In the Court of Appeal of Alberta

Citation: Bees v Canada (Attorney General), 2026 ABCA 163

Date: 20260515
Docket: 2501-0001AC
Registry: Calgary

Between:

Bobbie Bees as Representative Plaintiff,
Proceeding under the Class Proceedings Act, 1992

Respondent

- and -

His Majesty the King in right of Canada
as represented by the Attorney General of Canada

Appellant

The Court:

The Honourable Acting Chief Justice Dawn Pentelechuk
The Honourable Justice William T. de Wit
The Honourable Justice Alice Woolley

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice R.A. Neufeld
Dated the 27th day of November, 2024
Filed on the 29th day of April, 2025
(2024 ABKB 704, Docket: 2101-07744)

Memorandum of Judgment

The Court:

Introduction

[1] The respondent, Bobbie Bees, commenced an action against Canada with the aim of having it certified as a class action under the *Class Proceedings Act*, SA 2003, c C-16.5. The chambers judge certified the claim as a class action and defined the class as: "... individuals residing in Canda who, as minors, were the victims of sexual misconduct on a Canadian Armed Forces base by Captain Father Angus McRae while he served as a Canadian Armed Forces chaplain, including sexual abuse committed directly by Captain Father Angus McRae or with his participation, encouragement or facilitation...": *Bees v Canada (Attorney General)*, 2024 ABKB 704 (the certification decision).

[2] Canada now appeals the certification decision, challenging the application of several parts of the certification test. Canada does not dispute that the claim reveals a potentially viable cause of action against Canada by victims of sexual abuse by McRae while he served as chaplain on Canadian Armed Forces bases ("CAF bases") based on vicarious liability, and that such a claim could constitute a certifiable class proceeding. Canada's primary objections arise from the fact that Bees, the representative plaintiff and respondent on this appeal, was directly sexually abused by PS (an altar boy and victim of McRae's), rather than by McRae himself.

[3] For the reasons set out below, and subject to the removal of one of the certified common issues regarding damages by consent of the parties, Canada's appeal is dismissed.

Background

[4] Bees lived on CAF bases for most of his childhood. Between 1978 and 1980, from the ages of seven to nine, he lived on the Namao base in Edmonton. During that period, McRae was employed as chaplain at the Namao base. McRae had been an officer in the Canadian Armed Forces since 1973 and was employed as an armed forces chaplain between 1968 and 1981. Before being stationed at the Namao base, McRae worked as a chaplain on several other CAF bases.

[5] At an ecclesiastical trial in 1980, McRae admitted to having sexually abused "several minors" over the "couple of years" he served as chaplain at the Namao base. Later that year, McRae was court martialed for his abuse of PS, an altar boy, and sentenced to four years' imprisonment. A lawsuit brought by PS against McRae, the Department of National Defence and the Edmonton Archdiocese was settled in 2008 for an undisclosed amount.

[6] Bees' affidavit states that McRae abused "hundreds" of children while employed on CAF bases. The affidavit also states that, while Bees was living on the Namao base, McRae recommended to Bees' grandmother that PS, then about 14 years old, should babysit Bees and his brother. In hindsight, Bees believes that McRae made that recommendation knowing that PS would groom Bees and his brother for sexual abuse.

[7] According to the evidence filed on the certification application, PS began sexually abusing Bees and his brother immediately after he became their babysitter, when Bees was about seven years old. The abuse was frequent and when Bees resisted, PS became physically violent. PS also abused other young children on the base. A 2020 Military Police Complaints Commission Report (MPCC Report), attached to Bees' affidavit, found that the military police were aware in 1980 that PS was abusing children at the Namao base. The MPCC Report found that PS had been sexually abused by McRae, described in the MPCC Report as "an active pedophile who was successfully court-martialed", and that PS's actions in abusing children at the base were attributable to PS's victimization by McRae. PS was never formally charged for his abuse of Bees and others; the MPCC Report cited the passage of time, the young age of those involved at the time of the alleged offences, and that PS's actions were attributable to his own victimization to explain the decision not to bring charges against PS.

[8] There is no evidence that McRae himself directly sexually abused Bees. However, according to Bees' affidavit, on at least five occasions PS brought Bees to McRae's chapel on the Namao base. During these visits, McRae gave Bees a sickly-sweet grape juice, after which Bees could remember nothing. In retrospect, Bees believes that McRae drugged him with sedatives or alcohol.

