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**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2024 NLSC 180

Date: December 18, 2024

Docket: 20220124092

IN THE MATTER OF an application of
the Roman Catholic Episcopal
Corporation of St. John's;

AND

IN THE MATTER OF the *Companies'*
Creditor Arrangement Act, R.S.C. 1985,
c. C-36, as amended (the "CCAA")

Before: Justice Garrett A. Handrigan

Place of Hearing: St. John's, Newfoundland and Labrador

Dates of Hearing: October 31-November 1, 2024

Summary:

Fifty-nine Claimants filed Notices of Dispute to Notices of Disallowance/Determination/Supplementary Reasons that the Claims Advisor issued to them after it considered their Notices of Dispute. They argued variously that the Claims Advisor erred in law, in fact or in mixed fact and law and that the Notices the Claims Advisor issued to them should be set aside.

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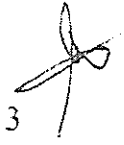
The Court allowed all Notices of Dispute. It found the RCECSJ liable either directly or vicariously to the Claimants. It set aside the Claims Officer's findings on liability and remitted the Claims to the Claims Officer to determine the damages the Claimants are entitled to.

Appearances:

Geoffrey L. Spencer	Appearing on behalf of the Applicant, the Roman Catholic Episcopal Corporation of St. John's (the "RCECSJ")
Geoffrey E. Budden, K.C. Paul A. Kennedy Jennifer Helleur Amelia Harris Lori Wareham William A. F. Hiscock Henry G. Mugford James R.A. Locke Stephen E. Barnes	Representative Counsel appearing on Behalf of Claimants, Anonymous Claimants / Creditors of the RCECSJ (the "Claimants")
Maurice Chiasson, K.C. and Joseph J. Thorne	Appearing on behalf of Ernst & Young Inc., Monitor of the RCECSJ
Andrew L. Johnson	Appearing on behalf of the BC Claimants
SR 005	Appearing on their own behalf
SR 007	Appearing on their own behalf

Authorities Cited:

CASES CONSIDERED: *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60; *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2020 NLCA 27; *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2022 NLSC 81; *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2023 NLSC 5; *John Doe (G.E.B. #26) v. Roman Catholic Episcopal Corporation St. John's*, 2024 NLCA 26; *Christian Brothers of Ireland, Re* (2004), 128 A.C.W.S. (3d)



1116, 69 O.R. (3d) 507 (S.C.); *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *R. v. Sheppard*, 2002 SCC 26; *Farej v. Fellows*, 2022 ONCA 254; *John Doe v. Bennett* (2000), 190 Nfld. & P.I.E.R. 277, 576 A.P.R. 277 (N.L.S.C.(T.D.)); *John Doe v. Bennett*, 2002 NFCA 46; *John Doe v. Bennett*, 2004 SCC 17.

STATUTES CONSIDERED: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36; *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11; *Class Proceedings Act*, R.S.B.C. 1996, c. 50

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

HANDRIGAN, J.:

INTRODUCTION

[1] In 1999, thirty-nine men, former residents of Mount Cashel Orphanage in St. John's, NL (the "Claimants") filed statements of claim in this Court claiming they were abused in the 1940s, 1950s, and 1960s by Irish Christian Brothers who ran the Orphanage during those decades. The Claimants named the Christian Brothers Institute Inc., the corporate body that owned and operated the Orphanage as Second Defendant and the Roman Catholic Episcopal Corporation of St. John's as First Defendant (RCECSJ).

[2] The Christian Brothers Institute, which filed for bankruptcy in the United States in April 2011, liquidated its assets in Canada and the United States to satisfy claims, like those before this Court, against it in both countries. It took no part in these proceedings. The Claimants based their actions against the RCECSJ in tort. In effect, they said the RCECSJ was directly or vicariously liable to them for the abuse they suffered at the Orphanage.

[3] Six of the claims were eventually chosen as “representative” of the claims that all thirty-nine men had against the RCECSJ. Two of the plaintiffs died before their claims were heard, so that only the claims of the four “Representative Claimants” went to trial. On March 16, 2018, Faour, J. of this Court, dismissed their claims, when he found that the RCECSJ was neither negligent nor vicariously liable to the plaintiffs: *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John’s*, 2018 NLSC 60. However, at the request of the parties and even though he found that the RCECSJ was not liable, Faour, J. assessed the damages that he would have awarded the four representative plaintiffs if he had found the RCECSJ liable.

[4] The plaintiffs appealed Faour, J.’s decision on liability and on July 28, 2020, the Newfoundland and Labrador Court of Appeal reversed him and found the RCECSJ vicariously liable to the plaintiffs: *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John’s*, 2020 NLCA 27. The RCECSJ cross-appealed aspects of Faour, J.’s findings on damages. The Court of Appeal generally upheld his findings, except it concluded that “[the trial judge] erred respecting...pre-judgment interest” (at paragraph 581).

[5] On January 14, 2021, the Supreme Court of Canada dismissed the RCECSJ’s application for leave to appeal from the Newfoundland and Labrador Court of Appeal finding that the RCECSJ was vicariously liable to the Claimants. The Supreme Court’s refusal to hear the RCECSJ’s appeal ended the decades-long litigation and the focus shifted straightaway to quantifying the Claimants’ damages and liquidating the RCECSJ’s assets to pay them.

[6] In particular, the Representative Claimants filed a judgment at the Office of the High Sheriff for Newfoundland and Labrador for \$2,395,312.45, the damages that the Court of Appeal awarded to them after it adjusted Faour, J.’s findings at trial for pre-judgment interest.

[7] The parties generally believed at that time that all claims against the RCECSJ would exceed \$50,000,000 and there would be more than one hundred claimants. It turned out that the parties were wrong on both counts. In fact, the pool of claimants



would ultimately exceed three hundred sixty-five and the value of their claims would exceed \$100,000,000. I note however, that the pool of those claiming against the RCECSJ was also expanded beyond those who were abused by Christian Brothers to include others who were abused by clergy and members of lay religious orders for which the RCECSJ was also responsible.

[8] On December 21, 2021, the RCECSJ filed a Notice of Intention at the Office of the Superintendent of Bankruptcy to Make a Proposal in Bankruptcy (“NOI”) to the Claimants. The RCECSJ had six months from the date it filed its NOI to make a proposal. However, when it became clear to the RCECSJ that it could not comply with that timeline, it applied to this Court on April 14, 2022, to convert the NOI proceedings it started under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) to proceedings under section 11.6 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CAA”).

[9] I heard the RCECSJ’s Application on April 29, 2022, and on May 10, 2022, I allowed the RCECSJ to convert the NOI proceedings under the BIA to a restructuring process under the CAA: *Roman Catholic Episcopal Corporation of St. John’s (Re)*, 2022 NLSC 81, to take effect on May 17, 2022. I stayed all actions against the RCECSJ when it filed its NOI under the BIA, and I continued the stay under the CAA, extending it repeatedly in the interim, so that it will expire now on June 30, 2025, unless I extend it again. I also appointed Ernst & Young Inc. as Monitor (“the Monitor”) when I converted the proceedings from the BIA to the CAA on May 10, 2022. Ernst & Young Inc had been Trustee in the BIA proceedings.

[10] In the meantime, on January 12, 2023, I filed a judgment in this matter giving the parties directions for a Claims Procedure Order (the “CPO”) and an Abuse Claims Protocol (the “ACP”): *Roman Catholic Episcopal Corporation of St. John’s (Re)*, 2023 NLSC 5. In that judgment I answered four questions that the parties put to me, expecting that with answers to those questions they would be able to agree on a realistic process to receive and review the claims for damages; on which they did agree.



[11] On April 19, 2023, the parties filed the CPO by consent, to which they attached the ACP as Schedule "A". I will set out the procedure on which the parties agreed later in these reasons, but it is sufficient to say now that the CPO delivered a robust and comprehensive format that was quite effective. I amended the CPO several times in the interim to address incidental issues that arose latterly but those changes did not affect its substance.

[12] On April 19, 2023, the Monitor issued a public notice informing Claimants that they had until September 30, 2023, the "Claims Bar Date", to send a Proof of Claim to the Monitor, after which "**Proofs of Claim which are not received...will be barred and extinguished forever**" (bold in original). I appointed Global Resolutions Inc. as the claims officer (the "Claims Officer") on May 30, 2023, whereupon the claims process began in earnest.

[13] The Claims Officer intended to release its claims' determinations on April 30, 2024, but it moved its release back to June 28, 2024. On that date the Claims Officer released three hundred fifty-seven Notices of Determination/Disallowance and ten additional Notices subsequently. Claimants had until August 16, 2024, or September 14, 2024, depending on when their forty-five day appeal period expired following receipt of the Notices, to appeal the Notices of Determination/Disallowance by filing Notices of Dispute.

[14] In the result, sixty-two Notices of Dispute were filed by the several deadlines. I set all but three of them for hearing on October 31-November 1, 2024, the other three having been settled between the Monitor, the Claims Officer and counsel for the Claimants. I heard all outstanding appeals on those two days and reserved my rulings on them until now.

THE LAW

Companies' Creditor Arrangement Act – Generally

Statute

[15] Section 20 of the *CCAA* provides for the “Determination of amount of claims” against a debtor seeking to restructure under the legislation. It provides in section 20 (1)(a)(iii), as is relevant here:

20 (1) For the purposes of this *Act*, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

...
(iii) ...proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor.
[emphasis added]

[16] Suffice it to say that this section of the *Act* is critically important to defining an appropriate claims process, particularly because it provides that disagreements between a debtor (the RCECSJ) and creditors (the Claimants) on the amount of a claim can be resolved on a “summary application” to the Court; but more about that later.

[17] Section 11 of the *Act* is also relevant:

Despite anything in the *Bankruptcy and Insolvency Act* or the Winding-up and *Restructuring Act*, if an application is made under this *Act* in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
[emphasis added]



Case Law

[18] Our Court of Appeal discussed section 11 of the *CCA* in an appeal from my January 12, 2023, decision (*Roman Catholic Episcopal Corporation of St. John's (Re)*, 2023 NLSC 5). In its matter, the Court of Appeal considered whether I erred when I refused to allow the estates of deceased claimants to receive any other than pecuniary damages from the RCECSJ. The Court dismissed the appeal, with Boone, J.A. & O'Brien, J.A., concurring and Knickle, J.A. agreeing with them, but filing her own reasons for dismissing the appeal.

[19] Boone, J.A. offered these helpful comments about the scope of judicial discretion under the *CCA*, albeit in a slightly different context in *John Doe (G.E.B. #26) v. Roman Catholic Episcopal Corporation St. John's*, 2024 NLCA 26 at paras 57-59:

[57] The jurisprudence has recognized that the *CCA* is skeletal legislation and not designed to be a comprehensive code. The legislation relies for its efficacy instead on judicial discretion set out in the *CCA*, section 11 (*Century Services*, at paras. 57-58):

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[58] As the Supreme Court judge noted in the decision on appeal, at paragraph 80, the Supreme Court of Canada has described the discretionary power granted by section 11 as "vast" (*Canada v. Canada North Group Inc.*, 2021 SCC 30, [2021] 2 S.C.R. 571, at para. 21). Although vast, the discretion is not unlimited, as the Supreme Court of Canada noted in *Century Services*:

[70] The general language of the *CCA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCA* authority. Appropriateness under the *CCA* is assessed

by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* - avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

[59] Therefore, the boundaries of judicial discretion under the *CCAA* are set by the baseline requirements of appropriateness (measured against the remedial objectives of the statute), good faith and due diligence. The party seeking the discretionary order bears the burden “to satisfy the court that the order is appropriate in the circumstances and that the applicant has been acting in good faith and with due diligence” (see *Canada North Group Inc.*, at para. 21; *Century Services*, at para. 69).

[20] The Court of Appeal also offered these comments about the homogeneity of the claims that the RECESJ’s creditors (the Claimants) have against it and affirmed that all must be treated the same:

[73] All the claimants whose interests the appellants represent are tort claimants and unsecured creditors. There is nothing in either the specific language or objectives of the *BIA* nor *CCAA* that would support a more granular division of tort claimants into different creditor classes depending on their respective circumstances or legal situations. The appellants did not provide any authority that would support such a division.

[21] In the same judgment, Knickle, J.A. offered her thoughts on the breadth of judicial discretion available to trial judges through section 11 of the *CCAA*, in particular, but also from the *Act* generally:

[128] The ability to make “any” order a judge “considers appropriate”, subject only to restrictions in the *CCAA*, has resulted in the *CCAA* as being interpreted as a more flexible instrument than the *BIA* to manage the issues facing a financially struggling company (*Century Services*, at paras. 13-14).



