

Citation: 2016 NBQB 174
Docket No.: MC/1003/10

Date: October 7, 2016

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

L'EVEQUE CATHOLIQUE ROMAIN DE
BATHURST

Plaintiff,

- and -

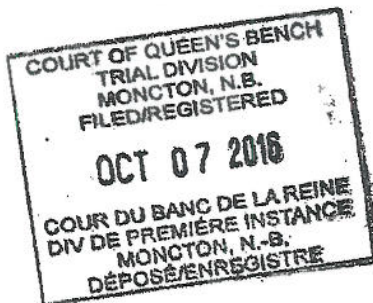
AVIVA INSURANCE COMPANY OF
CANADA

Defendant

- and -

CO-OPERATORS GENERAL INSURANCE
COMPANY

Intervenor.



DECISION

BEFORE:

Mr. Justice Stephen J. McNally

AT:

Moncton, New Brunswick

DATES OF HEARING:

November 30, December 1, 2 3, 4, 7, 8, 9, 2015

DATE OF DECISION:

October 7, 2016

COUNSEL:

Chris T. Blom and Mark R. Frederick for the plaintiff.

Charles LeBlond for the defendant, Aviva Insurance Company of Canada

Danys R.X. Delaquis for the intervenor, Co-operators General Insurance Company

ORIGINAL

MCNALLY, J.

(1) *"Can we in conscience continue to expose children to these scandals"*. Those were the concluding words in the file notes of Monsignor Edgar Godin, the Bishop of the Diocese of Bathurst, when transferring Father Levi Noel, once again, to another parish in the Diocese following complaints of the priest's inappropriate conduct towards young boys of his parish. Monsignor Godin's undated notes were recorded sometime between 1969 and 1972, while similar complaints relating to and transfers for Father Noel were being recorded in the Diocese's records since as early as February 2, 1961.

(2) As will be seen, Monsignor Godin's words encapsulate the troubling events underlying this case; a case which exposes the Bishop's knowledge of Father Noel's inappropriate conduct, and Bishop Godin's, as well as his predecessors' and successors', abject failure to take any or any adequate steps over the years to prevent Father Noel from committing and continuing to commit sexual abuses upon innocent young boys of the Diocese during the period from the late 1950s to the early 1980s.

(3) The upshot of this sad state of affairs is that over sixty years after some of the events occurred and many of the insurance policies and related documents can no longer be found, the court is called upon to determine whether the Diocese's insurers, during the years in which the abuse occurred, are obliged to indemnify the Diocese for the compensation it has already paid to several of the victims as well as victim claims that have not yet been resolved and are pending against it.

(4) In 2010, after learning of several claims and/or potential claims from victims of Father Noel and other priests of the Diocese, following consultation with legal counsel and after having been advised by its insurer at the time of the alleged events, Aviva Insurance Company of Canada, that there was no insurance coverage for the claims, Monsignor Valery Vienneau, the Bishop of the day, issued public invitations to parishioners to participate in an independent, non-adversarial and non-judicial

"conciliation" process in an effort to resolve any claims for compensation the victims might have against the Diocese in relation to the past abuse of its priests.

(5) Eighty three victims came forward to advance claims within the conciliation process. Some of the victims passed away prior to compensation being determined, some refused the compensation offered, some decided to pursue their legal rights through the courts and others were apparently victims of priests from dioceses, other than the Diocese of Bathurst. In total the Diocese identified one hundred and fourteen victims who allege they were abused by priests from the Diocese. Twenty-six different priests from the Diocese have been identified as abusers by the victims. Compensation was paid to 50 victims through the conciliation process. An additional 31 victims have been compensated through settled legal actions advanced through the court system or outside of the conciliation process. There are also additional legal actions remaining that have not yet been settled or gone to trial.

(6) At this stage of the proceedings, the parties are seeking a decision on all aspects of insurance coverage and Aviva's purported liability to pay damages or indemnification under the terms of the policies of insurance in effect at the relevant times for all settlements reached by the Diocese with victims, the costs of litigation as well as indemnification for those remaining claims that are ongoing.

(7) The parties have agreed, however, to bi-furcate the assessment of damages at this stage and to proceed with only the assessment of damages and costs payable by Aviva to the Diocese, if any, in relation to the claims settled and paid by the Diocese in the conciliation process. The damages and costs relating to claims settled and paid by the Diocese outside of the conciliation process or yet to be settled and/or litigated would only be determined at some later time. As of October 5, 2015, compensation totaling \$2,879,179.00 has been paid by the Diocese to settle claims outside of the conciliation process where claimants chose to pursue claims with legal action through the courts rather than through conciliation.

