IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Anderson v. Molon,*
2020 BCSC 1247

Date: 20200825
Docket: S1611860
Registry: Vancouver

Between:

Rosemary Anderson

Plaintiff

And

Father Erlindo Molon by his Litigation Guardian The Ontario Public Guardian and Trustee, Roman Catholic Bishop of the Diocese of Kamloops, a Corporation Sole

Defendants

Before: The Honourable Mr. Justice Crossin

Reasons for Judgment

Counsel for the Plaintiff:	S.L. Kovacs C. Linegar R. Leung
Counsel for the Defendants:	J.M. Hogg, Q.C. D. Jaccard
Place and Date of Trial/Hearing:	Vancouver, B.C. October 7-10, 15-18, 2019, February 10-13 and March 10-11 and 13, 2020
Place and Date of Judgment:	Vancouver, B.C. August 25, 2020

Introduction

[1] In September 1976, the plaintiff, having been raised in Vancouver, B.C., and travelled the world somewhat, found her way to Kamloops, B.C. to begin employment as an elementary school teacher. It was a Catholic school, Our Lady of Perpetual Help. This suited the plaintiff very much. She loved teaching and was a devout Catholic. The plaintiff was then about 27 years of age.

[2] The defendant, Father Erlindo Molon ("Fr. Molon") was at that time an assistant pastor living in the rectory at the same parish. Fr. Molon was there on the authority and under the supervision of the defendant, Roman Catholic Bishop of the Diocese of Kamloops ("the Diocese"). The Diocese is a corporation sole of perpetual succession pursuant to the Bishop of Kamloops, the *Roman Catholic (Incorporation) Act*, S.B.C. 1947, c. 102. Archbishop Emeritus Adam Exner was then Bishop of the Diocese of Kamloops possessing the usual supervisory authority over his clergy in the parish, including Fr. Molon.

[3] Shortly after the plaintiff arrived and began her teaching responsibilities Fr. Molon commenced a sexual relationship with the plaintiff. It was a relationship born of a betrayal of trust and perpetuated by an abuse of power. The relationship ended some months later, in approximately February or March 1977.

[4] Some decades later, in December 2016, the plaintiff brought this action against Fr. Molon and the Diocese. The claim seeks damages against Fr. Molon primarily based on battery arising from the sexual relationship. The plaintiff also seeks damages against the Diocese. This later claim sounds in negligence and breach of fiduciary duty and rests on the alleged wrongful conduct of Bishop Exner during the relevant period. Bishop Exner is not a named defendant.

[5] Fr. Molon is unable to manage his affairs. A litigation guardian was appointed and a response to civil claim was filed on his behalf. He did not however participate in the trial in any way.

[6] The Diocese concedes damages will flow as a result of the conduct of Fr. Molon, and agrees it will be vicariously liable for any damages awarded against Fr. Molon. The Diocese however denies any direct liability as alleged or at all.

[7] The evidence in this matter naturally focused on the life of the plaintiff; including, of course, the evidence of the sexually assaultive behaviour on the part of Fr. Molon during the plaintiff's months in Kamloops. The evidence concerning this conduct was essentially uncontradicted. It paints a disturbing picture of a priest pursuing, for his own prurient interests, the calculated exploitation of a young woman who was obviously, at that stage of her life, in dire need of emotional and spiritual care.

[8] In addition, the plaintiff testified concerning her life over the 40 years since she left Kamloops; her marriage, her children, her career, and her emotional and spiritual wounds.

[9] Bishop Exner testified. Bishop Exner gave evidence concerning his relationship with Fr. Molon, his dealings with the plaintiff, and his understanding of the sexual habits of Fr. Molon prior to, and subsequent to, the arrival of the plaintiff at the Diocese. The Bishop effectively conceded a failure of leadership, responsibility, and care. The Bishop recognizes now, and I believe recognized at the relevant time, there was a right path and there was a wrong path concerning his engagement with Fr. Molon and the plaintiff. In my view, he chose the wrong path.

Evidence and Analysis

[10] The plaintiff is currently 70 years of age. She began her testimony offering a good deal of evidence concerning her childhood.

[11] It did not appear to be a particularly joyful childhood. In fact, it appeared to be quite miserable. Her memories often reveal an atmosphere of repression, and feelings of shame. Her father, who figures prominently in her life narrative, was, according to the plaintiff, a man that demanded total obedience. He would physically assault her, by spanking, if he felt it was required.

[12] She was socially awkward and felt somewhat isolated. She testified she thought of herself as ugly and unloved by her parents. Consequently, and perhaps not surprisingly, the evidence of the plaintiff is that by the age of 16 or 17 she was already suffering from low self-esteem, feelings of depression, and thoughts of suicide; which ideation persisted, on and off, for some years.

[13] She attended an all-girls Catholic school throughout her school years. In high school she appeared to have had few, if any, friends. Her first sexual experience of any kind occurred in grade 11. It was not a positive experience. She was grabbed, kissed, and fondled in a car. She froze. The boy stopped. It left her terrified and racked with guilt and fear that she had committed a mortal sin.

[14] The plaintiff has a very high IQ and upon graduating from high school she set off for university; “out from under my father’s thumb”.

[15] She attended Notre Dame University in Nelson, B.C. in 1967. This however was only for one year. The plaintiff had some initial career thoughts about the medical profession but was not really sure at that point. The plaintiff did not do particularly well academically in her year in Nelson. This fact she hid from her father.

[16] The plaintiff moved back in with her parents in Vancouver the following year and entered the University of British Columbia to carry on her studies. She attended UBC from time to time between 1968 and 1974. In the first two or three years she also worked part-time at St. Vincent’s Hospital cleaning surgical tools.

[17] Again, she did not do well scholastically. The family atmosphere was not helpful. It was around this time in her life the plaintiff finally found the courage to stand up to her father; but it was fleeting. It was an incident that obviously impacted her psychological landscape. Having spoken out in opposition to her father's viewpoint, she was told by her mother that unless she apologized to her father, her father would kill himself.

[18] The plaintiff then moved to an apartment in Vancouver. She continued with classes but sabotaged her efforts by setting herself somewhat of a self-destructive

goal: how many classes could she skip and still manage to pass. Again academically, the plaintiff did not excel. This culminated in the plaintiff once again moving back under her parents' roof.

[19] Ultimately, the plaintiff determined she would like a career in teaching. The plaintiff's sister was at that time a nun stationed in Africa and the plaintiff had understood through a friend of her sister that there may be need for teachers in Uganda. The plaintiff set off for Uganda. The plaintiff found a position at a Catholic school run by nuns and began teaching in Uganda for the year between approximately January 1972 and January 1973. She found this very rewarding.

[20] During this period of time she took a month to travel to Kenya and Tanzania. While travelling, she happened to be delayed waiting for a bus. She testified she felt vulnerable in the circumstance to the point that she phoned the local Catholic Church to determine if arrangements could be made for assistance. A young priest, Father Malone, arrived at the bus stop, along with another, and invited the plaintiff to come back to the grounds of the church. Father Malone suggested she stay for a while, which she did. There were two guest rooms. The plaintiff testified that she found Father Malone attractive and developed a crush on him.

[21] Upon arrival, Father Malone invited the plaintiff to his room, grabbed her unexpectedly, and pulled her into his bed. She testified she was surprised someone would "hit on her", especially a priest. They had sexual intercourse and she then spent the next few days, and nights, with Father Malone and continued with the sexual relationship. She then left with what apparently were positive memories, although she was somewhat troubled by the fact he was a priest. Consequently, she went to confession. She has testified however she now feels, looking back, she was victimized and exploited by Father Malone. In fact, she now characterizes the sexual relationship as non-consensual.

[22] In any event she returned to Uganda after her stay with Father Malone, and eventually left Uganda for some brief travelling in France and England before returning to Canada.

[23] In France, she went to assist in the work of Jean Vanier. The evidence concerning Mr. Vanier and her stay is somewhat vague. What little I was told brings me to the conclusion that Mr. Vanier appeared to be another controlling male figure involved in some kind of spiritual teaching. In the course of her stay the plaintiff testified that Mr. Vanier at some point leveled certain criticisms towards her that she felt were unjustified. Exactly what these criticisms were remain unclear but they distressed the plaintiff to the point she attempted suicide by ingestion of pills. Precisely what tipped the plaintiff over the edge was not explored in evidence.

[24] The plaintiff ultimately returned home to Vancouver and once again took up studies at UBC. This was the school year in 1973. She graduated in 1974 with a Bachelor of Arts degree that appeared to be primarily focused in English. She took a fifth year to improve her average grades and continue to pursue her teaching career; a career the plaintiff states met with the approval of her father.

[25] The plaintiff received the equivalent of a Bachelors degree in Education and in the spring of 1975 undertook her teaching practicum for some weeks in Rock Creek, British Columbia. Rock Creek is a small community near Trail, British Columbia. Again, this proved to be another regrettable circumstance of sexual interaction.

[26] The plaintiff had arranged for the practicum to take place in Rock Creek because there was a religious commune nearby where she wanted to stay. A man named Ralph Gerrard was the leader of the commune; a faith healer in the eyes of his followers.

[27] The plaintiff did in fact reside at the commune in the spring of 1975 until the end of the school year. She returned to reside at the commune in September 1975 and taught at Greenwood Elementary School for the ensuing school year. The Greenwood School is nearby.

[28] During the course of her stay at the commune Mr. Gerrard would habitually come to her room at night and the two would engage in what is described as mutual

masturbation by kissing and fondling. The plaintiff testified she was conflicted concerning the sexual relationship with Mr. Gerrard. The plaintiff states that she was sensitive to the fact that Mr. Gerrard was married with children, whose wife and children were also on the property; but on the other hand, the plaintiff states, the sexual activity was physically satisfying.

[29] The duration of this sexual relationship is unclear on the evidence. What is clear is that these circumstances ultimately so traumatized the plaintiff that she sought medical treatment from her local doctor and began, during the course of her stay at the commune, a regime of anti-depressant medication.

[30] It appears that sometime in 1976 her state was so degraded it was noted by the school nurse. The plaintiff then generally disclosed the circumstances of her difficulties with Mr. Gerrard to the nurse, and was persuaded by the nurse to leave the commune and live with the nurse until the end of the 1976 school year. The plaintiff now describes the relationship with Mr. Gerrard as a series of sexual assaults.

[31] During her stay she came to know a Father Wilson. Father Wilson suggested she apply for a teaching position in Kamloops. She interviewed for the position in the summer of 1976 on her return to Vancouver from Rock Creek.

[32] In this period of time, her father had become unwell. He was residing on Bowen Island and on July 31, 1976 her father collapsed and died in the arms of the plaintiff. This was understandably profoundly traumatic.

[33] The plaintiff did however carry on and obtained the teaching position in Kamloops. She arrived in Kamloops to get ready for the school year on Labor Day 1976. The plaintiff found an apartment about a three-minute walk from the Chancery where the school and offices of the Bishop were located. Fr. Molon resided in the rectory connected to the church.

[34] The plaintiff and Fr. Molon eventually crossed paths in the course of various duties and activities connected with the church and school. The plaintiff described

Fr. Molon as jolly, older, and unattractive; at least unattractive to her. It was around the latter part of September 1976 that the plaintiff sought out Fr. Molon for comfort and solace as she was still grieving the death of her father.

[35] The offices of Fr. Molon were in the rectory. Connected to his office was his bedroom, through a door.