[22] The Claimants agree that their appeals are “true appeals”. This is how counsel for Claimants Budden 076 and 187 stated it in their Factum:

31. The parties have agreed the procedure for these appeals to be a “true appeal”, meaning the relevant standard of review is that of appellate proceedings.

32. The appropriate standard of review for the appeal are as follows:

- a.) Pure questions of law: the standard of review is correctness.
- b.) Questions of fact: the standard of review is that such findings are not to be reversed unless it can be established that the decision maker made a palpable and overriding error.
- c.) Questions of mixed fact and law: the standard of review, is that, in the absence of an “extricable” legal error or a palpable and overriding error, a finding of the decision maker should not be interfered with.

[23] Claimants Budden 076 and 187 also refer to paragraph 6 of the Interlocutory Application the Monitor filed on October 15, 2024, seeking “determinations of Notices of Dispute filed by Abuse Claimants” arising from the Notices of Determination/Disallowance issued by the Claims Officer:

6. The parties have agreed to, and this Court has endorsed, the procedure for these appeals:

the application by each disputing Abuse Claimant will be a “true appeal”, including the relevant standard of appellate review:

.....

[24] I will apply the standards of review as stated above, apropos of the questions arising from the appeals.

[25] This is the law I will apply to the issues I stated earlier. I turn now to analyze those issues starting with the background to them.

ANALYSIS

General Background

[26] The parties filed the CPO by consent on April 19, 2023. It issued from the judgment I filed on January 12, 2023. The CPO set out the following procedure:

- The RCECSJ provides the Monitor a complete list of potential claimants.
- The Monitor sends to each Claimant a Claims Package, using several means, including various media, ordinary mail, email, facsimile, etc.
- The Claims Package contains a Notice to Claimants, Proof of Claim form, instruction Letter and "...any other documentation the...[RCECSJ], in consultation with the Monitor and Representative Counsel, may deem appropriate" (section I (m) of the CPO).
- The Monitor causes a Notice to Claimants to be placed in various newspapers, with online platforms, in other publications and on its own website, as well as in "on-air" broadcasts.
- The form and substance of the contents of the Claims Packages and the Notices of Revision or Disallowance or Determination issued by the Claims Officer, and Notices of Dispute filed by the Claimants are as approved in the CPO.
- Proofs of Claims¹ are to be filed by the Pre-Filing Claims Bar Date, or September 30, 2023, failing which the Claimant is barred from participating in the Claims Process.
- The Claims Officer reviews all Proofs of Claims upon receiving them from the Monitor and determines if the RCECSJ is liable in law for the Claim.
- If the Claims Officer determines the RCECSJ is not liable for the Claim it issues a Notice of Revision or Disallowance to the Claimant.

¹ The CPO identifies Proofs of Claim (General) and Proofs of Claim (Abuse). Only the latter is relevant in these reasons and I will drop the bracketed word (Abuse) and refer to them simply as "Proofs of Claim" hereafter.



- A Claimant who receives a Notice of Revision or Disallowance "...may appeal the determination of the liability in law of the...[RCECSJ] by delivering a Notice of Dispute to the Monitor..." (section 38 of the CPO), generally within 21 days of receiving the Notice of Revision or Disallowance.
- If the Claims Officer accepts that RCECSJ is liable, it assesses "the validity and value of such Claim, in accordance with the Claims Protocol..." (section 39 of the CPO).
- The Claims Officer "will consider" my reasons in *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2023 NLSC 5; Faour, J.'s decision in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60; and the Court of Appeal's decision in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2020 NLCA 27, when "assessing an Abuse Claim", as well as "...the amount of any settlement or terms of release from any prior proceedings in relation to each Abuse Claim" (section 40 of the CPO).

[27] The Abuse Claims Protocol (ACP) sets out in more detail than the CPO, directions for the submission of claims, the factors the Claims Officer must consider when deciding on the RCECSJ's liability, the valuation of any Claims, including criteria under each several heads of damages; more particularly, general damages, economic loss, future care, and pre-judgment interest. All Notices of Dispute that the Claimants have filed in this matter, except for two that have already been resolved, deal with liability only so I will consider only those parts of the ACP that deal with that issue.

[28] The Claims Officer was directed to consider many factors when deciding on the RCECSJ's liability to the Abuse Claimants. I have extracted only those parts of the ACP that I consider particularly germane to the issues raised by the Notices of Dispute that I will consider:

- An Abuse Claimant is deemed to have a Proven Claim, so that the RCECSJ is liable, in these instances: if the Claimant is a Mount Cashel plaintiff; if the Claimant received a settlement from the US or Canadian CBI Bankruptcy Proceedings; if the Claimant issued a statement of claim for an Abuse Claim



against a third party and received a settlement; or if the Claimant complained in criminal proceeding in relation to an Abuse Claim.

- If an Abuse Claimant is not deemed to have a Proven Claim, the "...Claims Officer shall review and consider all supporting documentation included in the Abuse Claimant's Proof of Claim..., including details regarding the nature of sexual misconduct, the alleged perpetrator, the approximate date of the misconduct, and the location of the misconduct" (section 2.1.4).
- If the Claims Officer is not satisfied that the RCECSJ is liable, it "...shall issue a Notice of Revision or Disallowance in respect of the Abuse Claim and shall provide reasons therefor" (section 2.1.4). [emphasis added]
- "If the Claims Officer issues a Notice of Revision or Disallowance, the Abuse Claimant may bring an application to the Court in accordance with the procedures set out in the Claims Procedure Order" (section 2.1.5).
- "If an Order is made by the Court in relation to an application made by an Abuse Claimant as contemplated under section 2.1.5 that the Abuse Claimant was abused and that the...[RCECSJ] is liable at law for the abuse, and all appeal periods have expired, then that claim shall be considered to be a Proven Claim and the Claims Officer shall determine the compensation, if any due to the Abuse Claimant. If the Claims Officer determines either (i) that the Abuse Claimant was not abused or (ii) that the...[RCECSJ] is not liable at law for the abuse, and all appeal periods have expired, the Claim shall be disallowed" (Section 2.1.6).

[29] The Monitor submitted three hundred sixty-seven Abuse Claims to the Claims Officer following the protocol set out in the CPO and the Claims Officer assessed them according to the directives of the ACP. From that exercise, the Claims Officer found that the RCECSJ was liable for the abuse suffered by three hundred five Claimants and it determined the compensation to be paid to each of them.

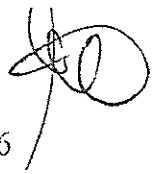
[30] The Claims Officer also found that the RCECSJ was not liable to fifty-nine Claimants and issued Notices of Revision or Disallowance to them, from which those Claimants filed Notices of Dispute. The remaining three Abuse Claims were initially in dispute as well, but the parties resolved them satisfactorily, so I need not deal with them.

[31] The following table lists all outstanding Notices of Dispute I will address in these reasons:

No	Table of Abuse Claims Disallowed	
	Claimant ID	Reason for Disallowance
	Part I	
1	Breedon 001	Signed Release in Other Proceedings
2	Breedon 002	Signed Release in Other Proceedings
3	Buckingham 002	Signed Release in Other Proceedings
4	Buckingham 003	Signed Release in Other Proceedings
5	Buckingham 004	Signed Release in Other Proceedings
6	Buckingham 011	Signed Release in Other Proceedings
7	Buckingham 012	Signed Release in Other Proceedings
8	Buckingham 013	Signed Release in Other Proceedings
9	Buckingham 029	Signed Release in Other Proceedings
10	Buckingham 043	Signed Release in Other Proceedings
11	Buckingham 045	Signed Release in Other Proceedings
12	Buckingham 047	Signed Release in Other Proceedings
13	Buckingham 053	Signed Release in Other Proceedings
14	Buckingham 062	Signed Release in Other Proceedings
15	Buckingham 072	Signed Release in Other Proceedings
16	Buckingham 082	Signed Release in Other Proceedings
17	Buckingham 087	Signed Release in Other Proceedings



18	Budden 013	Signed Release in Other Proceedings
19	Budden 016	Signed Release in Other Proceedings
20	Budden 025	Signed Release in Other Proceedings
21	Budden 026	Signed Release in Other Proceedings
22	Budden 035	Signed Release in Other Proceedings
23	Budden 082	Signed Release in Other Proceedings
24	Budden 126	Signed Release in Other Proceedings
25	Budden 129	Signed Release in Other Proceedings
26	Budden 136	Signed Release in Other Proceedings
27	Budden 139	Signed Release in Other Proceedings
28	Budden 150	Signed Release in Other Proceedings
29	Budden 173	Signed Release in Other Proceedings
30	Budden 184	Signed Release in Other Proceedings
31	Budden 190	Signed Release in Other Proceedings
32	Budden 203	Signed Release in Other Proceedings
33	Budden 209	Signed Release in Other Proceedings
34	Budden 216	Signed Release in Other Proceedings
35	MM 002	Signed Release in Other Proceedings
36	MM 005	Signed Release in Other Proceedings
37	MM 008	Signed Release in Other Proceedings
38	MM 017	Signed Release in Other Proceedings
39	SR 005	Signed Release in Other Proceedings



40	SR 007	Signed Release in Other Proceedings
41	Stack 005	Signed Release in Other Proceedings
Part II		
42	CFM 001	Abused by Christian Brothers in Vancouver
43	CFM 002	Abused by Christian Brothers in Vancouver
44	CFM 003	Abused by Christian Brothers in Vancouver
45	CFM 004	Abused by Christian Brothers in Vancouver
46	CFM 005	Abused by Christian Brothers in Vancouver
47	CFM 006	Abused by Christian Brothers in Vancouver
48	CFM 007	Abused by Christian Brothers in Vancouver
49	CFM 008	Abused by Christian Brothers in Vancouver
50	CFM 009	Abused by Christian Brothers in Vancouver
51	CFM 010	Abused by Christian Brothers in Vancouver
52	CFM 011	Abused by Christian Brothers in Vancouver
53	CFM 012	Abused by Christian Brothers in Vancouver
Part III		
54	Buckingham 024	Definition of Sexual Misconduct
55	Buckingham 025	Definition of Sexual Misconduct
56	Buckingham 054	Definition of Sexual Misconduct
57	Buckingham 090	Definition of Sexual Misconduct
Part IV		
58	Budden 076	Abused by a Nun



59 Budden 187

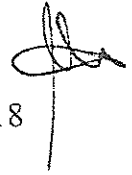
Abused by a Nun

[32] I will deal with the Notices of Dispute thematically, grouping together Notices in which the Claims Officer gave the same or similar reasons for disallowing the claims each represents. Before doing that, however, let me offer some context for the discussion that follows.

[33] The Claimants present to this Court as creditors of a corporation, not as plaintiffs claiming against a defendant; and they are not required to prove their claims in an adversarial mode, but only satisfy the Claims Officer to accept them as valid so that they may share in the distribution of the RCECSJ's liquidation. Our Court of Appeal in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2020 NLCA 27 found the RCECSJ vicariously liable to the four representative plaintiffs in that proceeding.

[34] As the Court *en banc* noted in paragraph 579 of its judgment, "With respect to the appeal on liability, we find the judge erred in concluding that the Archdiocese is not vicariously liable for the Brothers' sexual abuse of the appellants. We conclude the Archdiocese is vicariously liable in this regard and allow the appeal on this issue". The Supreme Court of Canada rejected the RCECSJ's request for leave to appeal their judgment so that it is final and binding on the Applicant in these proceedings.

[35] The RCECSJ responded to that finality by acknowledging its indebtedness to the other Claimants and offered to make a proposal in bankruptcy to them under the *BIA*. On March 4, 2022, by order of this Court, Ernst & Young Inc. as Trustee for the RCECSJ was directed to help the Corporation sell RCECSJ parcels of real property through a court-approved tender process. Eventually, the RCECSJ halted the *BIA* proceedings and I approved the RCECSJ to continue its restructuring under the *CCAA*. All assets of the RCECSJ were gathered in by the Monitor and in excess of \$44,000,000 was ultimately realized for distribution amongst its creditors.



[36] There are other creditors of the RCECSJ than the Abuse Claimants but their claim on its assets are a small portion of the total available for distribution. The primary creditors are the 367 Abuse Claimants who are defined in the CPO as "...any Person asserting a Pre-Filing Claim in respect of abuse by clergy, members of lay religious orders or other persons for whom the...[RCECSJ] is in law responsible" (section 1(b) of the CPO). So, the process which is engaged here involves the "creditors" who are the Abuse Claimants and the "debtor", which is the RCECSJ and whose assets will be distributed among the creditors as directed in the CPO.

