

# A summary of the Mount Cashel civil trial so far

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**Published:** Apr 25, 2016 at midnight

**Updated:** Sep 30, 2017 at 6:04 a.m.

That first day of trial at Courtroom No. 2, Newfoundland Supreme Court, the sides were aligned on either side of the aisle on stiff-backed, wooden benches that resemble the pews of a church.



The Mount Cashel Orphanage in St. John's. The building was torn down in 1992.

"Why are they here?" several people asked The Telegram.

The "they" in this instance are the handful of staff and top-ranking clergy, including Archbishop Martin Currie, of the Archdiocese of St. John's, known as the entity, RC Episcopal Corp. of St. John's who have attended the trial daily.

Those wondering why the church was there were former residents of the infamous Mount Cashel boys' orphanage — a name forever associated with a physical and sexual abuse scandal — and their supporters.

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The civil case that pits John Doe against the Episcopal Corp. has four John Does — men all in their 70s who, as test cases, represent 60 former Mount Cashel residents, clients of Budden and Associates' law firm. There are also about 20 others who could be affected by the outcome represented by other lawyers in St. John's.

The church officials are in their right to be there as any defendant in any lawsuit — they are the clients of a Toronto law firm — Miller Thomson — who dispute the claim that the archdiocese's business arm, the Episcopal Corp., should be held responsible for the abuse of boys at the Mount Cashel in the era late 1940s to early '60 at the hands of certain members of the Christian Brothers, a Catholic lay order.

The archdiocese insists it did not run the orphanage and therefore is not liable.

And none of these present-day staff or officials had anything to do personally with anything that went on back then.

The Mount Cashel scandal itself is most associated with the abuse of boys of a different era, the 1970s and '80s that prompted the 1989-90 Hughes Inquiry. That era is not involved in the civil case.

But the scandal is long-worn by this province and so are the emotions of former orphanage boys of any era who have been monitoring the trial through Telegram coverage or who have dropped down to court.

One younger man seated in the courtroom nodded his head up and down as men decades older told their stories of not only abuse, but harsh daily life at the orphanage.

So besides the stakes for the two sides in this specific trial — the 1940s-60s plaintiffs — there is an emotional stake for many others who see the church as the overseers of institutions that associate with the Roman Catholic religion.

But there's public opinion and then there's law.

And the law is what Justice Alphonsus Faour must apply to this case — whether the Christian Brothers of Ireland as operators of the orphanage were ultimately the legal responsibility of the archdiocese.

There's also the question of what various priests of the era may have known or not known about what certain Brothers and a couple of workers did to the boys and what steps they took to intervene.

Some abuse allegations have previously been proven in criminal court, while others never saw criminal prosecution. The boys cannot be named, due to a publication ban, and neither can deceased priests.

A conclusion to the matter is a long ways' away yet.

The trial sat for 13 days this month and recessed until June, when another three weeks are scheduled. Over the summer, lawyers for each side will submit written arguments and oral arguments will be heard in the fall.

A guesstimate on a verdict would be late this year or early 2017.

To even get to court, it's been a long haul — the statement of claim dates back to 1999 and originally listed the Christian Brothers of Ireland as defendants, along with the church. But the Brothers are

bankrupt — some of the claimants in this case did get some moneys from the Brothers, but lawyers argue it was not full compensation.

The stakes for the Episcopal Corp.: possible multi-millions in compensation to victims of physical and sexual abuse several decades ago and the fallout on its holdings of having to pay out those funds.

The stakes for the four John Does and the other claimants lined up behind them: If they lose, loss of compensation from the church, but also no legal validation of who they feel played a part in their torment.

The legal teams: local lawyers Geoff Budden and his associates Will Hiscock and Paul Kennedy represent the former residents; Ontarians Mark Frederick, Chris Blom and Susan Adam Metzler represent the Episcopal Corp.

The four test case John Does were the first to testify, one by one telling not only stories of unimaginable abuse, but also of the heartbreaking, common circumstances that led them to Mount Cashel — in all cases the death of one parent that left the other spouse devastated.

In three of the mens' stories, a mother died, leaving fathers scarred and unable to care for their children as they tried to continue on with life and/or work. And in the third case, a father died, leaving a mother destitute financially.

The backstories for some of them also involved male siblings sent to Mount Cashel and sisters being packed off to Belvedere orphanage, run by the Sisters of Mercy.

