that the expert evidence is inadmissible. Rather, I have in mind in considering the psychiatric and psychological evidence the caution with which courts should reflect upon such testimony. I consider the views expressed in *Sengbusch* apposite.
- [277] In particular, I mean no disrespect to the medical witnesses in this case when I venture to suggest it would be commonplace for any reasonably informed trier of fact, having heard the evidence in this trial, to conclude that there would be significant psychological problems resulting from repeated sexual assaults upon children over a lengthy period of time by figures of authority in circumstances where the children are in effect held captive away from their families or extended families. I venture further to suggest that whether the psychological status of a particular plaintiff meets the precise criteria for a particular diagnosis as set out in the DSM-IV usually will have little impact upon an assessment of damages.

- [278] The question, rather, is has the psychological impact of the sexual assaults upon these plaintiffs significantly interfered with the quality of their lives? If the answer be yes, they are entitled to be compensated. This is so whether they suffer from rigidly described medically defined post-traumatic stress syndrome, a personality disorder, depression, or none of the above.
- [279] I have, of course, listened with care to what the expert witnesses had to say. I have read and reread their reports. I have noted that each has tended to render an opinion more favourable to the party who retained them. I have observed that as a result, the plaintiffs have attacked the defendants' psychologist for "minimizing" the psychological impact of the sexual assaults upon the plaintiffs. In turn, counsel for the defendants have attacked the plaintiffs' psychiatrist because she herself is the survivor of sexual abuse, and the plaintiffs' psychologist because she was prepared to point out symptoms that did not group themselves in the appropriate clusters permitting a "diagnosis" according to the DSM-IV.
- [280] In the result, I accept much of what each of these expert witnesses said, but I do not accept all of it. This, if it need be said, is what a trier of fact is entitled to do.
- [281] While I am not prepared to accept submissions of counsel that any of these experts deliberately "slanted" their opinions (or as counsel put it, became "advocates"), I have concluded that generally speaking, where the psychiatric/psychological evidence called by the plaintiffs conflicts with that called by the defendants, I reject that of the defendants and accept that of the plaintiffs. My finding in this respect is based, among other things, upon four factors.
- [282] First, it is apparent from the evidence of these plaintiffs and other witnesses such as their spouses or other family members that they all suffer, to a greater or lesser degree, significant psychological difficulties which impact constantly upon the quality of their lives and the lives of members of their families.
- [283] Second, common sense dictates that children who have been subjected to the horrific sexual assaults suffered by the plaintiffs at St. George's would be left with manifest psychological difficulties.
- [284] Third, Dr. Daylen consistently emphasized the importance of the parent-child bond and, in contrast to Dr. Söchting, failed to appreciate or to accept the importance in native communities of the extended family. I conclude that she thus misconceives the nature of these plaintiffs' family experiences prior to attending St. George's.
- [285] Fourth, I find that Dr. Daylen's account of the history of some of these plaintiffs is inaccurate and, in particular, that her reports omit evidence which I find significant. For example, concerning the plaintiff ERM, she observed that there was an inconsistency in his evidence in that in discovery, and subsequently at trial, he estimated that the sexual assaults occurred two to three times a week over a two year period. She contrasted this with his "distinct memory" reported to her of one or two incidents of sexual assault. She then

assumed that ERM experienced only two incidents of sexual assault and based her opinion in part upon that assumption.

- [286] She testified that, if it were determined that numerous incidents over two to three years had occurred, her analysis would differ. I am unable to ascertain precisely how often ERM was sexually assaulted, but I find as a fact upon the evidence, that he was assaulted many times more than the two incidents accepted by Dr. Daylen. As all of the medical witnesses agree with the common sense conclusion that the duration and frequency of the assaults is an important factor, this assumption alone renders Dr. Daylen's opinion about ERM less helpful than Dr. Söchting's.
- [287] I am also troubled by Dr. Daylen's decision not to include what came to be known in this trial as the "flag" incident in her report on GBS. She testified that sometime after she had conducted her interview of GBS, he contacted her telling her he wanted to discuss something that was of importance. It turned out that he had a flag that had been given to him by Derek Clarke and which he had kept all these years. He told her that he did not know what to do with it. The fact that this flag was causing GBS such distress that he felt compelled to return to the psychologist retained by the defendants about this issue more than two decades after he was assaulted (and given the flag), would seem to be of some psychological significance.
- [288] Similarly, in assessing the significance of the incident involving the plaintiff Aleck breaking into a school in Seattle and setting it on fire, Dr. Daylen omitted to mention that during this incident, he reportedly ran up and down the school hallways masturbating. This bizarre sexual behaviour is of significance in the circumstances of this case and warrants at least some consideration in relation to the sexual assaults sustained by Aleck and the possible sexual dysfunction resulting therefrom.
- [289] This is not to say that I reject all of Dr. Daylen's evidence. I do not. Rather, it is to say that in some important respects I reject her evidence and accept that of Dr. Söchting or Dr. Penfold.
- [290] I add that the preoccupation of the medical witnesses with the pre-St. George's period of these plaintiffs' lives as children assumes considerable importance in light of the defendant's submission that it is essential to consider the quality of life that awaited these plaintiffs had they not attended residential school and been sexually assaulted by Clarke. In short, Canada, supported by the Church, says the plaintiffs' early lives were characterized by dysfunctional families, ill health, alcoholism, violence, poverty and abandonment. Thus, it is suggested that the quantum of damages should be reduced, as they would have grown up with significant difficulties regardless of what happened at St. George's. This is consistent with Dr. Daylen's opinions.

