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Docket: CI 22-01-37978
(Winnipeg Centre)
Indexed as: L.G. v. R.K.
Cited as: 2026 MBKB 33

# COURT OF KING'S BENCH OF MANITOBA

**B E T W E E N:**

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| | ) | Jamie A. Kagan and |
| L.G., | ) | Isabel Brodt |
| plaintiff, | ) | for the plaintiff |
| | ) | |
| - and - | ) | |
| | ) | Amanda Verhaeghe |
| R.K., | ) | for the defendant |
| defendant. | ) | |
| | ) | |
| | ) | Judgment Delivered: |
| | ) | March 4, 2026 |

## TOEWS J.

### INTRODUCTION

[1] The plaintiff commenced an action against her natural father, the defendant, alleging that he mentally, verbally, physically and sexually abused her. The plaintiff was born in August 1984, with the alleged abuse commencing at age four and continuing until a date in November 2021. The particulars of the abuse include sexual touching, oral sex, anal rape, and vaginal rape during a period of approximately 33 years, and are alleged to have occurred in varying frequencies. The injuries the plaintiff claims to have suffered, including physical, psychological and social injuries, are set out

in the statement of claim and will be referred to in the course of these reasons to the extent it is necessary to do so.

[2] At the commencement of this trial the plaintiff amended her statement of claim to delete every claim of abuse from the age of 19 up to and including November 2021.

[3] The defendant denies every allegation of abuse set out in the statement of claim.

[4] The court has initialized the names of the parties in the style of cause as the allegations involve the sexual abuse of a child in the context of a familial relationship.

## THE EVIDENCE

[5] The plaintiff testified that she is married and has two children. She had one sister who passed away of cancer in 2018.

[6] The plaintiff was born in Winnipeg, but at a young age she moved with her family to Anola, Manitoba. While living in Anola her father worked for the CNR in nearby Transcona and her mother worked at the Health Sciences Centre in Winnipeg. In Anola she took dance lessons, figure skating and played baseball. Both parents took her to these lessons.

[7] The plaintiff testified that while they lived in Anola her mother would often work weekends, shift work and evenings. She stated that her father was often alone with her during the evenings. She said he would drink alcohol regularly and saw him drunk. She said he would drink at a strip club or at a neighbour's house. She said there was conflict between her parents regarding her father's drinking. She also said that on one occasion when her parents were arguing in front of her about her mother not having sex with him, she offered to have sex with her father.

[8] She said that she was spanked on various occasions for things like making noise. On one particular occasion her father caught her and a friend playing with his playboy playing cards in the basement and kicked her in the "butt." She testified that when she was six, seven and eight years old, she spent time with her father in the family camper trailer at Falcon Lake for a month at a time in the summer when her father was on holidays. They spent the time at the beach, playing golf and eating ice cream. She said he drank every day from noon until night and became intoxicated, slurring his words. Her mother was unable to come to Falcon Lake for most of time they were there, as she continued to work during the month that her husband had holiday time.

[9] She described her father as violent, angry and frustrated. She said her father was a perfectionist, strict and had high expectations of her. As she became a teenager and after the family moved to Neepawa, she became sexually active with her peers at around age 15. She acknowledged that she had numerous sexual partners over the years. It is acknowledged that in and around November 2021, she was carrying on an extra-marital affair.

[10] She stated that as a teenager she had no desire to remain at home, noting that her older sister moved out of the family home when she was 18 years old. She stated that on one occasion her father removed the door on her bedroom when she wanted to have her boyfriend over.

[11] While she stated that her relationship with her father was non-existent as she grew older and had her own family, she continued to host and attend family functions where her father was present. She stated that her daughter felt uncomfortable around

the defendant. The plaintiff testified that at a family function at Easter time, 2017, her father had been drinking and he called her a whore.

[12] The plaintiff testified that she used cannabis for a number of years prior to November 2021, first by way of prescription and then when it was legalized for use without prescription. As of November 23, 2021, she was a daily user.

[13] She stated that she had no indication that her father had been sexually abusing her over the past three decades. However, on November 23, 2021, while she was intoxicated or "high" from smoking cannabis with her husband in their residential garage, she began experiencing a panic or anxiety attack. She told her husband at this time: "Dad raped me."

[14] At that time the husband called 911 and the police and an ambulance attended and took her to the hospital. At the hospital she told the medical staff that she had anxiety over most of her life, had been in a depression for the last two years and that in the last six months she had hit "rock bottom". She told the staff that recently she had increased her cannabis use as she said that it opens up her mind, helps her to remember things from her past and helps her to see things differently. At the hospital she advised the staff that she was concerned that her father may have interfered with her son and daughter, and although there is no evidence of that occurring, she felt that they are both acting differently. The staff notes state at Exhibit 7:

> Impression: 37 year old married Caucasian woman, admitted to the observation unit in the night with what sounds like substance induced psychosis/paranoia, now cleared. Has PTSD, depression and anxiety, however is working on dealing with same. Not a risk to self or others, displays good insight into her substance use, as well as plans for moving forward.

[15] The plaintiff told the staff during this hospital stay, again recorded at Exhibit 7:

> [She] reports has been using more marijuana than usual to try and evoke anxiety attack so she could remember what happened to her as a child.
> [She] states it finally came to her tonight [November 23, 2021]. realized her dad has been raping and beating her for years.

[16] In the same chart, directly under the forgoing, with apparent reference to "her dad has been raping and beating her for years" it is recorded:

> husband and mom state to EMS no evidence of this.

[17] Beginning with the incident on November 23, 2021, she stated that memories of sexual abuse by her father started coming back to her. The plaintiff in her testimony related various sexual encounters with her father commencing at age four. Anal rape is alleged to have begun at age eight or nine and occurred on a weekly basis. She stated that anal rape led to vaginal rape in the following years and she approximates that she had 1,000 sexual encounters with her father between the ages of 4 and 19 including vaginal, oral and anal rape.

[18] The plaintiff testified that on November 23, 2021, memories of sexual abuse kept coming back to her, including an incident in her home on November 17, 2021, during which she alleges that her father broke into her home and vaginally raped her. She stated that she has no specific memory of her father being there on that date or even any memory of the rape itself. She stated that she had inexplicable vaginal tearing and that she experienced 17 different incidents of vaginal tearing or bruising while she was in her home. However, she had no specific memory of her father being there in respect of any of those incidents, with the exception of one incident.

[19] That incident occurred in the first week of September 2021, when she alleged that her father broke into her home by coming through her daughter's bedroom window. She stated he forced her onto a bed and vaginally raped her.

[20] The plaintiff's husband testified his relationship with the plaintiff started in 2007. He said that she was a kind, compassionate person, but that her relationship with her father was "bizarre" and "dynamic". He stated that there was a lack of compassion and love in the family. He described the defendant as a heavy drinker and misogynistic, and that he had pornography in the washroom of his house. He said the defendant's treatment of the plaintiff exhibited traits of control, anger, temper, scolding, raised voice and slamming of doors, which could be prompted by minor frustrations on the part of the defendant.

[21] The plaintiff's husband stated his wife's mental health was very poor prior to November 2021. He stated she would have night terrors, and he had to wake her up from her sleep. He testified that in the early morning hours of November 23, 2021, she had been smoking cannabis and she was becoming increasingly anxious. He said that she was hyperventilating and crying, and after a time stated that her dad had raped her. She was not "calm and relaxed".

[22] After her release from hospital in November 2021, she exhibited a fear for her safety and she was emotionally drained. He said her condition after December 2021, was horrible and she demonstrated fear, sadness, depression and nervousness. He said she regained her recollection of verbal, mental and physical abuse and that she

took steps in respect of her personal safety. He said her condition has improved in the last two years.

[23] He testified that the plaintiff has had a hard time in expressing her emotions. He acknowledged that there was no evidence of any rape, but noted that the police who had been investigating were dismissive of the plaintiff's allegations.