The court heard, among other things, claims of boys at Mount Cashel being beaten as they lined up for meals, of having to eat porridge filled with dead grubs and stealing scraps from vats of swill consisting of patients' leftovers from city hospitals, of a boy being dragged by a rope into a frigid swimming pool where boys were forced to bathe with bars of Sunlight soap to save on hot water, of a boy screaming as he was beaten in the shower because he'd been late and was ducking in and out of the cold water, of sexual acts committed at night by a Brother roaming the young boys' dorm, of a traumatized boy eating a chocolate bar and drinking a pop while being sexually assaulted by the canteen operator because he had no idea what else to do.

Another former resident, not part of the case, was then called to testify because he had reached out to lawyers after reading about the trial in The Telegram. The man said he was sexually stalked at the orphanage by one of the Brothers.

But he also told the court that he told priests about incidents in and out of confession and his once serious interest in pursuing a career in the priesthood or as a Christian Brother ended with a loss of faith because his situation was not helped.

The stories of the former residents fixed the attention of the courtroom, for about a week and then testimony — except for a brief appearance by a local architect who knew one of the witnesses — shifted to experts.

It also shifted sides for a time as the first expert to take the stand was well-known historian John FitzGerald, who testified on behalf of the Episcopal Corp. and wrote a report based on his review of historical documents.

"The documents show that the Irish Christian Brothers were independent of direction and management of the Archdiocese," FitzGerald wrote in his report.

But Budden insisted in cross-examination that a pattern of involvement in fundraising and other matters is backed up in some 1950s correspondence between the archdiocese and the Brothers.

The last witness before the case recessed in June was on behalf of the former residents.

Episcopal Corp. lawyer Susan Adam Metzler contested his acceptance as an expert witness in a long voir dire, but Faour allowed Fr. Thomas Doyle to testify.

Doyle, a canon lawyer from the Washington, D.C., area has been outspoken in the past against how the Catholic church, mainly in the U.S., has handled abuse claims.

But his testimony in the Mount Cashel civil case centred on his knowledge of the complex internal judicial system unique to the Catholic church and interpretations of laws written in Latin.

Doyle confirmed for the court that the seal of confession cannot be broken without a priest risking excommunication, but suggested options priests could have taken to help boys who may have disclosed sexual abuse by a Brother or someone at the orphanage.

These included arranging a meeting outside the confessional, advising a boy to go to authorities at the orphanage or finding a vague way to alert the archbishop of the day to inappropriate things going on.

He also said while the Christian Brothers had its own Pontifical order from the Vatican, the archbishop could have gone up a chain of command if he had serious concerns.

Telegram trial coverage — the only media outlet present except for some other outlets' short stints in the beginning — resumes daily on June 6, online and in print.

### ***Quotes from the Mount Cashel Civil trial***

"Who were you going to tell? Who? Another (Christian) Brother? Who were you going to tell? Would they believe you? See what happened in Ireland? What happened in Australia? What happened in the States? Nobody told anybody." — John Doe No. 1, testifying of boys at the Mount Cashel Orphanage having no one to confide in about allegations of abuse.

"I was screaming like hell." — John Doe No. 2, recounting how he says he was being beaten by a Christian Brother for being late and ducking in and out of cold water in the shower.

"Everyday life has ups and downs ... but my life would have been normal. What I mean by normal, I would have been married with kids, home, steady job, you know, happy, not living in boarding houses or being tossed from here to there or drinking ... just basically unhappy and depressed. " — John Doe. No. 3, testifying about how Mount Cashel affected his life.

"The documents examined for this study show that the corporate entity ... Roman Catholic Episcopal Corp. of St. John's, and before incorporation as the Diocese of St. John's, played no controlling, managerial or oversight role whatsoever in the administration, fundraising, operations or running of

the Mount Cashel Orphanage, or of, or over, the assignment, work, supervision or reassignment of Irish Christian Brothers who worked in Newfoundland.” — Historian John FitzGerald.

“(The priest) cannot go to the archbishop, to anybody, even to the Pope, and say, ‘This boy came to me and confessed sexual abuse.’ He has to take a very indirect route if he is going to deal with this. It is possible and it can and should be done.” — Father Thomas Doyle, canon law expert, explaining the seal of confession.

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