- [291] I find this submission troubling. As has been repeatedly emphasized by the Supreme Court of Canada, the Crown has a fiduciary obligation towards native peoples and indeed that "the honour of the Crown" is at stake in its dealings with native peoples: *R. v. Marshall*, [1999] 3 SCR 456. In effect, Canada is arguing that it did such a terrible job of fulfilling its constitutional and fiduciary responsibilities to native people, that what happened at St. George's made little difference.
- [292] Could a person purporting to be in the role of a parent who sexually assaulted his or her child or step-child and was subsequently sued by that child, argue successfully that prior to the sexual assaults taking place he or she provided such a terrible environment in the complainant's home and life that the sexual abuse made little difference? I think not. It is disquieting that Canada, supported by the Anglican Church, has raised such a defence. Nevertheless, given the fundamental principles underlying the assessment of damages, I must consider these submissions.

DAMAGES

NON-PECUNIARY DAMAGES

- [293] The plaintiffs seek damages for the pain, suffering and loss of quality of life they have sustained and continue to suffer. They say they have experienced severe psychological dysfunction as a result of the sexual assaults perpetrated upon them at St. George's. They submit that as a result, their education, vocational experience, and family and social interactions have been impaired. They claim substantial damages.
- [294] Two difficult issues arise. The first is what part of the plaintiffs' present psychological status can be said to be caused by the sexual assaults? Second, can they claim for the sexual assaults only, or are the other deprivations and insults they experienced at St. George's compensable?
- [295] With respect to the first, I have already set out that the defendants say that the primary causes of the plaintiffs' difficulties are to be found in the quality, or the lack of quality, of their lives before they attended St. George's. They also point to tragic incidents in their lives after St. George's as causal events contributing to current psychological difficulties.
- [296] In *Athey v. Leonati*, [1996] 3 S.C.R. 458, the court held that a defendant is liable for any injuries caused or contributed to by his or her negligence and that the presence of other non-tortious contributing causes does not reduce the extent of the liability.
- [297] The fundamental rule has always been that if the wrong (here the sexual assaults) alone caused the plaintiffs' psychological dysfunction, the defendants are liable. However, where other non-tortious factors are involved, *Athey* set out three propositions.
- [298] Applied to this case, those propositions are as follows. First, if the plaintiffs' current psychological difficulties would exist regardless of the sexual assaults at St. George's, the defendants are not liable. Second, if both the sexual assaults and other traumatic life events

were necessary, in combination, to cause the plaintiff's psychological dysfunction, the defendants are liable. Third, if the sexual assaults and the other traumas were each in and of themselves sufficient to cause the psychological harm, then the question arises whether upon a balance of probabilities the sexual assaults materially contributed to the harm. If so, the defendants are liable.

- [299] In paragraph 15 of *Athey*, the court noted that causation is established where the defendant's negligence "materially contributed" to the injury, so long as that contributing factor is something more than "de minimus".
- [300] An example of the application of these principles in a sexual assault case where non-tortious factors were present is *M.M. v. R.F.* (1997), 52 B.C.L.R. (3d) 127 (C.A.), a case involving the sexual assault of a female child by her step-brother. In that decision, Donald J.A., who wrote the minority judgment, considered *Athey*. He set out the fundamental rule that the plaintiff is entitled to be placed in the position in which she would have been had the tort not occurred. He went on to hold (*Esson and Cumming JJA.* agreed with Donald J.A. on this point) that even if there had been non-tortious causes that contributed to the plaintiff's condition, the plaintiff would be entitled to full recovery from the defendant so long as the tort was a "material contribution" to the plaintiff's injury.
- [301] The pre-St. George's experiences of the plaintiffs would be relevant only if at the time they entered St. George's it was already apparent that their present psychological status was inevitable. This could be demonstrated if the evidence disclosed that the plaintiffs, at the time they first entered the residential school, were suffering a "manifest and disabling condition". See: *Pryor v. Bains and Johal* (1986), 69 B.C.L.R. 395 (C.A.). The defendants have failed to persuade me this is so.
- [302] For reasons I will discuss below, I conclude that while one can point to some unfortunate aspects of the plaintiffs pre-St. George's lives, these difficulties fall far short of a demonstrated manifest and disabling condition. Indeed, some of them could well fit the de minimus description, by which I simply mean that, when compared with the enormity of repeated sexual assaults upon captive children, they pale in significance. But more importantly as the legal test is not one of comparison, I find the evidence fails to persuade me that these pre-St. George's experiences would have caused the psychological harm now evident in the plaintiffs.
- [303] The defendants seize upon a number of early childhood events they say demonstrate a failure in parenting by the plaintiffs' fathers and mothers. For example, with respect to EAJ, they note that on one occasion when he was four months old, he was left in a car overnight, that he has no recollection of his father (who died when he was very young) or of the family home, and that he does not recall his grandmother's name. The defendants also point to post St. George's events which they submit evidence psychological trauma. To suggest these difficulties somehow render what happened to EAJ and the other plaintiffs at St. George's School an insignificant matter in a child's life and subsequent development is

less than persuasive. I conclude that these pre-school and post-school experiences did not lead inexorably to the plaintiffs' current psychological status. If I were wrong in this conclusion, it would not resound to the benefit to the defendants, for I conclude without doubt that the sexual assaults at St. George's materially contributed to the plaintiffs' post St. George's psychological difficulties.