[36] The plaintiff and Fr. Molon met in his office. They were seated close enough to enable the two to make physical contact. The plaintiff was quite upset. In due course, Fr. Molon asked if he could hold her hand. He also touched her right shoulder and right knee. The plaintiff testified that she immediately wondered to herself if the contact was sexual and concluded, in her own mind, that she did not think so.

[37] Ultimately, the plaintiff rose to leave and the two walked towards the door that exited the office. The plaintiff testified Fr. Molon then walked in front of her, embraced her, and kissed her.

[38] The evidence of the plaintiff as to what then occurred is vague. In fact, for the next ensuing decades, she testified that she either had no memory of the sexual relationship or simply did not think about it.

[39] The plaintiff testified it was only days before she was giving evidence in the trial that she brought forward thoughts of what she describes as an image of what then occurred after the embrace and kiss at the door.

[40] The plaintiff testified to an image of his hands on her; taking her by the hand, and leading her to his bedroom through the door connecting the office to his bedroom. She has no images of what then occurred, until the next morning. The plaintiff testified that she remembered waking up. She told him it was wrong. Fr. Molon told the plaintiff that he had uncles in the Philippines that had mistresses and it was okay to have mistresses.

[41] This sexual relationship continued for some months until approximately February or March 1977. The plaintiff states she felt trapped and didn't know how to end it. She testified she allowed it to happen in the sense that she couldn't stop it. She often froze with the hope that whatever was occurring would end quickly. The plaintiff made it clear she derived no pleasure from the sexual encounters. She testified she was not freely participating. The plaintiff estimates that she and Fr. Molon had intercourse 70 to 100 times over the course of these months.

[42] In so far as the sexual activity was concerned, the plaintiff testified that it would occur in the rooms at the rectory as well as at her apartment. There was little evidence of exactly what transpired; how it transpired, and the nature of the interaction. There is some evidence of the habits of Fr. Molon concerning ejaculation.

[43] The plaintiff was asked whether on any of these many occasions of intercourse she felt under threat of any kind. The plaintiff could provide evidence of two such occasions. On one occasion he threatened to kill himself if he couldn't continue the relationship.

[44] The other occasion was perhaps the last occasion of intercourse, probably sometime in February or March 1977. The plaintiff testified that Fr. Molon was in her apartment trying to rape her and she pushed him off. She recalled him complaining that she had left him in pain. He was upset and lectured her about her conduct which made her feel like it was her fault.

[45] In addition, the plaintiff testified that throughout the relationship the plaintiff would assist Fr. Molon with his sermons and help edit the English in those sermons.

[46] It is obvious to me that Ms. Anderson, upon encountering Fr. Molon, was in a vulnerable state, seeking comfort, guidance, and care from a person of spiritual stature, a stature she not only trusted but revered. Fr. Molon was clearly in a position of moral power and authority. It became immediately apparent that he had little

regard for her welfare. What he did hold in high regard was his visceral sexual needs, and he exploited the plaintiff for that purpose.

[47] The plaintiff was not silent concerning this relationship as it was unfolding. During the relevant time, the plaintiff disclosed what was occurring at confessional at the parish. In particular, she confessed, 12 to 15 times, over these few months, to a Father Barry Desmond. She felt by disclosing it to Father Desmond in confession it would remain confidential and she could avoid a scandal.

[48] Then, somewhat of a curious turn. After some period of time, perhaps near the end of 1976 or the beginning of 1977, Fr. Molon proposed marriage to the plaintiff. The plaintiff suggested Fr. Molon seek out Bishop Exner to obtain his advice on the matter. What I take from the plaintiff's evidence is that she felt the marriage would absolve the sin of having intercourse out of wedlock. That said, she did not really want to marry Fr. Molon. The issue of marriage as well, from the plaintiff's perspective, provided a vehicle to seek some help and guidance from Bishop Exner. How the prospect of marriage was to be a realistic proposition was not made clear to me on the evidence.

[49] In any event, Fr. Molon procrastinated in meeting with Bishop Exner to discuss marriage, notwithstanding the urging of the plaintiff. Finally, after a few weeks, the plaintiff told Fr. Molon she would have the discussion with Bishop Exner herself.

[50] The plaintiff made an appointment. The two met in Bishop Exner's office. The plaintiff testified she told Bishop Exner what had been happening between her and Fr. Molon. There is no evidence as to what precisely she said. The plaintiff asked for Bishop Exner's advice as to whether she should accept the proposal of marriage.

[51] The plaintiff stated that Bishop Exner asked if she had told anyone else so that it might provide evidence of what had been occurring.

[52] According to the plaintiff, she advised that no one knew except Father Desmond. Bishop Exner asked the plaintiff's permission to speak to Father

Desmond. She gave it. Father Desmond, according to the plaintiff, attended immediately and confirmed the plaintiff had been confessing what had been occurring with Fr. Molon over these many months. The attendance of Father Desmond is disputed by Bishop Exner. Father Desmond did not give evidence.

[53] The plaintiff states there were two more meetings with Bishop Exner following this initial meeting. Bishop Exner, in his evidence, can only recall one meeting.

[54] In any event, according to the plaintiff, the first meeting ended with Bishop Exner advising that he would think about what she should do. At some point, Bishop Exner advised against marriage.

[55] The second meeting, according to the plaintiff, consisted of Bishop Exner advising the plaintiff that he had met with a committee. He had spoken to Fr. Molon and offered to send him to an institution in Ontario for wayward priests. He also told the plaintiff that Fr. Molon would have to leave Kamloops. While this was a relief to the plaintiff, Bishop Exner also indicated that she would also have to leave Kamloops. The plaintiff could not understand why that had to be so and Bishop Exner ended the meeting by asking the plaintiff simply to think about it.

[56] The plaintiff states she and Bishop Exner met again. The plaintiff told Bishop Exner that she had thought about it and wanted to stay in Kamloops. Bishop Exner said that she could not stay because “they wouldn't let up until you go insane, and they'll crucify you”. There was no evidence as to what “they” meant but I gather it referenced the parishioners.

[57] Throughout the meeting or meetings, the plaintiff testified that Bishop Exner approached matters in a kindly way and, in her view, Bishop Exner was genuinely trying to help her. It is not suggested by the plaintiff that Bishop Exner made any reference to the plaintiff being a criminal; nor that she was to blame for the state of affairs, nor that she was told to leave by Bishop Exner because she would be a bad influence on her students. This evidence, or lack of evidence, has relevance to matters that will be referred to in due course.

[58] It appears that within about ten days of the meeting with Bishop Exner, Fr. Molon was stripped of his sacraments by Bishop Exner and thereafter vacated the rectory. It is unclear where precisely Fr. Molon landed. There were rumours that he was living in the basement of a parishioner's home in the Kamloops area and conducting mass at that location. In addition, for a time at least, Fr. Molon would continue to arrive at the plaintiff's apartment and, in the plaintiff's words, rape her. An incident in this regard has been previously referenced.

[59] The plaintiff did not renew her application to continue employment in Kamloops, but continued to teach until the end of the school year; May 1977.

[60] In determining her next steps, the plaintiff looked to Halifax. Another one of her sisters lived in Halifax. At some point previously, the Archbishop of Halifax, Archbishop Hayes, had promised the plaintiff a teaching position if an opportunity ever arose. The plaintiff decided to take up that offer and she left Kamloops at the end of the school year. The plaintiff also resolved to continue to pursue a Master's degree in religious education during the summer semesters at Seattle University. Indeed, she attended the 1977 summer semester at Seattle University before commencing her teaching obligations in Halifax beginning in September 1977.

[61] The plaintiff testified however that on New Year's Eve 1977, she was overcome with grief concerning her father and the events in Kamloops such that, again, she attempted suicide by the ingestion of pills. At the same time, she telephoned Archbishop Hayes and the Archbishop was either told by the plaintiff what the plaintiff was intending, or the Archbishop determined there was a problem. This resulted in Archbishop Hayes attending the plaintiff's apartment and taking her to the hospital. The plaintiff did not lose consciousness, stayed the night in the hospital, and was discharged the next day.

[62] The plaintiff subsequently sought psychiatric care as an outpatient but she cannot remember how that came about. She believes she stopped the counselling after some months because she did not think it was assisting her. It is unknown what issues were addressed in the counselling sessions but the plaintiff testified she did

not discuss her issues with Fr. Molon because, as she stated, she wasn't asked. Too much time, in her view, was spent discussing the relationship with her father.

[63] The plaintiff continued to teach successfully in Halifax and continued to do well scholastically in the summer semesters at Seattle University. In fact, over three semesters in religious studies, in 1977, 1978, and 1979, she achieved a 4.0 GPA.

[64] By any standard, by 1979, the plaintiff was advancing well in her teaching career. She was supervising other teachers and was the Parish director of religious studies.

[65] Nevertheless, in 1979, the year she was turning 30, her thoughts turned again to the pursuit of medicine. She wrote the MCAT in the spring of 1979. Her score was reasonable. The plaintiff visited the Dean of Medicine at Dalhousie University. The tenor of the advice she received was that she really needed to go back to University and pursue a year of relevant study. She left her teaching employment and registered for additional relevant courses at Dalhousie University in accordance with that advice. The studies began in the fall of 1979. The plaintiff took the MCAT exam again in the fall of 1979 and again it was a competitive score; but as her studies evolved, it was apparent again she was not doing particularly well scholastically.

[66] The plaintiff however applied to three medical schools in the spring of 1980: Dalhousie, McMaster and Memorial University in Newfoundland. She was not accepted by any of the schools. McMaster apparently had an age restriction. Memorial University and Dalhousie University gave no reasons for the rejection although Dalhousie had offered her an interview and invited her to try again after rejecting her.

[67] The plaintiff testified she does not know why Memorial or Dalhousie rejected her application but feels, at least in terms of Dalhousie, that she did not do well at the interview. Again, she felt she self sabotaged her efforts because she was feeling undeserving and attended the interview somewhat unkempt. While there was some anecdotal evidence from a former student concerning the nature of the application

process, there is no evidence from any representative of Dalhousie as to how these matters are generally weighed for the purpose of applications.

[68] The plaintiff in fact decided to try again to apply to medical school and registered again to take certain additional courses to improve her position scholastically. These classes at Dalhousie were to begin again in the fall of 1980.

[69] Coincidently, many months earlier, she determined that “she wanted a fellow in her life and she wanted children”. She pursued that desire on a Christian dating site and began dating Max, her future husband, in the spring of 1980. Mr. Anderson resided and worked in the Annapolis Valley. The drive to Halifax from the Annapolis Valley was about an hour and a half.

[70] The plaintiff testified that while she was not in love with Max Anderson in the traditional sense, they were certainly compatible. They had similar intellectual capacities. Conversation was comfortable and easy. They both cared about people and of course shared a deep faith as practising Catholics. The plaintiff considered this was “good enough” as she very much wanted to have children.

[71] The plaintiff felt that if she did not get married she would never have children. Rightly or wrongly, the plaintiff felt no one would really love her for who she was and that Max might provide the only opportunity to start a family which, as stated, she very much wanted to have. The plaintiff testified that had she not chosen to have children she would have continued with her classes at Dalhousie. She chose a family.

[72] The circumstances of Mr. Anderson apparently dictated where the couple were to reside after the marriage, that is, where Mr. Anderson resided. The plaintiff testified this meant she could not continue with classes. The weight of the evidence in my view is that the decision to abandon her pursuit at another attempt at entering medical school, was fundamentally informed by her desire to have children, which in turn determined marriage and residence. An inconvenient commute to Dalhousie

from the Annapolis Valley was a consequence of the decision to marry and have children.