[24] The husband of the plaintiff's deceased sister also testified on behalf of the plaintiff. He stated that he met the plaintiff in 2001, and that he married the plaintiff's sister in 2010. They had three children together before she passed away. He testified that he and his father-in-law, the defendant, usually had drinks together, including wine and beer and that they would drink to the point of intoxication. He advised that he could not remember anything inappropriate during the time they spent together as a family. He broke off contact with the defendant in the aftermath of these allegations in 2021.

[25] The next witness called by the plaintiff is a vice-principal of an elementary school who is a first cousin of the plaintiff. She is 12 years older than the plaintiff and has known the defendant for approximately 45 years. Her family lived close to the defendant's family when they resided in Transcona. She testified that she moved to Anola with her family when she was approximately 18 years of age. She stated that she babysat for the defendant's family.

[26] This witness testified that the defendant and his wife were very different. She said that the defendant would drink to intoxication while his wife did not drink. She thought the relationship between the couple was not healthy or good and that they had

some disagreements. She stated that the plaintiff's mother would work on weekends and different shifts. She described the defendant as being moody and often angry. She said the defendant was a strict parent and that he was easily irritated by the plaintiff. The plaintiff's sister, by contrast, was a good student and followed the rules.

[27] This witness stated that there was yelling and shouting in the relationship between the plaintiff and her father. However, she indicated that the discipline administered by the defendant was not physical, but involved the plaintiff being sent to her room. She stated she saw no indication of sexual abuse by the defendant, but recalled an incident when she was 13 or 14 years old when the defendant made a highly sexualized comment about horses and women to her. She noted that the defendant had been drinking at the time he made the comment. She related another incident when she was about 18 years old. On that occasion, the defendant had been drinking and they had been at an event with other family members. She said he tried to kiss her in a "goofy way" and he ended up falling down. Her aunt, who had been present, was embarrassed about the incident.

[28] Dr. Peter Jaffe, a psychologist, was called by the plaintiff to provide expert testimony. I have concluded that Dr. Jaffe is a qualified expert in areas concerning family violence, which includes sexual abuse, spousal abuse, and children exposed to violence. He is also an expert on child sexual abuse (including the impacts of sexual abuse), adult survivors of childhood sexual abuse, long-term sequalae of sexual abuse concerning mental health issues, delayed disclosure, and the effects of trauma on

memory. He has appeared numerous times as an expert witness in provincial and other courts across Canada, as well as in probate and family courts in the United States.

[29] Although Dr. Jaffe's psychological assessment of the plaintiff was entered as an exhibit at trial, the defendant takes issue with the findings contained in that report. However, in response to that concern, counsel for the plaintiff properly acknowledges in Exhibit 14, that Dr. Jaffe can only provide findings based on medical standards regarding the plaintiff's issues. The determination of whether the defendant committed any acts of sexual abuse towards the plaintiff is reserved for the trier of fact. As Dr. Jaffe noted at page 2 of his report (Exhibit 16):

> Only the court can decide [the plaintiff's] credibility and make findings about the history of abuse she reports. Her father denies that the abuse ever took place. I cannot determine whether the incidents of abuse occurred or investigate the veracity of her claim, but I can comment about what we know about incest and child sexual abuse and offer an opinion on the consistency of her reports with my clinical experience and knowledge of the scientific literature in the field. …

[30] In coming to his conclusions, Dr. Jaffe reviewed numerous documents relevant to the allegations and conducted four interviews with the plaintiff as well as her husband, her brother-in-law, her mother and her therapist.

[31] Dr. Jaffe states at pages 3 - 4 in his report that:

> Apart from gender, a number of factors have been associated with increased rates of interfamilial childhood sexual abuse, such as significant family dysfunction (Benedet & Grant, 2020; Pusch, Ross & Fontao, 2021), including high conflict relationships between parents, which increased the likelihood of father-daughter sexual abuse by 5 times (Stroebel et al., 2013) and between the parents and children (Health Canada, 2024). Other factors reported in the literature include a father with a history of substance abuse or antisocial traits who presents as a controlling, authoritarian parent who may have been a victim of abuse themselves. Factors also include a mother who is absent or emotional unavailability and a victim who is abused before puberty and may feel emotionally neglected or especially dependent on the parent.

[32] In his report, Dr. Jaffe examines various factors which may be present in cases of sexual abuse involving a father and his daughter including coercive control, memory and memory loss concerning the incidents of abuse, the retrieval of traumatic incidents and the impact of father-daughter sexual abuse.

[33] It is Dr. Jaffe's conclusion that the plaintiff's presentation and account of her history of abuse with her father is consistent with many of the dynamics and factors associated with father-daughter incest. That information is set out on pages 16 through 18 of his report. Dr. Jaffe considers and dismisses alternative hypotheses including:

1. [the plaintiff] is making up a wild story about abuse for financial gain.
2. [the plaintiff] has a mental health disorder in which she can't tell fact from fiction, and these allegations reflect her poor mental health.
3. [the plaintiff] has a false memory that she actually believes and has convinced herself that these things really happened to her.

[34] Dr. Jaffe did not speak to the defendant and noted that his assessment would have benefited from the plaintiff's late sister's accounts of her childhood and relationship with her father. In respect of the plaintiff's mother, he noted that while she has been diagnosed with Alzheimer's disease by her family doctor, the plaintiff and her mother report that while her short-term memory has been compromised, her long-term memory remains intact. The children of the plaintiff, including her teenage daughter who knows nothing of the allegations being made by her mother, were not interviewed by Dr. Jaffe, but Dr. Jaffe stated that the plaintiff says that her daughter related certain incidents involving the defendant to her (which in my opinion bear resemblances to incidents which the plaintiff has recounted from her youth).

[35] Dr. Jaffe concluded that many elements of the plaintiff's presentation are consistent with female survivors of sexual abuse, especially her mental health symptoms, delayed disclosure, trauma symptoms and problems with sexuality and intimacy. He states at page 22 of his report:

> The consequences of childhood sexual abuse can include some or all of the following: Mental health problems, such as substance abuse, depression, anxiety, and posttraumatic stress disorder; distress to the point of self-harm or self-destructive behaviours; interpersonal and relational problems, including problems with intimacy, sexual adjustment, and feelings of betrayal and diminished trust; distorted view of self, including poor self-esteem; overwhelming feelings of shame, guilt, self-blame, humiliation, and loss of credibility; diminished vocational outcomes. [the plaintiff] exhibits elements of all these indicators. If the court makes a finding that her overall reports of abuse are valid, notwithstanding potential discrepancies in exact times and occurrences, this abuse would be the most significant contribution to her past and current problems outlined in this report.

[36] The defendant testified on his own behalf. He has a grade 12 education and graduated as a pipefitter who worked for the railroad in the Transcona shops. In the time he was together with his ex-wife, they and their family lived in East Kildonan, Transcona, Anola and finally Neepawa. He left the railroad in 1995 to open a retail store in Neepawa. While the business initially was successful, he stated that owing to other stores in the area also opening up lines of business in direct competition with his line of business, the store ceased to be profitable. After four years he went back to pipefitting. In that capacity he worked in and around the Neepawa area, but also in locations across Canada sometimes for two or three months at a time. After working as a pipefitter, he became a real estate agent in 2009 for approximately 14 years. By the time he was working as a real estate agent, the plaintiff was no longer living in his home.

[37] The defendant testified that while he does not have a good relationship with his siblings, he maintained his relationship with his father as an adult. He stated that his parents divorced when he was 17 years of age, but that he continues to maintain a good relationship with his mother.

[38] He testified that he did well at school and was active in sports. The relationship between his parents was not good and he recalled an incident at age 16 when he saw his parents fighting. He stated that he hit his dad and his dad hit him back, as a result of which he left home for about a year. After his parents divorced, he moved back with his mother. He spent two years with his mother before moving out of her home and moving in with some friends. The years after leaving home and before he married admittedly involved a substantial amount of drinking and partying.

[39] He described the plaintiff during her childhood as being "a bundle of energy, mischievous, happy." She would play with her sister and friends. His relationship with his wife involved the "odd fight", but he never struck her. In respect of the discipline of his children, he stated that he never struck them other than for reasons of discipline and that involved a "smack on the butt".

