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# Archdiocese of St. John's deemed to be vicariously liable in Mount Cashel victims' suit

Newfoundland and Labrador Court of Appeal overturns trial court ruling



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A landmark ruling in the Newfoundland and Labrador Court of Appeal, which found that the Archdiocese of St. John's has a responsibility to compensate victims of the horrific abuse suffered by boys at the Mount Cashel Orphanage, builds on previous law that justifies conditions for going after “deeper pockets” in trying to address past wrongs, says one of the lawyers representing the plaintiffs.

“This is a thorough decision that we believe accurately captures the state of the law in Canada with respect to vicarious liability for survivors of sexual abuse,” says lawyer Geoff Budden of the St. John's law firm Budden and Associates, who represented the four abuse survivors.

He adds that holding the Archdiocese vicariously liable in this case recognizes the concept that if one defendant in a similar lawsuit doesn't have the ability to pay compensation, it is a legitimate goal to aim to hold another party with “deeper pockets” liable, if they meet the criteria of vicarious liability.

“It satisfies the need to provide justice to victims and makes it harder for any defendant or potential defendant to look away,” says Budden. He says it builds on a 1999 Supreme Court of Canada decision, *Bazley v Curry*, in which the top court held that a non-profit organization may be held vicariously liable in tort law for sexual misconduct by one of its employees.

While in that case there was concern about plaintiffs going after an organization simply because it had deep pockets, Supreme Court Justice Beverley McLachlin, writing on behalf of the court, said: “If, in the final analysis, the choice is between which of two faultless parties should bear the loss – the party that created the risk that materialized in the wrongdoing or the victim of the wrongdoing – I do not hesitate in my answer.

Neither alternative is attractive. But given that a choice must be made, it is fairer to place the loss on the party that introduced the risk and had the better opportunity to control it.”

Budden says the recently released decision in *John Doe v. The Roman Catholic Episcopal Corporation of St. John's*, could open the floodgates for others to sue the Archdiocese of St. John's, as well as better compensate the four John Does in this case and the others the case represents. They had successfully sued the Christian Brothers over abuse they had experienced at Mount Cashel during the 1940s, 1950s and 1960s but had only received small portions after bankruptcy proceedings in the United States resulted in liquidation of that organization's assets. As a result, the plaintiffs are seeking compensation from the Archdiocese.

The largest amount owed to a survivor is close to \$2 million, but little has been paid out by the Christian Brothers.

This case is not associated with the Mount Cashel sexual abuse scandal in the 1970s and 1980s, which led to the 1989-90 provincial Hughes Inquiry. As well, the victims from the earlier decades were not part of compensation from the Newfoundland and Labrador government when it settled cases from the '70s and '80s more than 20 years ago.

Budden says the victims in his case, many of them who are over 80, have been waiting a long time for this day, adding they “all carry the burden of what happened to them,” even those who went on to have successful lives.

The lawsuit was first filed December 1999 by the four former residents of the orphanage, whose names are protected by a publication ban. They are representatives of about 60 former residents from the 1940s to 1960s era that are directly affected by the case.

The suit was filed against the Roman Catholic Episcopal Corp. of St. John's (Archdiocese), the legal entity of the Archdiocese of St. John's, and the Christian Brothers Institute Inc. for damages resulting from the sexual abuse they suffered while they were boys living at Mount Cashel.

The [135-page appeal court decision released July 28](#) overturns an earlier decision by the province's Supreme Court, following a 35-day trial in 2016, which found that the Archdiocese was neither vicariously liable nor negligent when it came to the abuse the boys suffered at the hand of the Christian Brothers. During the trial, the Archdiocese didn't dispute that the five implicated members of the Christian Brothers abused the boys.

In that 174-page ruling, released in 2018, the court accepted the Archdiocese's defence that the Christian Brothers was an independent religious order that operated the orphanage separately from the Archdiocese. The trial judge also sided with the Archdiocese's argument that the Archdiocese may have supported the orphanage and helped with funding, but it was ultimately not responsible for any torts taking place under Church canon law, or civil law.

Ottawa-based lawyer Eugene Meehan, of Supreme Advocacy, who also represented the plaintiffs, says that "the trial judge held an adult person in a position of authority, a position of care, who saw children every day as part of his job, has no duty of care towards them. That's difficult to understand. The Court of Appeal corrected that."

Meehan also says there is hope "that this decision will be a powerful motivation for those who control institutions engaged in the care of children to take steps to prevent and eliminate sexual abuse ... Looking after children or looking after those that look after children, is a continuing legal responsibility.

"Even if you don't have direct hands-on responsibility, vicarious liability makes you liable."

Budden says that the trial judge “put a lot of emphasis” on the fact that the Brothers were doing the day-to-day childcare. “We argued that the relationship between the two entities was much closer than that and that the Archdiocese played a strong role over the Christian Brothers.”

The appeal court decision said that while the Christian Brothers, who were not employees of the local Archdiocese, were the perpetrators of the abuse, it was the Archdiocese that offered the Christian Brothers the environment to commit crimes against the boys, abuse that went unpunished for decades.

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“The Archdiocese exercised its authority over the Brothers and the orphanage in many ways, but it also provided the Brothers staffing Mount Cashel with the power, environment and tools to carry out their wrongdoing virtually undetected, while they were supposed to be carrying out the Archdiocese's legitimate objectives of caring for and educating the appellants,” says the decision by Court of Appeal Chief Justice Deborah Fry, Justice Francis O’Brien and Justice Lois Hoegg.

The decision goes on to say: “Their relationship was sufficiently close, and the connection between the Brothers’ assigned tasks and their wrongdoing was sufficiently close, to justify the imposition of vicarious liability on the Archdiocese.

“In the result, we allow the appeal respecting the Archdiocese’s vicarious liability for the conduct of the five Mount Cashel Brothers who sexually assaulted the appellants, and accordingly impose vicarious liability on the Archdiocese for the wrongful conduct of the Brothers.”

Budden said that not all grounds of appeal made by the plaintiffs were successful. The appeal court found that the Archdiocese was not negligent in relation to the abuse the boys

suffered, and the court ruled in favour of the Archdiocese's cross-appeal on the calculation of interest payments on any damages owed, which could reduce the total compensation.

The Archdiocese has 60 days to decide if it will apply to the Supreme Court of Canada to seek leave to appeal the decision.

Toronto lawyer Mark Frederick, who led the legal team for the Archdiocese in the case, says the decision is being analyzed and a decision will be made on whether to appeal, though it may take weeks.

But Meehan notes that appealing the decision could be a risky move.

"At the present time this is a Newfoundland and Labrador case, limited to that jurisdiction," he says "Do they want to take the chance of spreading this virus all the way across the country and making it a Canada-wide national precedent?"

"They would have to think long and hard about the risks here to themselves, to the Church in Newfoundland, and to every single Catholic Archdiocese and Diocese across Canada, as well as every other non-Catholic denomination in the country."

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