[9] McRae died in 2011, before the commencement of the current class proceedings.

The Statement of Claim

[10] Bees commenced an action against Canada intending to have it certified as a class proceeding. The Statement of Claim identified Bees as the proposed representative plaintiff and the proposed class as those who were "victims of abuse through the intentional physical, mental and sexual acts" of McRae "or his agents" on CAF bases.

[11] The main factual allegations in the Statement of Claim are:

- McRae was employed by Canada as a chaplain on the Namao base and other CAF bases.

- While Bees was a child living on the Namao base, he was subjected numerous times to mental, physical, and sexual abuse by McRae and PS.

- McRae also mentally, physically, and sexually abused hundreds of other children at the Namao base and other bases while he was a military chaplain.

- The abuse committed by McRae included "public degradation", physical assaults, sexual assaults, and forced confinement.

[12] The Statement of Claim asserts two main claims against Canada. The first is that Canada is directly liable for breaching a duty of care to prevent the abuse of children at CAF bases. The Statement of Claim alleges that Canada failed to properly screen and supervise its employees and did not have proper procedures and policies in place to protect children from abuse. The second claim is that Canada is vicariously liable for torts committed by its "agents, servants, or employees", including McCrae.

[13] The Statement of Claim pleads various kinds of general damages including pain, loss of enjoyment of life, impairment of relationships, impairment of mental health, and psychological trauma. It also asserts that punitive damages are appropriate because Canada "knew or ought to have known" about the abuse taking place at the Namao base and other CAF bases but continued to allow children to live there.

Test for certification

[14] The test for certifying a class action is set out in s 5(1) of the *Class Proceedings Act*. The certification judge must be satisfied that:

(a) the pleadings disclose a cause of action;
(b) there is an identifiable class of two or more persons;
(c) the claims of prospective class members raise a common issue;
(d) the class proceeding is the preferable procedure for resolving the common issues; and
(e) there is an eligible representative plaintiff who meets the statutory criteria.

[15] Class action legislation is procedural and was adopted to provide a mechanism to determine issues common to the members of a class in a manner that is economical, fair, efficient and manageable. The legislation is applied flexibly and liberally to balance fairness and efficiency: *Starratt v Mamdani*, 2017 ABCA 92 [*Starratt*] at para 9. Class certification is a procedural motion concerning the form of an action, not its merits: *Hollick v Toronto (City)*, 2001 SCC 68 at para 16; *Warner v Smith & Nephew Inc*, 2016 ABCA 223 [*Warner*] at para 10.

[16] With respect to the first part of the test under s 5(1)(a), the relevant question is the same as on an application to strike a claim: whether, taking the facts pleaded as true, it is plain and obvious that the pleadings do not disclose a cause of action: *Setoguchi v Uber BV*, 2023 ABCA 45 [*Setoguchi*] at para 20. The legislative requirement is met unless it is plain and obvious that the

claim cannot succeed: *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at para 63; *Starratt* at para 10.

[17] If the pleadings disclose a cause of action, the evidentiary threshold for the other certification criteria is not onerous. The requirement is that there be "some basis in fact" to support the claim: *Setoguchi* at para 19; *Starratt* at para 10. Certification of class proceedings is a gatekeeping function. It is not the court's role in a certification application to evaluate the underlying merits of the claim or whether it is likely to succeed: *VLM v Dominey Estate*, 2023 ABCA 261 at paras 18-20 [*VLM*].

Certification decision

[18] The chambers judge certified the action as a class action, although he modified the class definition and the list of common issues proposed by Bees.

[19] Addressing first the test under s 5(1)(a), the chambers judge found the Statement of Claim disclosed two certifiable causes of action against Canada: a claim grounded in the vicarious liability of Canada for the misconduct of McRae while employed at CAF bases and a claim for direct liability in negligence. He noted that this Court, in its recent decision in *VLM*, held that, even in the absence of vicarious liability, direct liability in a similar case could be based on a failure to screen the abuser, failure to supervise him, and failure to have adequate policies in place: certification decision at para 19.