[37] The Claims Officer is the initial arbiter of that distribution and the creditors have recourse to this Court if they disagree with the Claims Officer's decisions. Deference is due to the Claims Officer who must ensure that the Claimants are treated fairly and equitably. I also note that this restructuring process is an unusual application of the powers available to this Court under the CCAA.

[38] In *Christian Brothers of Ireland, Re* (2004), 128 A.C.W.S. (3d) 1116, 69 O.R. (3d) 507 (S.C.), Blair, J., then of the Ontario Superior Court of Justice dealt with the winding-up of The Christian Brothers of Ireland in Canada, in a matter well-known to some counsel in these proceedings. The Christian Brothers were insolvent because of claims brought against them for sexually abusing residents of Mount Cashel Orphanage and elsewhere. The Brothers applied to the Ontario Superior Court of Justice to be wound up under the *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11 and a Liquidator was appointed to distribute the proceeds of the liquidation amongst the Claimants. The matter came before the Superior Court for approval of the Liquidator's recommendations.

[39] Blair, J. reflected on the nature of the proceedings, apropos of what is happening in these proceedings:

[32] This is an unusual winding-up proceeding. Normally the assets of an insolvent company are liquidated and the proceeds distributed amongst creditors whose claims are essentially of a commercial nature. That is not the case here. The essence of this winding-up is that the Company's assets have been liquidated specifically to provide a pool of funds for distribution to tort victims of institutional abuse for which the Corporation is liable. The nub of what is before the court on these



motions is the Liquidator's request for approval of its Recommendations concerning the scheme for distribution of the liquidated assets to those tort victims based upon what is loosely parallel to an assessment of damages for that institutional abuse.

[40] That, of course, is precisely what is afoot in these proceedings.

[41] I commented in *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2023 NLSC 5 about the broad discretion that section 11 of the *CCA* confers on a restructuring court, and counsel, particularly counsel for the Claimants, have reminded me of my words several times:

[22] I will focus on the discretionary aspect of decision-making under the *CCA* because resolving the claims here will require exercising a robust discretion. That is because the claims process that each party promotes deals both with the RCECSJ's liability to the Claimants and then their damages. Both issues are rooted in tort law but in this case, neither liability nor damages are amenable to the usual standards of proof that would govern if the claims were being tried in bona fide tort proceedings.

[23] That said, and as I will show more clearly later in these reasons, it is fortuitous that the Claimants may prove their claims by the "summary application" process that the *CCA* provides. They will benefit measurably from the latitude that will be permitted them to prove by that means, both that the RCECSJ is liable for their losses and the damages that they are entitled to.

[24] Most, if not all of the Claimants are of advanced years, and/or are of poor health; and as well their memories of events may have been compromised by the time that has elapsed since they were abused. Because they are also susceptible to re-traumatization when recounting the horrendous deeds that their abusers did to them, measures may also be taken to lessen the impact of their retellings.

[42] I will invoke the "robust discretion" I referred to previously to ensure that the Claimants are not unduly prejudiced by the strict letter of the releases they signed in previous proceedings and also to deal with the definitional and jurisdictional issues that the Claims Officer struggled with in other instances.

[43] Finally, I want to acknowledge how effective has been the process that we have engaged here. The parties filed the CPO, with the attached ACP, by consent on April 19, 2023. The Order appointing Global Solutions Inc. as Claims Officer was filed on June 8, 2023, again by consent, and a multi-media protocol was employed to distribute notice of the proceedings to all potential claimants and to inform them that they had until September 30, 2023, to submit claims against the RCECSJ.

[44] The Monitor received three hundred sixty-seven claims by September 30, 2023, and the Claims Officer filed its Notices of Determination or Disallowance/Revision to the Claimants by June 28, 2024, for the claims they submitted. This point deserves emphasis: Only nine months elapsed between when the Monitor received the three hundred sixty-seven claims on or before September 30, 2023, and when the Claims Officer released its Notices for each of them; and in that discrete time, the Claims Officer dealt with all claims, assessing all for liability and then setting damage awards where appropriate.

[45] This could not have done in a trial setting. I note, for example, that the trial in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60 took thirty-five sitting days to decide whether the RCECSJ was liable to four claimants and how much their damages would be if it was.

[46] I acknowledge that we have had the benefit of the findings on damages that Faour, J. made in that decision, as well as the findings on liability that the Court of Appeal made when it reviewed the Trial Decision. Regardless, the prospect of deciding three hundred sixty-seven, what are in effect full tort claims, in nine months is practically imponderable but for the efficient process that we adopted here.

[47] It is those kinds of efficiencies that I was contemplating earlier when I commented that “it is fortuitous that the Claimants may prove their claims by the ‘summary application’ process that the CCA provides”. Our process is helped greatly by the mandate that the CPO and ACP denote: Assess the claims that Claimants present for their validity, relying on credible evidence, even if that evidence at times is not the classical evidence that might be required if these claims



were being viewed in an adversarial context. This will become more apparent as I review the fifty-nine Notices of Dispute the Claimants filed with the Monitor, especially those from the BC Claimants.

[48] I turn now to consider those Notices of Dispute starting with those from the Claimants who filed releases in other proceedings.

NOTICES OF DISPUTE

Part 1: Claims Disallowed because of Releases

Background

[49] The Claims Officer disallowed forty-one of the three hundred sixty-seven claims that it received because the Claimants signed releases when they received payments in other proceedings. They provided those releases for the Government of Newfoundland and Labrador and in the first Notices of Disallowance it issued to those Claimants, the Claims Officer advised them, quite perfunctorily, why it disallowed their claims:

The Abuse Claim is disallowed.

The Abuse Claimant executed or is deemed to have executed a release or other document as term of payment in a prior proceeding that is adjudicated as having the effect of releasing the... [RCECSJ] from any further claims, within the meaning of para. 40 of the CPO and sec. 3.1.8 of the ACP.

[50] The CPO and the ACP are respectively, the Claims Procedure Order and the Abuse Claims Protocol.

[51] I took the preceding quotation from the Notice of Disallowance that the Claims Officer issued to Abuse Claimant Breedon 001. The “result” is replicated in the other forty of the forty-one Notices of Disallowance that the Claims Officer

issued, citing the execution of "...a release or other document as a term of payment in a prior proceeding...". For ease of reference, the forty-one Abuse Claimants are those listed as Nos. 1-41 in the Table that I included earlier in these reasons.

[52] Eventually, all Claimants filed Notices of Dispute and many made lengthy and detailed submissions in support of their Notices. They claimed that the Claims Officer erred and asked that the Notices of Disallowance "...be reversed immediately" (paragraph 25 of the Notice of Dispute). The Claims Officer responded to all forty-one Notices of Dispute on September 20, 2024, with a lengthy "Notice of Disallowance/Supplementary Reasons" in which it contended that "...the effect of the Winding-up Release [in accordance with the attached February 4, 2004, of Honourable Justice Blair of the Ontario Superior Court of Justice] is to bar the Abuse Claim and release the...[RCECSJ]" (last paragraph of the Notice of Disallowance /Supplementary Reasons). In other Notices of Disallowance/Supplementary Reasons, the Claims Officer simply noted that "...the effect of the Release is to bar the Abuse Claim and release the... [RCECSJ]" (see for example, the Notice of Disallowance/Supplementary Reasons filed for Buckingham 045).

[53] The Notices of Disallowance/Supplementary Reasons that the Claims Officer filed in the forty-one claims vary somewhat to account for the different circumstances in which the Claimants executed Releases. However, they are consistent in this critical aspect: the Claimants released the Government of Newfoundland and Labrador in all forty-one instances and did not release the RCECSJ directly in any of them.

[54] Claimant Budden 013 signed a Release on April 15, 2004, when he received \$73,356 from the liquidated estate of the Christian Brothers of Ireland in Canada in the Winding-Up directed by Blair, J. of the Ontario Superior Court of Justice. He was one of thirty Claimants who received funds from that estate. He undertook the following by his release:

- To release Her Majesty in Right of Newfoundland and Labrador and the Royal Newfoundland Constabulary "...from all actions, causes of action, claims and demands...against the Releasee arising out of any tortious or criminal acts



committed by the CBIC...arising out of or connected to the Mount Cashel Orphanage in St. John's...";

- To "...not make any claim, or take any proceedings, related to the subject matters of this release against any person or entity that might claim contribution or indemnity for the Release"; and
- To "...indemnify and save harmless and to keep indemnified the Releasee from any further claims, demands, actions or suits which might be brought by, or, on behalf of the Releasor against the Releasee for and in respect of any of the matter or things hereinbefore set forth.

[55] For certainty the Releasee(s) are, as I noted above, the Government of Newfoundland and Labrador and the Royal Newfoundland Constabulary and the Releasor is Claimant Budden 013. The RCECSJ was not involved in those proceedings and the Release does not specifically contemplate the RCECSJ.

[56] Initially, the Claims Officer issued the *pro forma* "result of the adjudication" that I stated above. However, when Claimant Budden 013 filed his Notice of Dispute, the Claims Officer filed a Notice of Disallowance/Supplementary Reasons, in which it elaborated on the reasons it affirmed its initial decision to disallow the claim. Amongst the points in elaboration are the following under the heading of "The Effect of the Winding-up Release":

- "The Winding-up Release was adjudicated as having the effect of releasing the... [RCECSJ] from any further claims...";
- "The Winding-up Release includes a claim-over clause...that bars claims against a person or entity that might claim contribution or indemnity from the Province. The Abuse Claim is adjudicated against an entity, the... [RCECSJ], that might claim contribution or indemnity from the Province. As such, the effect of the Winding-up Release is to release the... [RCECSJ]" [emphasis added].
- "Further and in the alternative, the effect of the Winding-up Release, as acknowledged in paragraph 8 of the Notice of Dispute [filed by Claimant Budden 013], is to release a claim by the Abuse Claimant against the Christian Brothers based on latter's direct liability. The Abuse Claim is a claim against



the... [RCECSJ] based on the... [RCECSJ's] vicarious liability... [for the actions of the Christian Brothers at Mount Cashel]. As such it is adjudicated to be derivative of and dependent on the continuing direct liability of the Christian Brothers. In barring such a claim against the Christian Brothers based on direct liability... [for the actions of the Brothers at Mount Cashel], the Winding-up Release is adjudicated to also bar a claim against the... [RCECSJ] based on vicarious liability [for the actions of the Christian Brothers at Mount Cashel]. As such, the effect of the Winding-up Release is to bar the Abuse Claim and release the... [RCECSJ]”.

[57] There were several prior proceedings involving some of the Claimants, in which they received settlements and signed releases:

- Claims filed in 1994 in this Court against the Government of Newfoundland and Labrador as First Defendant, the Christian Brothers of Ireland in Canada as Second Defendant and named individuals, as Third and Fourth Defendants, settled in 1996 from funds provided by the Government of Newfoundland and Labrador.
- The Winding-Up proceedings for the Christian Brothers of Ireland in Canada that I referred to earlier which Blair, J. did in 2004. Those proceedings began in 1996 when the Brothers applied to the Ontario Superior Court of Justice to be wound up. Blair, J. explained the rationale for the winding-up process this way in an earlier judgment in those proceedings: The Brothers were “faced with such a large number of claims for compensation from these victims and lack[ed] sufficient assets to satisfy them” (*Christian Brothers of Ireland Re*, Part I – Overview).
- Claims filed in 2009 against the Government of Newfoundland and Labrador as Defendant, settled in 2014-2015 from funds provided by the Defendant.
- Claims filed in 2009, 2018, and 2019 against the Government of Newfoundland and Labrador as Defendant, settled in 2019-2023 from funds provided by the Defendant.



[58] Two further points are noteworthy:

- Each of the forty-one Claimants whose Claims I am dealing with presently signed at least one release (some several) and in each instance they released the Government of Newfoundland and Labrador and not the RCECSJ.
- Some of those same Claimants also received awards from the US Christian Brothers of Ireland Bankruptcy Proceedings for which they did not sign releases.