[73] The plaintiff testified that she wanted to begin a family. The couple were married in November 1980. Indeed, the first of their five children was born some months later in August 1981. There is no other evidence before me concerning any subsequent attempts to once again pursue her studies and apply to medical school or higher education.

[74] The couple had rocky moments over the next 40 years of marriage. They argued a good deal. These difficulties culminated some years later in the plaintiff leaving Mr. Anderson and taking their four children with her. She left Mr. Anderson in Nova Scotia and returned to Vancouver and took up residence with her mother. This occurred in July 1986. It was not until 1989 that the couple reconciled and Mr. Anderson moved to Vancouver. The couple separated again in 2013. Max moved out. He moved back in 2015.

[75] Within a short while after the initial separation in 1986, the plaintiff purchased a home in Vancouver and began a small word processing business. The plaintiff then decided to go back to her teaching career and secured a teaching position at St. Thomas Aquinas Catholic School in North Vancouver. This was in May 1988.

[76] This particular placement ran its course. The plaintiff describes the political atmosphere at the school as toxic. She felt that people at the school were making up things about her and reporting it to the principal. There was friction. She left on maternity leave in 1991 not wanting to return to teaching at that school.

[77] Following her maternity leave the plaintiff decided on a different career path. She determined to become a realtor. She obtained her real estate license in early 1992 and pursued this career successfully for many years. Very much later in life she decided to leave the business and return to school to pursue a Masters degree in fine arts.

[78] As previously referenced, it appears for decades after the events in Kamloops the plaintiff had no memory of those months in Kamloops; or at least the trauma associated with Fr. Molon. She had forgotten about it or did not think about. The plaintiff says it was buried and forgotten for years until it suddenly became part of her consciousness around 2014 – 2015.

[79] The plaintiff testified that she went to see the movie Spotlight. This caused the trauma to surface. In addition, in around this time the plaintiff was at confession with a priest that was the same ethnicity and age as Fr. Molon. This triggered images and memories of Kamloops as well.

[80] The plaintiff has described the symptoms she has experienced in her life since leaving Kamloops. These recent triggering events have created insight into the effects of Fr. Molon's conduct. She has a deep sense of betrayal. It has affected her faith and sense of intimacy, although she concedes she still finds much good in her faith, and, in fact she has renewed her singing in church choirs. While she has testified to having nightmares, at least for the two years following 2014, she could not recollect in her evidence the content of those nightmares.

[81] Her current counsellor, Ms. Dixie Black, has given evidence and the reports of Ms. Black concerning the counselling of the plaintiff are before the court. They are replete with the plaintiff revealing her thoughts and feelings about a number of matters, including issues associated with her experience in Kamloops and her continuing conflicting thoughts about her father.

[82] The plaintiff reported that in addition to all the other matters in her life that have caused her stress and anxiety, she has also been engaged in a litigious relationship with her family concerning the estate of her parents. This litigation has apparently been ongoing for approximately a decade.

[83] Finally, the plaintiff states her marriage now consists of a secure and loving relationship with Max.

The Evidence of Bishop Exner

[84] Bishop Exner has long retired and is now 90 years of age. He had difficulty with recollections from time to time during his evidence and readily conceded his memory has faded. While I find the reliability of certain aspects of his evidence suspect, I do not conclude he was at anytime attempting to deceive the court.

[85] Bishop Exner began his duties in Kamloops in 1974 and as such had authority and supervisory powers relating to the parishioners and the clergy within the diocese.

[86] Bishop Exner agreed that the parishioners in Kamloops, like all parishioners, look to their priest for guidance and for the providing of pastoral care. The duties and obligations to provide pastoral care are meant to address the emotional, social, and spiritual need of the parishioners. The priest is, in a sense, a shepherd caring for his flock of souls. Bishop Exner agreed that his biggest responsibility was to in fact ensure that pastoral care was being provided to his parishioners.

[87] In this context, the existence, and nature, of Canon Law was introduced into evidence by the plaintiff. Canon Laws are the internal laws of the Catholic Church that can guide, to one degree of another, certain activities within the bureaucracy of the church.

[88] Generally, Bishop Exner was very much alive to Canon Law but conceded his training was limited and he certainly was not an expert. His philosophy in matters of the church was simply to try and make the right judgments.

[89] In particular, Bishop Exner testified that in his experience it was rare he received a complaint of sexual impropriety in relation to a priest. He testified he was not aware Canon Law provided any particular process for investigating complaints of this nature. He did offer however that in such a circumstance, he viewed it was his responsibility to find out if the allegation was true, and if he was satisfied as such, take action to see that it did not happen again.

[90] In relation to the facts of this case, it must be said the most startling aspect of the evidence provided by Bishop Exner is that prior to the arrival of the plaintiff in the Diocese in September 1976, to the knowledge and regret of Bishop Exner, Fr. Molon had developed a most troubling reputation in the Kamloops Diocese for sexual impropriety.

[91] Bishop Exner characterized Fr. Molon as a “playboy priest”. He testified that in the spring of 1976 he had heard rumours of alleged sexual impropriety by Fr. Molon with parishioners. People would come to him with “insinuations” regarding such impropriety but stated it was never revealed to him the particular names of the parishioners that might be involved. He stated he “couldn't get a handle on it”. Bishop Exner confirmed that there were “quite a few” complaints of this nature concerning Fr. Molon throughout 1976.

[92] I pause to note there was evidence of a particular incident in relation to Fr. Molon’s sexual activity prior to the arrival of the plaintiff at the Diocese. The testimony was presented by Ms. Carmen Moore concerning statements made to her by her mother Ms. Doris Merkosky

[93] A *voir dire* was held concerning this evidence. Certain of the testimony of Ms. Moore was determined to be admissible and, with the agreement of counsel, was then tendered as evidence at trial.

[94] Ms. Merkosky was a librarian at the school in Kamloops in 1975–76 while Fr. Molon was at the Diocese. Ms. Merkosky is deceased. The daughter of Ms. Merkosky, Ms. Carmen Moore, offered the hearsay evidence of a discussion she had with her mother Ms. Merkosky. The discussion between Ms. Moore and her mother took place many years after the relevant time. Generally, Ms. Moore testified that she was told by her mother that she, Ms. Merkosky, was repeatedly raped by Fr. Molon between 1975–1976. Ms. Merkosky told her daughter that at one point she invited Bishop Exner to her home. Bishop Exner met with her and her husband and, according to her mother, it was disclosed to Bishop Exner what allegedly had occurred between Ms. Merkosky and Fr. Molon.

[95] Bishop Exner testified he knew the Merkosky family during their time in the Parish in 1975–76. Bishop Exner stated he went to their home only once and that was for dinner. The children were in attendance. He denied that Doris Merkosky told him that she had either been sexually assaulted or raped, or had any kind of sexual relationship with Fr. Molon. He testified he discussed the fact of her unhappy marriage but did not discuss allegations of sexual impropriety on the part of Fr. Molon.

[96] In this regard, counsel on behalf of the plaintiff submits as follows:

> Ms. Moore testified that in or around 1986, when she was 19 years old, her late mother disclosed to her that she had been raped by Molon in 1975 and into 1976, and that this was the reason for her "nervous breakdown" and hospitalization. She also told her that she disclosed the rapes by Molon to Exner in a conversation that took place in the living room.

[97] There is no evidence before me that Ms. Merkosky told Ms. Moore that "this was the reason for her nervous breakdown and hospitalization".

[98] Regardless, I am not satisfied the evidence establishes Bishop Exner was aware of specific names of parishioners that may have been involved with Fr. Molon during the relevant period; including Ms. Merkosky. I am not persuaded Bishop Exner knew of, or was told about, the complaint of Ms. Merkosky in the particular. I also conclude, as will become apparent, any lack of particular knowledge does not immunize Bishop Exner from criticism.

[99] The fact is, Bishop Exner actually confronted Fr. Molon in 1976 concerning the rumours of his sexual pursuits. According to Bishop Exner he did not deny the rumours; he "just laughed it off". "I'm only human" was the response of Fr. Molon.

[100] While these words used by Fr. Molon were not an explicit confession of sexual impropriety, the words could leave no doubt that the rumours were probably true and that parishioners might well have been at risk. It was apparent to me during the course of his evidence that Bishop Exner appreciated this implication at the time.

[101] Bishop Exner readily conceded that for a priest to enter into a sexual relationship with a parishioner to whom he ought to be providing pastoral care is a "terrible breach of trust" that would cause spiritual harm. Nevertheless, Bishop Exner remained paralyzed. He kept Fr. Molon at the Diocese and did nothing to try and curb his apparent predilections. Why? Because, states Bishop Exner, Fr. Molon was popular with many parishioners and, the fact was, Bishop Exner was in desperate need of a priest.

[102] I conclude on the evidence Bishop Exner took this decision to continue with the status quo, and abide by the decision, even though he knew Fr. Molon had probably caused, and may well continue to cause, harm to women in the Diocese. There was nothing in the response of Fr. Molon that would provide any comfort that Fr. Molon was not behaving as the rumours suggested, nor provide any comfort that Fr. Molon had any intention of curtailing his behaviour. Indeed, he did not.

[103] Bishop Exner also provided evidence concerning the plaintiff's disclosure and discussions with him relating to Fr. Molon, in February and March 1977.

[104] Bishop Exner recalls only one visit the plaintiff made to see him in the spring of 1977. He agreed that she arrived asking if she should marry Fr. Molon after disclosing the sexual relationship. Bishop Exner testified he discouraged it. He testified he did this because he then concluded Fr. Molon was taking advantage of her and would have taken more advantage if she was his wife. I found this somewhat curious and cryptic reasoning, but he was not pressed on this evidence.

[105] Bishop Exner denies asking the plaintiff if she had proof of the activity and denies that Father Desmond attended to disclose the confessional information.

[106] In addition, Bishop Exner denied asking or telling the plaintiff that she had to leave the Diocese. Bishop Exner states he would not have done so because he had no concerns about the plaintiff staying. The plaintiff, Bishop Exner says, was not the source of the problem. Bishop Exner also denied a discussion concerning the notion that the plaintiff would be crucified if she stayed.

[107] I generally accept the plaintiff's impression of the unfolding of the discussions with Bishop Exner. I do not believe her memory is perfect, given the traumatic circumstances and the passage of time; but the memory of Bishop Exner, on his own admission, is not often reliable.

[108] On the critical points, I accept that words were said by Bishop Exner that convinced the plaintiff she had to leave the Diocese. I accept the word 'crucify' was used in the discussion but I am not prepared to conclude it was used in precisely the context as testified to by the plaintiff. I am unable to conclude whether there were 1 or 3 meetings; or whether Father Desmond appeared as described. The uncertainty in this regard, however, does not impact how I view this case.

[109] The use of the word crucify, as it turned out, was an unfortunate choice of words. It triggered an internal chain of reasoning that appeared to haunt the plaintiff for some time. The plaintiff testified that upon hearing this word she reasoned that Jesus was crucified and treated like a criminal. Therefore, as her logic unfolded, criminals were crucified. Hence, she thereafter felt like a criminal.

[110] I do find however that the motive of Bishop Exner during his interaction with the plaintiff was not to punish; his intent was not to blame. He was, I find, animated by a genuine desire, at least at this point, to try and do what he thought was in the best interest of the plaintiff. That said, he admits he "fell short".