[40] After the children were a little older, his then wife went back to work. Initially their grandparents would look after the two girls when both were at work. Later on, the children went to daycare in Anola. In respect of any concerns regarding the plaintiff during this time, the defendant stated that the plaintiff broke her leg at about age five or six as a result of an incident involving a rope swing. At about age 11, the plaintiff also broke her ankle while playing soccer. She was attended to medically on

both occasions, including a brief stay of one day in a hospital in respect of one of those incidents.

[41] The defendant stated that the plaintiff was active in dance and various sports. In Anola specifically she was active in baseball and figure skating. He stated that both he and his wife would drive the plaintiff to her sports activities.

[42] The defendant stated that the plaintiff was energetic, had friends that she played with and that there were no behavioural problems at school. He said their relationship was good and that they participated in activities together and travelled together, including spending time at Falcon Lake in the summer. He said the relationship between the two sisters was good and while there were some disagreements, there was nothing abnormal in his relationships with his daughters and his wife.

[43] In respect of the plaintiff's schooling, the defendant testified that the plaintiff was held back for one year in grade four or five as a result of a concern over her English studies, but that doing so worked out well. He said she had a lot of friends in school and was involved in a lot of activities.

[44] Discipline of his children usually involved a spanking. One incident involving discipline was as a result of the plaintiff spitting in her mother's face when she was approximately six years old. In another incident when he caught her playing with his playboy cards when she was six or seven years old and he gave her a "boot in the ass with the side of his foot." He stated that he never removed the plaintiff's clothing when disciplining her.

[45] In respect of his consumption of alcohol, he stated that during his time in Anola he did not drink alone, but often did so in the company of friends. For example, when sitting around a fire with friends he could drink five or six beers. He stated he made his own beer and wine.

[46] In respect of his present consumption of alcohol, he stated that he will have "a couple of drinks" but that he is not dependent upon alcohol and that he has never been in treatment. He stated he has a Class 4 commercial driver's license which is renewed annually and that his kidney and liver function is good. He stated he has no concerns about his health.

[47] When the plaintiff was a teenager, he stated that she was active and outgoing. He said his relationship with her was normal and that he bought her a car for her 16th birthday. Although he stated he did not physically discipline her at that age, he did state that on one occasion he removed the battery from the car in order to prevent her from using it.

[48] The defendant stated that he maintained his relationship with his older daughter after she left home to attend university. He said he met the plaintiff's husband in 2009 or 2010. They got married in front of a justice of the peace. He and his wife were not invited to attend the event. Shortly after, the plaintiff and her husband moved to a city in Ontario where her husband is from. He stated that the plaintiff and her husband separated for about a month and he helped his daughter move back to Manitoba, but that the plaintiff and her husband reconciled and returned to raise their family in

Manitoba. He stated that he was involved with his grandchildren until he was served with this lawsuit.

[49] Prior to being served with this action he would visit the plaintiff and her husband at their home in Morden. By that time, he was separated from his ex-wife. He was living in Brandon and would stay overnight at the plaintiff's home in Morden when he visited them. Sometimes his new partner would accompany him to Morden. He stated that although at times the plaintiff's husband would be away from home on account of work-related trips, often the plaintiff's husband would be there as well. The defendant stated that he and the plaintiff's husband would do house projects together.

[50] The defendant stated that on one occasion the plaintiff provided him with her electronic house code to gain entry to her home in order to repair something for her in the house. He stated he never accessed the house without her permission. He stated that he saw her daughter alone at her house no more than 10 times. If her husband was at home, they would drink wine together. He recalled that family events with his daughter were upbeat and admits that alcohol was consumed at these events. He denies that he ever called his daughter a whore. He testified that he did not know that his daughter was having an affair.

[51] The defendant also testified as to various medical issues that he has experienced. He admits that he suffers from gout, but that issue is under control with the use of prescribed medication. He stated that he injured his wrist in 1976 and that the difficulty in using his dominant hand on account of that injury persisted until 2020 when he had another surgery on that wrist.

[52] The defendant also testified that he had experienced problems with his right knee and that he had surgery on that knee on August 16, 2021. Seven days later he had an infection in that knee in respect of which he required further treatment. He testified that as a result of his knee problem he could not drive a car until sometime in December 2021. He stated he did not see his daughter immediately before the surgery and did not see her again until Christmas time 2021, when he dropped off Christmas presents at her home. He stated that he had persistent problems related to his knee.

[53] He testified that his daughter dropped in to see him at his home in Brandon in February 2022, on her way to Neepawa. He did not know that she and her family, as well as her mother had moved to Alberta. He stated that he did not know about the allegations that his daughter was making against him until he was served with some legal papers in April 2022.

[54] Although he admitted to being in the area of Red Deer Alberta on May 19 - 20, 2024, the defendant denies knocking on any doors in Red Deer or searching for his daughter and her mother there. He stated that he and his new partner had attended a funeral in Fort Saskatchewan, Alberta and stopped in a camping location near Red Deer on their way to Lethbridge and Waterton National Park in southwestern Alberta.

[55] The defendant admitted he was a strict father, although not as strict as his own father. The defendant denied he ever sexually assaulted his daughter or threatened harm to her children.

[56] The only other witness called by the defendant was Dr. Jeffrey Waldman. Dr. Waldman was qualified as an expert in forensic psychiatry, including both in children

and in adults, including the impact on survivors of sexual abuse. He is also qualified as an expert in memory, recantation, repression of memories, effects of cannabis use on memory, reliability of memory and false memories in the legal context and variables relating to the reliability of memory. He testified that in the course of his career he has authored approximately 500 independent medical assessments and has been called as an expert in numerous court cases. His psychiatric report in this matter is found at Exhibit 24 of the trial documents.

[57] At the onset of his testimony, he stated that he received Dr. Jaffe's raw data including information on the standardized tests administered by Dr. Jaffe on the plaintiff in respect of this matter. However, by the time he received it he was unable to include his consideration of that data in his formal report for the court. However, he did review that raw data. Furthermore, apparently, as the result of the position taken by the plaintiff, he was unable to speak to the mother or husband of the plaintiff. He stated that it would have been important to have talked to them about the events leading up to the hospital emergency admission of the plaintiff on November 23, 2021. Information about the alleged break-ins to the plaintiff's home and other information about the plaintiff's childhood from her mother would have been helpful.

[58] Dr. Waldman stated that the raw data and the objective testing by Dr. Jaffe "strongly suggest malingering" on the part of the plaintiff in four out of five categories, however he was unable to arrive at any definitive conclusion in that respect given a lack of information. Prior to receiving that raw data and objective testing results of the

plaintiff from Dr. Jaffe, he had come to the conclusion that the plaintiff does believe that these sexual assaults had occurred.

[59] It is Dr. Waldman's opinion that the use of cannabis plus the lack of sleep can produce psychosis, and that cannabis "fed" the development of this delusion. In his report at page 18, Dr. Waldman stated:

> … In the current case, the use of increasing doses of cannabis , and active attempts to try to recall something that [the plaintiff] believed could explain her unhappiness at the time aside from the reality to her marital problems, the death of her sister, her own significant medical problems, and her challenges parenting her children, over the course of 2 years ultimately led to an active reconstruction rather than a recollection, that almost certainly contains significant distortions.

[60] At page 20 of his report Dr. Waldman stated:

> I would agree with Dr. Jaffe's assertion that there are several potential diagnoses. However, I disagree with the opinion that [the plaintiff's] presentation is consistent with a woman that has survived persistent severe sexual abuse including anal penetration, at times daily, from the age of 4-10 and severe sexual abuse including vaginal penetration, at times daily, from the age of 10 until 35. [the plaintiff] reported that prior to arriving at the belief that her father had sexually assaulted her, she had 2 years of believing someone was breaking into her home. She had become increasingly anxious, withdrawn, and confronted several individuals that she believed had harmed her. She also reported that prior to 2019, she had no problems with her mental health and had never felt the need to pursue treatment. Although she had severe medical conditions and extensive medical investigations, there is no indication of damage that would be expected from being repeatedly anally raped from the ages of 4-10. And she did not describe mental health difficulties that would be expected prior to age 35 that would typically be associated with the severe and persistent nature of the abuse [the plaintiff] reported. In addition, the only trigger that [the plaintiff] endorsed to Dr. Jaffe that would cause her anxiety, is seeing a man that reminded her of her father, although [the plaintiff's] therapy notes indicate that she was having a relationship with someone reminiscent of her father, and as such this trigger did not lead to avoidance as would be expected based on the diagnostic criteria of PTSD.

