Date: 2002/07/12
Docket: S. H. No. 129455

IN THE SUPREME COURT OF NOVA SCOTIA
[Cite as: S. F.C. v. Nova Scotia (Attorney General), 2002 NSSC 176]

BETWEEN

S. F. C.,

PLAINTIFF

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the Queen, in Right of the Province of Nova Scotia,

DEFENDANT

D E C I S I O N

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

HEARD: **Before the Honourable Justice D. Merlin Nunn, Supreme Court of Nova Scotia, at Halifax, Nova Scotia, on May 21 - 24, 2002.**

LAST WRITTEN SUBMISSION: **June 27, 2002**

DECISION: **July 12, 2002**

COUNSEL: **William M. Leahey, for the Plaintiff**
Dale A. Darling and Genevieve Harvey, for the Defendant

NUNN, J.

[1] In this action the plaintiff is claiming for damages for sexual and physical abuse he alleges to have suffered while he was a resident at the Shelburne School for Boys for which the defendant is vicariously liable.

[2] A Notice of Intended Action was given the defendant on July 5, 1996 and this action was commenced on April 1, 1997 by the plaintiff's then counsel, Lance Scaravelli, with each side's list of documents exchanged by mid-June of that year. Nothing further was done until July 23, 1999 when a Notice of Intention to Proceed and a Change of Solicitor were filed by Mr. Leahey, the plaintiff's current solicitor, followed by a Notice of Trial filed August 20, 1999. There is nothing in the court file to account for the long delay in bringing this matter to trial.

[3] The plaintiff is presently aged 42, unmarried and has been self-employed on a part-time basis as a self taught *, having previously worked for varying periods at a number of unrelated jobs.

[4] As a child he lived with his parents and an older brother in their home on * Street in Halifax. He attended * School completing Grade 6 and then * for Grade 7. At this time he was 13 years old and, according to him, he began acting up more, not listening to his parents, breaking his home curfew,

hanging around with some problem associates, taking drugs and alcohol, with the ultimate effect that his school marks began to suffer. His parents tried to help him by being more strict but this was to no avail. He continued his activities, got caught shop-lifting and stopped going to school although he pretended to his parents that he was attending school by leaving in the morning but then go off with his friends. The school pursued his non-attendance and ultimately, he was sent to the Shelburne School for Boys. His admission card (Exhibit 1, Tab 5) indicates that he was admitted there on March 19, 1974 and released July 28, 1974 and the offence indicated as "Curfew Violation". The judge making the Order was Judge Black of the Family Court. The plaintiff says that there was an academic program there but he doesn't remember doing anything academic.

[5] He indicates in his testimony that nothing relating to this action occurred during this period.

[6] He was to return to school in Grade 7 in September but failed to do so. He was smoking more drugs and continued to hang around with his former associates. Again, his non-attendance at school was followed up and he was sent back to the Shelburne School for Boys. His admission card, (Exhibit 1, Tab 5) shows he was committed there on September 27, 1974 and released

April 5, 1975 with the offence listed as “Order of the Administration” and the judge again being Judge Black. There is no clear evidence as to the reason for his confinement though he suggests it was truancy.

[7] It was during this period that he alleges that the events giving rise to this action occurred.

[8] The first incident he described in his testimony involved his teacher, P. A., and occurred while in class. He testified that while in class, A. would come up behind him and start rubbing his shoulders and leaving his hands there. This occurred on a number of occasions. Sometime after, again in class, A. sat beside him and put his hand on his thigh and was moving it up to his crotch. Again, on another occasion when A. was driving the plaintiff and another unnamed boy to town, the unnamed boy was in the middle and the plaintiff was in the front passenger seat and A. reached over and put his hand on the plaintiff’s thigh by his crotch.

[9] The plaintiff never mentioned these incidents to anybody but he said that, because of them, he stopped going to school.

[10] The next incident he described was that the gym teacher asked him to go on the roof to adjust an antenna and while he was on the roof this teacher took away the ladder and told him to jump down threatening that if he didn’t

jump he, the teacher, would go up and throw him off. He did jump, about 15 feet he said, hurting his knee and shoulder.