- [304] The second issue to which I have referred in paragraph 293 above concerns the Limitation Act R.S.B.C. 1996 c. 266. Before that act was amended in 1992, all of the claims in this action would have been statute barred. The amendment changed the law so that a cause of action based upon misconduct of a sexual nature, which occurred while the complainant was a minor, is not subject to any limitation period.
- [305] Because of that change in the law, the plaintiffs are entitled to be compensated for any damages resulting from the sexual assaults. While a court may take into account the circumstances in which those assaults took place when considering the quantum of damages, or in relation to aggravated or punitive damages, (which I have done below) I am not here assessing damages for the cultural destruction suffered by native peoples as a result of the residential school system, as just or deserving as such compensation might be. I am limited, as a court must be, to assessing damages for the wrongdoings which the Limitation Act recognizes as permitted causes of action at this time.
- [306] I turn to the individual plaintiffs. I will consider non-pecuniary damages for each of the four plaintiffs first. Then, I will turn to the topics of aggravated damages, punitive damages, income loss for each plaintiff and cost of future care in the order in which they testified: EAJ, Terry Aleck, ERM, and GBS.

EAJ

- [307] EAJ, now 39, resided with his extended family at 25 Mile Ranch on the west side of the Fraser River before he entered St. George's at the age of six. While one might be sceptical of the joys of pastoral life sung by counsel, I am satisfied that he had a reasonably good childhood before St. George's, a life characterized by positive relations with his extended family, a lack of violent discipline or punishment, and by successful efforts by that family to provide for themselves through farming and fishing. This is evident not only from his own testimony, but from the testimony of his sister. There is scant evidence which would lead one to conclude he had a manifest disabling condition at age six. I find as a fact he did not.
- [308] I also reject the submission that the perception that his father committed suicide had a significant impact upon him. First, there is no evidence that his father did commit suicide. What little we know is equally consistent with accidental drowning. Second, there is no evidence the thought that his father may have committed suicide arose when he was a child. While Dr. Daylen may have accepted this, I am bound by the evidence heard in this trial and do not accept opinions based on facts not proven.

- [309] I am satisfied that the sexual abuse was a significant factor in EAJ's later abuse of alcohol. He testified that he drank "to forget about" what he went through at the residential school. This is important, for Dr. Söchting concludes he drinks because of the sexual abuse and is depressed because of the sexual abuse. Dr. Daylen concluded he is depressed because he drinks. While it is difficult to separate the source of depression, I accept EAJ's testimony that a major reason he abused alcohol was to blank out the rapes.
- [310] I also accept, as found by Dr. Söchting, that EAJ's tendency to isolate himself is a result, in the main, of his treatment at St. George's, and that it has had a significant impact upon him and his family.
- [311] I find it important in assessing damages to consider the fact, which I accept, that from the time he was first raped by Clarke, he hated his mother. He testified he hated her because he blamed her for having put him into St. George's and therefore into the place where these events happened. It was years before he came to accept her innocence, and began to restore his relationship with her, a matter which he said has troubled him greatly.
- [312] Dr. Söchting found that the sexual assaults:
- ... profoundly damaged his psychological development. It has caused him to suffer from several psychiatric disorders which to this day continue to interfere with his life. Most significantly, his active POST-TRAUMATIC STRESS DISORDER prevents him from talking about his sexual assaults due to both a fear of being overwhelmed by the memories, and a fear of not being able to trust the person he confides in. Instead of confronting therapeutically his sexual abuse, he has developed various maladaptive ways of coping with it. These ways include, but are not limited to, attempts to distance himself from his inner emotional turmoil by using alcohol, reckless driving, unannounced escapes from people who care for him, and a rigid and inflexible approach to both work and leisure including cultural activities. These ways are consistent with several, but not all, aspects of SCHIZOID PERSONALITY DISORDER and an OBSESSIVE-COMPULSIVE PERSONALITY DISORDER. While these personality traits can be conceptualized and appreciated as a tormented mind attempting to cope with otherwise overwhelming emotions and situations, they significantly reduce the quality of his life. It is my opinion that he was not especially vulnerable to develop these particular personality styles in the absence of having suffered the sexual assaults at St. George's, and I attribute their development to the combined effects of having endured the sexual abuse and not having had social support at the time, and later, to assist him in dealing with the effects of the abuse.
- [313] Dr. Daylen found that EAJ continues to experience "clinically significant psychological difficulties that cause him distress and interfere with his day to day functioning", and conceded in cross-examination that it is likely he suffers from PTSD. However, in her report she concluded that, while the sexual assaults have contributed to and exacerbated EAJ's "personality dynamics ... I do not believe that they constitute the primary causal factor".

[314] I accept Dr. Söchting's opinion that the combined effect of the sexual assaults and the lack of support at the time are the major cause of his current psychological problems. I find the importance of the sexual assaults alone, given all of the circumstances, to be more than that caught by the expression "having made a material contribution".

[315] I assess non-pecuniary damages at \$150,000.

Terrance Wayne Nelson Aleck

[316] Aleck, now 35, spent his early childhood at a ranch 14 miles from Lytton, living with an extended family. That history is set out above, beginning at paragraph 49. Counsel for Aleck describes his pre-St. George's life as "a positive experience, lived in a communal environment, with his extended family on the farm and in the surrounding area". Counsel concedes, however, that Aleck has unpleasant memories of the period during which the family lived in Vancouver.

[317] The defendants characterize Aleck's pre-St. George's life as seriously at risk. They point to Aleck's father's alcoholism, and his risking his children by driving them in a car while drunk, as well as the father's inconsistent presence. They point to an incident of Aleck observing his mother committing adultery.

[318] There is no doubt Aleck's early life had its unhappy periods and that he was exposed to inappropriate behaviour. But Aleck also recalls close and affectionate relationships with grandparents and an uncle. Certainly, he has positive memories of his life at Kanaka Bar, living with a grandmother he testified he called "mom". He remembers fishing and preserving fish with his grandparents and uncles, and describing those adults as "caring". He testified that "there was a lot of laughter and jokes around the table during meal times".