[61] In the result, Dr. Waldman concluded that the plaintiff had not experienced recovered memories as her description of the events of November 23, 2021, was not

consistent with a recovered memory. He stated on page 21 of his report that in his opinion:

> … [the plaintiff] developed the belief that her problems all stem from decades of sexual abuse by her father. This description is most consistent with a delusion in the context of a delusional disorder or possible Major Depressive disorder with psychosis, or substance induced psychosis that remains untreated. Unfortunately, delusions that persist for years, especially in the context of delusional disorder, often have a less than favourable response to antipsychotic medication. This is because of the prolonged nature of the delusional belief prior to patients coming to clinical attention. The diagnosis is difficult because delusions are non-bizarre; patients remain organized, and do not experience hallucinations. As such, I agree with the clinicians that assessed her at Boundary Trails emergency department when she initially developed the belief that her father had been assaulting her, that her presentation is most consistent with psychosis.

## **CLOSING ARGUMENT OF THE PLAINTIFF**

[62] I have had the benefit of receiving the plaintiff's closing argument in printed form. While this document may not be a *verbatim* repetition of counsel's oral closing argument, it was very helpful to me in order to ensure that I fully heard and considered the plaintiff's position. Any references to the plaintiff's argument enclosed in quotation marks in these reasons is a reference to the plaintiff's written closing argument unless it is otherwise indicated.

[63] The plaintiff argued that the defendant has not complied with the rule in ***Browne v. Dunn***, 1893 CanLII 65. In the words of counsel for the plaintiff, the rule in ***Browne v. Dunn*** represents procedural fairness and prevents a party from presenting their version of events without permitting the other party, who presents an alternative theory of the case, the chance to respond.

[64] In this respect the plaintiff stated that she was not "cross-examined on, and therefore was deprived of the opportunity to respond to matters of substance regarding the plaintiff's allegations of sexual abuse, inappropriate touching, the defendant's inability to control his use of alcohol, and the allegations of the defendant being a strict and controlling parent. The plaintiff stated the defendant also failed to put the defendant's theory of the case to the plaintiff, that the plaintiff is suffering from delusions, false memories, mental illness, and that the defendant did not sexually abuse the plaintiff and that the defendant was a good and loving father. As a result, the plaintiff submitted that the defendant should be precluded on direct examination from giving any evidence or addressing any of the forementioned substantive matters.

[65] It is the plaintiff's position that on a balance of probabilities, the facts that the plaintiff recalled, and has been recalling since November 23, 2021, establishes the defendant's liability. The plaintiff argued that her accounts and the accounts of other witnesses illustrate consistent patterns found in father-daughter sexual abuse. The plaintiff argues that based on Dr. Jaffe's testimony, forgetting trauma and sexual abuse is not uncommon and that recalled memories have just as many deficiencies or otherwise are just as reliable as memories a person has always retained.

[66] The plaintiff urged the court to take note of the serious problem of childhood sexual abuse in Canada and that the abuse happens most often at the hands of a family member. Gender aside, the plaintiff stated that Dr. Jaffe's report provided numerous factors associated with increased rates of familial childhood sexual abuse including, but not limited to:

a) significant family dysfunction;

b) high conflict relationships between parents, increasing the likelihood of father-daughter sexual abuse by five times;

c) an absent or emotionally unavailable mother;

d) a victim who is abused before puberty and may feel emotionally neglected or especially dependent on the abusing parent; and

e) a father with a history of substance abuse or antisocial traits who presents as a controlling authoritarian parent.

[67] The plaintiff submitted that the evidence demonstrates that the defendant exhibits all of these factors and the evidence is at odds with the presentation that the defendant made in his evidence minimizing each of those factors. The plaintiff submitted that while all of the factors individually may not be considered as bearing much significance when taken together, a pattern emerges which is commonly associated with higher incidents of childhood sexual abuse within a family.

[68] The plaintiff then focused her argument on the events of November 23, 2021, which she argued demonstrate that the event of the plaintiff's memories returning was clearly not staged. The plaintiff argued that the hospital notes describe the plaintiff as exhibiting bizarre and paranoid behaviour and that this response is according to Dr. Jaffe to be expected in many cases when the process of recovering memories occurs. At the same time the plaintiff argued that the hospital emergency staff who noted that the plaintiff's behaviour was delusional, bizarre and seemingly paranoid on

admission to the hospital were not legally qualified to provide this type of conditional diagnosis.

[69] The plaintiff argued that the smoking and intoxication by cannabis at the time the she exhibited the symptoms that led her husband to call for emergency services should not be a concern. The plaintiff argued that cannabis is a substance that she uses to help herself relax and that this is a common occurrence among a younger generation who have replaced alcohol usage with cannabis. The plaintiff argued that Dr. Jaffe is unaware during the course of his lengthy career of any studies that would suggest false recollections are caused by the consumption of cannabis. Rather, the plaintiff says Dr. Jaffe's report supports the argument that it is common in persons who were sexually abused during childhood to self-medicate through drugs or alcohol as a coping strategy.

[70] The plaintiff relied on Dr. Jaffe's report that forgetting trauma and sexual abuse is not uncommon and the memories that are recalled have just as many deficiencies or are otherwise just as reliable as memories that a person has always maintained. The plaintiff stated that she had provided the details of the memories of sexual abuse which she came to recall. The plaintiff argued that her accounts of the sexual abuse have remained consistent. She stated as she continues with her therapy that these memories continue to be recalled since November 23, 2021.

[71] The plaintiff submitted that the evidence of Dr. Waldman is riddled with inconsistencies and is incomplete. In respect of its incompleteness, the plaintiff pointed out that it was only a week before trial that he asked to interview the plaintiff's mother

and husband. He stated that he thought it was important to speak with them. Dr. Waldman ultimately met with the plaintiff and the defendant less than a month before the trial and failed to conduct any standardized testing of the plaintiff. It is the plaintiff's position that Dr. Waldman's report reflected a bias in that he was not familiar with the studies which Dr. Jaffe relied upon in coming to his conclusions. He expressed concern that while Dr. Waldman had access to the notes of the plaintiff's therapist in which it was noted that the plaintiff's mother "was reported to have apologized to her for the abuse she suffered", it did not cause Dr. Waldman "any pause".

[72] The plaintiff also expressed concern in the course of argument that he had in his possession a letter from the plaintiff's mother when drafting and issuing his report before the trial commenced. The plaintiff stated that on the basis of the letter Dr. Waldman would have seen "… how the defendant treated [the plaintiff] growing up; how he drank, how he was always annoyed with her and treated her worse than [her sister]" and yet "… this letter and its contents are <u>not referred</u> to in any capacity in his subsequent report". [underlining in the original] This example then served as a springboard into examples in other cases where Dr. Waldman "has been accused of cherry-picking information".

[73] In this case, a particular concern of the plaintiff, as stated in her closing argument at page 38, para. 148, is that:

> Dr. Waldman conceded to diagnose an individual with a delusion disorder, they must maintain <u>a fixed, unwavering false belief; however,</u> he also minimized that [the plaintiff] specifically asked him at the end of their interview whether he believed her or whether he thought she was suffering from a mental illness. This does not represent an unwavering belief, but point to [the plaintiff's] genuine pursuit to determine what happened to her.

[74] The plaintiff took the position that if the court, nevertheless, accepts all or part of Dr. Waldman's evidence, the court should "… consider the research concerning delusional disorders and their prevalence in society." The plaintiff pointed out that statistically both Dr. Jaffe and Dr. Waldman agree that somewhere in the range of less than five to ten percent of cases of reported sexual assault allegations are false. The plaintiff also submitted that the accuracy of reports of sexual abuse that proceed through the court system "are roughly in the 100% range".

