

Is the church responsible?

Liability questions raised when clergy found guilty of sex offences

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The Canadian Press

VANCOUVER — The former bishop of Nelson, B.C., and the Roman Catholic Church are appealing a precedent-setting ruling that found them liable for a priest's sexual assault on an altar boy.

Wayne Kaskiw was an 11-year-old in Kelowna when he was sexually assaulted in 1975 by Paul Pornbacher, a parish priest in the diocese of Nelson.

Sixteen years later, Kaskiw disclosed the assaults and Pornbacher was convicted and sentenced to 18 months. Kaskiw then sued Pornbacher, now an ex-priest, and the Catholic Church, through the former bishop of Nelson, Emmett Doyle.

In a recent B.C. Supreme Court decision, the judge awarded Kaskiw \$210,000 in damages from the priest and the church, plus an additional \$20,000 in punitive damages against Pornbacher.

But lawyer Ken McEwan, representing the bishop and church, filed an appeal Friday. He said he will focus on the damage award and the finding that the bishop and church were liable for the priest's actions. Pornbacher is not appealing.

Liability is an unsettling issue for the church and poses interesting legal questions, say lawyers and legal experts.

Can a bishop as representative of the church be held liable for a priest's actions? Can the church be negligent and liable and have to pay damages for a priest's behavior?

"Whether (the church) was liable for what the priest did is the question of vicarious liability," says Diane Tourell, the lawyer who represented Kaskiw.

"Basically, what it means is if you're a bouncer and you work in a nightclub and you turf a patron down the stairs and he breaks his neck, the nightclub owner is liable for what you do because you're an employee."

The B.C. decision was "definitely a precedent in B.C., the finding of vicarious liability in the context of the Catholic Church," Tourell said Monday.

But there have been liability decisions in other provinces, including one similar to Pornbacher that involved a priest and altar boy in Nova Scotia.

Halifax lawyer Michael LeBlanc says he expects to hear soon whether the Supreme Court of Canada will hear his case, which also focuses on the church's liability.

The Nova Scotia Court of Appeal late last year

Quick Quotes

Quotes from experts on the question of liability for Catholic Church for illegal actions by priests:

"The church argued that, no, he wasn't really an employee and we weren't really his employers. He was doing this on his own time. Those arguments did not succeed for them."

— Diane Tourell, lawyer for former B.C. altar boy who won damages from ex-priest and Catholic Church in B.C. Supreme Court.

"Is a priest who is a member of a diocese who acts immorally or illegally outside the context of his ministry bringing the diocese with him into that act? It's a difficult question"

— Rev. Gerry Copeman, former president of the National Federation of Councils of Priests.

"It is apparent, although he denied it, that Bishop (Emmett) Doyle, the Bishop of Nelson at the relevant time, had been aware since in or about 1970 that at least two, and possibly three, of the priests in his diocese had been sexually inappropriate with children in their parish."

— Madam Justice Georgina Quigano in a January 1997 ruling that found former bishop and church liable.

"These priests were placed by the church in a very powerful position and ultimately (some) abused that power. The church should be responsible for that abuse because they put the priest there in the first place."

— Michael LeBlanc, lawyer for Nova Scotia altar boy who successfully sued church but had it overturned by provincial appeal court.

overturned a finding of church liability for the sexual assault of an altar boy by Rev. Jim Mombourquette.

The B.C. Supreme Court judge cited the case in her rulings.

But she rejected the Nova Scotia appeal court reasons, siding instead with the trial judge's finding of liability on the church's part.

"Clearly, it's polarized, depending on which court you go to, as to how the courts are looking at this," said LeBlanc.

He said the Nova Scotia appeal court ruled the church can't be held responsible when one of its priests "acts criminally and totally contrary to the religious tenets which he has sworn to uphold."

The B.C. Supreme Court, however, ruled that "the tenets of the church and the vows related to them do not define the scope of employment but only the modes of behavior expected by the church of a priest in carrying out his role as a representative of the church."

The Pornbacher ruling was among several cases

LeBlanc cited in his submission to Canada's highest court as reasons why it should hear the Nova Scotia case.

"There are many (civil) claims under way right now" across the country, said LeBlanc.

Michel Theriault, a canon law professor at St. Paul University in Ottawa, sees a vital role for the Supreme Court and the issue of liability.

"It will help in that it will establish a set of interpretations that the (lower) courts will abide by," said Theriault, although each case before it will be addressed on its own merits.

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