[111] Bishop Exner again sought out Fr. Molon after the plaintiff had disclosed these matters in the meeting. Fr. Molon, according to Bishop Exner, reacted the same way as he had reacted in the past. There was no denial and contrition was absent. Bishop Exner offered to send him to a different parish; where Fr. Molon could minister and receive counselling. Fr. Molon again refused.

[112] Bishop Exner confirmed Fr. Molon quickly disappeared from the Diocese. He heard the rumour he was being sheltered by a parishioner in the Diocese.

[113] Bishop Exner hoped that Fr. Molon's previous Bishop in the Philippines might recall him. This, of course, is during the time when Fr. Molon had gone underground;

his whereabouts unknown. Bishop Exner wrote a letter to the Bishop in the Philippines to this effect in June 1977.

[114] Bishop Exner suspended Fr. Molon from the Kamloops Diocese in October 1977.

[115] Bishop Exner received a letter some years later, in November 1981, from a diocese in New York essentially seeking a reference for Fr. Molon. Bishop Exner responded and revealed to the diocese in New York the difficulties with Fr. Molon: what he characterized as his “unacceptable ways” and the fact of his prior suspension.

[116] Years later, Bishop Exner was again contacted for the purpose of assisting Fr. Molon to obtain a ministry in the armed services. Bishop Exner testified that he agreed he would assist Fr. Molon. He further testified that he regrets agreeing to help.

[117] Bishop Exner acknowledged that he received a letter from Fr. Molon in April 1992 thanking Bishop Exner for helping him get the “chaplain's job” with the armed forces. Bishop Exner indicated he did not know what he meant. Bishop Exner testified he did not do anything to help him. He was not contacted by anyone and he ultimately did not recommend him. Bishop Exner says he does not know how he got the job. Bishop Exner agrees that he should have written the armed services and warned them of Fr. Molon, but he did not do so.

[118] Speaking generally, there was an all-out assault by the plaintiff on the credibility of Bishop Exner at trial. The plaintiff submits Bishop Exner was not credible. It is submitted Bishop Exner was “demonstrably evasive about his knowledge of the identities of any other victims”.

[119] In addition, the plaintiff submits “Exner's evidence on the two critical pieces of evidence — his investigation into Fr. Molon’s misdeeds in 1976 and whether he exiled Ms. Anderson — is not credible or reliable. He has only half admitted the truth. That half admission is relevant to Ms. Anderson's claim in direct negligence

against the defendant Diocese and her associated plea for an award of punitive damages".

[120] Further it is submitted "Exner either knows or knew more; and he has held back relevant evidence from this Court, both during his cross-examination and earlier, at the time of these events, through his admitted deliberate omission to put pen to paper to document his investigation in 1976".

[121] It is my conclusion Bishop Exner was attempting to be transparent in this evidence. He did his best, clearly conceding his memory had failed. He was not feigning such failure in my view. He was candid in his evidence, which was often gratuitously inculpatory. He made no attempt to demean or belittle the evidence of Ms. Anderson nor her expressions of pain and suffering.

[122] I do not accept that Bishop Exner was attempting to deceive the court or offer half-truths in his testimony. I do not find he was motivated by personal vindictiveness or a systemic culture of bad faith in coming to his judgments during the relevant period. The evidence simply does not support the position of the plaintiff concerning the motives and credibility of Bishop Exner. That said, his failure to act prior to the arrival of the plaintiff at the parish had devastating consequences.

[123] Bishop Exner failed to take adequate steps to protect parishioners, including the plaintiff, from the predatory instincts of Fr. Molon and what appears to be Fr. Molon's complete lack of moral rectitude. Bishop Exner effectively received an admission of guilt from Fr. Molon in 1976 that he had been conducting himself in the most egregious way. Names, dates and detail were not required for Bishop Exner to understand the nature of the conduct and appreciate he had an obligation to act. It is plain Bishop Exner was torn between his own needs, and putting an end to what he described as a "terrible breach of trust".

[124] I conclude, under any assessment of reasonableness, it was an unreasonable decision to allow Fr. Molon to carry on after the discussions in 1976. These circumstances ought not to have created any debate within the heart and mind of

Bishop Exner. Bishop Exner concedes in hindsight he clearly failed to do the right thing. In my view, this revelation ought not to have required hindsight.

Ms. Dixie Black

[125] Ms. Dixie Black is a Deacon with the Anglican Church and a clinical counsellor. Ms. Black is a significant presence in the life of the plaintiff and has been providing regular counselling on these matters since January 2016. The comments and views of Ms. Black in relation to the sessions that she has held with the plaintiff are before the court. A sense of helplessness and powerlessness is a major theme that emerges from these sessions, particularly concerning her relationships with men, including Fr. Molon, but beginning with her father. The issues associated with her father continue to be a significant point of discussion to this day.

[126] The journey of the plaintiff as chronicled in the notes of Ms. Black reflects the fact the plaintiff appears to have benefited from the access she has had to Ms. Black. Certainly many aspects of her life have improved over the last few years; however, there is no doubt the plaintiff will benefit from continued counselling with Ms. Black.

The Medical Evidence

[127] The plaintiff and the defendant both called expert evidence directed at the assessment of the plaintiff's psychological injuries and the impact the injuries have had on her life trajectory. I found the evidence of both experts helpful and constructive, although I have also concluded the evidence of both had certain shortcomings. Consequently, I do not fully embrace aspects of the respective opinions.

Dr. Peter Jaffe

[128] Dr. Peter Jaffe is a doctor of clinical psychology with expertise in the areas of family violence and historical sexual abuse. He has produced a number of reports over his career in relation to the impact of sexual abuse on adults; and in particular relating to the persons abused within the Catholic Church.

[129] Dr. Jaffe was asked by the plaintiff to provide his opinion as to whether Fr. Molon's conduct contributed to the plaintiff's past and current social and vocational functioning. Dr. Jaffe was also asked to provide his opinion relating to a prognosis and recommendation for further treatment therapy or medication in the future concerning the health of Ms. Anderson. Dr. Jaffe provided *viva voce* testimony and his report is also before the court. His expertise was conceded by the defendant.

[130] The evidence of Dr. Jaffe addressed these issues and its contribution to the plaintiff's past and current social and vocational functioning. It was put this way by Dr. Jaffe in his report:

> In offering my opinion, I acknowledge that it is scientifically impossible to know with certainty the extent to which sexual abuse or other factors in the Ms. Anderson's life were causally linked to her overall level of functioning and life trajectory. However it is possible to form an opinion as to whether the abuse was more likely than not to have caused her impaired functioning, based on the preponderance of clinical evidence. At the time of the abuse, Ms. Anderson was a vulnerable young Catholic teacher who turned to a priest for counselling and spiritual support in the aftermath of her father's death. Rather than support, he sexually exploited her. Clearly Ms. Anderson had other sources of vulnerability including her difficult relationship with her father and some of the psychological abuse she suffered in her family. … These childhood issues, subsequent crises in her marriage and current conflicts with her siblings have all had an impact on her prior to the abuse and subsequently. I considered these issues as part of my assessment and these factors compound the distress she is feeling from the historical abuse.

[131] In essence, while Dr. Jaffe generally acknowledges there were stressors, abuse, and difficulties that the plaintiff experienced both before and after the trauma of Kamloops, he testified the experience at the hands of Fr. Molon was a significant contributor to the past and current functioning of the plaintiff.

[132] In addition, Dr. Jaffe is of the view that her symptoms, including the recent presence of nightmares and intrusive thoughts, allows for a current diagnosis of post-traumatic stress disorder (PTSD).

[133] Dr. Jaffe concludes:

> The Trauma Symptom Inventory-2 was administered to assess the extent of trauma–related symptoms over the past six months. … Overall, Ms. Anderson has multiple symptoms of post-traumatic stress disorder and would qualify for this diagnosis based on the criteria from DSM-5.

[134] Finally, Dr. Jaffe also opined as to whether the abuse in Kamloops impacted the plaintiff's educational or vocational advancement.

[135] Dr. Jaffe concluded as follows:

> She was on a path to be a successful teacher and one could project that she could have had a long-term career with promotions. Her intelligence and desire for self-improvement would likely have led to ongoing professional development and even advanced education for Masters or PhD qualifications over time.

[136] And further:

> … I understand that she developed the ambition of going to medical school at Dalhousie University.… Looking back, she felt she sabotaged and failed that interview due to her lack of confidence and poor self-esteem. The Dean of Medicine encouraged her to reapply. Aside from a lack of confidence, she married Max and felt that she would live outside of the commuting range to attend. There is some basis from her self-report that medical school was a possibility. In my opinion, the consequences of the sexual exploitation by Father Molon included poor self-esteem, depression, anxiety and PTSD which undermined the possibility of further academic successes that would have further vocational outcomes.

[137] There were features of Dr. Jaffe's report and evidence that gave me some reticence in placing unadulterated reliance upon the evidence.

[138] Firstly, I do note, the plaintiff in fact embarked upon a successful teaching career, with promotions, in Halifax, subsequent to her experience in Kamloops. This was interrupted by her decision to pursue further studies in an attempt to be accepted to medical school.

[139] In addition, certainly one of the highlighted features of the opinion of Dr. Jaffe, as it was the evidence of Ms. Anderson, was the observation that the plaintiff's

feelings of self blame and guilt, and feeling like a criminal, continues to resonate and impact her emotional well-being.

[140] In relation to this, the report of Dr. Jaffe states as follows:

> When the Bishop learned of the abuse, the priest was removed from his duties and Ms. Anderson was asked to leave as well because of her being a 'bad example' for the students she was teaching. Ms. Anderson describes the extent of the abuse and the aftermath as a life altering event which impacted her mental health and life trajectory. [Emphasis added.]

In this regard however, the plaintiff did not testify that she was asked to leave the Diocese because she was a bad example to her students.

[141] The views of Dr. Jaffe were also informed, as testified to by Dr. Jaffe, by the fact he was told by the plaintiff, that she had been informed by Bishop Exner, that she also had to leave the Diocese because she was to blame.

[142] There is also no evidence that she was told by Bishop Exner that she was to blame.

[143] Finally, Dr. Jaffe testified that while he understood the assaultive behaviour by Mr. Gerard distressed the plaintiff, he did not understand the experience sent the plaintiff into such a depression that she required medical treatment and medication. Dr. Jaffe testified that it would have been important for him to know this for the purpose of his opinion. Again, unfortunately, Dr. Jaffe was not asked how or why it was important and how it might impact his opinion.

[144] Consequently, there exists a lurking unease on whether Dr. Jaffe had the benefit of all relevant facts for the purpose of his evidence.

Dr. Kulwant Riar

[145] Dr. Riar is a psychiatrist called by the defence. Dr. Riar was qualified as an expert in the field of psychiatry with a particular practice in forensic psychiatry in both civil and criminal cases; he has expertise in sexual abuse assessments and its relationship to PTSD, depression and other psychiatric disorders.

[146] He has a particular interest addressing young offenders and is currently on staff at the Vancouver General Hospital in the area of sexual medicine. He is a clinical professor at the University of British Columbia. Again, his qualifications to provide expert evidence were not challenged.

[147] It will be recalled that Dr. Jaffe has concluded the exploitation in Kamloops was a significant contributor to her depression, anxiety and low self-esteem that was present in her life, to one degree or another, following the events in Kamloops.