[75] The plaintiff stated that it is also acknowledged by Dr. Waldman that the "prevalence of delusional disorders as defined [by the relevant medical guide] has been estimated in the range of 0.2 % of the population" while "[s]chizophrenia which affects about 1% of the population is five times more prevalent than a delusional disorder." The plaintiff submitted that based on statistical research alone, which the plaintiff stated demonstrate that 10% of Canadian youth are victims of sexual assault before the age of 15, "Dr. Waldman acknowledged on cross-examination that technically, the numbers would say it is 600 times more likely that the plaintiff is a victim of sexual abuse as opposed to suffering from a delusional disorder."

[76] In conclusion on the issue of liability, the plaintiff submitted in her written argument that the defendant, in seeing his daughter on the stand, stated "he believed that she believes that she is telling the truth." The plaintiff then stated that both Dr. Waldman and Dr. Jaffe in their reports similarly find "[the plaintiff] credible – that she is not simply making things up" and further that not a single witness – lay or expert – took the stand and stated that the plaintiff "was not telling the truth."

[77] In view of my finding in respect of liability, it will not be necessary for me provide my opinion on damages.

## CLOSING ARGUMENT OF THE DEFENDANT

[78] The defendant agreed with the plaintiff that the onus of proof in this case is on the plaintiff to establish liability on a balance of probabilities. There is no higher standard of proof on the plaintiff in this case simply because of the nature of the allegations being made.

[79] The defendant submitted that all of the evidence here, submitted in support of the allegations, is circumstantial. There is no direct evidence here of any sexual abuse by the defendant directed towards or upon the plaintiff. No one testified that they knew this was happening for approximately 30 years until the plaintiff stated on November 23, 2021, that my "Dad raped me."

[80] The defendant stated the questions for the court to determine are:

a) was the plaintiff sexually assaulted? and,

b) did the defendant sexually assault the plaintiff?

[81] The defendant stated that the plaintiff's belief that they happened is not proof of the facts needed to answer these questions.

[82] In respect of the plaintiff's argument concerning the rule in ***Browne v. Dunn***, the defendant stated that the purpose of the rule is to ensure trial fairness and to prevent trial by ambush. He submitted that there is no matter in part of the defendant's case that was not already known to the plaintiff well in advance of the trial. The remedy here, if any, would be to recall a particular witness in order to ask

questions in respect of any matter which may not have been apparent to the plaintiff and on which the defendant had failed to cross-examine. The plaintiff did not ask the court to recall any witnesses.

[83] The defendant noted that the court must approach the recovery of childhood memory with caution and that the role of the expert must not supplant the fact finder's function of determining the facts. The defendant relies on the decision of the court in ***Whitfield v. Whitfield***, 2016 ONCA 581, which held that a trial judge falls into error by relying on an expert report to corroborate the truth of allegations of sexual or physical assault for the purpose of finding a party liable.

[84] The defendant stated that the evidence of the defendant is neither reliable or credible in terms of establishing the allegations made. The defendant offers a number of examples including among others:

a) At age 10 the plaintiff offered to have sex with her father in the presence of both of her parents when her father and mother were fighting in her presence about sex.

b) As to the plaintiff's position that she was unaware of any sexual abuse prior to the November 23, 2021 incident in the plaintiff's garage, a friend of her husband's had suggested that the bruises that the plaintiff had photographed on her body was a sign of abuse.

c) The allegations by the plaintiff that the defendant broke into her house through her child's bedroom window in the first week of September 2021, two to three weeks after his knee surgery and also on another occasion a week before

the November 23, 2021 incident are not credible. The defendant stated that it was only after the plaintiff was provided with the plaintiff's medical disclosures, including the material relevant to the knee surgery, did the plaintiff's evidence in respect of the date of the September 2021 break-in change.

d) During a therapist's session on November 1, 2021, the plaintiff disclosed that she was having an extramarital affair from 2018 for a number of years. At the same therapy session, she advised the therapist that she was close with her father. The defendant stated that this is at odds with her testimony on the stand in respect of her relationship with her father or even her willingness to talk about her father prior to the November 23, 2021 incident.

[85] In respect of reliance on expert reports, the defendant referred the court to a transcript of proceedings before McCawley J. in ***Jocelyn Lantin et al. v. Rex Sokolies et al.*** dated April 11, 2016, in which McCawley J. refused to allow the admission of an expert report on the basis that it had not met the requirements of the test for the admission of expert opinion set out in ***R. v. Mohan***, 1994 CanLII 80 (SCC). In the transcript she noted in excluding an expert's report at page 44 at lines 22 - 28:

> … But to the extent, he is, in fact, giving his opinion on the issue that I have to decide. And whereas I recognize that I am not bound by any opinion such as that, the cases are very clear that the closer the opinion actually gets to the opinion – or the decision of the court, the more suspicious the trier of fact should be in terms of allowing it in.

[86] It is the defendant's position that the report of Dr. Jaffe should be excluded on a similar basis, namely that he is giving his opinion on the issue that this court has to decide.

[87] The defendant argued on the basis of Dr. Waldman's opinion that the facts in this case do not fit with the principles of how triggering events occur and how memories are recovered. The evidence here demonstrates that she did not have a recovered memory and that she did not actually recall any sexual event involving the defendant.

[88] It is the defendant's position that insofar as the incident on November 23, 2021 is concerned, that incident does not accord with what constitutes a repressed memory, but rather is more consistent with a delusion disorder.

## **ANALYSIS AND DECISION**

[89] I am of the opinion that the plaintiff's action should be dismissed. My reasons for coming to that conclusion are as follows.

[90] In dealing with the objection of the plaintiff on the grounds that the rule in ***Browne v. Dunn*** has not been complied with by the defendant, I am of the opinion that the plaintiff's argument is not sound. The principle itself and the application of the rule has been discussed in numerous civil and criminal cases across Canada over the last century and more, including by our court of appeal. In my opinion, the rule in its original context is properly set out in the decision of the court in ***R. v. Dowd***, 2020 MBCA 23 (CanLII) where the court held at para. 5:

> [5] To ensure credibility assessments are made as a result of a fair and orderly trial process, the rule requires that, where a party intends to later impeach a witness on a matter of significance to the facts in issue by contradictory evidence or in closing argument, the witness must be confronted with the contrary position during cross-examination so that he or she may have the opportunity of responding to it.

[91] However, the rule has now evolved into one that is of a more general application. As held by the court in ***Palmer v. The Queen***, 1979 CanLII 8 (SCC):

> … Reference was made to *Browne v. Dunn* (1894) 1893 CanLII 65 (FOREP), 6 The Reports 67 and to *Rex v. Hart* (1932) 23 C.A.R. 202. I respectfully agree with the observation of Lord Morris in the former case at page 79:
>
> > I therefore wish it to be understood that I would not concur in ruling that it was necessary in order to impeach a witnesses' credit, that you should take him through the story which he had told, giving him notice by questions that you impeached his credit.
> >
> > In my opinion the effect to be given to the absence or brevity of cross-examination depends upon the circumstances of each case. There can be no general or absolute rule. It is a matter of weight to be decided by the tribunal of fact, vide: *Sam v. Canadian Pacific Limited* (1976) 1975 CanLII 1044 (BC CA), 63 D.L.R. (3d) 294

[92] More recently, the court in ***R. v. Lyttle***, 2004 SCC 5 (CanLII) at para. 65 confirmed that the rule remains a sound principle of general application:

> 65 The rule, although designed to provide fairness to witnesses and the parties, is not fixed. The extent of its application is within the discretion of the trial judge after taking into account all the circumstances of the case. See *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759, at pp. 781-82; J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at pp. 954-5. In any event, the foregoing rule in *Browne v. Dunn* remains a sound principle of general application

[93] The rule and its application are designed to prevent "trial by ambush". In my opinion there are no matters here that took the plaintiff by surprise. The plaintiff was not deprived of the opportunity to respond to matters of substance or otherwise. The pleadings, the pre-trial discoveries and the proceedings at trial left no doubt as to what the theory behind the defendant's case is, which stated broadly, is that the plaintiff is suffering from delusions, false memories, and a form of mental illness, as well as a denial that he sexually abused the plaintiff. The plaintiff was aware of this before she

took the stand and to the extent that she could, she addressed those issues in her testimony and the other evidence.