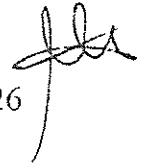
[59] The appeals for disallowance for signed releases raise these issues:

1. What is the standard of review?
2. Did the Claims Officer err?
3. If so, what remedy are the Claimants entitled to?

Discussion

1. *What is the standard of review?*

[60] I stated the standards of review earlier in these reasons and noted that for “pure questions of law, the standard of review is correctness”. It is self-evident and brooks no discussion that it is a “pure question of law” to ask if the Claims Officer properly found that the effect of the “Winding-up Release” is to bar Claimant Budden 013’s claim against the RCECSJ’s assets in these restructuring proceedings. Thus, I will apply correctness to my review of the Claims Officer’s decision to disallow the claim because of its assessment of the effect of the Winding-up Release on that claim.



[61] I note the guidance on applying correctness as the standard of review that the Supreme Court of Canada provided in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

[54] When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir*, at para. 50. While it should take the administrative decision maker's reasoning into account - and indeed, it may find that reasoning persuasive and adopt it - the reviewing court is ultimately empowered to come to its own conclusions on the question.

[62] It follows that I may substitute my view for the Claims Officer's decision and allow Claimant Budden 013's claim if I find that the Claims Officer erred when it disallowed his claim.

2. *Did the Claims Officer err?*

[63] I will not discuss individually all forty-one Notices of Dispute that these Claimants filed to the Notices of Disallowance/Supplementary Reasons that the Claims Officer issued to each of them. I set out particulars from the Notices that Claimant Budden 013 received from the Claims Officer and it represents, with minor variances, the Notices that the other forty Claimants also received from the Claims Officer.

[64] I acknowledge that the circumstances of all of these Claimants vary, not surprisingly, but I can deal with all their Notices of Dispute suitably, by addressing broad principles rather than sort through the minutiae of each of them. To that end, I note that the Claims Officer took a similar approach. The initial Notices of Disallowance that the Claims Officer issued in all cases is the cryptic statement that I set out earlier in these reasons, but I repeat here for ease of access to it:

The Abuse Claim is disallowed.



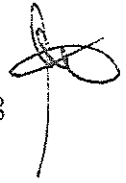
The Abuse Claimant executed or is deemed to have executed a release or other document as term of payment in a prior proceeding that is adjudicated as having the effect of releasing the.... [RCECSJ] from any further claims, within the meaning of para. 40 of the CPO and sec. 3.1.8 of the ACP.

[65] Eventually, as I have already noted, the Claims Officer resiled from that position, a reaction which appears to have been prompted by the lengthy and detailed Notices of Dispute the Claimants filed when they responded to the Claims Officer's Notice of Disallowance; so, the Claims Officer released the Notices of Disallowance/Supplementary Reasons to address some issues the Claimants raised in their Notices of Dispute. While there are again some differences amongst the revised Notices of Disallowance, there is much consistency and the one which I examined closely relating to Claimant Budden 013, fairly represents the Claims Officer's response to all forty-one Claimants.

[66] Let me state the Claims Officer's response this way: The Claimant released the Government of Newfoundland and Labrador in each of those instances and it is possible that claims may result from these present proceedings to jeopardize the protection that was afforded to the Government by the releases.

[67] Of course, while the Claimants released the Government previously it did not release the RCECSJ, which is the party they sued twenty-five years ago and which the Court of Appeal found was vicariously liable for the actions of the Christian Brothers at Mount Cashel Orphanage on July 28, 2020. That judgment clearly established that the RCECSJ was liable to the Plaintiffs in that action and the judgment gained finality when the Supreme Court of Canada dismissed the RCECSJ's application for leave to appeal on January 14, 2021.

[68] The risk to the Government of Newfoundland and Labrador that the Claims Officer contemplates is that the RCECSJ will seek indemnity or contribution from the Government for the damages that it has to pay to the Claimants. I presume that the Claims Officer anticipates that the RCECSJ may regard the Government as vicariously liable to the Claimants in the same way that RCECSJ is and the RCECSJ will try to mitigate its losses by apportioning liability with the Government.



[69] First, there is no indication whatsoever that the RCECSJ has ever considered that it might be entitled to indemnity from the Government or to a contribution for its losses. But even more fundamentally, the time for the Government to have sought indemnity or contribution is long past.

[70] Some counsel alluded to the possibility that the RCECSJ might try to initiate third-party proceedings against the Government. A defendant may only issue and serve a third-party notice before it files its defence, unless it has leave of the Court: *Rule 12.02 (1) of Rules of the Supreme Court, 1986*, S.N.I. 1986, c. 42, Sch. D. The RCECSJ might have issued a third-party notice to the Government in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60 before it filed its defence to the claim, but that action is spent now and this Court is *functus officio* as to it.

[71] Moreover, the four Plaintiffs that carried that action filed it in this Court in 1999, fully 19 years passed before Faour, J. filed his judgment on March 16, 2018; and the RCECSJ made no bid to join the Government in that time. Nor, as I have already stated, has the RCECSJ shown any interest in joining the Government to this cause.

[72] But there are two other considerations that indicate the Government could not possibly be in jeopardy at the suit of the RCECSJ. First of all, the Government cannot issue a third-party notice in these proceedings. This cause is not an adversarial process. There is no plaintiff or defendant and no party could be drawn in as a third party. We are engaged on an insolvency process, in which we are liquidating the RCECSJ's assets to provide funds to it to settle the Claimants' damages.

[73] Additionally, the Government of Newfoundland and Labrador has already been involved in the proceedings, not as a party, of course, but as a debtor of the RCECSJ to whom the Government paid \$13,000,000 to compensate the RCECSJ for its interest in the lands owned by the RCECSJ upon which schools were situated. The parties filed an Order on February 12, 2024, approving the Settlement Agreement between the RCECSJ and the Government, noting that the "...RCECSJ... is hereby authorized to complete the sale of the RCECSJ School

Lands to Government and/or the NLESD (collectively the "Purchasers"). Subsequently, the RCECSJ, the Government and the NLESD entered into Minutes of Settlement providing the terms and conditions of the sale.

[74] One of the terms, 4(a) reads in part as follows:

... with the exception of any claim that the Government or the District may have as a result of the execution and delivery of this Agreement, to remise, release, and forever discharge the RCECSJ, and its successors and assigns, from all manners of actions, causes of action, deeds, suits, proceedings, debts, dues, duties, accounts, bonds, covenants, contracts, claims, demands, damages (known or unknown), sums of money, controversies, promises, actions, variances, trespasses, grievances, executions, and liabilities whatsoever both in law and in equity, with respect to the Schools Act.

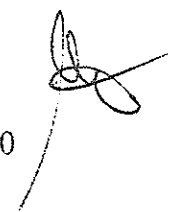
[75] These dealings between the RCECSJ and the Government invoke two ironies:

1. Why would the RCECSJ negotiate in good faith with the Government to resolve its ownership interest in the schools' land if the RCECSJ contemplated suing the Government because it might possibly be vicariously liable with it for the abuses the Christian Brothers committed at Mount Cashel Orphanage? or,
2. Why would the Government unconditionally release the RCECSJ from all possible causes with respect to the schools, if it feared that the RCECSJ might try to draw it into sharing damages vicariously with it for the Claimants in these proceedings?

[76] There is one final factor to consider on this issue: Each of the Claimants who received prior payments is required to account for them. Article 3, sections 3.1.6, 3.1.7, 3.1.8 of the Abuse Claims Protocol provide:

Deductions for Prior Distributions In Other Insolvency Proceedings or Other Awards or Settlements

3.1.6 Each Abuse Claimant as part of its Proof of Claim (Abuse) will certify:

- 
- 3.1.6.1 whether they have previously received an award as part of the US CBI Bankruptcy Proceedings or Canadian CBI Bankruptcy Proceedings.
 - 3.1.6.2 whether they have previously been awarded payment upon implementation of a settlement or judgment on the basis of a Proven Claim.
 - 3.1.6.3 the amount of any distribution or payment awarded in either section 3.1.6.1 or 3.1.6.2 (each a “**Prior Amount**”):
- 3.1.7 The Claims Officer shall deduct the full amount of the Prior Amount awarded to an Abuse Claimant, who is not a Deceased Abuse Claimant, from the amount that the Claims Officer has otherwise determined to be the Abuse Claimant’s total award for each of the Claim Components. In respect of Deceased Abuse Claimants whose claims are limited under the *Survival of Actions Act*, deductions for any Prior Amount awarded are subject to the discretion of the Claims Officer.
- 3.1.8 Each Abuse Claimant shall provide to the Claims Officer a copy of any release that was executed by the Abuse Claimant in relation to any Prior Amount. In the event such release has the effect of releasing the Applicant from any further claims, the Abuse Claimant’s Proof of Claim (Abuse) shall be disallowed.

[77] I note parenthetically that the underlined portion of section 3.1.8, authorizes the Claims Officer to disallow claims if the release has the effect of releasing the Applicant (i.e. the RCECSJ). It says nothing about releasing the Government and if taken literally one might argue that this provision in the ACP disposes of the issue of the Releases in its entirety, given that none of the Releases the forty-one Claimants signed releases for the RCECSJ.

[78] I do want to appear disingenuous, however, and it still is appropriate to address the issue, as I have done, by dealing with it as the Claims Officer framed it in the Notices of Disallowance/Supplementary Reasons that he provided to each one of them.



[79] Requiring the Claimants to disclose any prior payments they have received is to ensure that all Claimants and the RCECSJ are treated fairly in the liquidation of the RCECSJ's assets. It acknowledges that the Claimants are entitled to be compensated for their losses in damages, because of the abuse they suffered and to put them in the place they would have been but for the abuse; but they may receive no more.

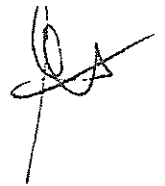
[80] Overall, I find that the Claims Officer erred in law in disallowing the claims of all forty-one Claimants. Sections 2.1.5 and 2.1.6 of the Abuse Claim Protocol provide for the following procedure in this event:

- 2.1.5 If the Claims Officer issues a Notice of Revision or Disallowance, the Abuse Claimant may bring an application to the Court in accordance with the procedures set out in the Claims Procedure Order.
- 2.1.6 If an Order is made by the Court in relation to an application made by an Abuse Claimant as contemplated under section 2.1.5 that the Abuse Claimant was abused and that the... [RCECSJ] is liable at law for the abuse, and all appeal periods have expired, then that claim shall be considered a Proven Claim and the Claims Officer shall determine the compensation, if any due to the Abuse Claimant...

[81] Earlier in these reasons I set out the salient portions of Article 2, Determination of Liability, from the Abuse Claims Protocol. I note here that each of the forty-one Claimants is covered by one or more of the criteria in section 2.1.2 of the Protocol and is "...deemed to have a Proven Claim..." because he meets some of those criteria. Aside from that, I have reviewed all materials provided by each of the forty-one Claimants to the Claims Officer in support of their claims and I find that the RCECSJ is liable at law for the abuse they suffered.

3. *What remedy are the Claimants entitled to?*

[82] Accordingly, I set aside the Notices of Disallowance that the Claims Officer issued to all forty-one claims and remit these claims to the Claims Officer; and I



direct the Claims Officer further to fix the compensation, if any that is due to those Claimants.

Part 2: Claims of the BC Claimants

Background

[83] The Claims Officer disallowed twelve claims filed by residents of British Columbia. Throughout these proceedings we have collectively referred to those residents as the “BC Claimants” and I will continue that practice for ease of reference. The BC Claimants attended two Vancouver-area Catholic Schools, Vancouver College and St. Thomas More Collegiate, over the thirty-seven-year period from 1976 to 2013. They claim variously that they were psychologically, physically and sexually abused by members of the Christian Brothers of Ireland in Canada who taught at those schools.

[84] The BC Claimants filed a Notice of Civil Claim under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 in the Supreme Court of British Columbia, on February 21, 2021. They have since amended their Notice of Civil Claim four times, most recently on August 9, 2024. The named representative plaintiff on the Notice of Civil Claim attended Vancouver College from 1980 to 1985, for grades 8-12.

[85] The representative plaintiff claims against nine defendants, including: Vancouver College Limited; St. Thomas More Collegiate Ltd.; Edward English; Joseph Burke; Douglas Kenny; Gerard Gabriel McHugh; Kevin Short; The Roman Catholic Episcopal Corporation of St. John’s; and the Roman Catholic Archbishop of Vancouver. All individual defendants are or were members of the Christian Brothers and The Roman Catholic Episcopal Corporation of St. John’s is, of course, the RCECSJ in these proceedings.