[148] Dr. Riar agrees the events in Kamloops certainly aggravated symptoms that were extant prior to and subsequent to the Kamloops experience. Dr. Riar also suggests these other events also significantly contributed to her depression, anxiety and low self-esteem following Kamloops. Dr. Riar describes the events in Kamloops as “a severe trauma that tipped her over the edge”.

[149] Dr. Riar concludes as follows:

> I feel that what has caused most of the distress in Ms. Anderson's life was the fact of her having mixed personality traits including Strong–dependent personality traits, obsessive-compulsive traits and also possibly some traits of borderline personality. The underpinning of these personality traits is related to her upbringing and family dynamics. … This treatment at home created a sense of inadequacy powerlessness and lack of self-awareness. She developed low self-image and poor image of herself, lack of confidence in her abilities and lack of assertiveness. This lead to social isolation, further inhibiting her social and emotional abilities. Due to her personality traits, she craved emotional closeness and support from people around her, which has led to her being vulnerable for exploitation.

[150] While Dr. Jaffe and Dr. Riar generally agree on the symptoms that have plagued the plaintiff, and agree the experience in Kamloops contributed to her ongoing difficulties, they do expressly disagree on whether one can properly diagnose the plaintiff as currently suffering from PTSD.

[151] Dr. Jaffe believes one can. Dr. Riar disagrees.

[152] Dr. Riar points out that there is none of the usual indicia of PTSD present in the plaintiff up until 2014 because she had no memory of the events.

[153] And further:

> I do not believe that she suffered from posttraumatic stress disorder related to alleged sexual maltreatment by Molon. She does not recall experiencing any symptoms when the alleged abuse was going on or soon after when she was in Halifax. Then, until 2013 or 14 2014, the alleged abuse was not in the forefront of her memory nor was she experiencing symptoms relating to the alleged maltreatment."

[154] And further:

> I do not believe that she has suffered posttraumatic stress disorder, but certainly has suffered periods of depression and anxiety from time to time in her life. I feel the lack of trust and anger comes from her personality traits and also at the time when she is depressed or anxious these behaviours can be dominant.

[155] On balance, given the lurking discomfort relating to certain weaknesses in the evidence of Dr. Jaffe, coupled with the detail and presentation by Dr. Riar on this particular issue, I am not satisfied that the plaintiff has proven she currently suffers from PTSD. That said, I am also not persuaded that a particular diagnosis is critical. The fact is both agree the sexual exploitation at the hands of Fr. Molon in Kamloops caused injury and aggravated, for the rest of her life, symptoms of depression, anxiety, lack of self-worth and vulnerabilities that have caused a great deal of grief.

[156] Concerning the decision to start a family and get married, it was suggested to Dr. Riar by counsel that the marriage occurred quickly and impulsively, thus reflecting a decision borne by trauma. Dr. Riar disagreed with the suggestion. Indeed, the evidence of the plaintiff is that it was a relationship that evolved over the course of some months and the issue of marriage was discussed and debated at some length between Ms. Anderson and Mr. Anderson prior to her acceptance of the proposal. The evidence simply does not support the suggestion the decision of the plaintiff to accept the marriage proposal was impulsive.

[157] In the view of Dr. Riar, the fact that the plaintiff married, and decided to forgo another try at acceptance to medical school over the next many years, does not necessarily indicate there is a psychiatric issue at play. Marriage, as Dr. Riar indicates, ‘is a big u-turn for lots of people’.

[158] Finally, while Dr. Riar testified that, generally speaking, trauma can impact relationships, Dr. Riar disagrees with the view expressed by Dr. Jaffe that the sexual exploitation in Kamloops can properly be viewed as undermining or creating a disadvantage concerning vocational pursuits in this particular case.

[159] However, I also find, there are again features of the evidence of Dr. Riar that somewhat dilute the confidence I have in his opinion as well.

[160] It became apparent in the course of the evidence of Dr. Riar that he was asked not to assume, for the purpose of his opinion, that the plaintiff was effectively expelled from Kamloops. Dr. Riar testified that if in fact the plaintiff was effectively expelled, that fact would aggravate matters from his perspective. Again, Dr. Riar was not asked by either counsel how in the particular this might impact his overall opinion.

[161] In addition, Dr. Riar testified that his overall opinion included the characterization that the sexually assaultive behaviour in Kamloops involved a "certain element of exploitation". I found this characterization somewhat surprising. In my view, the entire sexual relationship between the plaintiff and Fr. Molon rested firmly on rank exploitation.

[162] There was additional expert evidence offered by the plaintiff in relation to her prospects of medical school and higher education.

[163] Dr. Colleen P. Quee Newell is a vocational consultant and registered clinical counsellor. Dr. Quee Newell's report was commissioned by the defendant but tendered in evidence by the plaintiff.

[164] Dr. Quee Newell was tendered as an expert in vocational consulting including vocational assessment, career and personal counselling, job-search counselling, vocational test administration and interpretation, and labour market research.

[165] Dr. Quee Newell tendered her report and provided *viva voce* evidence offering her opinion with respect to the likelihood Ms. Anderson would have

successfully obtained acceptance into medical school in Canada based on the conditions that existed in the late 1970s and early 1980s. The expertise of Dr. Quee Newell was accepted by both parties.

[166] Dr. Quee Newell concluded as follows:

> Based on my review of the available admission statistics for Canadian medical schools during the time frame Ms. Anderson applied to Dalhousie University Medical School, it is my opinion that unless she were to reapply to multiple medical school programs with significantly higher MCAT scores, Ms. Anderson's average MCAT results, below average academic achievement in undergraduate science courses, and age do not favour her as a competitive applicant. Based on all of the preceding factors, it is my opinion that although it is possible Ms. Anderson's future medical School applications may have been successful, this would not be considered a real and substantial possibility. [Emphasis added.]

[167] It became apparent during the evidence that some of the language used by Dr. Quee Newell was language influenced as a result of her discussions with counsel on behalf of the defendant. When pressed, Dr. Quee Newell readily conceded she was uncomfortable with the use of the phrase “real and substantial possibility”, primarily because she was unfamiliar with its legal significance.

[168] She made it clear her conclusion was that while it was possible a future application to medical school may have been successful, it was not probable. This conclusion is consistent with her reasoning as contained in a report. In the end, both parties invited the evidence of Dr. Quee Newell to be weighed with all of the other evidence.

[169] The essence of the conclusions of Dr. Quee Newell recognize that while the MCAT scores of the plaintiff could be said to be competitive, an MCAT score is only one factor to be weighed in an application of this sort. Dr. Quee Newell also makes the point that Ms. Anderson's MCAT scores were raised by her stronger than average performance on the reading skills and quantitative analysis sections, whereas her science-based scores (biology, chemistry, physics, science problems) are near the midpoint of the average range and lower than the mean scores for those females accepted into a Canadian medical school program.

[170] Finally, Dr. Quee Newell addresses the undergraduate grades of Ms. Anderson. In her opinion, the undergraduate grades would be reasonably expected to decrease the competitiveness of Ms. Anderson's application to heavily science-based medical school program.

[171] Dr. Robert Carson also provided expert opinion evidence related to this particular aspect of damages.

[172] Mr. Carson is an economist. The opinion of Mr. Carson provides a statistically based estimate of lifetime earnings which is intended to assist in any evaluation of loss of past employment earnings claimed by the plaintiff.

[173] Mr. Carson was asked to assume that Ms. Anderson could have completed a medical degree or doctorate in religious education by mid-1985. It is in these two areas that Mr. Carson has provided a future earnings projections to the age of 70. Again, the expertise of Mr. Carson was accepted by the parties and his report is before the court.

[174] The calculations and projections provided by Mr. Carson were not challenged. Mr. Carson produced a range of lifetime projected earnings in these two areas of pursuits; medicine and a continuing teaching career. The projections consisted of gross income, net of contingencies, plus benefits. These calculations produced a range in relation to both these pursuits of approximately $2.2 million to $3.5 million over the plaintiff's lifetime.

[175] Material evidencing the gross income of the plaintiff (to the point of her retirement at approximately the age of 60) was produced. The plaintiff earned a good deal of her income by way of commission sales in the real estate industry. The figure provided to the court was her gross income net of commissions in the amount of $780,000.

[176] The plaintiff submitted the mid-level gross earnings of a medical doctor and the highest and best earnings of a university professor came out to more or less the same figure. The plaintiff’s gross income was then subtracted from this figure, which,

in turn, provided the projected lost income. The plaintiff submits, causation issues aside, and assuming a finding of real and substantial possibility, the likelihood of the plaintiff becoming a doctor should be set at 75%.

Liability

[177] The plaintiff advances several different claims. Against Fr. Molon, she advances a claim in sexual battery. Against the Diocese, she advances a claim in vicarious liability for Fr. Molon's actions, as well as a claim in direct negligence for failing to prevent his abusive behaviour.

[178] In my view, the plaintiff has succeeded in establishing liability under each of these claims.

[179] The tort of battery is made out upon proof of an intentional infliction of unlawful force on another person: *Norberg v. Wynrib,* [1992] 2 S.C.R. 226 at 246 [*Norberg*]. Although consent is a defence to a claim in battery, the onus lies upon the defendant to prove the physical contact was consensual: *Non-Marine Underwriters, Lloyd's of London v. Scalera*, 2000 SCC 24.

[180] The plaintiff testified that she was sexually abused by Fr. Molon multiple times between the fall of 1976 and the spring of 1977. Fr. Molon did not appear at trial, and there was no evidence that could establish the basis of a valid defence.

[181] In any case, the plaintiff argues that she could not have consented to the sexual activity, because of the power imbalance between her and Fr. Molon. Consent must be meaningful, voluntary, and genuine to be effective: *P.P. v D.D.*, 2016 ONSC 258 at para. 83. In this context, consent obtained through the exploitation of a position of power is often referred to as vitiated consent. In my view, this is a phrase that ought to leave the lexicon in this area. Consent obtained through the exploitation of a position of power is no consent at all. I am satisfied that Fr. Molon is liable in battery for the sexual abuse on the plaintiff that took place between September 1976 and May 1977.

[182] The Diocese has conceded vicarious liability: it is therefore jointly and severally liable for this same abuse.

[183] In addition, the plaintiff claims the Diocese was directly liable for failing to take reasonable steps to protect the plaintiff from a risk of harm it knew or ought to have known existed. The significance of this allegation relates primarily to the plaintiff's claim for punitive damages against the Diocese.

[184] In particular, the plaintiff alleges Bishop Exner failed to:

a) take adequate steps to investigate Fr. Molon's sexual improprieties;

b) document any investigation of the allegations against Fr. Molon in the spring of 1976, contrary to the church's own Canon Law policy;

c) terminate Fr. Molon in the spring of 1976;

d) restrict or limit Fr. Molon's duties;

e) warn parishioners of the risk of harm by Fr. Molon; and

f) prioritize the protection of the parishioners above the avoidance of a scandal.

[185] For the purpose of this analysis, Bishop Exner and the Diocese are to be considered one and the same: *John Doe v. Bennett*, 2004 SCC 17 at para. 14. If a bishop is negligent in the discharge of his duties, the diocese is directly liable, because the office of the bishop, the enterprise of the diocese, and the episcopal corporation are legally synonymous: *Bennett* at para. 7.

[186] The plaintiff's claim against the Diocese, like any claim in negligence, requires proof of the following elements:

a) the existence of a duty of care;

b) a breach of the standard of care; and

c) that the breach caused damage to the plaintiff.

[187] In this case, I am satisfied that all of these elements were present.