[94] In my opinion, there was nothing in the testimony or the evidence generally that took the plaintiff by surprise or otherwise prevented the plaintiff from advancing her case. Indeed, I would note that when the defendant attempted to embark upon a broader ranging examination of the plaintiff regarding her sexual history, it was the plaintiff's counsel who took objection to that line of questioning. Counsel argued that the policy behind the statutory provisions in respect of limiting cross-examination on matters of past sexual conduct in the ***Criminal Code*** were generally applicable to civil proceedings and that this restricted the defendant's examination of the plaintiff on her sexual history.

[95] It is not necessary to make any further comments here on whether the policy underlying the statutory provisions of the ***Criminal Code*** in respect of the restrictions of cross-examination is applicable to this civil proceeding. After a brief discussion between the court and counsel, the defendant chose to move to a different line of questioning. However, it seems odd for the plaintiff to now argue that the failure of the defendant to put various questions to the plaintiff regarding her sexual history now becomes part of a ***Browne v. Dunn*** argument.

[96] It would have served no purpose to require the defendant to ask certain perfunctory questions, the answers to which are a foregone conclusion. Indeed, asking those questions could in my opinion have raised unnecessary emotional and personally damaging elements in the proceedings which would not have advanced either party's

interests. For example, to ask the plaintiff in the circumstances of this case a line of questioning about whether she thought she was mentally ill, even if legally permitted, might be considered abusive.

[97] The remedy in this case might have been a request to recall witnesses. I note no request was made. In considering all of the circumstances of this case, I find that the rule in ***Browne v. Dunn*** was not contravened.

[98] In dealing with the testimony of the plaintiff and the related evidence, I take issue with any suggestion by counsel for the plaintiff that Dr. Jaffe or Dr. Waldman found her credible. Dr. Jaffe made it clear on page 2 of his report:

> Only the court can decide [the plaintiff's] credibility and make findings about the history of abuse she reports. Her father denies that the abuse ever took place. I cannot determine whether the incidents of abuse occurred or investigate the veracity of her claim, but I can comment about what we know about incest and child sexual abuse and offer an opinion on the consistency of her reports with my clinical experience and knowledge of the scientific literature in the field.

[99] In my opinion this approach is consistent with the role of an expert witness in matters such as these as delineated by the court in ***Mohan***.

[100] However, Dr. Jaffe does take the view that the plaintiff believes that she is telling the truth in recounting these alleged incidents of sexual abuse. Although Dr. Waldman expresses a similar opinion in his written report, it was not without some misgivings that he had after his receipt of the objective testing and the raw data provided by Dr. Jaffe. Nevertheless, in the result, both doctors appear to have approached their testimony on the basis that the plaintiff believed she was telling the truth.

[101] Based on my consideration of all of the testimony and evidence in this case, I have some hesitation about accepting that premise. I do so for a number of reasons.

[102] I have significant concerns about the plaintiff's account of the alleged break-in into her daughter's bedroom window in the beginning of September 2021. She told the therapist on November 1, 2021, that her relationship with her father was good. There is no explanation why her father would decide to break into her house well before the incident on November 23, 2021. It makes no sense that her father would decide to break into her home when she had regularly admitted him into her home. This is especially difficult to understand why her father would then choose to break into her home through a window after having gone through knee surgery and its subsequent complications and rehabilitation efforts. The evidence I accept is that he was unable to drive a vehicle until December and in the circumstances, it is not plausible that somehow, he was able to arrive at a location two or more hours from his own home, break into the plaintiff's home, forcibly rape her and then leave.

[103] The plaintiff takes issue with the defendant's position that it was only after the plaintiff received the defendant's medical reports and then realized his medical condition in early September 2021, reconsidered the date of the break-in and decided that it occurred on another date. In my opinion this reconsideration of the date of this incident makes me strongly suspicious that this is much more than simply reflecting on the incident and determining that the incident occurred on a different date. It is one of the only incidents, along with the incident approximately a week before the November 23, 2021 incident, where the plaintiff was able to provide a relatively certain date of when an assault against her by her father allegedly occurred while she was an adult.

Her recounting of this incident and her subsequent reconsideration and redetermination of the date is simply not credible.

[104] I have similar misgivings about the incident that allegedly took place approximately a week before the November 23, 2021 incident in her garage at home. Although the plaintiff testified that she believes there were approximately 17 incidents when she was allegedly sexually assaulted by her father, none of the bruising and other physical evidence related to her body or her possessions demonstrates any evidence of sexual assault. Although a criminal investigation by the police proceeds on a very different basis that a civil proceeding, I do not accept the plaintiff's husband's testimony that the police were dismissive of her complaint, implying somehow that they were less than professional in carrying out their investigation in respect of a sexual assault that allegedly occurred just over a week earlier in November 2021.

[105] The police investigation demonstrates that their approach cannot be characterized as dismissive. In summary, the plaintiff and her husband attended at the Morden police station approximately a day after the November 23, 2021 incident regarding a complaint about a historical and ongoing sexual assault. A statement was provided by the plaintiff. Later that day the police were provided with pictures of bruises which the plaintiff sent them. Victim Services was contacted by the police and put in touch with the plaintiff. Later the same day the plaintiff asked the police to attend to her residence to seize her bed sheets to possibly obtain DNA samples. Ultimately the bed cover was seized as well as a fitted sheet and mattress cover. No DNA specimen capable of analysis was recovered. Her children were taken for medical

examinations and after the examination the police were advised that there were no indications of physical or sexual abuse. The matter was referred to the Crown for consideration and the Crown advised that it would not be authorizing charges.

[106] The fact that the Crown did not authorize charges is not relevant to my consideration of this matter. It is relevant however to consider whether there was any plausible indication that a sexual assault had taken place based on evidence independent of the plaintiff's own account. It is clear that other than the statement of the plaintiff, there is no physical or corroborating evidence than an assault took place.

[107] While corroboration is not necessary in order for a finding of criminal or civil liability to be entered, in dealing with this type of allegation, including in the context of a repressed or recovered memory, corroboration is helpful for the trier of fact to consider in making their determination. In this respect the recent decision of the court in ***R. v. Case***, 2026 SCC 6 (CanLII), is instructive. I provided counsel with a copy of this decision when I learned of it during the course of trial, so that they could provide me with their comments, if any, in the course of their final arguments.

[108] In ***Case***, the court upheld the decision of the Ontario Court of Appeal "substantially for the reasons of the majority of the Court of Appeal." The reasons for the decision of the majority of the Ontario court are reported at ***R. v. Case***, 2024 ONCA 900 (CanLII). Any further citations of the ***Case*** decision in these reasons will be from the decision found at ***R. v. Case***, 2024 ONCA 900 (CanLII). Although the decision involves the discussion of a criminal sexual assault matter, the observations of the court are instructive here.

[109] The ***Case*** decision dealt with whether expert evidence is required in the context of reliability findings when considering matters involving intoxication and memory and a "flashback" concerning the perpetrators of an assault that the complainant testified she experienced. In the course of holding that expert evidence was not required in this case, the trial judge found that the complainant's flashback was not a dream, but rather that she remembered some of what occurred. The court noted in the decision that trial judges routinely deal with reliability findings in matters involving issues of intoxication and memory, in sexual assault complaints and in numerous other contexts without the assistance of experts.