[11] He then testified that he did not attend class for 3 weeks to a month and, when told he must attend, he ran away, getting back to Halifax whereupon he was caught breaking into a store or restaurant and was sent back to Shelburne. On his return he claims he was put in "the hole" a secure cell, which he described in detail as being in a cordoned off part of the main building with a cinderblock wall, one high window covered partly with plywood and steel mesh, and a solid wood door with a hatch opening from the outside in the top part of the door so one could look in. This hatch was about one foot high and there was another hatch at the bottom of the door large enough to slide in a food tray. Inside the cell was a bed and a toilet. He testified that the counsellor in charge of this secure area was P. M..

[12] Following this he avoided going to class by going to the library and on one occasion in which he described the library as blacked out because of some kind of a video test going on, the library teacher, unnamed, put his hand on the plaintiff's thigh whereupon the plaintiff jumped up and left the library. Following this incident, and because of it, the plaintiff joined with two others and ran away. He testified that they broke into a gas station and stole

a car. When on the highway an R.C.M.P. car came up behind them and a high speed chase began, ending when the engine of the boys car blew. The plaintiff says that they were escorted back to Shelburne by the R.C.M.P. and on arrival the police officer put him in a secure cell. He also said that the stolen car belonged to a teacher at the Shelburne School for Boys.

[13] He testified that after the police officer left, P. M. came to his cell, had him strip naked, took away his bedding, grabbed him flinging him against the wall and then kicked him in the chest and left him there. As a result of this he says he suffered a broken nose and the right side of his face was swollen. His clothing and bedding were not returned until just before the shift ended. He alleges that M. said the teacher wasn't going to do anything about the car but he was.

[14] He continued to say that he was in this cell for five to seven weeks during which time M. would have him (and apparently others) up at 5:00 a.m. and out flooding a rink each day for one week and other days moving rocks in a field and cleaning floors with steel wool. This was done before breakfast which was at 8:00 a.m.

[15] While in this cell he said that, at night, M. would open the top hatch of the door and begin masturbating while looking at the plaintiff. He says he knew

that he was masturbating because his shoulder was moving. This happened a lot according to the plaintiff.

[16] At first he testified that on one occasion M. came into his cell and began masturbating, telling the plaintiff to watch him, then telling the plaintiff to do the same. The plaintiff said he put his hand under the blanket and pretended to masturbate.

[17] Then he testified this happened more than once and, in fact, a number of times, between October and December 1974.

[18] Following this there were no further physical or sexual activities alleged by the plaintiff and in due course he was released, returned home and went to another school, * for the remainder of the year. The evidence seems to indicate he did not pass the Grade 7 level, though afterwards through the G.E.D. program, he did complete the high school level.

[19] As a result of these incidents the plaintiff says that he felt ashamed when they occurred and has carried that shame to the present day. He says it made him feel as if he did something wrong and he has been suppressing the events ever since. He could never discuss the events with anybody and claimed they prevented him from having close relationships, particularly with women.

[20] His testimony indicated that, a short time after leaving Shelburne he had a relationship with a woman, at age 17, and they planned to marry, but the relationship ended, though not before she was pregnant and delivered a son. He did continue drinking and taking drugs and they contributed largely to his problems, though he says that he is now drug free and has his alcohol consumption under control.

[21] By the time this action was commenced it was well known that there had been abuse at the Shelburne School for Boys, which had been acknowledged by the Provincial Government which had set up a Compensation Program for victims of this abuse with a very large amount of money in total being paid out. The plaintiff was aware of this program, which did not involve the courts, but rather private sessions with an investigator and a scale of compensation based upon the nature of the abuse and, as well, was aware of the possibility of a lawsuit.

[22] In any event, sometime in early summer of 1996 he consulted Mr. Scaravelli, a lawyer, who filed a Notice of Intended Action in July 1996 and, later, in December of that year an Amended Notice with the Originating Notice being filed in April 1997. He had several meetings with his counsel because he found it difficult to tell his story and was subject to episodes of

weeping and crying. Scaravelli suggested he see a psychologist, suggesting Mark Kent. The plaintiff saw Kent in November, 1997, and, between then and April, had nine one-hour therapy sessions. He said he did not continue as he did not have the financial ability. Apparently, the Compensation Program assumed the costs up to April.

[23] His evidence is somewhat confusing as to his reasons for not participating in the Compensation Program. On direct he said that he was upset with the Program because it kept changing and he chose the lawsuit route after the then Minister in charge of the Program said "if anyone didn't like the program he could take the government to Court". Yet, on cross-examination, he said he believed he was acting under the Program and the documentation being filed by his counsel was being done so as part of the Program, even though this action was started almost one year after he first consulted counsel.