[319] I conclude that, despite some difficult periods, Aleck was happy and well cared for at Kanaka Bar in the period before he entered St. George's. But at the same time, I recognize, as do Drs. Söchting and Daylen, that there was a chaotic aspect to his pre-St. George's life which put him at risk.

[320] Counsel for the defendants submit Aleck went to St. George's because his parents drank excessively, were violent, and had separated. But that is also likely why he was living at Kanaka Bar with his extended family. Counsel point out that there was no school at Kanaka Bar, and that Lytton was 14 miles away. That is the evidence. It can hardly ameliorate what happened to Aleck at St. George's. Nor can evidence that, in some respects, St. George's provided Aleck with many enjoyable activities and gave him an education.

[321] Aleck was sent to St. George's School in grade one. He was first assaulted by Clarke when he was nine years old. These assaults continued for four years, and only ended when his father decided to take the family to Seattle. Of course, as noted above, he did not escape completely, for Clarke followed him to Seattle and assaulted him again in 1970 and 1971.

- [322] While there are some inconsistencies in Aleck's memory of and testimony about these many assaults, I reject the suggestion that his description of the assaults and his reaction to them is unreliable. His difficulty in remembering these painful incidents, and in particular their frequency and duration, is not surprising.
- [323] Aleck drank excessively as a teenager. He stopped such drinking in 1978, but again began drinking excessively in 1985 and in 1986, entered the Round Lake Treatment Centre. He has not consumed alcohol since. There can be little doubt, however, that these lengthy periods of abusing alcohol have had an impact upon his life. I think it significant the evidence is, he first drank at age nine, shortly after he was first sexually attacked by Clarke.
- [324] I find these repeated sexual assaults over a lengthy period have had a major negative impact upon Aleck's life. His wife's testimony, which I found compelling and which in the main I accept, confirms this.
- [325] Mrs. Aleck's testimony is also consistent with the opinion of Dr. Söchting, set out in paragraphs 243 and following above, conclusions which are significant given the fact that Dr. Söchting was careful to consider the significance of an early childhood marked by "by multiple caregivers and alcohol abuse".
- [326] Dr. Daylen agrees that Aleck has "suffered negative psychological consequences associated with the sexual assaults" he sustained at St. George's. However, she is of the opinion that Aleck's current psychological concerns relate "primarily to other factors", in which she includes his early childhood.
- [327] With respect, I have no doubt in concluding upon the evidence that the sexual assaults upon Aleck as a child by a figure in authority from whom he could not escape, and for a long period of time, are the primary cause of his problems since he left St. George's. These factors contribute materially to his current psychological difficulties.
- [328] As both Drs. Söchting and Daylen observe, Aleck is a remarkably resilient man who has done well despite the terrible psychological insults he has sustained. This achievement has been aided no doubt by a determined spouse, a strong person herself, who is devoted to him and their family.
- [329] Taking into account all of the above, I assess non-pecuniary damages in Aleck's case at \$140,000.

ERM

- [330] ERM is now 46 years old. He was the youngest of eight children, and prior to St. George's lived with his parents at Nahamanak. His father was steadily employed by CN Rail from before ERM's birth until his retirement in 1970.

- [331] I have set out above ERM's evidence concerning his memories of his early life. It can be seen that it is characterized by a relatively stable family life. Counsel for the defendants have suggested, nevertheless, that he was neglected because his father was always at work and his mother had too many people for whom she had to care. This submission is not persuasive. There were members of the extended family present, and in any case, I ask would the defendants have had the father unemployed and the mother not a hard working homemaker? I think not.
- [332] Dr. Söchting recognized that at the time of the assaults, ERM, a child, did not perceive the activities as entirely wrong, but rather tried to cope "with the physical pain and psychological confusion" by dissociating and adjusting his self-image accordingly. However, she went on to say that he:
- ... felt unable to prevent the sexual assaults by Mr. Clarke. Due to his accommodating nature and desire to be liked, he did not question his supervisor's behaviour. Instead, he attempted to cope the best he could. He was able to dissociate, an ability that not everyone has. This allowed him to detach himself from the sexual assaults. Although it helped him at the time, it has later been detrimental to his ability to confront the abuse therapeutically. However, the effects of the sexual abuse manifested itself in a slow erosion of his positive sense of self, and in his need to externalize his internal state of tension.
- [333] Dr. Söchting also noted that as ERM's parents were alcoholics, he had an elevated risk of abusing alcohol. She also observes that he began abusing alcohol at age 11, "at the height of the sexual abuse he suffered by Mr. Clarke" and that he used alcohol to distance himself from "his painful feelings".
- [334] She found that the sexual abuse has caused him to suffer from several psychiatric disorders that have had an impact upon him and his family, leading to depression and placing him at risk for suicide. She particularly notes the negative impact upon the sexual aspect of his marriage.
- [335] Dr. Daylen, while recognizing that the sexual assaults "heightened his sensitivity to rejection and contributed to his deeply rooted feelings of insecurity", concludes that it is his early childhood and subsequent experiences that are the most significant contributors to his ongoing depressed mood. She was unable to offer a specific opinion "as to the extent to which the assaults by Mr. Clarke contributed to [ERM's] current confusion" about his sexual orientation.
- [336] I am satisfied that it is the sexual assaults, including their nature, frequency, duration and circumstances, that are the prime cause of his difficulties. I assess non-pecuniary damages at \$140,000