[110] In the context of considering the complainant's evidence in that matter, the court noted:

> [34] The details of the alleged assault that the complainant provided in the days immediately following her dinner with the appellants [Case and Loyer] were consistent with her earliest account. The complainant remembered the manner in which she was assaulted including the position of her body, the people involved, the digital penetration, and Case's words to Loyer.
>
> [35] These were the circumstances in which the trial judge found that, despite what she described as significant gaps in the complainant's memory, the complainant was able to observe, hear, and feel what was happening to her. Her confusion the next morning was explained by the effects of the substance she had consumed and the alternative narrative Case put to her.
>
> [36] Given the gaps in the complainant's memory, the trial judge looked to the confirmatory evidence. She found that there was a "striking correspondence" between the medical evidence and the complainant's flashback and, in addition, that the evidence corroborated and confirmed the complainant's account.
>
> [37] The complainant had bruising on her upper thighs and reported vaginal soreness when she was examined on June 21 and June 22 following the alleged assault. The trial judge rejected the appellants' suggestion that the complainant may have bruised herself by bumping into tables at work on the basis that it was implausible. She found "that the only reasonable inference is that the bruises were made by hand pressure on [the complainant's] upper thigh during the

> sexual assault." This evidence supported the conclusion that the sexual assault was not a dream.
>
> [underlining added]

[111] I will comment on the need for expert evidence in this case later in these reasons. At this point it is appropriate to address the nature of the evidence of the complainant in terms of its credibility and its reliability. In my opinion, even if I assume that the evidence of the complainant is credible, at least in the narrow sense that she believes that what she is testifying to is true, I cannot accept her evidence as reliable.

[112] Unlike the decision in ***Case***, the plaintiff's account here has no corroboration or confirmation capable of supporting her account. There is no physical, medical or other corroborating evidence that indicate a sexual assault took place or that the plaintiff committed any sexual assault or sexual abuse either while the plaintiff was an adult or as a child. Both the mother and husband of the plaintiff advised the medical emergency staff on November 23, 2021, that there is "no evidence of this." (Exhibit 7) Certainly there was no evidence of the raping and beating of the plaintiff provided by the husband in his testimony before the court. The mother did not testify, but her statement in the hospital records to the effect that there was no evidence of the raping and beating of the plaintiff by her ex-husband is not contradicted by any other evidence properly before the court.

[113] The plaintiff did not produce any medical records concerning her childhood years or even during her early adult years that would establish on a balance of probabilities or even suggest that she was anally, vaginally or orally raped. Counsel for the plaintiff took the rather bold position that it was the responsibility of the defendant to obtain

and produce the medical records of the plaintiff when she was a child because the plaintiff could not remember who her family doctor was as a child. That position is preposterous. I do not believe that the plaintiff would be unable to obtain her own medical records and certainly the defendant has no access to the plaintiff's childhood medical records now that she is an adult. When asked by the court whether the plaintiff made inquiries of the defendant about the names of doctors where she may have obtained medical care as a child, I was told that those questions were not put to the defendant in discovery or otherwise. Furthermore, it appears that while the mother, who was not called to testify, may have issues affecting her short-term memory, there is no indication whether she was asked to assist her daughter in obtaining her records given that I am advised that her long-term memory is unimpaired.

[114] It is noted earlier in these reasons that the plaintiff expressed concern in the course of argument that Dr. Waldman had in his possession a letter from the plaintiff's mother when drafting and issuing his report before the trial commenced. The plaintiff stated that the letter would have allowed Dr. Waldman to have seen how the defendant treated the plaintiff growing up; how he drank, how he was always annoyed with her and treated her worse than her sister and yet this letter and its contents are not referred to in any capacity in his subsequent report.

[115] In my opinion, given the fact that such information would be hearsay in respect of highly contested matters in any event, the better course of action would have been to have produced the mother as a witness since I was advised that her long-term

memory is not impaired. Indeed, I would point out that just a short time prior to trial, counsel for the plaintiff requested that both Dr. Jaffee and the mother be allowed to testify remotely by video. Although I made no formal ruling on the request, I advised counsel in writing that my general practice in respect of expert witnesses, especially those from out of province, is to allow them to testify remotely. However, with lay witnesses like the plaintiff's mother, I am reluctant to do so because of credibility issues that very often arise. Despite counsel being invited to make an application in respect of both witnesses to have them argue the issue of providing evidence remotely, counsel came to an agreement that only Dr. Jaffe would appear remotely. For reasons unknown to me, the plaintiff's mother was not called as a witness. However, I make no adverse or other inference in that respect.

[116] Furthermore, in respect of the plaintiff's adult medical records that were obtained and tendered as exhibits in the court, there does not appear to be any corroborating or confirmatory medical or physical evidence that would indicate that the plaintiff was sexually assaulted or that she was sexually assaulted by her father. Lacking any medical or physical evidence that the plaintiff was sexually assaulted as a child by her father, the plaintiff takes the position that this corroboratory or confirmatory support of her account can be found in the consideration and application of general statistics concerning the prevalence of child sexual abuse in Canada and the identification of factors that would seemingly place her father in the category of a person who would be likely to sexually abuse their children. A number of these reports and studies are set out in Dr. Jaffe's report as well as in a Juristat released by Statistics Canada on

December 12, 2022, entitled *Profile of Canadians who experienced victimization during childhood, 2018*, which the plaintiff also provided to the court.

[117] This is an opportune time in these reasons to comment on the plaintiff's position that the accuracy of reports of sexual abuse that proceed through the court system "are roughly in the 100% range." I have significant reservations about the accuracy of that statement and I refuse to allow that purported statistic to have any bearing on my consideration of the evidence within the framework of the procedure and substantive legal principles that I am required to consider and apply in the context of this proceeding. Indeed, if that kind of statistic had any persuasive legal value, I could have simply concluded the proceedings at the end of the trial by issuing a judgment in favour of the plaintiff without any further consideration of any testimony (other than the plaintiff's testimony) or any other evidence. As it is, apparently this is one of those cases where my consideration of all of the evidence does not allow me to come to a conclusion which according to the plaintiff should be a forgone conclusion in roughly "the 100% range."

[118] In my opinion, even if the evidence here is that the defendant falls squarely within the ambit of the factors and categories identified in those studies and reports (a characterization of the evidence which I do not accept), it would be extremely dangerous to come to the conclusion that the defendant, on a balance of probabilities, sexually abused the plaintiff on the basis of the evidence here. Without some kind of persuasive and compelling evidence that the defendant actually sexually abused the

plaintiff, if would be irresponsible to classify him as a child abuser and that he abused his daughter for over 30 years.

[119] There are no facts or combination of facts here that together with any general statistical factors would allow me to come to that conclusion. Any combination of the statistical factors relied upon by the plaintiff together with the other evidence and testimony in this case do not lead me to the conclusion that on a balance of probabilities the defendant anally, vaginally or orally raped his daughter "thousands" of times as estimated by Dr. Waldman, on the basis of what he was told by the plaintiff or even a thousand times, as she testified in court or even once.

[120] Like Dr. Waldman, I find the following inexplicable. These observations help lead me to the opinion that the plaintiff's account of her sexual abuse at the hands of the defendant is simply not plausible. Dr. Waldman's report at page 20 of Exhibit 24 states:

> … She also reported that prior to 2019, she had no problems with her mental health and had never felt the need to pursue treatment. Although she has had severe medical conditions and extensive medical investigations, there is no indication of damage that would be expected from being repeatedly anally raped from the ages of 4-10. And she did not describe mental health difficulties that would be expected prior to age 35 that would typically be associated with the severe and persistent nature of the abuse [the plaintiff] reported. In addition, the only trigger that [the plaintiff] endorsed to Dr. Jaffe that would cause her anxiety, is seeing a man who reminded her of her father, although [the plaintiff's] therapy notes indicate that she was having a relationship with someone who reminiscent of her father, and as such this trigger did not lead to avoidance as would be expected based on the diagnostic criteria of PTSD.

[121] In fact, as her therapist's notes indicate, as late as November 1, 2021, she described her relationship with her father as good. The fact that her mother may have apologized to the plaintiff for the abuse she suffered as a child does not assist in demonstrating that the sexual abuse described in her testimony actually occurred. Her

mother had no knowledge of any sexual abuse by her own admission, at least as late as November 23, 2021.