[20] The chambers judge considered Canada's argument that the facts pled in the Statement of Claim only support a cause of action by Bees against PS, and that the doctrine of vicarious liability cannot extend to impose liability on Canada for actions taken by a 12 to 14-year-old. The chambers judge was not satisfied, however, that there could be no cause of action against Canada for the purpose of certification "simply because the physical contact alleged in the Statement of Claim included someone other than Father McRae". He found that McRae may have committed several torts, including assault, false imprisonment, and intentional infliction of emotional distress, even if he did not directly sexually abuse Bees. Canada could be vicariously liable for those torts if (among other things) there was a sufficient connection between McRae's assigned tasks and his tortious conduct. The facts as pled "disclose some basis for a sufficiently substantial connection to make an arguable case for vicarious liability", and that cause of action was accordingly certified: certification decision at para 34.

[21] With respect to the class definition under s 5(1)(b), the chambers judge considered the definition proposed by the applicant – which would include victims of abuse through the acts of McRae "or his agents" on CAF bases – as well as the revised definition proposed by Canada that would apply to only minor victims of McRae and not include a reference to McRae's "agents". The chambers judge agreed that the use of the term "agents" was inappropriate, and crafted a definition that would cover victims of McRae in the following terms: "minors who were the victims of sexual misconduct on a Canadian forces base by Father Angus McRae, including sexual

abuse committed directly by Father Angus McRae or with his participation, encouragement or facilitation": certification decision at para 41. The chambers judge was satisfied the class had at least two members, noting McRae's admission at the 1980 ecclesiastical trial to having assaulted several minors in the previous couple of years.

[22] The chambers judge identified several common issues suitable for resolution in a class action, including:

- Whether Canada is directly or vicariously liable for damage suffered by class members due to McRae's sexual misconduct while he was employed at CAF bases.
- The circumstances in which McRae came to be working at CAF bases.
- Canada's training, supervision, and oversight of McRae when he was stationed at CAF bases.
- The duties, responsibilities and powers of McRae as a chaplain at CAF bases, and in relation to minor children resident on CAF bases while he was a chaplain.
- Whether McRae was the subject of complaints of sexual misconduct involving minors who resided on CAF bases during or prior to being stationed at the Namao base and, if so, what steps were taken by Canada in response.
- The physical layout of the chapel and the chaplain's residential accommodation at the Namao base and previous base assignments.
- Whether the alleged general damages can be estimated on an aggregate or class-wide basis.
- Whether the alleged punitive damages can be estimated on an aggregate or class-wide basis.

[23] Finally, with respect to ss 5(1)(d) and (e), the case management judge found that a class action was the preferable method for resolving members' claims, primarily because it would avoid the need for multiple historical sexual abuse trials. Further, Bees was a suitable representative plaintiff because he had demonstrated willingness to seek justice for sexual abuse committed against him in the past.

Issues on appeal

[24] On appeal, Canada argues that the case management judge erred in certifying the action by:

1. finding the pleadings disclose a cause of action;

2. finding there is an identifiable class of two or more members;

3. certifying as common issues: (a) whether Canada is directly liable in tort to class members; and (b) whether general and punitive damages can be estimated on a class-wide basis;

4. finding that Bees is a suitable representative plaintiff.

[25] Issues 3(a) and 4 are bound up with the first. For the reasons given below, we find that the pleadings disclose a cause of action in negligence against Canada, and accordingly there is no objection to certifying direct liability in negligence as a common issue. Similarly, Canada's objection to Bees' suitability as a representative plaintiff is largely based on its argument that Bees does not have a cause of action against Canada and is therefore not a class member. We have concluded otherwise, and it is therefore not necessary to address the fourth issue.

[26] Accordingly, these reasons address issues 1, 2 and 3(b).

Standard of Review

[27] The judge who certifies a class action is uniquely familiar with the factual context and, in the absence of an error of law that attracts a correctness standard, substantial deference is accorded to the certification judge's exercise of discretion: *Starratt* at para 8. Whether the pleadings disclose a cause of action is a question of law and is reviewed for correctness. Otherwise, decisions to certify a class action are discretionary and will not be overturned on appeal unless they reflect an error of principle or are unreasonable: *Setoguchi* at para 16.