[86] The representative plaintiff alleges that the Archbishop of St. John’s, for whom the RCECSJ is liable, owed a duty of care to him and the other BC Claimants



based on these particulars that I drew from paragraph 99 of Fourth Amended Notice of Civil Claim that the representative plaintiff filed on July 6, 2023:

- (a) the knowledge that Brother English, Joseph Burke; Brother Short; and Brother Kenny posed a serious threat and continuing threat to students;
- (b) the authority which the Archbishop of St. John's held over all matters pertaining to the activities of the Christian Brothers in St. John's, including at Mount Cashel;
- (c) the authority which the Archbishop of St. John's had to decertify Catholic school teachers;
- (d) the authority which the Archbishop of St. John's had to prevent decertified teachers from teaching at any Catholic school in Canada; and
- (e) the obligation owed by the Archbishop of St. John's to inform fellow Archbishops including the Archbishop of Vancouver of instances of abuse at Mount Cashel and the dangers posed by the Christian Brothers to children in Catholic schools.

[87] Fundamental to the claim that the Archbishop of St. John's owed a duty of care to the BC Claimants is this further allegation from paragraph 4 of the Fourth Amended Notice of Civil Claim:

(4) Over the period 1976 to 1983, the CBIC [Christian Brothers in Canada] moved six child abusers from Mount Cashel to Vancouver College and St. Thomas More where they had unfettered access to children, abused children and/or failed to protect children from their fellow Christian Brothers.

[88] In effect, the Claimants say the Archbishop of St. John's should have decertified as teachers, the Christian Brothers named in sub-paragraph 100 (a) of the Fourth Amended Notice of Civil Claim, so that they would have been prevented from teaching in either Vancouver College or St. Thomas More Collegiate. However, the Archbishop of St. John's did not decertify those Brothers as teachers, they had access to the BC Claimants and the Brothers abused them; for which failure the Archbishop of St. John's and the RCECSJ are liable in damages to them.



[89] They also claim, of course, that the Archbishop of St. John's was likewise obliged, given what he knew of what the Brothers did to the residents of Mount Cashel, to inform the Archbishop of Vancouver so that the latter might have intervened to prevent the Brothers from teaching in either of those institutions.

[90] As I noted above, each of the twelve BC Claimants filed claims in these proceedings as creditors of the RCECSJ. Claimant CFM 001 filed the lead claim. He appended a copy of the Second Amended Notice of Claim (the Third and Fourth amendments were added subsequently) to his Proof of Claim, to support his claim that the RCECSJ was liable to him for the abuse that he suffered between September 1981 and June 1983 when he was in Grades 9 & 10 at Vancouver College.

[91] Claimant CFM 001 stated that "I experienced at least 8 incidents of sexual misconduct by [Brother Edward] English in my Grade 9 & 10 years (September 1981 to June 1983). I was 13-15 years old" (Section 2(b) of Proof of Claim (Abuse), page 3).

[92] Claimant CFM 001's Proof of Claim is dated April 11, 2023, and his counsel submitted it to the Monitor on September 26, 2023. The Claims Officer issued a Notice of Disallowance/Summary Reasons to Claimant CFM 001 on June 28, 2024. It noted that "[f]or the purposes of this adjudication the claimed abuse is assumed to be valid" but then disallowed Claimant CFM 001's claim, for these reasons:

The [RCECSJ] has been found vicariously liable for the sexual abuse by Christian Brothers of residents of the Mount Cashel Orphanage, as detailed in the Appeal Decision [as described in the CPO]. The finding of vicarious liability is based on the close relationship between the [RCECSJ] and the Christian Brothers in the community, as again detailed in the Appeal Decision. The alleged abuse as described in the Abuse Claim [dated April 11, 2023, and attachments] does not take place within that community. As such it is adjudicated that there is no factual or legal basis on which to find the [RCECSJ] is vicariously or otherwise liable for the alleged abuse.

As a result, the Abuse Claim is disallowed.



[93] Claimant CFM 001 filed a Notice of Dispute on August 9, 2024, in which he claimed severally:

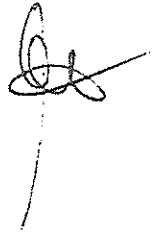
1. The Claims Officer neither adjudicated legal arguments nor investigated disputed facts.
2. The Claims Officer's interpretation of the NL Court of Appeal Decision's finding of vicarious liability is erroneous.
3. The Claims Officer failed to consider his claim that the RCECSJ is directly liable for the abuse.

[94] The Claims Officer acknowledged receiving the Claimant CFM 001's Notice of Dispute but it waived its right to file Supplementary Reasons as paragraph 38.1 of the CPO allowed it to do. I heard the Notice of Dispute with several others over two days, October 31 & November 1, 2024, and reserved my judgment until now.

[95] I set out the standards of review for these appeals earlier in these reasons and need not repeat them here. I note in its Notice of Disallowance/Summary Reasons that the Claims Officer disallowed Claimant CFM 001's claim because "...there is no factual or legal basis on which to find the [RCECSJ] vicariously or otherwise liable for the alleged abuse".

[96] Our Court of Appeal in *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's, 2020 NLCA 27* (the decision that ultimately led to these insolvency proceedings) explained the standards of review, notably as to how they intersect with direct negligence and vicarious liability, two matters of particular interest to Claimant CFM 001:

[43] The doctrines of negligence and vicarious liability are legal standards which must be correctly applied to a set of facts in order to determine whether liability ensues. In this case, if the legal standard the judge applied to the evidence is not correct, a question of law arises, and the review standard of correctness applies. If the judge erred in his application of the legal standard to the evidence, questions of mixed fact and law arise, for which the review standard of palpable and overriding error applies (*E.B. v. Order of the Oblates of Mary Immaculate in the Province of British Columbia*, 2005 SCC 60, [2005] 3 S.C.R. 45 at para. 23) unless the error is



an extricable error of principle, in which case the review standard is correctness. If the judge failed to consider relevant evidence or made factual findings or drew inferences which are plainly wrong or unsupported by the evidence, he will have committed palpable and overriding error.

[97] I agree with the Claims Officer that its finding is based in fact and law for which this is the standard of review: in the absence of an “extricable” legal error or a palpable and overriding error, a finding of the decision maker [the Claims Officer] should not be interfered with.

[98] The challenge for me in reviewing Claims Officer’s Notice of Disallowance/Summary Reasons is the scantiness of the reasons the Claims Officer provided. I will discuss this insufficiency more fully when I review the Claims Officer’s stated reasons in light of the issues that it had to decide.

[99] I noted earlier in these reasons that Claimant CFM 001 “filed the lead claim”. My meaning may be obvious but I will elaborate for certainty: Claimant CFM 001 is one of twelve BC Claimants. The remaining claimants are designated sequentially from CFM 002-CFM 012. All have similar backgrounds to Claimant CFM 001, although the alleged abuse they claim the Brothers inflicted on them varies.

[100] All claimants submitted Proofs of Claim (Abuse) with the Monitor which referred them to the Claims Officer as directed in the CPO. In each instance, the Claims Officer disallowed their claims and provided them Notices of Disallowance/Summary Reasons identical to that which it issued to Claimant CFM 001. In like manner, each of the remaining eleven BC Claimants filed Notices of Dispute, identical to that which Claimant CFM 001.

[101] In fact, each of the subsequent Notices of Dispute contains this statement where a claimant is required to state his, “Reason for the dispute”: “Please refer to Schedule ‘A’ attached to the Notice of Dispute of claimant (sic) CFM 1, dated August 9, 2024”. Ultimately, the remaining BC Claimants fell to the same fate as



Claimant CFM 001: the Claims Officer disallowed their claims and waived its right to file Supplementary Reasons by paragraph 38.1 of the CPO.

[102] The appeals of the BC Claimants raise these issues:

1. What is the standard of review?
2. Did the Claims Officer err?
3. If so, what remedy are the Claimants entitled to?

1. *Standard of Review*

[103] I alluded to this issue above. This matter, as the Claims Officer stated in his terse reasons, involves questions of mixed fact and law, for which the standard of review is generally palpable and overriding error, unless it presents an extricable legal error for which the standard is correctness.

2. *Did the Claims Officer Err?*

[104] Counsel for the BC Claimants submitted a comprehensive appeal factum in which he argued strenuously that the Claims Officer erred, offering several instances in which the Claims Officer failed the Claimants. First of all, counsel submitted that the Claims Officer's Notice of Disallowance "...prevents meaningful review of the substantive merits of the decision under appeal" (paragraph 43 of Appeal Factum of The B. C. Claimants"). He offered, in support of his claim, the Supreme Court of Canada's decision in *R. v. Sheppard*, 2002 SCC 26, as explained by the Ontario Court of Appeal in *Furej v. Fellows*, 2022 ONCA 254.

[105] *R. v. Sheppard* was on appeal to the Supreme Court of Canada from this Province. Binnie, J. wrote for the Court, with the concurrence of the other justices.

In paragraph 10 of his judgment Binnie, J. set out, as he put it, "... [the trial judge's] judgment in its entirety...":

Having considered all the testimony in this case, and reminding myself of the burden on the Crown and the credibility of witnesses, and how this is to be assessed, I find the defendant guilty as charged.

[106] Of this succinct statement by the trial judge, Binnie, J. said this: "In my opinion, the failure of the trial judge to deliver meaningful reasons for his decision in this case was an error of law...". (paragraph 68)

[107] Counsel for the BC Claimants submits in his Factum, and I agree, that the Claims Officer's reasons are inadequate because they do not permit "meaningful review of the substantive merits of the decision under appeal". As to those reasons, the following is the crux of them:

The finding of vicarious liability is based on the close relationship between the [RCECSJ] and the Christian Brothers in the community, as again detailed in the Appeal Decision. The alleged abuse as described in the Abuse Claim [dated April 19, 2023, and attachments] does not take place in that community.

[108] In those brief reasons, it appears that the Claims Officer failed to consider:

- The factual basis on which the Court of Appeal found "the close relationship" that it relied on to find the RCECSJ vicariously liable for the Christian Brothers.
- Whether there was any comparable relationship between the RCECSJ and the Christian Brothers who abused the BC Claimants to support a finding of vicarious liability.
- Whether the Christian Brother "community" that existed in British Columbia compared sufficiently to the Christian Brother "community" at Mount Cashel to support a finding of vicarious liability.



[109] Of course, none of this is appreciable on reviewing the Claims Officers' Notice of Dispute, especially not to Claimant CFM 001, to whom it is directed, since the Claims Officer did not elaborate. In the result, I allow the Notice of Dispute and I find that the Claims Officer erred in law by failing to file adequate reasons for the Notice of Disallowance that he issued to Claimant CFM 001. Accordingly, I set aside the Notice of Dispute to consider the matter further.

[110] I have two options because I set aside the Notice of Disallowance:

- Remit the claim to the Claims Officer for further deliberation and disposition;
or
- Deal with the issue of the RCECSJ's liability to Claimant CFM on my own account.

[111] I choose the latter. Let me say why.

[112] Claimant CFM 001 submitted a Proof of Claim to the Claims Officer, by way of the Monitor. That Proof of Claim comprised the completed Proof of Claim approved by this Court, running to some twenty-two pages, followed by forty-one additional pages, including replicated photographs from college yearbooks and a copy of the Notice of Civil Claim filed in the Supreme Court of British Columbia in the class action proceedings I alluded to earlier. I have this document.

[113] In addition, I have the Notice of Dispute filed by Claimant CFM 001's counsel. It runs to forty-six pages and sets out in detail the reasons Claimant CFM 001 disputes the Claims Officer's decision to disallow his claim. This is the whole of the substantial record that the Claims Officer had at hand when it disallowed Claimant CFM 001's claim. To complete the record, of course, there are the Claims Officers' Notices of Disallowance and Waiver of Supplementary Reasons. In effect, I have the same means available to me to decide whether the RCECSJ is liable to Claimant CFM 001 as the Claims Officer did; and I will.



[114] Counsel for Claimant CFM 001 puts forward two bases for finding the RCECSJ liable for the abuse the Christian Brothers inflicted on his client:

- Direct liability; and/or
- Vicarious liability.

[115] As to direct liability, counsel offers the “Bennett” case *John Doe v. Bennett* (2000), 190 Nfld. & P.I.E.R. 277, 576 A.P.R. 277 (N.L.S.C.(T.D.)) upheld by our Court of Appeal as *John Doe v. Bennett*, 2002 NFCA 47, and further at the Supreme Court of Canada as *John Doe v. Bennett*, 2004 SCC 17, as an “analogous case” to Claimant CFM 001’s claim.