[24] On cross-examination the plaintiff was unable to remember the names of the cottages in which the boys were housed, though each had a name, nor could he remember the names of the counsellors with one exception. As well he only could recall less than a half-dozen other residents. He doesn't remember going on any outings other than one fishing trip.

[25] He related that on his second day in the cell while his face was swollen from the incident alleged against M., the Superintendent of the School came to his cell with M. and asked him what had happened. He did not reply because M. was there and the Superintendent asked M. to leave but M. did not leave and the plaintiff did not respond.

[26] He was firm in his responses to cross-examination that M. worked in that secure unit, that he would start early morning. He was not sure how many times M. would open the hatch and masturbate but it was more than once though he doesn't know how he remembers it as more than once, but believes that to be the case. Then he said he couldn't specifically recall it happening more than once.

[27] Defence counsel asked him what were the bad things that happened to his life, referring to the plaintiff's earlier testimony regarding his life at Shelburne. His response was that he doesn't know if he attributes anything to Shelburne, though that may be because he's older and can handle his alcohol, and is off drugs. The main bad thing is his failure to have relationships to which he attributes his inability to tell what happened to him at Shelburne as the major factor.

[28] While at Shelburne he heard nothing from the other boys of any physical or sexual abuse nor any rumours to that effect.

[29] On re-examination, referring to the visit by the Superintendent, he said he heard M. say to the Superintendent outside the cell, “none of your business, I’ve been here longer than you and I will be here after you’ve gone.” He did not hear what was said to bring this response.

[30] The first witness called by the plaintiff was Edward Gannon, who in 1965 was a Probation Officer in Sydney. His evidence related to whether the government was aware of complaints about certain sexual activities of P. M.. He testified that two boys, formerly at Shelburne School for Boys, told him that M. was masturbating in front of the boys. He then wrote to the Regional Director of the Department of Public Welfare and though he learned it was under investigation he never heard any results although there is a letter from the Director of Child Welfare to the Minister of Public Welfare (Exhibit 2 Tab 24) to the effect that the matter was investigated by the Superintendent of the School, Mr. S., and no evidence of such activities could be found and the allegations were considered untruthful. His evidence need not be elaborated upon here any further.

[31] The next witness for the plaintiff was Mark Kent, who was duly qualified by the Court as an expert psychologist in the field of assessment and counselling of patients who have been subjected to acts of traumatic sexual abuse. His expert's reports are filed in Exhibit 1 Tab 6 dated February 18, 1977 and Tab 8 dated November 25, 1977.

[32] The Tab 8 report briefly sets out the family background of the plaintiff as related by the plaintiff as a preliminary to the application of certain psychological tests directed towards determining the plaintiff's academic, intellectual and vocational abilities and whether he would be suitable for various employment objectives. Briefly the plaintiff's results on these tests showed him to have an above average intelligence, high aptitude and applied abilities and could excel at any type of academic or vocational opportunities he pursued. Mr. Kent concludes this report as follows:

> It is worth nothing this individual demonstrated superior abilities earlier on in his school life however once being sent to the Shelburne Institution, he was not given the opportunity to develop these above average abilities and consequently dropped out of the mainstream education system and lost out on an opportunity to attain a higher standard of living in his life. It appears Mr. C. was unable to make the

emotional and psychological adjustments coming out of the Shelburne Institution to reintegrate back into the mainstream educational system no doubt due to the alleged abuse as well as losing a year in his academic development while at the Shelburne Institution.

This would indicate to an extent that the Shelburne experience had a traumatic and detrimental impact on the psychological, emotional, intellectual, vocational, and financial development of this individual and it is quite unfortunate that he has been unable to recuperate from this particular experience throughout his adult life.

Based on these test results it is obvious that Mr. C. could have achieved a higher standard of living and could have become extremely successful in whatever educational endeavours he pursued. Unfortunately he has not been able to attain any degree of success remotely associated with his innate skills or intelligence and abilities and no doubt he has suffered detrimental consequences due to his stay at the Shelburne Institution.

I believe Mr. C. has been robbed of an opportunity to better himself and to achieve financial, occupational and interpersonal success as a result of the educational deprivation and emotional distress while at

> the Shelburne Institution. However, Mr. C. certainly has the abilities to achieve and to excel in whatever occupation or educational avenue he pursues and I believe he deserves an opportunity to achieve these goals in his life.