Analysis

1. It is not plain and obvious that the pleadings do not disclose a cause of action

[28] The test for whether a pleading discloses a cause of action under s 5(1)(a) is whether the causes of action pleaded are supportable at law, or whether, on the other hand, it is "plain and obvious" that the claim cannot succeed: *Alberta v Elder Advocates of Alberta* Society, 2011 SCC 24 at para 4; *Setoguchi* at para 20. At the certification stage, pleadings are read "generously and liberally". A reading of the pleadings should not be overly circumscribed given the flexible approach to any further amendments, particularly where, as here, the pleadings have not been closed. Therefore, unless it is plain and obvious that the facts do not support a remedy or are insufficient for that purpose, the cause of action will be sufficiently disclosed to meet the legislative requirements: *Starratt* at para 10; *LC v Alberta*, 2017 ABCA 284 at para 14.

[29] The chambers judge found that the pleadings disclose two causes of action by Bees and the other class members against Canada: direct liability in negligence for failure to prevent McRae's

sexual abuse, and vicarious liability for the torts committed by McRae while he was employed at CAF bases and interacting with minors.

[30] With respect to the claim in direct liability, the chambers judge referred to this Court's recent decision in *VLM* at para 31, which described several potential bases for the direct liability of Alberta and the Synod of Edmonton in the certification of a class action involving abuse by a priest against boys incarcerated at the Edmonton Youth Development Centre:

> ... either [Alberta or the Synod] might be directly liable if it could be established that they had a duty to prevent the sexual assaults from occurring, and they negligently failed to discharge that duty. ... It is at this level that (i) a failure to screen Father Dominey before he was placed at the Centre, (ii) a failure to supervise him, or (iii) 'inadequate policies' might result in direct liability for his sexual assaults, even if there was no vicarious liability.

The same analysis applies here, and the identified potential bases of direct liability are alleged in the Statement of Claim.

[31] Canada submits that it cannot be liable in direct negligence based on its interpretation of s 3(b)(i) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, which sets out the extent of the federal Crown's liability in tort. Section 3 provides, in part:

> 3. The Crown is liable for the damages for which, if it were a person, it would be liable
>
> ...
>
> (b) in any [province other than Quebec], in respect of
>
> (i) a tort committed by a servant of the Crown, or
>
> (ii) a breach of duty attaching to the ownership, occupation, possession or control of property

[32] Canada argues that the effect of s 3 is that the federal Crown may be vicariously liable for the torts of its servants but cannot be directly liable for its own tort, save for limited situations that do not apply here. That interpretation has some support in the case law. Various authorities have stated that the federal Crown can only be held liable for the fault of its servants, and not on its own account: see *Hinse v Canada (Attorney General)*, 2015 SCC 35 at paras 58, 92; Patrick J Monahan, Wade K Wright & Erika Chamberlain, *Hogg's Liability of the Crown*, 5th ed (Toronto: Thomson Reuters, 2024) at 185; *MacLean v R*, [1973] SCR 2; 1972 CanLII 124 at 6–7 (SCC); *Ontario v Madan*, 2023 ONCA 18 at paras 50-57.

[33] Other authority indicates that the Crown is not shielded from direct liability in tort: see, eg, *Swinamer v Nova Scotia*, [1994] 1 SCR 445; 1994 CanLII 122 (SCC) [*Swinamer*]. In *obiter* at 461, Cory J rejected the argument that s 5(1)(a) of the Nova Scotia *Proceedings against the Crown Act*, RSNS 1989, c 360 (the structure of which mirrors that of the federal Act) shielded the Crown from direct liability in negligence. He reasoned that there is little practical difference between the provincial Crown being vicariously liable for the negligence of a servant and it being directly liable for its own breach of a duty of care. The Crown can only act through its servants or agents, so if the Crown has acted negligently that can only be because its servants have acted negligently, even if those servants are not identified. It has been suggested that the distinction between direct and vicarious liability is no longer practically significant for the purposes of the *Crown Liability and Proceedings Act*: *Williams v Canada (Attorney General)*, 76 OR (3d) 763; 2005 CanLII 29502 at para 38 (ONSC) [*Williams*].