GBS

- [337] GBS, who never knew his biological father, spent his early childhood with his mother and a number of siblings and half siblings on one of the Lytton Indian reserves. At different times, there were two different step fathers. GBS's recollections of that period are limited. He had extensive contact with extended family, and recalls no corporal punishment or violence. He remembers that his mother drank excessively on occasions, but he did not fear her. He told Dr. Daylen that his perception of his life at that time is that it was "not too bad".
- [338] GBS was a pupil at the Lytton Elementary School who went to St. George's as a resident when he was in Grade 3. He was at St. George's for approximately four and one half years. Notwithstanding the incident of having to clean the urinal with a toothbrush, his description of life there was, I found, not as negative as that of other plaintiffs, except that corporal punishment administered by Clark with a slipper became a major component in his fearful memories.
- [339] He was first assaulted by Clarke part way through the year that he moved to the intermediate dormitory. The assaults continued for about one and one half years until he refused to return to the residence and moved back with his mother. Shortly after this, as noted above, he disclosed the assaults to Rev. Harding and the principal of the elementary school, Joseph Chute.
- [340] GBS testified that he still fears Clarke. As late as the trial he described checking to see if Clarke was around. He leads an isolated life-style, and has developed what Dr. Penfold described as "a well entrenched" method of coping by using a "ball" in his head to hide memories of the assaults. He previously abused alcohol for the same purpose. She described GBS as "still vastly influenced by the trauma of the sexual abuse", and described those impacts as I have set out in paragraph 260 above.
- [341] Dr. Daylen recognizes that the sexual assaults "negatively affected [GBS's] self esteem and self respect at the time, and that he continues to experience embarrassment and shame". She notes, as did Dr. Penfold, that GBS is resilient and has coped well. She concludes he does not suffer currently from any diagnosable mental disorder.
- [342] I assess non-pecuniary damages for GBS at \$130,000.

AGGRAVATED DAMAGES

- [343] The plaintiffs submit that any award of non-pecuniary damages should be increased by an amount of "aggravated" damages in order to compensate fully the plaintiffs for the losses they sustained as a result of the sexual assaults. They rely upon the aggravating factors set out by the Court of Appeal in *Y.(S.) v. C.(F.G.)* (1996), 26 B.C.L.R. (3d) 155 at paragraphs 57 through 59. These include considerations of whether the defendants were in a position of trust, whether the defendant's response was characterized by remorse, the age of the

plaintiffs at the time of the assaults, the nature, number, frequency and duration of the assaults, and the physical pain and mental suffering associated with the assaults.

- [344] All of the plaintiffs in this case were under the control of the defendants or their agents at the time of the assaults. The defendants were in a position of authority and trust over the plaintiffs. The plaintiffs were children. They were, in effect, helpless at the time, cut off from their extended families and even from siblings also resident in the school.
- [345] The experience at St. George's was, as Dillon J. found, like the military. That in itself may not have been unacceptable at the time, but the use of that authoritarian coercive milieu to facilitate sexual assaults was and is unacceptable and is an aggravating factor.
- [346] The defendants, although they have now expressed some remorse, did nothing for many years. Since the commencement of these actions, they have defended the claims with tenacity, requiring the plaintiffs to relive their experiences and repeat the stories a number of times, including in a public courtroom.
- [347] I conclude the sheer horror of what happened to these children, and in particular the fact that for all of them the assaults continued over a period of time that must of seemed exceedingly long to children, warrants an award of aggravated damages.
- [348] An award of aggravated damages must not be so small that it fails to make the point, but being compensatory, it must not cross the line to an amount that is punitive. In the circumstances of this case, I assess aggravated damages at \$25,000 and augment EAJ's compensatory award by that amount. I find each of the plaintiffs similarly entitled to aggravated damages, and therefore augment the award of non-pecuniary damages for the other three plaintiffs by the same amount.

PUNITIVE DAMAGES

- [349] The plaintiffs seek punitive damages. Such damages are awarded not to compensate the plaintiffs, but to punish the defendant or defendants. The defendants say that punitive damages may not be awarded where liability is vicarious, or where the underlying tort is negligence. To do so, they submit, is inappropriate because vicarious liability is liability without actual fault, and because negligence is not intentional.
- [350] I am satisfied that if punitive damages may be awarded within the categories of liability found by Dillon J. and binding upon me (because of the agreement between the parties in this case), the dreadful circumstances found here warrant such damages. The institutional defendants' failure over so many years to uncover the terrible crimes of Clarke, the failure of the defendants to report the matter to the police and to the parents of these children (particularly in light of the fact that the principal, Rev. Harding, was himself abusing children), and the failure to move immediately when the sexual assaults came to light to see to the needs of the children, demonstrated in the words of Legg J. (as he then was), in *Meyer v. Gordon* (1981), 17 C.C.L.T. (B.C.S.C.), a "disregard of every principle of decency

which is the foundation" for an award of punitive damages. The defendants' conduct was both arrogant and high handed. The well-being of these violated children was sacrificed, as Dillon J. said in paragraph 40, "so as not to attract attention to St. George's School" and, I would add, to protect Clarke and the then administrator, Rev. Harding.