[33] At best these tests show that the plaintiff had the ability to succeed and could have remained in the “mainstream”referred to by Mr. Kent though he did not. However, the conclusions as to the plaintiff’s Shelburne experience and its alleged effects are not capable of being based upon the tests administered, but rather upon the information provided in three earlier sessions prior to the February, 1997, report (Tab 8).

[34] Mr. Kent’s February, 1997, report begins with the plaintiff’s background information as told by the plaintiff himself. It is essentially what he testified to though there are some differences. His school history is not as complete as to the period in his life where he stopped going to school, as are the reasons for his very changed life when he was in Grade 7. Another point is that it was only once Mr. M. came in his cell and masturbated, a point dealt with in cross-examination.

[35] Basically the background information is in line with the plaintiff’s testimony. The report then goes on to indicate the psychological tests given

and their results. In summary they indicate that the plaintiff is suffering from high levels of anxiety and reactive bouts of depression stemming from the abuse he suffered at Shelburne. Mr. Kent's conclusion at page 9 of his report is:

> Mr. C. had a stable supportive upbringing but was unfortunately exposed to ongoing physical abuse, sexual encounters, and psychological intimidation for over two years while in the Boy's School. At such an early age, these traumatic events shaped his psychological, sexual and emotional development and has played itself out in a "fringe" life style. Concomitant with the abuse, desecration of childhood innocence and suppressed anger, Mr. C.'s sense of learned helplessness and lack of direction has caused him to be an angry victim well into his adult years. Certainly Mr. C.'s inability to sustain productive work and a normal relationship with women, has continued the victimization cycle to this day.

In his testimony Mr. Kent stated that the plaintiff was emotional and cried a lot during the first two sessions, but opened up and was able to tell what happened to him on the third session. He says he was struck by the sense he had that the

plaintiff was not out to get anybody, but rather that he was trying to deal with the issue and resolve it.

[36] His assessment was a clinical assessment leading to the therapy that would be required. In such an assessment situation, the relationship of client and psychologist must be based on trust, with the result that the psychologist accepts the incidents described by a client without challenge or cross-examination. Then reliance is placed upon the psychological tests to try to reach a reasonable assessment so that a therapy program can be determined. Significantly missing is any careful psychological diagnosis of the plaintiff and his problems.

[37] No other references to these reports are required here as they are fully set out in Exhibit 1.

[38] I did admit into evidence a discovery transcript taken in another claim regarding Shelburne of Dr. Fred MacKinnon, who was Deputy Minister of Social Welfare at the time of the events alleged here, but for one purpose only, which was to show government knowledge of some claims of abuse at Shelburne. This was objected to by defence counsel. Dr. MacKinnon was subpoenaed in this case, but a doctor's letter was provided that he could not testify due to age (91 years) and health.

[39] No other witnesses were called by the plaintiff. The two people he named, A. and M., are both deceased, with the latter having been imprisoned upon conviction for a number of sexual assaults committed on young boys at the Shelburne School for Boys.

[40] I have set out the plaintiff's evidence at some length as there is a strong contrast between it and the evidence on behalf of the defendant.

[41] The defendant's first witness was B. C., now retired, who was the Superintendent of the Shelburne School for Boys from 1970 to 1981. He described the institution and how it operated , indicating that there were, on average, 100 boys in the institution at any time who were grouped, according to size, in a number of cottages with a counsellor at all times who worked on a shift schedule. The shift schedule was 6 a.m. to 2 p.m.; 2 p.m. to 10 p.m. and 10 p.m. to 6 a.m. There were three supervising counsellors, one for each shift.

[42] As well there was a regular academic program under a principal and six teachers with each cottage having a teacher and 3 shop teachers for vocational training. Outside activities frequently occurred and were organized by the various counsellors.

[43] The institution had its own maintenance staff and kitchen staff, and the services of a visiting psychologist.

[44] Mr. C. then described the secure area which was located on one side of the administration building. In this area were four rooms with locked doors, with two other rooms that could be used as secure rooms. The doors to these rooms were solid wood with a small glass window at chest level to enable observation and a vent in the bottom large enough to slide a try through. There was no hatch as described by the plaintiff, nor was there a toilet in each room. The washrooms were across the hall from these rooms and there was a TV and games room there. When anyone was in the secure area there always was a counsellor present. Unless a boy was violent he was free to use the washroom facilities and the games room while in the secure area.