[122] In respect of the report of Dr. Jaffe, I have noted that his opinion hinges on the credibility of the circumstances of the sexual abuse related to him by the plaintiff. In my opinion, the evidence demonstrates that the testimony of the plaintiff is not credible or reliable. Even if I were to assume that she actually believed her account of the events, I simply find it implausible. While the defendant may have failed in some respects as a father, in my opinion there is no other credible or reliable evidence that on a balance of probabilities establishes he committed these heinous acts of abuse upon his child.

[123] It is not necessary for me to determine in the course of these reasons why the plaintiff accused her father of committing his abuse. It may be based on a delusional disorder as Dr. Waldman opines. There may be another reason. In my opinion she was clearly highly intoxicated on November 23, 2021, when she claimed to have remembered that her father had raped her as recently as a week to 10 days earlier. I do not believe that the experience that she described, as having suddenly remembered, was a recollection of an event that actually occurred. I believe it is something that she came to believe as a result of her intoxicated state. It was not an actual memory of something occurring.

[124] The plaintiff takes issue with the hospital staff characterizing her conduct as substance induced psychosis/paranoia (page 2 of Exhibit 7), stating that they are not medically qualified to make that diagnosis. In my opinion, it is not unusual for

emergency staff to make that type of preliminary diagnosis given the type of situations they have to deal with on a regular basis. The use of the word "paranoia" or more particularly its derivative "paranoid" which the plaintiff took specific exception to here was recently considered by the Manitoba Court of Appeal in ***R. v. Hastings***, 2026 MBCA 11 (CanLII). In that decision the appeal court considered the use of that word by a very unsophisticated, but in my opinion as the trial judge, a very honest witness in describing her boyfriend's conduct. It held:

> [33] Regarding the accused's behaviour described by S.B. as "paranoid", she testified it began before she saw him taking any pills and continued throughout the eighteen hours she was confined. When she first went into the shack, he was looking out the window and turning off lights; she described this as paranoid. From the outset, the accused was concerned that S.B. was involved with someone else. The accused was paranoid about S.B. cheating well before he extracted a name from her. After the deceased's name was mentioned, he told her he was going to lure the deceased to the shack. Following the murder, she said, "He was looking out the window and getting worried that the cops might come there again, looking for [her]." She also described this as paranoid.
>
> [34] The judge was not required to accept S.B.'s view that the accused's behaviour "maybe" indicated he was high on something. In our view, the judge's finding about the reasons for the accused's paranoid behaviour was not the result of a misapprehension of the evidence.

[125] There is no suggestion in that case that because the witness was not qualified to make a medical diagnosis, the court could not consider the meaning of that term in the context in which it was used there.

[126] In my opinion, Dr. Waldman characterizes the November 23, 2021 incident at the hospital very well. It accords with my view of the evidence. It is instructive to reproduce portions of that report here. He states at pages 6 - 7 of Exhibit 24:

> A review of medical documentation was completed from the emergency department she was brought to after her use of cannabis led to the belief that her father had been assaulting her. In the medical documentation, it was

> indicated that information obtained from [the plaintiff's] husband and mother stated that there was no evidence that her father had ever sexually or physically abused her. Documentation indicates: "frequent marijuana user last 3-4 days severe anxiety states dad raped her in childhood. Told story multiple times and each time story got more grant reports when husband is away dad comes home and rapes her and her children - husband reports there has never been any evidence of this … EMS spoke with husband who reports increasing agitation and anxiety worse when she smokes more." She was then assessed by the mental health nurse in the emergency department who documented: Reports using cannabis at home, increased use recently as she feels that it opens up her mind, helps her to remember things from her past, helps her to see things differently. Has been feeling like she's been missing something and has been trying to figure out what that was. While high last night she had flashes of her dad raping her. Reports that she is aware that while she was high she thought that her dad had affected/raped everyone in her life and had been having panic attacks about that." The diagnostic assessment at the time was "37-year-old married Caucasian woman, admitted to the observation unit in the night with what sounds like substance induced psychosis/paranoia."

[127] Further at page 18 of the report (Exhibit 24) he states:

> … In the current case, the use of increasing doses of cannabis, and active attempts to try to recall something that [the plaintiff] believed could explain her unhappiness at the time aside from the reality of her marital problems, the death of her sister, her own significant medical problems, and her challenges parenting her children, over the course of 2 years ultimately led to an active reconstruction rather than a recollection, that almost certainly contains significant distortions.

[128] On the basis of the evidence here, I am satisfied that the plaintiff consumed cannabis to the point where she was severely intoxicated or "high" before and during the time she arrived at the emergency ward of the hospital. As a result of her continued attempt by the use of ever-increasing doses of cannabis to help her "recall something" that occurred to her as a child, resulted in her exhibiting the symptoms displayed and which the hospital staff observed and tentatively characterized as "substance induced psychosis/paranoia." As the hospital notes state in recounting her recent history prior to November 23, 2021, at page 5 of 9 in Exhibit 7:

> increased anxiety, severe past 3-4 days
> worsening delusions/paranoia – states father has abused her physically and raped her as a child, with story changing and more grandiose each time.
> husband and [patient's] mother denies these claims, citing no evidence or mention of same historically …

[129] It is unfortunate that the plaintiff's mother was unable to testify in view of the fact that "her long-term memory remains in tact." Perhaps her recollection of the plaintiff's childhood and the plaintiff's relationship with her father could have provided greater insight into the plaintiff's background. However, I must deal with the evidence that was presented in the case and it is on that basis that I am coming to my decision. It would be improper for me to speculate as to why she could not have provided evidence in respect of matters within her long-term memory affecting the plaintiff and I will not do so.

[130] In my opinion, it would be extremely dangerous to rely on the plaintiff's evidence without any more substantive corroboration or confirmation that the events she described as an adult or as a child actually occurred. Her testimony concerning what happened to her that night is unreliable as a basis for suggesting that in her state she was able to recall a memory that her father had sexually assaulted her. Furthermore, her professed recollection of her father breaking into her own home by coming in through a bedroom window in the first week of September 2021, is simply not plausible.

[131] On the basis of the evidence in this trial, it would be unsafe and unsupportable to conclude that the plaintiff has been recalling memories of things that actually happened to her in her childhood or as an adult.

[132] As the court stated in ***Case***, at paras. 12 and 13:

> [12] To the extent that the appellants' argument suggests that expert evidence was required to support the trial judge's reliability findings, *R. v. François*, 1994 CanLII 52 (SCC), [1994] 2 S.C.R. 827 is squarely against it. As the Crown submits, trial judges deal with issues of intoxication and memory routinely, in sexual assault complaints and in numerous other contexts, and do so without the need for expert evidence. See e.g., *R. v. B.W.W.*, 2017 ONSC 985; *R. v. R.D.*, 2017 ONSC 1856, aff'd 2019 ONCA 132.
>
> [13] Expert evidence was not required in this case. It was for the trial judge to consider the complainant's evidence and to make findings of credibility and reliability. Her findings are entitled to deference in this court.

[133] I have considered the totality of the evidence presented here, including the expert reports. In doing so, I do not find it necessary to rely on the expert evidence to any greater extent than the references I have made in these reasons in coming to the conclusion that the evidence of the plaintiff lacks credibility and is unreliable. It is not necessary for me to set out any other additional reasons for doing so.

## **CONCLUSION**

[134] In the result, I find that the plaintiff has not proven on a balance of probabilities that she was sexually assaulted, sexually abused, or abused by the defendant as alleged in the statement of claim as originally filed or as amended at trial. Accordingly, the statement of claim of the plaintiff against the defendant is dismissed with costs.

[135] Although the defendant requested an opportunity to address the issue of costs at a later date, I see no reason in the circumstances of this case, admittedly without the benefit of submissions from counsel on this point, to depart from the awarding of costs as fixed by tariff. If costs cannot be agreed upon or if the defendant wishes to seek

costs at a higher or enhanced level, including solicitor/client costs, costs may be spoken to. Otherwise, I am prepared to order costs on the basis of tariff.

_____ J.