[188] It well established that a diocese owes its parishioners a duty of care to prevent their abuse at the hands of its priests: *K. (W.) v. Pornbacher* (1997), 32 B.C.L.R. (3d) 360 (S.C.). Although these cases typically deal with the abuse of children, I see no reason why that duty should not also encompass vulnerable, adult parishioners. In any case, at the time Bishop Exner became aware of rumours of Fr. Molon's sexual improprieties, there was undoubtedly sufficient proximity and foreseeability to found a duty of care. Accordingly, I find the Diocese owed the plaintiff a duty of care to take reasonable steps to prevent her abuse at the hands of Fr. Molon.

[189] The findings of fact I have made in this matter leave no question that Bishop Exner failed to take any such reasonable steps. His conduct fell far short of the applicable standard of care. That said, I do not conclude that the evidence supports a finding Bishop Exner deliberately failed to document the investigation; as was urged by the plaintiff.

[190] Finally, it is clear that but for Bishop Exner's negligence, Fr. Molon would not have committed the assaults. Had Bishop Exner taken appropriate steps prior to the arrival of the plaintiff, Fr. Molon would never have engaged in the abuse of the plaintiff starting that fall. Whatever damages flow from Fr. Molon's abuse therefore also flow from the Diocese's negligence: both were necessary causes of this damage.

Damages

[191] The basic principles underlying the causation and assessment of damages were set out in *Shongu v. Jing*, 2016 BCSC 901 as follows:

> [64] I do not think I can improve upon the summary of those legal principles set out by Voith J. in *Brewster v. Li*, 2013 BCSC 774:
>
> > [79] The basic principle of tort law is that the defendant must put the plaintiff back in the position she would have been in had the

> defendant's tortious act not occurred (*Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 32). The corollary of this principle is that the defendant need not compensate the plaintiff for any loss not caused by his/her negligence or for "debilitating effects of [a] pre-existing condition which the plaintiff would have experienced anyway" (*Athey* at para. 35).
>
> [80] Since the burden is on the plaintiff to prove causation, she must establish that the defendant's tortious act caused *both* an injury (*i.e.* her pain disorder and/or her depression) and a resulting loss (*e.g.* non-pecuniary loss or lost wages). "The former is concerned with establishing the existence of liability; the latter with the extent of that liability" (*Blackwater BCSC* at para. 363). In the case at hand, if the plaintiff cannot establish that one of her injuries was *caused* by the MVA, then she cannot recover from the defendant for the losses that flowed from that injury. Additionally, if the plaintiff cannot establish that the injury caused by the defendant, in turn, caused a certain loss, then she cannot recover from the defendant for that loss.

[65] Once a plaintiff establishes that the defendant's negligence is a cause of his or her injuries, the defendant is liable for the full extent of the loss, even if there are other, non-tortious, causes for it. In this regard see *Athey v. Leonati*, [1996] 3 S.C.R. 458:

> 19 The law does not excuse a defendant from liability merely because other causal factors for which he is not responsible also helped produce the harm: Fleming, *supra*, at p. 200. It is sufficient if the defendant's negligence was a cause of the harm: *School Division of Assiniboine South, No. 3 v. Greater Winnipeg Gas Co.*, [1971] 4 W.W.R. 746 (Man. C.A.), at p. 753, aff'd [1973] 6 W.W.R. 765 (S.C.C.), [1973] S.C.R. vi; Ken Cooper-Stephenson, *Personal Injury Damages in Canada* (2nd ed. 1996), at p. 748.

[66] In *Farrant v. Laktin*, 2011 BCCA 336, the Court affirmed the applicable principles:

> [8] To justify compensation for his disabling pain, the plaintiff must establish a causal connection between the defendant's negligence and that pain.
>
> [9] The general test for causation, established in *Athey v. Leonati,* [1996] 3 S.C.R. 458 at paras. 13-17, is the "but for" test: "but for" the accident, would the plaintiff have suffered the disabling pain? In *Athey*, the Court also stated that a plaintiff need not establish that the defendant's negligence was the sole cause of the injury. If there are other potential non-tortious causes, such as the plaintiff's spinal degeneration in this case, the defendant will still be found liable if the plaintiff can prove the accident caused or materially contributed to the disabling pain, beyond the *de minimus* range.
>
> …
>
> [11] Thus, in applying the "but for" test, the trial judge was required to consider not just whether the defendant's conduct was the sole cause of the plaintiff's disabling pain, but also whether the plaintiff had

> established a substantial connection between the accident and that pain, beyond the *de minimus* level.

[192] The jurisprudence concerning the relationship between causation and the assessment of damages appears, at least to me, sometimes challenging to reconcile. Simply put, every compensable harm has a dual nature: it is simultaneously an “injury” — the physical or mental effect of the tort in question — and a “loss” — a consequent diminishment in the plaintiff’s life relative to what it would have been had the tort not occurred. Injuries are harm manifested in the real world. Loss, on the other hand, is perceptible only by reference to a hypothetical, injury-free world. It is the difference between the plaintiff’s “original position” and her “injured position”. Both are necessary to found an award of damages.

[193] Of course, different standards of proof apply to real, as opposed to hypothetical events. Real events — that is, events that have already occurred in the past — are subject to proof on a balance of probabilities, like any other fact in a civil proceeding. This includes the question of causation. Hypothetical events, by contrast, need not be proven at all. Instead, they are simply given weight according to their relative likelihood, provided they are shown to be a “real and substantial possibility”: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 27.

[194] Unlike the assessment of future losses, which deals only in hypotheticals, the assessment of past losses, as the case at bar demands, involves a consideration of both hypothetical and real events. On the one hand, the court must determine whether the plaintiff has proven, on a balance of probabilities, that the tort in question caused her injuries, and what exactly those injuries were. On the other, the court must consider whether, and to what extent, the life of the plaintiff would have turned out differently without these injuries. This is necessarily a hypothetical exercise. Both standards of proof are therefore applicable.

[195] In this case the plaintiff alleges that she suffered severe mental injuries, including low self-esteem, anxiety, depression, feelings of worthlessness, and PTSD as a result of Fr. Molon’s conduct. These injuries, she submits, diminished her

quality of life, and, as well, deprived her of the chance of a successful career as a doctor or an educator with a Ph.D. The former gives rise to a claim in non-pecuniary damages; the latter to a claim for loss of past income, as well as special damages and a claim for the cost of future care. In addition, she claims punitive damages against both Fr. Molon and the Diocese.

[196] Assessing these claims requires a consideration of both actual and hypothetical events, and the application of both the "balance of probabilities" and the "real and substantial possibility" standard.

[197] It is apparent the first step must be to determine what injuries, if any, are attributable to Fr. Molon's conduct.

[198] There is no doubt Fr. Molon's conduct caused psychological harm to the plaintiff, nor do I understand the defendant to suggest otherwise. As the plaintiff argues, it is not necessary to attach a specific label to her emotional injuries, or provide evidence of a specific diagnosis to establish causation: *Baglot v. Fourie*, 2019 BCSC 122 at para. 282. There is a clear connection between the plaintiff's struggles with mental health after her time in Kamloops, and the abuse itself.

[199] The real question is the extent of the injuries attributable to the abuse. On this point, the parties differ primarily with respect to the significance of the plaintiff's pre-existing conditions. As previously referenced, the plaintiff suffered from feelings of depression, thoughts of suicide, and low self-esteem since she was a teenager. The plaintiff continued to suffer from depression, and in fact attempted suicide, as a young woman. These symptoms are similar in kind, if not degree, to the symptoms the plaintiff attributes to Fr. Molon's abuse.

[200] The defendant argues the quantum of damages should be reduced to reflect the impact of this pre-existing condition. In effect, the defendant advances a "crumbling skull" argument: that is, although Fr. Molon's abuse injured the plaintiff, her pre-existing psychological condition would have caused her to suffer similar harm in any case.

[201] In response, the plaintiff invokes the “thin skull” rule. She claims that her pre-existing conditions merely rendered her more vulnerable to Fr. Molon’s abuse. The defendants, accordingly, are liable for the entirety of her injuries, since they must take the plaintiff as they find her. In addition, she cites *Ashcroft v. Dhaliwal*, 2008 BCCA 352 for the proposition that where a tort indivisibly aggravates a pre-existing injury, the defendant is liable for the entirety of the consequent harm.

[202] Justice Major explained the difference between the “thin skull” and “crumbling skull” doctrines in *Athey* at paras. 34–35:

> 34 The respondents argued that the plaintiff was predisposed to disc herniation and that this is therefore a case where the "crumbling skull" rule applies. The “crumbling skull” doctrine is an awkward label for a fairly simple idea. It is named after the well-known “thin skull” rule, which makes the tortfeasor liable for the plaintiff's injuries even if the injuries are unexpectedly severe owing to a pre-existing condition. The tortfeasor must take his or her victim as the tortfeasor finds the victim, and is therefore liable even though the plaintiff’s losses are more dramatic than they would be for the average person.
>
> 35 The so-called “crumbling skull” rule simply recognizes that the pre-existing condition was inherent in the plaintiff’s “original position”. The defendant need not put the plaintiff in a position <u>better</u> than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage: Cooper-Stephenson, *supra*, at pp. 779-780 and John Munkman, *Damages for Personal Injuries and Death* (9th ed. 1993), at pp. 39-40. Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant’s negligence, then this can be taken into account in reducing the overall award: *Graham v. Rourke*, *supra*; *Malec v. J. C. Hutton Proprietary Ltd.*, *supra*; Cooper-Stephenson, *supra*, at pp. 851-852. This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.

[203] I take this to mean the tortfeasor is responsible for any injury their wrongdoing causes, however unexpectedly severe (the thin skull rule), but bears no responsibility for harm that would have occurred anyway because of a pre-existing condition (the crumbling skull rule). Both rules are, in effect, elaborations on the underlying principle that “[d]amages are always to be assessed by reference to the

situation the plaintiff would be in but for the wrongdoing": *Gordon v. Ahn,* 2017 BCCA 221 at para. 33.

[204] The crumbling skull rule deals in hypotheticals; consequently it applies whenever there is a real and substantial possibility a pre-existing condition would have affected the plaintiff's "original" position. For this reason, I cannot accede to the plaintiff's submission that the defendants are necessarily liable for the entirety of her damages regardless of her pre-existing condition. *Ashcroft* was a case about apportioning responsibility between different tortfeasors. This case is about the relationship between a pre-existing condition, unrelated to any tort, and the plaintiff's subsequent injuries.

[205] In my view, the plaintiff's pre-existing condition must be taken into account if there is a realistic possibility it would have caused the plaintiff to suffer some or all of the harm for which she seeks compensation, regardless of whether the tort had occurred. The law applicable in these circumstances was set out by the Court of Appeal in *Zacharias v. Leys*, 2005 BCCA 560. In that case, the court relied on its previous judgment in *Hooiveld v. Biert* (1993), 87 B.C.L.R. (2d) 160 (C.A.) as follows:

> [25] … The plaintiff in [*Hooiveld*] suffered from numerous back problems before injuring it further in a car accident. The evidence was that the plaintiff suffered back pain since childhood, had injured her back five times in the previous five years, and was being treated for chronic back pain during the two months prior to the accident. Nonetheless, the trial judge found that the plaintiff's pre-existing problems merely increased her susceptibility to further injuries. The trial judge therefore applied the "thin skull" rule. In reaching a different conclusion, the Court said, at paragraphs 31-33:
>
> > We are of the view that the finding that the accident "exacerbated the previous condition" could lead to application of the "thin skull" rule only if the plaintiff's previous condition was one from which it was not to be expected that she would otherwise ever have suffered again in the future. The judge does not say that this was so nor, in our view, could he, on the evidence before him, have made such a finding.
> >
> > On the basis of the findings of the trial judge it was thus necessary for him to apportion responsibility for the plaintiff's back condition as between the disability which she had before the accident and the exacerbation, or aggravation, of that condition brought about by the accident.