[45] In summary, Mr. C., testified that with one exception, not the plaintiff, no boy was ever in the secure area for an extended period of time and certainly not for five to seven weeks as the plaintiff alleged. Generally, the period in the secure area extended from a few hours to a couple of days. He indicated that, as Superintendent, he would be very aware of any extended stay in that area, as it would be a most unusual event and also because there were daily reports made by each of the counsellors and he recalls none indicating an

extended stay such as the plaintiff alleges. It was exceptional to have a boy in the secure area.

[46] Further, he stated that he had never visited the secure area and found a boy with facial injuries and does not remember visiting the plaintiff. As well, referring to the alleged comments overheard by the plaintiff by M., he said no such comments were made as he would have considered them insubordination and dealt with it immediately. He denied that M. was ever insubordinate to him. Also he was satisfied that M. did not work, nor would he be assigned to work, in the secure area as he actually worked with younger children and he was older, mild mannered and would not be put in a high stress situation.

[47] He denied the likelihood of M. masturbating in the hall and entering the boy's cell because the institution was very open and very little could go on without other people knowing.

[48] As to the events alleged against P. A., he testified that A. resigned and left the institution in June 1974 at the end of the school term as he was going to enter the Maritime School of Social Work that Fall. That is, A. left the Shelburne School several months before the plaintiff arrived for his second time and therefore could not have done the acts alleged by the plaintiff.

[49] As to the flooding of the rink C. testified he has no recollection of boys flooding a rink though there was an old area once used as a rink, but not in his time at the institution. Also, in 1973-74 a new rink was built in Shelburne and they bought time there for the boys.

[50] The second defence witness, L. K., also retired after 32 years at the institution, was one of three Supervisors in 1974-75 in charge of all staff on one shift. He testified that detailed records were kept on each boy, each cottage and every counsellor and, as far as the shift was concerned, staff could not volunteer or change shifts without his express consent.

[51] He also testified that no one spent five to seven weeks in the secure area. Rather one sent there could be there for minutes, hours or overnight with the real thrust being to get the boy back to his cottage. He never ever heard it referred to as “the hole”.

[52] Similarly, he said there was no hatch on the door to swing open, but rather a small window about 12" high and 6" wide covered with wire mesh.

[53] As to M., he testified that he worked days and not nights and never worked in the secure area. No sexual complaints were made against M. until an event in 1975 with a young boy whereupon M. was immediately dismissed.

[54] He denied any possibility of the roof incident occurring as only maintenance staff were allowed on the roof and only they had control of any ladders. If there were an antenna problem, it would have been dealt with by maintenance or professional help would be obtained. If this event happened, he said, he would have known about it as it was his job to know of such events.

[55] According to him any flooding of the old rink was done by maintenance and at night so it would have time to freeze by morning. He also confirmed it had fallen into disuse and in 1974-75 they used the new arena at Shelburne.

[56] On cross-examination it was suggested that K., who is chairman of the organization Past Employees for Restorative Justice and who was against the government's Compensation Program might have some bias against the plaintiff. He testified the he would be objective and truthful and I find that he was and there could be no merit to any suggestion he was anything less than he indicated.

[57] The third defence witness, Barbara MacKenzie, of the Department of Community Services, Human Resources Section, was called to speak to the record in Exhibit 1, Tab 16, the personnel record of P. A. which shows he resigned as of September 1, 1974. I accept this record as accurate as that

would be the beginning of the next school year. Since the class year ends at the end of June for summer holidays, it is not inconsistent that he left the Shelburne institution at the end of June. In any event it indicates A. was gone before the plaintiff's second stay at the institution.

[58] Dr. Carole Pye was the final defence witness. She is a clinical psychologist, registered to practice in Nova Scotia. Her qualifications were admitted by the plaintiff and she was qualified as an expert in the field of psychology entitled to give opinion evidence as an expert in forensic assessment and assessment of psychological disorders in adults including post traumatic stress disorder.

[59] Her expert's report is filed in Exhibit 1, Tab 12. This is a forensic assessment rather than a clinical one and as such is more neutral and not directed towards treatment. For a forensic evaluation there must be the clinical interview wherein the history of the individual is taken and his attitudes and responses observed. Then the special psychological tests followed by a survey of collateral documents such as school reports and employment reports and interviews of persons collateral to the person being assessed, i.e. collateral sources.