- [351] The plaintiffs rely upon *Peeters v. Canada* (1992) 54 F.T.R. 289, and the subsequent appeal decision (1993), 18 C.C.L.T. (2d) 136, a case in which the Crown was found liable for punitive damages because of an assault committed upon a prisoner by prison employees. That decision has been the subject of much criticism: see Waddams, *The Law of Damages*, (2d) at pages 11 to 25.
- [352] In *G.B.R. v. Hollett* (1996), 139 D.L.R. (4th) 260, (leave to appeal to the Supreme Court of Canada denied), two of three justices hearing the matter at the Nova Scotia Court of Appeal declined to follow *Peeters* but nevertheless found punitive damages were available against the Crown in a negligence case. *Hollett* concerned a teenaged girl who was sexually abused by Hollett, a counsellor at a juvenile home for girls.
- [353] Pugsley J.A. based the award of punitive damages upon the failure of Hollett's supervisor to suspend or dismiss him immediately upon his realizing something was seriously amiss. In so doing, Pugsley J.A. agreed that punitive damages should not be awarded in cases where the actions of the tortfeasor "constitute mere negligence", but he went on at paragraphs 236 and 237 to write:

The Department of Social Services was the provincial government department responsible for the operation of the Nova Scotia Home for Girls and was acting as the employer of MacLeod and Greateorex. Mr. Greateorex was the Director of Special Protection Services, and a senior representative of the Department of Social Services. As Director, he was vested with not only the authority, but the responsibility to ensure that the operation of the school in no way endangered the safety of its wards. In these circumstances, the acts of Greateorex, as well as the acts of MacLeod, because of their respective positions, should be taken to have been the acts of their employer.

I conclude that the failure of those in charge of the school to terminate Hollett's employment at the end of July, 1976, constituted conduct that was inexcusable, outrageous, callous, and reprehensible. Ms. R. was recklessly exposed to substantial risk of harm without any justification. Not all conduct attracting these descriptions will necessarily deserve the sanction of punitive damages. It depends on the facts of each case. The facts, and the relationship, in this case, in my view, require the condemnation.

- [354] Chipman J.A. also concluded there should be an award of punitive damages. He agreed that *Peeters* imposed too broad a liability for such exemplary damages. Rather, he turned to the American Law Institute's proposal on punitive damages that:

#909 Punitive Damages Against a Principal

Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if,

- (a) the principal or a managerial agent authorized the doing and the manner of the act, or
- (b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or
- (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
- (d) the principal or a managerial agent of the principal ratified or approved the act.

[355] Both of these appellate justices found liability in the employer when those in a supervisory capacity (McLeod and Greatorrex) failed to take action to prevent a wrong from being visited upon the plaintiff. I agree with the reasoning of Chipman J.A. at paragraph 53 in that although "I would take a narrow view of the Court's power to impose punitive damages vicariously, this case is one of those exceptional ones where such should be the result".

[356] The defendant Canada, joined by the Anglican defendants, takes the position that "negligence, no matter how bad, is not a basis on which to award punitive damages". With respect, that is not the law in this province. See *Robitaille v. Vancouver Hockey Club* (1981) 124 D.L.R. (3d) 228 (C.A.):

The contention that exemplary damages cannot be awarded in actions based on negligence must fail. The policy of the Courts in dealing with the subject of exemplary damages is set out by Garrett, "Allowance of Punitive Damages in Product Liability Claims", 6 Ga. L.R. 613 (1972) at p.626: "Punitive damages, on the other hand, are reserved for situations where the defendant has done more than inflict injury on others by his negligence or intentional acts. He must have acted maliciously, or with such recklessness as to indicate an indifference to the safety of others, or have engaged in some other type of behaviour which is regarded as so socially reprehensible as to justify the awarding of punitive damages. Therefore, such extraordinary damages should not be predicated on the mere showing that the plaintiff was injured due to a defective product which was manufactured or distributed by the defendant."

The Court of Appeal held further:

"The reason why awards of exemplary damages in negligence cases are rare is because in most negligence cases the conduct of the defendants, apart from lack of care, has not been blameworthy. In the case on appeal, the negligence of the defendant flowed from, and was directly linked with, the arrogant and high-handed conduct of the officers and servants of the defendant."

[357] Dillon J., at paragraphs 180 and 181, said that the principal Rev. Harding could have or should have taken action long before he did:

If Harding did not become aware of Clarke's sexual misconduct, he ought to have. Knowledge of Clarke's sexual abuse would have been revealed through proper supervision of Derek Clarke, proper establishment and enforcement of rules disallowing students in staff quarters, and proper observation of general conduct of students at the residence by the administrator in the course of his regular duties. The administrator should have been aware of the behavior of children on the playground and childhood gossip which was apparent to a relatively novice teacher at the local school who acted swiftly to deal with the matter. If he was not, then he was willfully blinded by his own desires to avoid detection of lax moral conduct and sexually abusive behavior at St. George's. Other institutions had rules against children being in the rooms of dormitory supervisors which were enforced by the principal. It is hardly likely that Harding would establish or enforce rules against having children in the rooms of staff when he engaged in that very behavior. Clarke's sexual activity continued for eight years with such frequency that it is unreasonable to expect that it would have gone unnoticed with reasonable supervision of his activities in the dormitory. Harding certainly perceived the danger of sexual relations between students and staff at least two years prior to open disclosure of Clarke's behavior when Harding took the first steps in discipline of another child care worker for this very kind of conduct. If Harding did not know of Clarke's behavior, then he certainly ought to have known or he was willfully blind to it.

Harding's knowledge attaches to his employers, the Crown and the Anglican Church . Both of them failed to take reasonable supervisory precautions against sexual abuse by dormitory supervisors, particularly Derek Clarke. Both were in a position to have acted to prevent the misbehavior.

(emphasis added)

[358] To this must be added the callous and reprehensible decision taken by Rev. Harding to hush up Clarke's abominable behavior. As noted above, he failed to go to the police, he failed to tell the parents, and he failed utterly in his responsibility to do something for these damaged children. Not only that, on May 22, 1973, Rev. Harding, in his capacity as Canada's administrator and on the letterhead of the Department of Indian Affairs and Northern Development, wrote a letter to Clarke advising him that "your resignation is accepted", and incredulously he added:

Your past services in the field of practical Child Care have been appreciated and we trust that your personal problems will soon be cleared up.