> This is what we must now do.

[206] Here, I am satisfied on a balance of probabilities that Fr. Molon's conduct caused severe trauma and clearly aggravated the plaintiff's pre-existing condition. However, I cannot say this condition was one from which it was not to be expected she would otherwise ever have suffered from, at least to a certain degree. In other words, there is a real and substantial possibility that the plaintiff would have suffered, or was already suffering from, at least some of the psychological harm she ultimately suffered.

[207] Accordingly, I have taken the plaintiff's pre-existing psychological conditions into account in assessing the quantum of damages. The fact is, however, in my view this makes comparatively little difference. In this regard, I would attribute a small deduction in or around 10 to 15%, to reflect the possible impact of the pre-existing condition. This is necessarily an imprecise exercise, but the principle remains the same; the measure of damages is the difference between the plaintiff's injured position and her original position; which includes any pre-existing conditions. I have factored this deduction into my calculation of damages.

[208] The measure of damages here is the difference between a plaintiff with some experiences of depression, suicidal ideation, and low self-esteem as a teenager and young woman, and the plaintiff as she is: a person suffering from serious psychological trauma.

[209] In relation to the assessment of damages, the plaintiff claims compensation under the following heads of damage:

a) Non-pecuniary damages;

b) Loss of past income;

c) Special damages;

d) Cost of future care; and

e) Punitive damages.

Non-Pecuniary Damages

[210] The purpose of non-pecuniary damages is to compensate a plaintiff for pain and suffering and loss of enjoyment of life.

[211] In *Stapley v. Hejslet,* 2006 BCCA 34, the Court of Appeal set out the following factors in assessing the quantum of an award for non-pecuniary damages:

> The inexhaustive list of common factors cited in Boyd that influence an award of non-pecuniary damages includes:
>
> (a) age of the plaintiff;
>
> (b) nature of the injury;
>
> (c) severity and duration of pain;
>
> (d) disability;
>
> (e) emotional suffering; and
>
> (f) loss or impairment of life;
>
> I would add the following factors, although they may arguably be subsumed in the above list:
>
> (g) impairment of family, marital and social relationships;
>
> (h) impairment of physical and mental abilities;
>
> (i) loss of lifestyle; and
>
> (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[212] In addition, aggravated damages may be warranted if the tort occurred in humiliating or undignified circumstances: *B.M.G.* v. *Nova Scotia (Attorney General),* 2007 NSCA 120 at para. 131. The nature of an award of aggravated damages was explained in *Huff v. Price* (1990), 51 B.C.L.R. (2d) 282 at 299 as follows:

> …aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. They are designed to compensate the plaintiff, and they are measured by the plaintiff's suffering. Such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of the defendant; that are of the type that the defendant should reasonably have foreseen in tort cases or had in contemplation in contract cases; that cannot be said to be fully

> compensated for in an award for pecuniary losses; and that are sufficiently significant in depth, or duration, or both, that they represent a significant influence on the plaintiff's life, can properly be the basis for the making of an award for non-pecuniary losses or for the augmentation of such an award. An award of that kind is frequently referred to as aggravated damages. It is, of course, not the damages that are aggravated but the injury. The damage award is for aggravation of the injury by the defendant's high-handed conduct.

[213] In *B.M.G.* the Nova Scotia Court of Appeal recognized the following factors as specifically shaping the analysis of non-pecuniary damages in cases of sexual battery (at para. 134):

a) the circumstances of the victim at the time of the events, including factors such as age and vulnerability;

b) the circumstances of the assaults including their number, frequency and how violent, invasive and degrading they were;

c) the circumstances of the defendant, including age and whether he or she was in a position of trust; and

d) the consequences for the victim of the wrongful behaviour including ongoing psychological injuries.

[214] The plaintiff seeks non-pecuniary damages in the amount of $425,000, inclusive of aggravated damages. This is close to, or beyond the upper limit on pecuniary damages set by the Supreme Court of Canada in *Andrews v. Grand & Toy Alberta Ltd.,* [1978] 2 S.C.R. 229, which she says does not or ought not to apply to cases of sexual assault.

[215] In support of this quantum, the plaintiff cites the Ontario case of *MacLeod v. Marshall,* 2019 ONCA 842 [*MacLeod*], in which a jury awarded the victim of a historical sexual assault $425,000 in non-pecuniary damages, including $75,000 of aggravated damages. In addition, she cites *Waters v. Bains,* 2008 BCSC 823 ($325,000), and *John Doe (G.E.B. #25) v. The Roman Catholic Episcopal Corporation of St. John's*, 2018 NLSC 60 ($320,000), both cases of sexual battery.

[216] The Diocese submits that an award in the range of $50,000–$60,000 is appropriate in the circumstances. The cases it cites, however, are dated, readily distinguishable, and of little assistance: *Norberg; D.C.B. v. Boulianne*, [1996] B.C.J. No. 2183*; Gates v. MacDougall, et al,* 2006 BCSC 1919.

[217] In the case at bar, the plaintiff was a young woman at a vulnerable time in her life. The abuse she suffered was protracted and ongoing. The plaintiff's encounters with Fr. Molon were degrading and highly invasive. Fr. Molon occupied a position of trust and authority. He abused that trust to exploit the plaintiff repeatedly over months. When confronted with this misconduct, the only evidence before the court suggests he was wholly indifferent and dismissive of the ramifications of what he was doing.

[218] Even taking the plaintiff's pre-existing condition into account, I find the assaults had a profound effect upon the plaintiff's psychological well-being. Fr. Molon's abuse caused the plaintiff pain, anguish, grief, and humiliation. It deeply affected her self-confidence. She has carried these wounds throughout her life.

[219] The present circumstances resemble those of the cases cited by the plaintiff much more closely than those cited by the defendant. In my view, an award of $275,000, inclusive of aggravated damages, is appropriate in light of the aggravating factors described above, and the severe effect of the abuse on the plaintiff's well-being and quality of life, making due allowance for the plaintiff's pre-existing condition.

Loss of Past Income

[220] In addition to non-pecuniary damages, the plaintiff seeks pecuniary damages for loss of past income. This is a claim for loss of earning capacity. More specifically, an award for loss earning capacity has been defined as "compensation for the loss of the use of that capacity over time", or in other words, "the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury": *M.B. v. British Columbia,* 2003 SCC 53 at para. 27; *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.

[221] It is well settled there are two primary approaches to assessing loss of income: the “earnings” approach and the “capital asset” approach. Both require proof of a real and substantial possibility of pecuniary loss: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.

[222] The primary difference between these approaches lies in the nature of the loss in question. Under the “earnings” approach, a plaintiff must demonstrate a real and substantial possibility of some specific future or hypothetical event leading to a loss of income. Under the “capital asset” approach, the plaintiff must demonstrate that the nature of her injuries are such that her general capacity to work, considered as a capital asset, has been lost or devalued. The “earnings” approach asks whether there is a real and substantial possibility that the plaintiff would have earned a specific sum of money, absent the tort; the “capital asset” approach, in effect, asks whether there is a real and substantial possibility her working life in general would have turned out differently, even if it is impossible to know exactly how.

[223] These approaches are not mutually exclusive. Indeed, they are simply different ways of attempting to assess the same head of damages: *Pallos v. Insurance Corp. of British Columbia* (1995), 100 B.C.L.R. (2d) 260 at para. 27. It is open to a plaintiff to adduce evidence of a specific hypothetical possibility foreclosed by her injuries. It is equally open to a plaintiff to demonstrate that her injuries have generally impaired her ability to pursue income-earning opportunities in circumstances where it is impossible to say that she would not have pursued these opportunities over the course of her working life: *Palmer v. Goodall* (1991), 53 B.C.L.R. (2d) 44 at 59, cited in *Pallos* at para. 25.

[224] The plaintiff has advanced what is essentially an earnings-based argument. In particular, she claims she is entitled to compensation in relation to the specific possibility of her becoming a medical doctor or an educator with a Ph.D. The plaintiff submits there was a real and substantial possibility that she would have become a doctor, or failing that, a Ph.D., had she not been abused by Fr. Molon. On this basis,

she claims she is entitled to damages in an amount corresponding to the income she would earned in either of these professions.

[225] For the reasons that follow, I cannot accede to this argument on an "earnings" approach. Nevertheless, I find that the plaintiff has established some degree of loss on a "capital asset" approach, and would make an award of damages accordingly, although on much smaller scale.

[226] I have found that Fr. Molon's abuse caused serious psychological harm to the plaintiff. I accept, as Dr. Jaffe opined, that these psychological injuries had an impact on all aspects of the plaintiff's life, including her vocational pursuits.

[227] The plaintiff's earnings-based argument turns on the possibility that, absent these injuries, she might have become a doctor, or obtained a Ph.D. The plaintiff submits the likelihood of her becoming a doctor should be assessed at 75%. She relies on the opinion of Dr. Quee Newell, who gave evidence that approximately 45% of female candidates with an MCAT score in the same range as the plaintiff were offered at least one place in a Canadian medical school in the 1979–1980 school year. The plaintiff argues her odds were even better because she applied to multiple schools, and because she intended to continue taking classes and apply again in future years.

[228] Certainly on the evidence I would not place this likelihood anywhere near 75%. I would place it around 25% in relation to a medical career and perhaps 35% concerning pursuit of a Ph.D. and a career in academics. My conclusions, however, render this assessment moot. While I accept there is a real and substantial possibility the plaintiff could have become a doctor, had she continued to work towards that goal (or the pursuit of a career in academia), this is not what actually happened.

[229] Instead, the plaintiff decided to abandon her pursuit of higher education or medical school to marry and have children. Having decided to get married, the plaintiff appears to have given up entirely on the pursuit of higher education. In fact,

she stated it was impossible for her to carry on with her academic studies, because her new husband lived too far from the university; at least the university where she wanted to apply.

[230] The plaintiff claims it is the loss of this possibility itself that forms the basis of her entitlement to damages. She argues that her psychological injuries caused her to rush impetuously into a marriage she did not want. Her marriage, and the consequent loss of opportunity to pursue higher education, was thus a product of Fr. Molon's abuse, for which she is owed compensation.

[231] In particular, the submission of the plaintiff is as follows:

> Moreover, she would not have chosen to marry Maxwell Anderson when she did, abandoning her pursuit of further courses that would have permitted her to reapply the following year. Suddenly, and impulsively, she chose to marry a man who lived so far from her university that it would be impossible for her to carry on with her academic studies in support of a career path that she worked so tirelessly to pursue.

[232] And further:

> In short, Ms. Anderson's life took a wrong turn, a turn she would not have taken but for the tortious wrongs of the defendants.