[60] Her report's personal history is much more detailed than that of Mr. Kent and while it contains references to the allegations in this case, it also refers to other problems in the plaintiff's youth regarding his family, his schooling and his activities.

[61] For collateral sources the plaintiff gave only three names, his brother, his physician and another and was unwilling to provide others such as other family members, co-workers, women he lived with or good friends. Dr. Pye interviewed the first two, but understood the third person was to contact her when he came to town, but he did not. She made it very clear that that number of collateral sources was very small and she really wanted and asked for a fairly extensive list.

[62] Dr. Pye was aware of the results of the tests given by Mr. Kent and she then gave the plaintiff the series of tests set out on page 15 of her report and her indication of the results of each is provided in the following pages along with her summary and interpretation.

[63] Her summary at pages 26 to 28 is highly significant as she found clear and consistent indication in the plaintiff's psychological assessment of features of antisocial personality disorder and possibly of psychopathy. She states at page 26,

> The existence of an antisocial personality disorder has some particular implications for S.'s current assessment and claims. One is with regard to the reliability of his statements. The assessor (Dr. Pye) did not reach any specific determination regarding deceitfulness in S.'s case. However, due to the strong associations of ASP with deceitfulness, it would be advisable whenever possible to seek independent corroboration of claims of abuse made by any person with this diagnosis. The second implication has to do with casual factors of current disorders. When a child shows early onset of features of Conduct Disorder, there is increased likelihood of adult Antisocial Personality Disorder.

[64] In this latter regard the plaintiff's conduct disorder began before Shelburne, and escalated before the alleged abused of his second stay there. Dr. Pye's report continues:

> S.'s adult Antisocial Personality Disorder features would likely have developed even if there was not been the second term at Shelburne and the alleged abusive episodes during that time. It may well be the case that Shelburne had nonspecific contributing effects on the development of antisocial disorder for S.. Any abusive experiences

> would probably have worsened antisocial patterns. Nevertheless, it would not be reasonable to conclude that S.'s antisocial patterns could be primarily attributed to Shelburne or that abuse experienced at Shelburne was their principle cause.

[65] With regard to whether the plaintiff shows any indication of trauma related disorders, Dr. Pye concluded that while this was a major area of assessment, there was little to support a finding of abuse related post traumatic stress disorder.

[66] Dr. Pye indicates that the plaintiff's problems of poor relationship and dysphoria have many different possible causes remote from Shelburne, concluding that the assessment she performed found little evidence to support the plaintiff's claims of abuse and the sort of psychological harm that would result from abuse during childhood.

[67] Dr. Pye made it very clear that it was not her function to give an opinion that the plaintiff was lying or truthful about Shelburne nor is her assessment determinative of whether or not these events occurred. While she disagrees with Mr. Kent's deduction that the Shelburne events were the cause of the plaintiff's psychological problems, she only contends that her assessment provides other possible causation. She disagrees with Kent on post

traumatic stress disorder which he assessed at moderate to severe and persisting while she found little to support this disorder in the plaintiff.

[68] No further witnesses were called and there was no rebuttal evidence. Written briefs of argument were provided by counsel.

[69] The plaintiff's brief suggests that the main issue is one of credibility of the plaintiff and argues that the plaintiff as an abused person trying to recollect details of humiliating events, suppressed for 25 years, is entirely credible especially in view of the well publicized abuse that had occurred there. It then challenges many aspects of the defence witnesses evidence as to their accuracy. It suggests that the witnesses C. and K. have set out on a crusade to attempt to discredit, through the type of generalizations which characterized their testimony, any claimant who submits that he was abused at Shelburne, as part of a public relations battle to support their organization which counters the notion of extensive abuse at Shelburne and the government's Compensation Program. It also challenges the forensic psychological report in that the author did not utilize one of the collateral source people, that she confused material facts, and was careless in ensuing she had the right facts and, because she has done so many other assessments

for the Department of Community Services, she had an economic interest in providing evidence favourable to the defence.

[70] The defendant's brief, accepting credibility as a major issue, takes the position that, in view of the evidence of the defendant, the plaintiff is not a credible witness and secondly, has not met the burden of proof which rests upon him.