[34] Subsequent cases have followed *Swinamer* with respect to negligence claims against the federal Crown by either ignoring statutory limitations on direct liability or recasting direct liability claims as claims of vicarious liability: see e.g. Monahan, Wright & Chamberlain at 193–194; *White v Canada (Attorney General)*, 2002 BCSC 1164 at paras 23, 41, 46–49, 52; *White v Attorney General of Canada*, 2004 BCSC 99 at para 63; *Williams.*

[35] Given the legal uncertainty surrounding whether s 3 of the federal *Crown Liability and Proceedings Act* limits Crown liability in tort to vicarious liability, apart from the small pocket of direct liability in s 3(b)(ii), it is not plain and obvious that the Statement of Claim does not disclose a cause of action in direct negligence against Canada. We were provided with very limited argument on the point and it would not be appropriate to address that uncertainty in this appeal. Accordingly, we would not disturb the conclusion of the chambers judge that the pleadings disclose a cause of action in direct negligence.

[36] Canada's primary argument is with respect to the certification of the claim in vicarious liability for the sexual misconduct of McRae while employed at CAF bases. Canada says the pleadings do not disclose a cause of action in vicarious liability with respect to plaintiffs, like Bees, who were not sexually abused by McCrae directly. Before the chambers judge, and at the hearing of this appeal, Canada agreed that there may be a certifiable class proceeding in respect of the sexual abuse committed by McCrae against what Canada terms his "direct victims". However, Canada says there are effectively two categories of victims in this case. In the second category are victims like Bees, who were sexually abused by perpetrators who were themselves victims of McCrae but were not sexually abused by McCrae himself. According to Canada, these "secondary victims" do not have a cause of action against Canada by way of vicarious liability because there are no pleaded facts suggesting that the perpetrators, like PS, who sexually abused the secondary victims were servants of the federal Crown.

[37] This distinction assumes, erroneously in our view, that victims of PS, or of others in a similar position, could not also be victims of McCrae. The pleadings raise a number of claims by

which McCrae could be liable in tort to those class members. It is alleged that McCrae, as an agent, servant or employee of Canada, abused the plaintiffs "physically, sexually and mentally", including through the commission of physical assaults, sexual assaults and forced confinement. Construed generously, the Statement of Claim is sufficient to raise liability on the part of McCrae, and vicariously on the part of Canada, for torts committed against the plaintiffs outside of acts of sexual abuse by McCrae himself. As the chambers judge noted, it would be premature to find no cause of action against Canada for the purpose of certification simply because the physical contact alleged included someone other than McRae. He found that the Statement of Claim can give rise to several "legal pathways" to a finding that McRae committed torts against Bees and other class members, including assault through threats or intimidating conduct, false imprisonment, and intentional infliction of emotional distress. Moreover, as argued by the respondent, actions taken by McCrae to facilitate abuse by PS or others, if proven at trial, could give rise to liability as a joint tortfeasor.

[38] Although all that is required at the certification stage is that the pleadings disclose a cause of action and no evidence need be led, we note that the evidence filed in the certification application includes specific allegations of actions taken by McCrae against Bees, like the administering of a "sickly sweet drink" in the chapel where Bees was sexually abused by PS in McCrae's presence, and arranging for PS to babysit Bees and his brother, leading to sexual abuse of the children by PS. As noted by the chambers judge, if proven at trial these actions could give rise to a finding of negligence or assault by McCrae.

[39] In his analysis of vicarious liability, the chambers judge noted that "[h]istorically, Canadian Courts have been reluctant to impose no-fault vicarious liability on employers for the misconduct of employees", particularly where the misconduct is "contrary to the fundamental values and objectives of the employer and clearly beyond the scope of the employment relationship": certification decision at para 30, citing *Jacobi v Griffiths*, [1999] 2 SCR 570 at para 53[1]. In *VLM*, this Court certified a class action against the Alberta government for sexual abuse of incarcerated minors by a chaplain working at a youth correction centre, noting that the government could be vicariously liable if the chaplain "had an employment relationship with them, or a *sui generis* relationship close enough to result in vicarious liability": *VLM* at para 31. The chambers judge here certified the cause of action in vicarious liability, noting that "as the evidentiary record is developed, more clarity will be achieved as to the relationship between Father McRae, his military parishioners, and their children": certification decision at para 34. He concluded that "the facts as pled disclose some basis for a sufficiently substantial connection to make an arguable case for

---

[1] We note that the Supreme Court of Canada has granted leave to appeal the decision in *HN v School District No 61 (Greater Victoria)*, 2025 BCCA 144, in which the Court of Appeal declined to find the School District vicariously liable for sexual assaults committed by a tutor, based on the binding precedent of *Jacobi v Griffiths*. In the materials seeking leave to appeal, one of the proposed issues is whether the test for vicarious liability stated in *Jacobi v Griffiths* and *Bazley v Curry*, [1999] 2 SCR 534 "should be modified to account for societal and legal change and understanding with respect to liability for affording opportunities to engage in the grooming of young victims to perpetrate sexual violence".

vicarious liability". We agree that it is not plain and obvious that a claim against Canada in vicarious liability for torts committed by McRae or torts that he directed, enabled or facilitated, cannot succeed.