[116] I state in summary form the principles that counsel drew from *Bennett* to support Claimant CFM 001’s claim that the RCECSJ is liable to him, see paragraphs 45-62 of the Appeal Factum of the BC Claimants:

- A bishop’s knowledge of abuse by a priest/religious in his diocese imposes a duty of care on the bishop and his episcopal corporation to prevent further abuse.
- The duty of care arises from the diocese’s knowledge of the abuse and responsibility for the operation of the diocese and supervision of its priests/religious.
- Transferring a priest or religious to another part of the diocese is simply moving the abuse elsewhere, not dealing with it.
- Canon law conferred on the Archbishop several duties:
 - To ensure that nothing that was done that was contrary to the faith of good morals;
 - To investigate an offence he is aware of, whether by rumor or report, by possibly visiting schools, orphanages or institutions to ensure they do not pose danger to the spiritual and moral welfare of the students; and
 - Exercise some control over the Brothers at Mount Cashel to prevent sexual abuse of students



[117] Counsel summarized the preceding points in the subsequent paragraph:

63. In the circumstances of this case, where it is inconceivable that the Archbishop did not know of abuse at Mount Cashel, the Archbishop's failure to report the abuse, institute a special investigation and/or prevent further abuse by these Brothers constitutes negligence. As found by the Court of Appeal in *John Doe* [v. (G.E.B. #25) v. *The Roman Catholic Episcopal Corporation of St. John's*, 20 N.L.C.A 27], the Archbishop had ultimate authority over matters of sexual abuse at Mount Cashel

[118] Counsel then claimed that the Archbishop's breach of duty to report the abuse that he knew the Brothers who were transferred to British Columbia had committed at Mount Cashel led to the abuse of the BC Claimants abuse (paragraph 68). He summarized his submission on the Archbishop's direct negligence to the BC Claimants this way:

68. In sum, knowledge of sexual abuse at Mount Cashel imposed a duty upon the Archdiocese to prevent further abuse. The complete failure of the Archbishop or anyone else in the Archdiocese to act in the circumstances of this case was a breach of this duty which resulted in foreseeable harm to the B. C. Claimants. As such the RCECSJ should be held liable for the sexual assault of the B. C. Claimants by Brothers English, Short and Kenny.

[119] In the Proofs of Claim that the BC Claimants submitted to the Claims Officer they claimed that the Archbishop of St. John's owed a duty of care to them for the reasons that I set out above. The Archbishop's breach of that duty supported their claim for damages from the RCECSJ because of its direct negligence. But they also claimed that the RCECS was vicariously liable.

[120] The Claims Officer not only rejected the BC Claimants' submission that the RCECSJ was vicariously liable to them, it also rejected the claim that the RCECSJ was "otherwise liable" to them, of which only direct liability could have been within his contemplation:

...there is no factual or legal basis on which to find that the Applicant vicariously or otherwise liable for the alleged abuse (from the penultimate paragraph of the

Notice of Disallowance/Summary Reasons issued to Claimant CFM 001 on June 28, 2004). [emphasis added]

[121] I find that the Claims Officer erred in rejecting the BC Claimants' claim that the RCECSJ was directly liable to them. In this behalf, the following pertain:

- The Archbishop of St. John's knew indisputably that the Christian Brothers abused the residents of Mount Cashel Orphanage, mentally, physically and sexually.
- It is reasonable to assume that the Christian Brothers who abused the residents of Mount Cashel Orphanage would continue their abuse if circumstances permitted.
- Removing the Christian Brothers from Mount Cashel and transferring them elsewhere, with their teaching and religious affiliations intact, created an opportunity to abuse other children who came under their care.
- The Archbishop of St. John's knew of the proclivities of the Christian Brothers who were transferred to British Columbia and he courted the risk that they would abuse other children, just as the Bishop of St. George's [in the Kevin Bennett matter] incurred this risk by transferring Kevin Bennett out of his parish in this Province to other parts of his diocese when his abuse was uncovered.
- The Archbishop of St. John's relationship to the Christian Brothers is analogous to the Bishop of St. George's relationship to Kevin Bennett, in that the Archbishop of St. John's knew that Christian Brothers abused the residents of Mount Cashel and he caused the Christian Brothers to be transferred out of the Archdiocese just as the Bishop of St. George's transferred Kevin Bennett from parish to parish in his Diocese.
- The Archbishop knew of the abuse that the Christian Brothers inflicted on the residents of Mount Cashel Orphanage and was obliged in law to inform those who were entrusted to the care of the Christian Brothers, in British Colombia and wherever, that they were at risk of being abused.
- Effecting the transfer of the Christian Brothers out of the Archdiocese, the Archbishop should have considered that the Christian Brothers would offend in subsequent placements, just as they did in British Columbia.



[122] Overall, I find that the RCECSJ is directly liable to the BC Claimants for the sexual abuse that the Christian Brothers inflicted on the BC Claimants after the Brothers were transferred from Mount Cashel Orphanage in St. John's to various schools in British Columbia, including St. Thomas More Collegiate and Vancouver College. In light of this finding, I decline to decide whether the RCECSJ is vicariously liable to the BC Claimants for the abuse they suffered while in care of the Brothers.

[123] In concluding that the Archbishop of St. John's knew that Christian Brothers abused residents at Mount Cashel and the Archbishop was instrumental in removing those Brothers from the institute, I had available to me and reviewed the following documents provided by counsel to the BC Claimants, appended as Exhibits to the Appeal Factum he filed on October 29, 2024:

1. Police Report dated 18 December 1975, prepared by Detective Robert Hillier, Newfoundland Constabulary, *Excerpt: Exhibit C-0137; Hughes Report pp 102-112.*
2. Memorandum dated 18 March 1976 to Dr. G. G. McHugh from Br. D. F. Nash "Subject – Reminders re Mount Cashel", *Excerpt: Exhibit C-0221; Hughes Report pp 133-134.*
3. Minutes of the Christian Brothers' Provincial Council Meeting on March 20, 1976, *Excerpt: Exhibit C-094.*
4. Documents from Records of Roman Catholic Archdiocese of St. John's, *Excerpt: Exhibit C-0535; Hughes Report p 221.*
5. Documents from Records of Roman Catholic Archdiocese of St. John's Parts 2 and 3, *Excerpt: Exhibit C-0553.*
6. Excerpt from Hughes Report regarding "Sergeant Pike and John Kelly at the Soper Inquiry", *Excerpt: Hughes Report pp 139-151.*
7. Excerpt from Hughes Report regarding McHugh letters about English and Ralph, *Excerpt: Hughes Report pp 154-157.*
8. Excerpt from Hughes Report regarding "Problems of the Royal Commission", *Excerpt: Hughes Report p 196.*

9. Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy, conducted by the Honourable Gordon A. Winter, O.C., Excerpts: pp 9, 24, 105, 112, 139.
10. Expert Memorandum of Thomas P. Doyle.
11. Testimony of Gerard McHugh to Hughes Inquiry. December 15, 1989, *Excerpt: tape 2, 11:18.*
12. Michael Harris, *Unholy Orders: Tragedy at Mount Cashel*, 1991, Excerpt: p 137.
13. Christian Brothers of Ireland record regarding Kevin Short.
14. Christian Brothers of Ireland record regarding James Edward English.

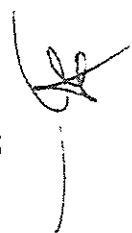
3. What remedy are the Claimants entitled to?

[124] In the result, I set aside the Notices of Disallowance/Summary Reasons that the Claims Officer issued to all BC Claimants and find the RCECSJ is liable to the BC Claimants. I remit Claims CFM 001-102 to the Claims Officer and direct it to determine the compensation, if any that is due to those Claimants.

Part 3: Claims Denied by Definition of Sexual Assault

Background

[125] By way of background, I offer a brief summary of the claims that each of Claimants Buckingham 024, 025, 054 and 090 provided in the Proofs of Claim they filed with the Claims Advisor.



Claimant Buckingham 024

[126] While Claimant Buckingham 024 did not live at Mount Cashel, he went there occasionally with his classmates at Holy Cross Elementary School for swimming lessons. He says he was leered at when showering after swimming and he recalled a Christian Brother drying him off with a towel, noting that he was old enough to dry himself without the Brother's help.

Claimant Buckingham 025

[127] Claimant Buckingham 025 lived at Mount Cashel for a year when he was 12 years old. He thinks it was from 1969 to 1970. He knew that the Christian Brothers who ran the Orphanage abused its residents. He noted, in particular, that this happened when the Brothers went through the dormitories at night and he also witnessed a Brother sexually assaulting another resident in a sick room.

[128] He recalled being forced to shower while Brothers loitered nearby and he remembered that they stared at by them. At his age, he did not require supervision when showering and the leering and staring made him uncomfortable and he was afraid that the Brothers were going to sexually assault him.

Claimant Buckingham 054

[129] Claimant Buckingham 054 lived at Mount Cashel between 1975 and 1978, from when he was 15 to 17 years old. He too was aware of the rampant sexual abuse by the Brothers at the Orphanage and he tried to shield the younger residents from it and comfort them after the Brothers abused them.

[130] He says that while he was not physically abused, he was regularly forced to shower while the Brothers loitered in the shower room and stared at him and he



feared that they would abuse him. Again, he was independent enough to shower and dry himself without assistance.

Claimant Buckingham 090

[131] Claimant Buckingham 090 was a student at Brother Rice High School from 1974 to 1975. He knew Brother Ralph who taught at the School and that Brother Ralph lived at Mount Cashel. Brother Ralph made sexual overtures to Claimant Buckingham 090, describing him as handsome. He says he was forced to shower after gym class while Brother Ralph was present and stared at him. As with the other Claimants, Claimant Buckingham 090 felt uncomfortable with the attention Brother Ralph directed at him and he too did not require help in showering, drying, or dressing himself.

[132] Each of these Claimants filed Proofs of Claim (Abuse) in September 2023, two of them on September 14, 2023, and the others on September 22 and 29 respectively. The Claims Officer issued Notices of Disallowance on June 28, 2024, and denied all claims. The four Claimants filed Notices of Dispute to the Notices of Disallowance that the Claims Officer issued to them; and in all instances the Claims Officer waived its right to file Notices of Disallowance/Waiver of Supplementary Reasons.

[133] As to Claimant Buckingham 024, the Claims Officer stated:

The Abuse Claim is disallowed.

The Abuse Claim has two components.

....

The second component involves alleged abuse by Christian Brothers at Mount Cashel. The ...[RCECSJ] admits liability to the Abuse Claimant, subject to the alleged abuse being adjudicated as valid. The alleged abuse is adjudicated as not valid.



[134] Claimant Buckingham 024's Notice of Dispute relates only to the "second component" of his Claim.

[135] As to Claimant Buckingham 054, the Claims Officer stated:

The Abuse Claim is disallowed.

The Abuse Claim alleges that the Abuse Claimant was sexually abused while a resident of Mount Cashel by Christian Brothers.

It is adjudicated that the Abuse Claim does not articulate a claim in respect of which the...[RCECSJ] is at law liable, within the meaning of the CPO and the ACP.

It is further adjudicated that the Abuse Claim is not valid, within the meaning of the CPO and the ACP

[136] As to Claimant Buckingham 090 the Claims Officer provided the same reasons as he did for Claimant Buckingham 054 except in the second line of its reasons; which read here thus:

The Abuse Claim alleges that the Abuse Claimant was abused while a student at Brother Rice High School by a Christian Brother teacher.

[137] Let me summarize the reasons that the Claims Officer gave for disallowing each of these four claims:

- Claimant Buckingham 024 says that a Christian Brother leered at him and dried him off with a towel after he showered from swimming at Mount Cashel Orphanage with his classmates from Holy Cross Elementary School. The Claims Officer rejected his Abuse Claim as "not valid".
- Claimant Buckingham 025 says that Christian Brothers stared and leered at him while he showered and toweled himself off after swimming at Mount Cashel and he was afraid he might be physically abused because of what he knew about the abuse at Mount Cashel. The Claims Officer rejected his Abuse Claim as "not valid, within the meaning of the CPO and the ACP".

- Claimant Buckingham 054 says he was regularly forced to shower while the Brothers loitered in the shower room at Mount Cashel and stared at him and he feared that he would be abused. The Claims Officer rejected his Abuse Claim as “not valid, within the meaning of the CPO and the ACP”.
- Claimant Buckingham 090 says he was regularly forced to shower after gym class at Brother Rice High School while a Christian Brother was present and stared at him and he feared he would be abused. The Claims Officer rejected his Abuse Claim as “not valid, within the meaning of the CPO and the ACP”.