[71] As the witnesses were presented I listened very carefully to their testimony and observed them as they presented their direct testimony and under cross-examination. I find the witnesses C. and K. to be truthful in their recollections and I cannot accept any suggestion that their testimony was biased or that they were on a crusade to discredit as defence counsel suggests. As well, I accept Dr. Pye's psychological assessment as that of a professional expert in the field, prepared on the information the plaintiff provided, certainly not biased either against the plaintiff or in favour of the defence case and, more certainly, not directed so as to preserve any economic or financial interest with the Department of Community Services.

[72] The burden on the plaintiff is to prove his case by a balance of probabilities and his allegations must be put to that test. Taking first his allegations that on a number of occasions sexual assaults were committed upon him by his

teacher, P. A., during the plaintiff's second stay at Shelburne, it cannot be found that he has met the burden of proof necessary when A. was not at the institution at that time which I find to be the fact.

[73] As to the gym teacher forcing him to jump off the roof, he was unable to provide any details, not the name of the teacher or any evidence to support the injuries claimed. As a contrast to this allegation, I have the credible evidence that this would not be permitted by any teacher or counsellor, that any such work would be done by the maintenance crew who had exclusive control of all ladders. Clearly, without something more, the plaintiff has failed to meet the burden of proof to establish a claim in this regard.

[74] Finally, he alleges both physical abuse and sexual abuse against P. M.. By the time this action started M. was a well known pedophile already convicted on a number of counts of sexual assault on boys at the Shelburne School for Boys. However, that does not alter the burden for the plaintiff to prove his own allegations. The evidence of the defence on this matter, which I accept, is so strong in contrast to that of the plaintiff that, again, the plaintiff has failed to discharge his burden of proof. First, the alleged physical assault is contrasted with credible evidence that M. did not work in the secure area, that a boy being brought back by the R.C.M.P. would be

brought first to a supervising counsellor and not put directly in a cell and then the supervising counsellor would have to assign some counsellor to the secure area, that the Superintendent has no recollection of visiting this area and seeing an injured boy and denies explicitly a conversation where M. had said to him the comment alleged. Again, without something more, the burden of proof has been discharged.

[75] Turning to the very serious allegations that M. masturbated in the hall while looking in on him a number of times and then entered his room and masturbated in front of him and asked him to do the same, the evidence of the defence witnesses C. and K. is quite compelling. I accept their testimony that, with one exception, not the plaintiff, no one remained in the secure rooms for an extended period. Most were from minutes to at most a few days, a cooling off place, so that they were back in their group in the cottage as soon as possible. I am satisfied that the plaintiff was not in this secure area for five to seven weeks as he alleges. However the length of time is not fatal to the allegation nor are the inaccuracies of his description of the area itself, though they may tend to make his testimony less credible. The icing on the cake, so to speak, is the evidence of both C. and K. that M. did not work in that area and because of his nature and experience would not be

assigned there. Also he did not work the night shift when these events are alleged to have occurred. Even the plaintiff's testimony as to the number of times this event occurred from once, to many times, to more than once to I believe more than once, does not help in determining just what is proved. When you consider this evidence in total it would be most unreasonable to conclude the balance of probabilities burden has been met. While it is obvious that most sexual assaults occur in private without witnesses, the strong evidence here not only contradicts but establishes that it was most likely that the incidents claimed by the plaintiff could have occurred. In the face of that, the plaintiff has failed to discharge his burden of proof.

[76] Because of my findings of credibility regarding the defence witnesses testimony and the very significant differences between the parties as to the evidence, and taking into consideration the comment by Dr. Pye, already referred to, about the strong association of ASP with deceitfulness making it advisable whenever possible to seek independent corroboration of claims of abuse made by a person with this diagnosis, I searched through the evidence very carefully to seek if there was anything to corroborate any of his claims. There was not.

[77] As a result, therefore, the plaintiff's claim for damages for physical and sexual abuse while he was at the Shelburne School for Boys is dismissed with costs payable to the defendant at the usual standard scale.

[78] Having decided the issue, it is not necessary for me to deal with the several legal issues raised by the defendant, namely that this action for common assault is barred under the *Limitation of Actions Act* and breach of a fiduciary duty is not a cause of action against the provincial Crown of Nova Scotia.

[79] As well, it would only be an academic exercise to deal with damages. If I were to do so, I would not, in these circumstances award either aggravated or punitive damages and, because of the existence of so many other factors which contribute to the plaintiff's problems, would determine a moderate award as compensation had I found some, any or all of the allegations to have been proved.

[80] Judgement for the Defendant.

J.

Halifax, Nova Scotia