[40] Canada objects that the pleadings do not contain facts sufficient to support the identified causes of action. We do not agree. Although the pleadings could be more complete, we are satisfied that they are sufficient to disclose causes of action in both direct negligence and vicarious liability. During oral argument, counsel for the respondent stated an intention to amend the Statement of Claim to plead additional facts.

2. There is an identifiable class with two or more members

[41] Section 5(1)(b) of the *Class Proceedings Act* requires that there be an identifiable class of two or more persons. The requirement will be satisfied if there is "some basis in fact" to support it. The class must be based on objective criteria, bearing a rational connection to the common issues. The definition is sufficient if it enables a person's membership in the class to be determined: *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at para 38; *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58 at para 59. That some members of the class may not have a claim is not on its own a disqualifying factor: *Warner* at para 22.

[42] The chambers judge defined the class as follows:

> All individuals residing in Canada who, as minors, were the victims of sexual misconduct on a Canadian Armed Forces base by Captain Father Angus McRae while he served as a Canadian Armed Forces chaplain, including sexual abuse committed directly by Captain Father Angus McRae or with his participation, encouragement, or facilitation....

[43] We agree with the chambers judge that there is some basis in fact that there are two or more members in the defined class. The evidence in the record includes the transcript of McRae's court martial proceedings in 1980, in which he formally admitted to committing indecent acts with "several minors over the past couple of years" — a period during which McRae was a military chaplain at the Namao base. There is also Bees' own response to questioning on his affidavit, in which he reported his belief that McRae "abused, assaulted or harassed" up to 25 minors on CAF bases.

[44] Canada does not contest that there is evidence to the effect that McRae abused two or more minors at the Namao base, but objects that there is no indication that two or more of those victims is alive and not barred from pursuing a claim against Canada. We are not persuaded by this objection. It is not the role of the certification judge to evaluate the merits of a putative class action, which is why the "some basis in fact" threshold is a low one. Limitation issues should not normally be determined at the certification stage (*Bruno v Samson Cree Nation*, 2021 ABCA 381 at paras

71–80), and in this case Canada has not yet filed a statement of defence raising limitation issues. The evidence is that McRae sexually abused up to 25 children 45 years ago. Without any conflicting evidence, it was reasonable for the chambers judge to infer that at least two of the children are still alive.

[45] Canada also says there is no basis in fact that McRae "encouraged or facilitated" the sexual abuse of at least two children by another person. Contrary to Canada's position, the chambers judge did not certify separate subclasses of "primary" victims directly abused by McRae and "secondary victims" abused with his encouragement or assistance; rather, he certified a single class that covers minors directly sexually abused by McRae and those abused by others with McRae's participation, encouragement or facilitation. There is no requirement that there be two or more individuals in each identified "subclass". In any event, there is evidence in the record to support the claim that McRae facilitated PS's abuse of Bees in the form of Bees' own evidence that McRae recommended PS as his babysitter as a form of grooming, and that he gave Bees a drink that may have been a drug on the several occasions when PS brought Bees to McRae's chapel.

[46] We are also satisfied that the membership criteria used in the class definition are sufficiently clear to enable potential members to know whether they fall within the class. The definition sets out several objective criteria: class members living on CAF bases at the relevant time who were sexually abused by McRae or someone else with McRae's participation, encouragement or facilitation. Individuals abused by McRae himself clearly fall within the class, and those abused by PS or others known to have been McRae's victims would also be alerted to their potential class membership. As noted previously, whether individual class members can ultimately establish their claim is not a disqualifying factor.