[233] The plaintiff's claim for loss of past income rests on the proposition that her decision to get married was caused, at least in part, by Fr. Molon's abuse. Absent this causal connection, her marriage is properly characterized as an "independent intervening event". As explained in *Athey* (at para. 32), such events form part of the plaintiff's "original position" — that is, the position the plaintiff would have been in, but for the tort, and for the disappointments of which the defendant need not compensate the plaintiff:

> The essential purpose and most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in absent the defendant's negligence (the "original position"). However, the plaintiff is not to be placed in a position better than his or her original one. It is therefore necessary not only to determine the plaintiff's position after the tort but also to assess what the "original position" would have been. It is the difference between these positions, the "original position" and the "injured position",

> which is the plaintiff's loss. In the cases referred to above, the intervening event was unrelated to the tort and therefore affected the plaintiff's "original position". The net loss was therefore not as great as it might have otherwise seemed, so damages were reduced to reflect this.

[234] This in turn raises the question of the applicable standard of proof to demonstrate a causal connection. The plaintiff relies on the recent Ontario case of *MacLeod* for the proposition that she need only demonstrate a real and substantial possibility of loss to prove her entitlement to damages. She suggests that if there is a real and substantial possibility that she would not have married Mr. Anderson, but for the abuse she suffered, she is entitled to damages to the extent of that possibility.

[235] In my view, however, the reasoning in *MacLeod* does not absolve the plaintiff of the burden of proving the existence and causation of actual past events on the balance of probabilities. *MacLeod* simply stands for the proposition that hypothetical events need not be proven to this standard: paras. 17–18.

[236] As an event that actually took place in the past, the plaintiff's decision to get married is neither a hypothetical nor a future event, and must therefore be proven on the ordinary civil standard of proof: *Athey* at para. 27. In this case, the plaintiff's entitlement to damages does not turn on what might have happened, but what did, in fact, happen.

[237] That causation in these circumstances must be proven on a balance of probabilities is implicit in *Athey* itself. In *Athey*, the defendant's negligence caused minor back injuries to the plaintiff. Some time after, the plaintiff suffered a herniated disc while stretching. The effects of this second injury were debilitating. The trial judge found that the first injury was a necessary cause of the second on a balance of probabilities. At the Supreme Court of Canada, the defendant argued that the second accident was an intervening event, and that the plaintiff's damages should be reduced accordingly. The Court rejected this argument as follows:

> 33 In the present case, there was a finding of fact that the accident caused or contributed to the disc herniation. The disc herniation was not an

> independent intervening event. The disc herniation was a product of the accidents, so it does not affect the assessment of the plaintiff's "original position" and thereby reduce the net loss experienced by the plaintiff.

[238] In other words, once causation has been established on a balance of probabilities, the defendant is responsible for 100% of the effects of a subsequent event that occurs prior to trial. The necessary corollary of this conclusion, in my view, is that if causation is not established on a balance of probabilities, the defendant is not responsible for any of the effects of that event.

[239] In this case, I am not persuaded that Fr. Molon's abuse was a cause of the plaintiff's marriage on a balance of probabilities. I find the plaintiff's position and logic on this point is not sufficiently supported by the evidence. The evidence simply does not support the suggestion the decision of the plaintiff to accept the marriage proposal was impulsive, or driven by the plaintiff's psychological injuries. In particular, it is not supported to the requisite threshold by the medical evidence; nor, in fact, the evidence of the plaintiff.

[240] I find there is not a sufficient causal connection between the abuse and the plaintiff's decision to get married. Accordingly, her decision to get married must be considered an independent intervening event, which does not in itself give rise to any compensable damages, but forms part of her "original position". To the extent the plaintiff's claim for loss of past income flows from this decision, I would dismiss it accordingly.

[241] However, I do not consider this the end of the inquiry. Marriage did not mark the end of the plaintiff's working life. Her decision to abandon her career for her family was neither permanent, nor inevitable. Her injuries persisted throughout her marriage. They continued to affect her as she re-entered the job market. They were with her as she decided to leave teaching to pursue a new career as a real estate agent. In my view, an award of $125,000 is appropriate to compensate the plaintiff for loss of earning capacity on a "capital asset" approach, in light of the general factors set out in *Brown v. Golaiy,* (1985), 26 B.C.L.R. (3d) 353. These include the extent to which:

> 1. the plaintiff has been rendered less capable overall from earning income from all types of employment;
>
> 2. the plaintiff is less marketable or attractive as an employee to potential employers;
>
> 3. the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to her, had she not been injured; and
>
> 4. the plaintiff is less valuable to herself as a person capable of earning income in a competitive labour market.

[242] I do not base this award on any particular career trajectory the plaintiff might have pursued; rather, it reflects a bundle of possibilities, including the possibility that, but for her psychological trauma, the plaintiff might have renewed her attempt at higher education after getting married; that she might have re-entered the job market sooner; that, having entered the job market, more and better opportunities would have presented themselves; and that she might have made more of those that did come her way.

[243] None of these possibilities were developed in any detail. I do not consider any of them to be particularly likely, or if they were, to have made a significant difference in themselves. Viewed as a whole, however, and in light of the nature and extent of her injuries, again, with due allowance for her pre-existing condition, I am satisfied that there is a real and substantial possibility that the plaintiff's working life would have turned out differently, were it not for the abuse she suffered. Though incapable of precise calculation, an award for loss of earning capacity is therefore warranted.

Special Damages

[244] The plaintiff claims special damages in the amount of $19,140. This amount represents her counselling expenses with Mr. Dixie Black. These costs have arisen since the triggering events concerning the abuse at the hands of Fr. Molon. The defendant submits the court should parse these costs in accordance with the constellation of issues that are addressed in the counselling sessions with Ms. Black. I do not find this invitation helpful or indeed required. I award special damages in the amount of $19,140.

Cost of Future Care

[245] In a similar vein, the plaintiff submits that the opinion of Dr. Jaffe should be accepted and a finding made that the plaintiff will require ongoing counseling with Ms. Black for the next five years at an estimated cost of $25,000. I accept this evidence and so order this amount as cost of future care. Again, while other topics will doubtless be canvassed in these sessions, Fr. Molon's abuse was clearly the driving factor behind the plaintiff's decision to seek counselling, and her ongoing need for such care in the future.

Punitive Damages

[246] In addition to compensatory damages, the plaintiff seeks punitive damages against both Fr. Molon, and the Diocese.

[247] Punitive damages are an exceptional remedy. The law governing punitive damages was helpfully set out by Justice Watchuk in *West Bros. Frame & Chair Ltd.* v. *Yazbek,* 2019 BCSC 1844 at paras. 223–226:

> [223] Punitive damages are unlike any other form of damages. Their purpose is not to compensate, but to punish. Similar to a criminal penalty, punitive damages are driven by a logic of retribution, denunciation and deterrence: *Whiten v. Pilot Insurance Co*., 2002 SCC 18 at para. 111.
>
> [224] Courts should only resort to an award of punitive damages in exceptional circumstances. Such an award should only made in response to conduct that "harsh, vindictive, reprehensible and malicious in nature" as well as "extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment": *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 S.C.R. 1085 at 1108. Punitive damages should be awarded to deter conduct only if compensatory damages are insufficient to do so: *Whiten* at para. 94.
>
> [225] Punitive damages must be tailored to the defendant's culpability. In *Whiten*, Binnie J. identified the following factors in assessing the blameworthiness of a defendant's conduct at para. 113:
>
> (a) whether the conduct was planned and deliberate;
>
> (b) the intent and motive of the defendant;
>
> (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
>
> (d) whether the defendant concealed or attempted to cover up its misconduct;

(e) the defendant's awareness that what he or she was doing was wrong;

(f) whether the defendant profited from its misconduct; and

(g) whether the interest violated by the misconduct was known to be deeply personal or irreplaceable.

[226] In addition, an award of punitive damages must be:

(a) proportionate to the degree of vulnerability of the plaintiff;

(b) proportionate to the harm or potential harm directed specifically at the plaintiff;

(c) proportionate to the need for deterrence;

(d) proportionate, even after taking into account the other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct;

(e) proportionate to the advantage wrongfully gained by a defendant from the misconduct: *Whiten* at paras. 114-126.

[248] I have concluded an award of punitive damages is clearly warranted against Fr. Molon. Fr. Molon's conduct was an egregious, and indeed reprehensible, abuse of power. He exploited the vulnerability of a young woman entrusted to his care to engage in a prolonged and repeated course of sexual exploitation. His conduct was clearly wrong, by the standards of any time. He also demonstrated a brazen indifference to the harm caused by his actions.

[249] Although these concerns are addressed to some extent in the award of aggravated damages, I do not consider an award of aggravated damages alone to provide sufficient denunciation of this reprehensible conduct. In light of the blameworthiness of Fr. Molon's conduct, his position of trust and authority, and the vulnerability of the plaintiff to his abuse, I consider an award of punitive damages in the amount of $250,000 to be appropriate in this case, in addition to the compensatory damages already awarded.

[250] The plaintiff's claim for punitive damages against the Diocese is less clear. As explained in *Whiten v. Pilot Insurance Co*., 2002 SCC 18 (at para. 67) "[i]t is in the nature of the remedy that punitive damages will largely be restricted to intentional torts." Nevertheless, punitive damages have been awarded in cases of negligence, where the conduct of the defendant is sufficiently egregious to merit condemnation

by the court: *Whiten* at para. 67; *Robitaille v. Vancouver Hockey Club Ltd.* (1981), 124 D.L.R. (3d) 228 (BCCA).

[251] Once again, the plaintiff relies on *MacLeod,* where the jury made an award of punitive damages in the amount of $500,000. Similar to that case, the plaintiff in her submissions attempted to paint a picture of a culture of pervasive secrecy in the Diocese; a culture that systematically buried allegations of abuse, blamed victims for their own trauma, and shielded abusers from accountability. This submission was not made out on the evidence before me.

[252] Nevertheless, I am persuaded that an award of punitive damages against the Diocese is merited in this case on the basis of its direct liability in negligence.

[253] The Diocese failed the plaintiff profoundly in a moment of great need. Bishop Exner was aware of troubling rumours about Fr. Molon as early as the spring of 1976. These rumours were all but confirmed when he confronted Fr. Molon. He knew that Fr. Molon's conduct put the spiritual and psychological well-being of his parishioners at risk. He chose not to act. As he himself admitted, this resulted in a serious violation of trust.

[254] I have found Bishop Exner was candid about his failings, and expressed regret that he did not act to prevent the plaintiff's abuse. His conduct was not vindictive or malicious. Nevertheless, his failure to act fell egregiously short of the standard of care required of a person in his position of trust and authority. It was, in my view, a purposeful and reprehensible omission, which merits the condemnation of the court. The compensatory damages already awarded against the Diocese are not sufficient, in my view, to address the blameworthiness of this conduct. I consider an award of $150,000 to be warranted in these circumstances.

Disposition

[255] In the result, the plaintiff Ms. Rosemary Anderson is entitled to the following award of damages for the injuries and loss caused by this tortious conduct:

a) non-pecuniary damages in the sum of $275,000;

b) loss of past income in the sum of $125,000;

c) cost of future care in the sum of $25,000;

d) punitive damages against the defendant Father Erlindo Molon in the sum of $250,000;

e) punitive damages against the Roman Catholic Bishop of the Diocese of Kamloops, a Corporation Sole in the sum of $150,000; and

f) special damages in the sum of $19,140.

[256] The plaintiff is entitled to prejudgment interest plus costs on Scale B.

[257] The issue of the calculation of pre-judgment interest, in the somewhat unusual circumstances of this case, was fully addressed by the plaintiff; at least in her written submissions. I am not satisfied I have the full benefit of the position of defendant on this point. In the event the parties cannot agree concerning the calculation of the pretrial interest then they may make arrangements to address the matter.

"Crossin J."