[359] I find this comes within the expression "blameworthy" as that word is used by the Court of Appeal in Robitaille. Like Dillon J., I am cognizant of the probable explanation for this appalling sentiment - that Rev. Harding too was abusing children.

[360] I am aware that Dillon J. found that because of the failure of the Church to disclose Clarke's abuse, "the Crown was deprived of an opportunity to contain the psychological injury" to the plaintiffs. This finding, however, must be read in light of her finding in the paragraph quoted above, that "Harding's knowledge attaches to his employers, the Crown and the

Anglican Church". This is similar to the knowledge of McLeod and Greatorex in the Hollett case. In the word "knowledge", I include Harding's despicable and selfish decision, calculated to protect himself and the school, to abandon the children by failing to go to the police or the families, and in neglecting to find appropriate psychological counselling support services.

- [361] With the greatest of respect to those who would say otherwise, I am satisfied the law countenances punitive damages in these circumstances. In so saying, I am aware that in the recent decision of *W.R.B. v. Plint* 2001 BCSC 997, in circumstances similar to those in this case, the Court concluded that punitive damages are not awarded in this province in cases of vicarious liability absent reprehensible conduct specifically referable to the employer and declined to award punitive damages. That case may be distinguishable with respect to the facts of the instant case (there being reprehensible conduct specifically referable to the employer (see paragraphs 357-359 above). If it is not distinguishable, applying *In re Hansard Spruce Mills* (1954), 13 WWR (NS) 285 (BCSC), I would decline to follow *Plint* on this point as it appears the *Peeters* and *Hollett* decisions discussed above were not before the court.
- [362] Taking into consideration all of the above, I award EAJ \$25,000 punitive damages as against the Crown, and \$25,000 punitive damages as against the Church defendants. I assess punitive damages in the same amounts for each of the other three plaintiffs.
- [363] The pleadings also seek punitive damages against Derek Clarke. Counsel have not emphasized this claim presumably because as noted above Clarke was sent to prison and one would expect he has little or no assets. There is no evidence on the latter, and it is possible he may have or he may acquire assets. It is difficult to find words to express the revulsion reasonable people would feel for Clarke's despicable self-indulgent conduct. Had Clarke not been convicted and sentenced to a period of incarceration, and thus punished, an award of punitive damages against him would also be appropriate. Regretfully, I decline to make such an award.

WAGE LOSS

- [364] The plaintiffs say they are entitled to significant damages for past wage loss and for impairment of their capacity to earn in the future. Each side called experts to testify as to what the plaintiffs would have earned had their education not be slowed or impaired, and had they not been delayed in the entry into the market. After much consideration, I have concluded these claims have not been proven.
- [365] EAJ has worked on and off as a labourer, and was at the time of trial employed at a ginseng farm. He gave some evidence about leaving at least one job because he took a dislike to his boss. Dr. Söchting attributes his "oppositional and inflexible attitude in employment settings" to a lack of trust and respect for authority figures.

- [366] This may be, but in my view, it does not tie the plaintiff's employment history to the sexual abuse which he suffered. There is ample evidence that the entire residential school experience (for example the cutting of hair, the segregation from family, the racist epithets, the corporal and other ridiculously cruel forms of punishment, the crushing of native languages and disparaging of native foods) would engender in children a distrust of and disrespect for authority.
- [367] Terry Aleck has been trained at post secondary institutions as a teacher, and has taken a number of courses concerning violence counselling and community service work. He presently works 25 hours a week, but the evidence is that he chooses to do so as he and his family wish to live in or near the Stein Valley. This decision cannot, in my view, be laid at the feet of the defendants.
- [368] I also note that some of the plaintiffs have done well in achieving educational or trade qualifications. ERM took a number of courses in carpentry and related trades (some of his transcripts disclose very high grades), and finally apprenticed, becoming a journeyman carpenter in 1994. He testified a key reason he has been unsuccessful in obtaining employment is that employers would rather hire less qualified workers for less cost. He also said that he left his job in 1994 because of a dispute with a supervisor. Importantly, he testified subsequently he and his wife made the choice that he would stay home and his wife would work.
- [369] GBS graduated from high school and went to work at a local lumber yard, on the evidence not an unusual step for young men in the area. He left after a few months, but returned in 1984 and has worked there ever since. He testified that he likes his job, and gets on well with his employers. His claim is based upon the theory that he has the ability to have sought higher education or higher paying positions and has failed to do so because of the long term effects of the sexual abuse at St. George's.
- [370] In my view, the link has not been made out. There is nothing to suggest his experience is not typical of many men who are content in their jobs, particularly where they have been employed for many years in a well paid position. Indeed, GBS agreed on cross-examination that at this time in his life he is not interested in going back to school.
- [371] I conclude that the plaintiffs have failed upon a balance of probabilities to prove any wage loss, past or future.

COST OF FUTURE CARE

- [372] The plaintiffs submit that psychotherapy and counselling are essential for each of the plaintiffs to assist them to overcome the sequelae to the sexual abuse which continues to impact upon their lives.