[138] The appeals of the Claimants Buckingham 024, 025, 054, and 090 raise these issues:

1. What is the standard of review?
2. Did the Claims Officer err?
3. What remedy are the Claimants entitled to?

1. *What is the standard of review?*

[139] The theme running through these reasons is that the Abuse Claims were “not valid within the meaning of the CPO and the ACP”. In the absence of a clear statement of why the Claims were “not valid” it appears that the Claims Officer may have considered the factual matrix of each claim and concluded that what the Claimants alleged was not abuse for which the RCECSJ was liable to the Claimants. I say that “it appears” because I am forced to deduce that by considering the context of the claims and the allegations each Claimant made about what the Christian Brothers did to him and not from what the Claims Officer actually said.

[140] This goes to the definition of abuse, which has legal and factual aspects so that appealing the Claims Officer’s findings involves matters of fact and law for which the standard of review is palpable and overriding error. Palpable error pervades the whole process and overriding error changes the outcome. I will apply



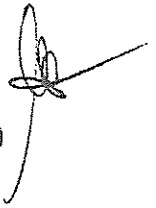
this standard of review to the Notices of Disallowance that the Claims Officer issued to these four Claimants.

2. Did the Claims Officer err?

[141] The Claims Officer disallowed each of the Abuse Claims that Claimants Buckingham 024, 025, 054, 090 submitted to it, because it deemed them “not to be valid within the meaning of the CPO and the ACP”. Neither the CPO (Claims Procedure Order) nor the ACP (Abuse Claims Protocol) define “Abuse Claim”. The CPO simply says in the “SERVICE AND INTERPRETATION” section that the term “...means a Pre-filing Claim asserted by an Abuse Claimant”. “Pre-filing Claim”, in the same section of the CPO, has a lengthy definition but it is more procedural than substantive in nature.

[142] But Article 2 of the ACP instructs the Claims Officer on “DETERMINATION OF LIABILITY”. It allows for five categories of Abuse Claimants who are “deemed to have a Proven Claim”; and the CPO provides this definition of “Proven Claim”: “[it]...means the amount and Status of a claim of a Claimant as finally determined in accordance with this Claims Procedure Order”. That definition is largely tautological and does not assist in addressing the issue posed by the four appeals here; but it is safe to say, and I do, that none of these four Claimants has a Proven Claim, either by the CPO or the ACP.

[143] For those Abuse Claims that are not “Proven Claims”, section 2.1.4 of the ACP, as I stated earlier in these Reasons, provides: If an Abuse Claimant is not deemed to have a Proven Claim, the “...Claims Officer shall review and consider all supporting documentation included in the Abuse Claimant’s Proof of Claim..., including details regarding the nature of sexual misconduct, the alleged perpetrator, the approximate date of the misconduct, and the location of the misconduct”.



[144] It follows then that the Claims Officer was required to do the following when reviewing the Claims that Claimants Buckingham 024, 025, 054 and 090 submitted:

- Review and consider all documentation submitted with their Proofs of Claim.
- Consider the nature of the sexual misconduct.
- Consider the identity of the alleged perpetrator.
- Consider the date of the misconduct.
- Consider the location of the misconduct.

The Proof of Claim

[145] I cannot say confidently that the Claims Officer considered these factors simply because the Notices of Disallowance that it issued to each of them is rote or pro forma in nature and does not allow for appropriate review. In the result, I find that the Claims Officer erred, first because its reasons do not allow for that review; but more importantly I find that if the Claims Officer had considered those factors properly it would have concluded that Claimants Buckingham 024, 025, 054 and 090 submitted valid claims and Claims Officer would have accepted them. Let me explain.

[146] The Claimants provided comprehensive Claims. They are well-documented and each is supported by a psychological assessment from a Registered Psychologist confirming the trauma the Claimant suffered because of the abuse the Brothers subjected them to. The Proofs of Claim also included “legal submissions” from Claimants’ counsel offering bases to the Claims Officer for finding the RCECSJ liable and for setting the damages the Claimants should receive.

Nature of the Sexual Misconduct

[147] The Christian Brothers did not physically abuse any of these four Claimants; but all were leered at by Brothers who stood by and stared at them as they showered



and dried themselves following gym class or swimming. In some instances, the Brothers told them they were “handsome” and otherwise graded and rated them. The Claimants, not surprisingly, experienced discomfort and embarrassment and were afraid that the Brothers would abuse them. While the leering, ogling, and courting may not have been as intrusive or as destructive of the Claimants as the physical assaults that most residents endured, the Claimants were demeaned and disturbed by it.

Identity of the Alleged Perpetrator

[148] In all four instances, the perpetrator was a Christian Brother. The Claimants named several Brothers including Brothers Ralph, Kenny, English and French. The Brothers ran Mount Cashel Orphanage and also taught at schools in St. John’s the Claimants attended, such as Brother Rice High School. The Claimants knew the Brothers personally and were well-aware of their sexual proclivities having, in some instances witnessed them abusing other boys or they knew of their reputations for sexually abusing young boys.

Date of the Misconduct

[149] The abuse took place when the Claimants were young boys, ranging from 12 to 17 years old and they were either residents of Mount Cashel Orphanage or under the direction of the Christian Brothers in school. In fact, at 15 to 17 years old, Claimant Buckingham 054 considered himself old enough to care for the others, either preventing them from being abused or counseling and consoling them when they had been abused. However, it is self-evident that the Claimants, regardless of their ages were vulnerable and impressionable and well within the control of the Brothers who courted, groomed, and abused them.



Location of the Misconduct

[150] Most of the abuse took place at Mount Cashel Orphanage, which was equated with child sexual abuse. All residents of the Orphanage knew of the Brothers' deviant behaviour and many had been abused by the Brothers or feared they would be.

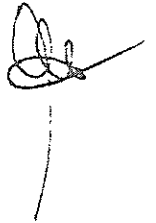
[151] I sense that the Claims Advisor's finding that the Abuse Claims were "not valid" may have risen from its concern that the Brothers did not physically assault the Claimants. However, the Claims Advisor was required to determine if the Claimants were subjected to sexual misconduct by the Brothers, and it is not necessary that such misconduct be accompanied by physical abuse. It is clear from the Proofs of Claim that Claimants Buckingham 024, 025, 054 and 090 submitted that they were traumatized by the sexual misconduct that the Brothers subjected them to.

[152] For example, the Registered Psychologist who submitted a report to support Claimant Buckingham 024's Proof of Claim said this of the impact on him:

It is my clinical opinion that the abuse Mr. [Claimant Buckingham 024] experienced impacted his mental health, well-being, relationships, employment and sense of self. It has caused him to doubt his self-worth and feel he is of no personal value. The impact of the abuse denied him the skills to develop healthy and trusting relationships and the ability to feel confident as a person to engage in relationships

[153] Each of the other Claimants experienced similar effects.

[154] Overall, I find that the Claims Officer erred in finding that the Abuse Claims that Claimants Buckingham 024, 025, 054 and 090 submitted were "not valid". If the Claims Officer had considered the factors that I reviewed above and the Proofs of Claims that the Claimants submitted with the supporting documentation the Claimants attached to them, it would have concluded that the Claims were valid.



[155] The Claims Officer erred palpably and its errors had an overriding effect on the conclusions that it came to.

3. What remedy are the Claimants entitled to?

[156] In the result, I set aside the Notices of Disallowance that the Claims Officer issued to Claimants Buckingham 024, 025, 054 and 090. I remit Claims Buckingham 024, 025, 054 and 090 to the Claims Officer and I direct it to determine the compensation, if any that is due to those Claimants.

Part 4: Claimants Abuse by Nuns

Background

[157] The Claims Officer disallowed claims by Claimants Budden 076 and 187, who were abused by Sisters of Mercy who taught them in grade school.

Claimant Budden 076

[158] Claimant Budden 076 submitted her Proof of Claim on September 24, 2023. She was a student at St. Patrick's Convent School in St. John's, NL which was owned and operated by the Roman Catholic Episcopal Corporation under the auspices of the Sisters of Mercy.

[159] She alleges that her teacher, a nun who lived at St. Patrick's Convent, abused her, "in or about the year 1956, when ...[I] was 12 years old and in Grade 7" (Proof of Claim). She claims that the abuse took place in a cloakroom off her classroom. She says the nun opened the top of her school uniform on two occasions and fondled her bare breasts under her clothing. She also claims that her teacher touched her body outside her clothing while she was sitting at her desk in the classroom, and even

though that touching was not overtly sexual, it made her uncomfortable and anxious because of the other incidents.

[160] The Claims Officer filed its Notice of Disallowance to Claimant Budden 076's Claim on June 28, 2024. The Claims Officer offered this support for its decision to disallow the Claim:

The Abuse Claim is disallowed.

The Abuse Claims alleges that the Abuse Claimant was sexually assaulted while a student at St. Patrick's Convent School by a nun of St. Patrick's Convent who was one of her teachers.

It is adjudicated that the Abuse Claim does not articulate a claim in respect of which the ...[RCECSJ] is at law liable, within the meaning of the CPO and the ACP. For the purpose of adjudication, the alleged abuse is assumed to be valid.

[161] Claimant Budden 076 filed her Notice of Dispute on August 16, 2024, and the Claims Officer filed its Notice of Disallowance/Waiver of Supplementary Reasons on September 20, 2024.

Claimant Budden 187

[162] Claimant Budden 187 filed her Proof of Claim on September 25, 2023. She was a student in a small rural school and claims she was abused by a Sister of Mercy during the 2 to 3 years that she was in Grades 4 to 7. She was 9 or 10 years old at the time and she says the abuse occurred frequently, as many as 1 to 3 times a week and even 3- or 4-times during summer vacation.

[163] She claimed it happened in several venues, either in a bathroom or a bedroom of the Convent, and that it was the Principal of the school abused her. She claims that the Sister stroked her breasts and other parts of her body, such as along the top of her bum; and also, that the Sister penetrated her anus and vaginal digitally and forced the Claimant to kiss her breasts and perform oral sex on her.



[164] And the Claimant says there was another dimension to the abuse which took place in the R.C. Parish in the community. This is how she described it in her Proof of Claim:

There was a private staircase at the Parish House, and ... [the Sister] would wash us children and tidy us up to stand in a line so the Priest could evaluate us. On at least two occasions, in the bedroom of the Parish House, ... [the Sister] and the Priest forced myself and another child to take off all of our clothes, and made us touch each other in a sexual manner as they watched. I was also made to take part in oral sex with the Priest on several occasions.

[165] The Claimant said that another nun who taught her in Grade 4 was present when some of the incidents with the Principal occurred and witnessed what was happening but did not participate in the abuse. Nor did she, as the Claimant ruefully notes in her Proof of Claim, "...intervene nor protect me from the sexual violence that I was experiencing".

[166] The Claims Officer filed its Notice of Determination to Claimant Budden 0187's Proof of Loss on June 28, 2024. The Claims Officer split the Claim twofold for its adjudication. In the first instance, it "...determined that the Proof of Claim articulates claims for which the Applicant is at law liable"; and it "...determined that the dollar amount of the Claimant's Abuse Claim to be \$510,000", spread across three heads of damages. The Claims Officer identified this as the "second component" of the claim and it related to the "...alleged abuse by the priest [which] is adjudicated as valid".

[167] As to the first component of the Claim the Claims Officer stated:

The first component involves alleged abuse by nuns teaching at Roman Catholic schools in the Archdiocese. The ...[RCECSJ] is adjudicated as not liable in law to the Abuse Claimant, as detailed below.



[168] These are the “details” that the Claims Officer provided “below”:

The second component involves alleged abuse jointly by a nun and a priest. The ...[RCECSJ] has admitted abuse claims involving priests employed in the Archdiocese, subject to the alleged abuse being adjudicated as valid. The alleged abuse by the priest is adjudicated as valid ...

[169] While the “second component” of the Claim is not relevant to this appeal, I include it because it will, as appears below, help in understanding the pithy reasons the Claims Officer provided for disallowing the first component.


[170] Claimant Budden 187 filed her Notice of Dispute on August 16, 2024. In her Notice, she specified what she was disputing:

[4] ...The Claimant disputes the determination of the Claims Officer that the ... [RCECSJ] is not liable for the sexual abuse perpetrated against her by a nun at the Convent House and the Parish House ...

[171] On September 20, 2024, the Claims Officer filed its Notice of Disallowance/Waiver of Supplementary Reasons electing not to respond to Claimant Budden 187’s Notice of Dispute.