3. Certification of common issues regarding damages

[47] The chambers judge certified as common issues "whether the alleged damages can be estimated on a class-wide basis and what the estimated class-wide damages on an aggregated basis would be", leaving it to the common issues judge to determine "whether an order for an aggregate monetary award can or should be estimated": certification decision at para 58. On appeal, Canada challenges the certification of common issues respecting aggregate general damages, noting the comments in *VLM* that "many aspects of a sexual assault claim will be specific to the individual complainant" and "not amenable to formulation as common issues": *VLM* at para 7. The respondent consents to removing the common issues relating to aggregate damages and that portion of Canada's appeal is accordingly allowed.

[48] Canada also challenges the certification of common issues regarding the availability of punitive damages. The respondent takes the position that this common issue was properly certified.

[49] The foundation for the punitive damages claim is that Canada, through its military officials, was aware that McRae had sexually abused minors or had been involved in their abuse on CAF

bases but failed to take any action to stop the abuse. The respondent says Canada exhibited a callous disregard for the safety and security of minors living on bases where McCrae was chaplain.

[50] Canada argues that entitlement to and quantification of punitive damages cannot be certified as common issues because they depend on whether compensatory damages are adequate to achieve the objectives of retribution, denunciation and deterrence: *Whiten v Pilot Insurance Co*, 2002 SCC 18 at paras 94, 123. Canada argues that because establishing the entitlement to and quantum of compensatory damages will require individual trials, the entitlement to punitive damages cannot be properly certified as a common issue.

[51] We disagree. Several cases have held that punitive damages, which are not themselves compensatory in nature, may be amenable to class-wide determination in a way that general damages typically are not: *Ross v Canada (Attorney General)*, 2018 SKCA 12 at paras 90–91; see also *Rumley v British Columbia*, 2001 SCC 69 at paras 16, 34; *Fakhri v Wild Oats Markets Canada, Inc*, 2004 BCCA 549 at para 23–26; *Cloud v Canada (Attorney General)*, 73 OR (3d) 401; 2004 CanLII 45444 at paras 70–71 (ONCA); *Chalmers v AMO Canada Company*, 2010 BCCA 560 at para 31. Unlike compensatory damages, the focus of an entitlement to punitive damages is the conduct of the defendant and not the individual circumstances of class members: *Chalmers* at paras 29-31; *Rumley* at para 34. In appropriate cases, therefore, the threshold question of whether the defendant acted culpably in a way that could warrant punitive damages can be certified as a common issue: *Chalmers* at para 31.

[52] In this case, we are satisfied that there is "some basis in fact" to support Bees' claim that military officials had some knowledge of the sexual abuse that was occurring and failed to prevent it. Bees points to his own evidence that children on the Namao base were broadly aware of his abuse by PS and that, on one occasion, PS brought him to a sauna and "provided him" to a man, who Bees believed to be a Major, for the purpose of giving him oral sex. He also points to the following findings at paragraph 80 of the MPCC Report:

> ... there can be little question that, at the very least, base MPs were well aware of [PS]'s abuse of other children at the time of the investigation and prosecution of Capt Father McRae. Indeed, it appears to have been [PS]'s behaviour with other younger children, which led to the MPs' pursuit of Capt Father McRae in the first place.

[53] A later finding in the MPCC Report, indicating the military chain of command may not have known about McRae's sexual misconduct "prior to the investigations by local base MPs and CP SIU in 1980, shortly after which Capt Father McRae was charged and court martialed", may tend to undermine the claim for punitive damages. However, at the certification stage, it is enough for the representative plaintiff to identify "some basis" in the evidence that Canada's employees knew or suspected McRae's sexual misconduct but did nothing to prevent it. We are satisfied that low bar has been met. The chambers judge did not err in certifying punitive damages as a common issue.

[54] The certification of aggregate general damages as a common issue is set aside. The certification of all other common issues is confirmed.

Conclusion

[55] The appeal is dismissed and the certification of the claim as a class action is confirmed, with the exception that the appeal from the certification of aggregate general damages as a common issue is allowed.

[56] Given the predominant success of the respondent, costs of the appeal are awarded to the respondent.

Appeal heard on January 13, 2026

Memorandum filed at Calgary, Alberta
this 15th day of May, 2026

REGISTRAR
FILED
15 May 2026
OA
Court of Appeal of Alberta

Pentelechuk A/C.J.A.

de Wit J.A.

Woolley J.A.

Appearances:

A. Bordignon
for the Respondent

R. Drummond
D.L. Vassberg
for the Appellant