- [373] For EAJ, Dr. Söchting recommends five years of psychotherapy with a therapist familiar with treating complex post sexual trauma reactions. She recommends that EAJ's wife be involved in some of the sessions. As a qualified therapist is not available in Lytton, Dr. Söchting would include transportation costs to Vancouver. Dr. Daylen recommends 50 to 75 hours of psychotherapy aimed at his specific anxiety symptoms. She would also included EAJ's spouse in some of the therapy. Both doctors concede that predicting the amount of such therapy needed is very difficult. Dr. Söchting estimates the cost at \$21,500; Dr. Daylen makes no estimate.
- [374] The Church, supported by Canada, submitted that these services would be provided by the provincial Medical Services Plan if there were a referral from a family physician. However, I am not persuaded this is so. Dr. Söchting testified such services would be very limited. Further, the defendants' witness Yousuf Ali testified that while the federal Medical Services Branch provides aboriginal peoples with psychotherapy for short term crisis management, it does not fund the long term treatment recommended here.
- [375] I am satisfied, then, there should be an award for the costs of future psychotherapy. The issue is quantum. For EAJ I have considerable doubt as to whether he would take advantage of the services suggested. Dr. Söchting observes that he would have to overcome considerable distrust if the therapy were to be effective. Dr. Daylen notes that EAJ's negative attitudes and distrust of authorities coupled with his expressed distrust of counsellors and discomfort with discussing psychological issues may make him not "amenable" to such treatment.
- [376] In the end, I conclude the award proposed by Dr. Söchting does not take into account these real difficulties. I assess costs of future care at \$10,000. As these expenditures should occur promptly, it is not appropriate to assess a net present value.
- [377] Dr. Söchting recommends two to three years of psychotherapy for Aleck with an appropriately qualified therapist, including from time to time his wife and daughters, at an estimated cost of \$17,500. Dr. Daylen concludes that Aleck has successfully worked through his history of sexual abuse and that further abuse-specific therapy would not be productive. However, she agrees Aleck would benefit from some short term counselling directed at handling anxiety and stress, with some involvement of his wife.
- [378] I find Dr. Daylen's opinion persuasive in this instance, and assess Aleck's costs of future care at \$8,000.
- [379] Dr. Söchting is understandably concerned with ERM's suicidal tendencies. She is of the opinion that he is extremely fragile and requires therapy specifically aimed at coping skills, depression, sexual impulse control, and family matters including parenting. She estimates the cost of such therapy over a five year period at \$26,500.

- [380] Dr. Daylen, who as I noted considered that ERM had been assaulted only twice, observed that ERM has previously engaged in treatment that had been unsuccessful. She was also concerned that focus on the abuse might be counter-therapeutic, and would therefore limit future therapy to ERM's present depression and coping with lethargy and sexual dysfunction.
- [381] I have found ERM the most difficult of the plaintiffs to assess in terms of future care. Nevertheless, given that both experts recognize suicidal tendencies, and given my finding that Dr. Daylen's assumption of only two sexual assaults cannot be sustained, I accept Dr. Söchting's recommendation and assess costs of future care at \$26,500.
- [382] Dr. Penfold recommends counselling and therapy for GBS in the areas of marital relationships and parenting. She is concerned, however, that individual psychotherapy may be "unwise" as it may interfere with the effective coping techniques he has developed. She concludes that as therapy might be difficult and distressing, he "would likely need six months to a year off work" for such treatment.
- [383] Dr. Daylen stresses GBS's resiliency and effective coping. She reports he expressed no interest in counselling. She concluded "he might benefit" from psycho-educational sessions as distinct from psychotherapy but said that at his current level of functioning such sessions were not necessary.
- [384] Counsel submitted that the cost of future care recommended by Dr. Penfold would be \$9,500 plus \$38,680 for the wages lost should he take a year off work. Noting that counsel for the plaintiff's submitted that GBS was the "least damaged" of the plaintiffs, I conclude there is nothing to support the idea he should take a year off work, and reject that suggestion. I also find there is no direct evidence on what group therapy for residential school survivors would cost an individual. I do find, however, that GBS's marital and parenting problems arise in large measure because of the sexual abuse, and therefore make an award to permit some counselling in those areas. I assess damages for costs of future care for GBS at \$4,000.

Categories of Defendant

- [385] Throughout these reasons I have referred to Canada and the church as defendants. I have done so for simplicity, despite the obvious fact that the Anglican parties are third parties in the Aleck action and defendants in the ERM action. Counsel will draft the order in the appropriate manner in light of these reasons and of the agreement to which I referred to in paragraphs 7 and 8 above.

Summary

EAJ

Non-pecuniary damages \$150,000

Aggravated damages 25,000

Punitive damages 50,000

Cost of Future Care 10,000

Terrance Aleck:

Non-pecuniary damages \$140,000

Aggravated damages 25,000

Punitive Damages 50,000

Cost of Future Care 8,000

ERM:

Non-pecuniary damages \$140,000

Aggravated damages 25,000

Punitive damages 50,000

Costs of Future Care 26,500

GBS:

Non-Pecuniary damages \$130,000

Aggravated damages 25,000

Punitive damages 50,000

Cost of Future Care 4,000

[386] The awards for punitive damages are assessed at \$25,000 against Canada and \$25,000 against the Anglican defendants.

[387] For the reasons set out in Plint at paragraph 925, I decline to order court order interest. Counsel will have liberty to speak to costs.

"L.P. Williamson, J. per P.D. Dohm, A.C.J."

The Honourable Mr. Justice L.P. Williamson

September 11, 2001 -- Corrigendum to the Reasons for Judgment rendered by Mr. Justice Williamson advising that there is an inconsistency in the figures set out in the Reasons for Judgment in this matter issued August 9, 2001. There are different figures in the body of the judgment and in the summary concerning the award for non-pecuniary damages to ERM. The correct amount is the figure in the body of the judgment, \$140,000.

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Prepared on 28 October 2026 · Esheria