[172] The appeals filed by Claimants Budden 076 and 187 raise these issues:

1. What is the standard of review?
2. Did the Claims Officer err?
3. What remedy are the Claimants entitled to?



1. *Standard of Review*

[173] Claimant Budden 076 and 187 submit that I should review the Claims Officer's Notices of Determination/Disallowance on correctness. They offer two rationales for their submission in the Factum they filed on October 25, 2024:

33. The standard of review for the question of whether the RCECSJ was vicariously liable for the conduct of the Sisters is a question of law. The standard of review applicable is that of correctness.

34. In the alternative, if the question of vicarious liability is found to be a question of mixed fact and law, the Claimants submit there is an extricable legal error and/or due to insufficient reasons provided to the Claimants, those reasons give rise to an error of law. In both scenarios, the standard of review remains that of correctness.

[174] I agree with both submissions. Let me explain.

[175] In *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's* 2020 NLCA 27, our Court of Appeal considered whether Faour, J. applied the correct law of vicarious liability to the evidence before him when he decided whether the RCECSJ was liable for the actions of the Christian Brothers. It concluded that he did not and noted:

[118] In summary, the judge erred in law in failing to apply the correct law of vicarious liability to the evidence. He also erred in failing to globally assess the evidence when applying the doctrine to the evidence and by conflating the closeness and connection inquiries. The latter errors are extricable errors of principle. The errors, being subject to the correctness standard of review, are so fundamental to the determination of the ultimate issue that they undermine the judge's decision not to impose vicarious liability on the Archdiocese for the Brothers' wrongdoing.

[176] I am thwarted from inquiring similarly of the Claims Officer in this appeal by the reasons it offers for disallowing the claims against the Sisters of Mercy. I quoted earlier that the Claims Officer justified its decision to disallow the second component

of the Claims (i.e. that portion of it which relates to the actions of the Sisters of Mercy) by comparing the relative positions of the priests and nuns; and as to the Priest against whom Claimant Budden 187 complained it said: "The ...[RCECSJ] has admitted abuse claims involving priests employed in the Archdiocese...". I deduce from that comment that the Claims Officer was satisfied by this admission to find the RCECSJ liable for the Priest's actions.

[177] By extension, I surmise that the Claims Officer would not find the RCECSJ liable for the actions of the Sisters of Mercy, simply because the RCECSJ had not admitted any liability for their actions. If that is the logic the Claims Advisor followed, it erred in law because it did not consider the relationship between the Sisters and the RCECSJ to determine if the RCECSJ might be vicariously liable for them.

[178] Of course, overriding all of this analysis is the sparseness of the reasons that the Claims Officer provided for rejecting the Claims that both Claimants Budden 076 and 187 presented to it. Those reasons offer this (and the only) theme: "It is adjudicated that the Abuse Claim does not articulate a claim in respect of which the ...[RCECSJ] is at law liable, within the meaning of the CPO and the ACP".

[179] It is just as I said earlier in these reasons, when I reviewed the reasons the Claims Officer provided for disallowing the claims the BC Claimants presented: "Counsel for the BC Claimants submits in his Factum, and I agree, that the Claims Officer's reasons are inadequate because they do not permit 'meaningful review of the substantive merits of the decision under appeal'".

[180] In the result, I find that the Claims Officer erred in law by not examining the relationship between the RCECSJ and the Sisters of Mercy to see if the RCECSJ might be vicariously liable for their actions; and otherwise, by failing to articulate sufficient reasons for disallowing the claims of Claimants Budden 076 and 187 to allow me to examine them meaningfully. Thus, I may substitute my decisions on liability in both instances, if I disagree with the Claims Advisor.

2. Did the Claims Officer err?

[181] I find that the RCECSJ is vicariously liable for the actions of the Sisters of Mercy that both Claimants Budden 076 and 187 complained of. Let me explain why.

[182] In *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's* 2020 NLCA 27, our Court of Appeal considered whether Faour, J. at trial had erred when he decided the Corporation was not liable for the actions of the Christian Brothers. It found that he did err and it stated what he should have done to conclude that it was liable:

The issue was whether the relationship between the Archdiocese and the Brothers at Mount Cashel who committed the wrongs, as well as the connection between the Brothers' assigned tasks and the sexual assaults they committed, were sufficient to justify the imposition of vicarious liability. (paragraph 81)

[183] Thus, when I analyze the question of whether the RCECSJ is vicariously liable for the actions of the Sisters of Mercy, I will proceed on two fronts: 1. The relationship between the Sisters of Mercy and the RCECSJ; and 2. The connection between the tasks the RCECSJ assigned to the Sisters of Mercy and the sexual assaults that they committed.

1. The Relationship between the Sisters of Mercy and the RCECSJ

[184] In *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60, Faour, J. made significant findings about the relationship between the Sisters of Mercy and the RCECSJ:

- “In the field of education, the Roman Catholic Bishop invited certain orders of Sisters and Brothers to provide and operate schools. While the Church was staffed by well-educated clergy, their education focused on philosophy and theology, and not pedagogy. The Presentation and Mercy Sisters had an



expertise and reputation in education and began educating children in 1833”. (paragraph 8)

- “Throughout its history, the Archdiocese was also instrumental in bringing into the community other religious orders, in particular the Sisters of Mercy and Presentation Sisters. Both these religious orders of women established and operated schools within the diocese, and in other areas of Newfoundland. The Sisters of Mercy also established and operated a hospital facility from about 1913 in St. John’s until the government took over its operation in the 1990’s. All of these facilities were supported by the Archdiocese”. (paragraph 26)
- “If they were not ordained, the religious congregations, Sisters or Brothers, often were dedicated to a social function, in education or health care”. (paragraph 31)
- “According to Dr. Fitzgerald, and underscored by the two experts in Canon Law who testified, there was a key difference in governance between the Presentation and Mercy Sisters in the diocese, and the Christian Brothers. This difference has some significance in a determination of the degree of authority exercised by the Archbishop over the religious orders. Dr. Fitzgerald described the difference between congregations of Diocesan Rites and congregations of Pontifical Rites. The former recognized the Archbishop as their Superior and took direction from him. Both congregations of Sisters in the Province, the Presentation and Mercy congregations, were of Diocesan Rite, and were answerable to the bishop in any diocese in which they operated”. (paragraph 34)

[185] From the preceding, it is clear that there was a strong relationship between the RCECSJ and the Sisters of Mercy, based on these factors:

- The RCECSJ invited the Sisters of Mercy to operate their schools because the Sisters had expertise as child educators.
- The RCECSJ either owned or supported the schools which the Sisters of Mercy operated.
- The Sisters of Mercy also had societal outreach because of their expertise in health and education.

- The Sisters of Mercy were a congregation of Diocesan Rite, for whom the Archbishop was their Superior and from whom they took direction.

[186] I find that the relationship between the RCECSJ and the Sisters of Mercy is sufficiently close for the Corporation to be liable for the actions of the Sisters. I turn now to consider whether the Sisters' actions were sufficiently close to what the RCECSJ required of them to justify that finding.

2. The Connection between the Assigned Tasks and the Sexual Assaults

[187] In *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's* 2020 NLCA 27, our Court of Appeal set out five factors that apply to this consideration:

- (a) the opportunity that the enterprise afforded the employee to abuse his or her power;
- (b) the extent to which the wrongful act may have furthered the employer's aims (and hence be more likely to have been committed by the employee);
- (c) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer's enterprise;
- (d) the extent of power conferred on the employee in relation to the victim;
- (e) the vulnerability of potential victims to wrongful exercise of the employee's power.

[188] Let me examine each of these factors to see how they apply here.

Opportunity

[189] Claimants Budden 076 and 187 both attended schools owned by the RCECSJ and operated by the Sisters of Mercy on its behalf. Claimant 076 went to St. Patrick's

Convent School and the Sister who abused her lived in St. Patrick's Convent. She said that the Sister abused her in the cloakroom of the Grade 7 classroom where she attended school and that the RCECSJ owned and operated that school. As well, it is clear that she was under the control and direction of the Sister.

[190] Similarly for Claimant Budden 187, she attended a school that the RCECSJ owned and operated in a small rural community. She says she was abused in the bathroom of the school, in the back bedroom of the Convent and in the bedroom of the Parish House where the Priest resided.

[191] In each instance, the Claimants were young, immature children who were under the care and direction of the respective Sisters of Mercy who abused them while they attended the schools that the Sisters operated for the RCECSJ.

Wrongful Acts Furthering the Aims of the RCECSJ

[192] As the Court of Appeal said of the Christian Brothers in *John Doe (G.I.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's* 2020 NLCA 27, "... [the] laudable objectives of the Archdiocese cannot be said to have been endorsed or encouraged in any way by the wrongful conduct of the Brothers". (paragraph 190)

Relationship Between Wrongful Acts and Friction, Confrontation or Intimacy

[193] There is nothing particularly relevant between the wrongful acts the Sisters of Mercy committed on the Claimants and any friction or confrontation within the Sisters of Mercy. However, it may be said that the Sisters would naturally have been sources of comfort and support for the girls and would have developed intimacies with them by such measures.

Extent of Power Conferred

[194] Claimant Budden 187 told in her Proof of Claim of the control that the Sister who abused her exerted over her by physical violence:

“Sister [M...] used physical punishment like strappings with an alder branch to the hands, back, knees and wrists and there was always the threat of strapping if [I] did not go to the Convent House after school. Sister [M...] would tell me if I told anyone about the incidents of sexual abuse, both that no one would believe me, and that my parents would get in trouble if [I] told anyone and that I would be taken away and put with strangers for telling lies”.

[195] Similarly, Claimants Budden 076 said this in her Proof of Claim of the control that the Sisters exerted over her:

“The Claimant states that the nuns were violent and controlling, and that she was fearful of physical punishment. The Claimant knew that she must do as she was told by them or she would be punished”.

Vulnerability of Claimants

[196] The preceding quotations also portray how vulnerable the Claimants were to abuse by the Sisters. But this quotation from Claimant Budden 187’s Proof of Claim captures it even more poignantly. It was her answer to the question if she reported the abuse to anyone:

“I told my mother and grandma at the time. My mother did not believe me and my grandma said, *“my girl it is going to be ok”*.”

[197] From that it is apparent that Claimant Budden 187 was alone with her trauma, abandoned to her abuser by her family.

[198] Claimant Budden 076, when she responded to the same question in her Proof of Claim, related the following:

“The Claimant first told a priest in confession.... She made this confession 3-4 years following the incidents of sexual misconduct.... She recalls... [the Priest] continually asking her if he was ‘sure’ what happened; She felt he was waiting for her to recant her confession”.

[199] Overall, the Sisters of Mercy had expertise in education and were recognized for their instructive and developmental skills, particularly with young children. They were also a lay religious order, who were dedicated to the spread of Catholicism, the *raison d'être* of the RCECSJ. The Sisters had unrestricted access to the children in their care and the opportunity to establish Catholic religious observance early with them in their young and impressionable lives. That growth of the Catholic faith flowed naturally between the mandate of the RCECSJ and the access the Sisters of Mercy had to their young charges to foster and develop it.

[200] I find that the Sisters’ actions were sufficiently close to what the RCECSJ required of them to find that the RCECSJ were liable for their actions. In the result, I find that the RCECSJ is vicariously liable for the sexual misconduct that the Sisters of Mercy directed towards Claimants Budden 076 and 187.

3. What remedy are the Claimants entitled to?

[201] I set aside the Notices of Disallowance/Determination that the Claims Advisor issued to them and direct the Claims Advisor to direct it to determine the compensation, if any that is due to those Claimants because of the sexual misconduct of the Sisters of Mercy who abused them.

SUMMARY AND DISPOSITION

[202] Fifty-nine Claimants filed Notices of Dispute to Notices of Disallowance/Determination/Supplementary Reasons that the Claims Advisor issued to them after it considered their Notices of Dispute. They argued variously that the Claims Advisor erred in law, in fact or in mixed fact and law and that the Notices the Claims Advisor issued to them should be set aside.

[203] The Court allowed all Notices of Dispute. It found the RCECSJ liable either directly or vicariously to the Claimants. It set aside the Claims Officer's findings on liability and remitted the Claims to the Claims Officer to determine the damages the Claimants are entitled to.

ORDER

[204] In the result I order that:

1. The Claims Officer erred in law, in fact or in fact and law in disallowing the fifty-nine claims of the Claimants who filed Notices of Dispute in these proceedings.
2. The RCECSJ is liable either directly or vicariously to the fifty-nine Claimants in damages.
3. The Claims Officer shall determine the damages that the fifty-nine Claimants are entitled to receive from the RCECSJ.



GARRETT A. HANDRIGAN
Justice