(8) By the Diocese's calculation, the conciliation process settled the claims of victims in the amount of \$4,284,000.00. The claims on behalf of victims compensated through the conciliation process and for which indemnity is sought under the policies of insurance identified in this action were settled in the amount of \$3,641,000.00. The Diocese acknowledges that some of those claims fall partially within and partially outside of the policy years. In relation to those claims, it is seeking only the pro-rata portion of the compensation paid that falls within the policy periods.

(9) The amount of the claim for which the Diocese seeks indemnity in relation to claims paid through the conciliation process is \$2,944,415.00. The Diocese also seeks reimbursement of the pro-rata share of the conciliator's fees incurred in the conciliation process - $\$509,673.00 \times 80\% = \$407,738.00$ as well as the reimbursement of counselling costs it paid for victims in the amount of \$6,111.00.

(10) The total amount of the claim advanced by the Diocese and for which it seeks partial judgment at this stage for indemnification for the claims it settled and paid pursuant to the conciliation process is therefore \$3,358,264.00. It also seeks pre-judgment interest on this amount, punitive damages and its costs.

(11) Although there are gaps over the years where the actual terms of the insuring agreements could not be located and there are some variances in the specific wording relating to the different policies issued, they all essentially provided that the insurer of the time would pay on behalf of the Diocese all sums, up to the stated limits of the policies, that the Diocese would become obligated to pay by reason of the liability imposed upon it by law for damages for bodily injury suffered by any person and caused by events occurring within the policy period.

(12) Aviva Insurance Company of Canada is the successor of the insurers, Canadian General Insurance Company and Commercial Union Assurance Company, which issued the insurance policies to the Bishop during the relevant periods of time. Aviva has been unable to locate any of the policies, applications for insurance, underwriting policies, certificates of insurance or any documents related to the policies issued by either of its

predecessor companies. All of the documentation entered into evidence related to the insurance policies was produced by the Diocese from its records. Aviva does not dispute that its predecessor companies issued policies that were in effect for the periods of time for which the Diocese has located policies.

Position of the Diocese

(13) The Diocese's position is that the policies issued were occurrence-based policies providing general public liability insurance to the Diocese. It argues that absent limiting language, the policies extend coverage to all liability imposed by law upon the Diocese. Sexual abuse claims against the Diocese include claims for damages for both physical and psychological or emotional injury which constitute claims for damages for "bodily injury" and therefore fall within the unambiguous language providing coverage under the policies.

(14) The Diocese submits that the policies unambiguously provided coverage for the perils or risks of future events that might occur, both foreseen and unforeseen. Consequently, it is of no moment whether the parties or either party did not anticipate at the time of inception that the Diocese might be obligated to pay, by law, damages to victims sexually abused by its priests.

(15) The Diocese argues that the words "obligated to pay" or "obligation to pay" includes both an obligation of an insured to pay by reason of a judgment or an agreement to settle where an insured settles a case after being wrongly advised by its insurer that there was no coverage for the claim and denied coverage for the claim. According to the Diocese, this extends to include settlements reached following a public invitation to parishioners, prior to any claims being made, to advance any claims they might have for sexual abuse committed by members of the clergy and to resolve them in a voluntary, confidential, non-adversarial and non-judicial forum with an independent conciliator.

(16) The Diocese acknowledges the exclusion of coverage for intentional and criminal acts of the insured. It maintains, however, that the liability imposed by law on the

Diocese is by virtue of its vicarious liability for the acts of its priests. Although it concedes that the individual priests would not be entitled to coverage and indemnity for damages incurred due to their intentional acts, the Diocese submits that neither it nor the Bishops did anything intentionally to abuse, to injure or to assist in the sexual abuse of the victims. The Bishops may have been negligent or even grossly negligent but coverage is not excluded for negligence, only intentional acts. Therefore the Diocese argues that the exclusion for intentional acts cannot apply with respect to the coverage provided under the policies to indemnify the Diocese for damages it is obligated to pay to the victims for the intentional acts of its priests.

(17) On the issue of a purported duty on the Diocese to disclose, and its failure to disclose, to its insurers the incidents of abuse by its priests in the 1950s to 1980s, it maintains it was under no obligation to report such abuse to its insurers. It submits that victims of sexual abuse did not advance claims against employers' of abusers in the period from the late 1950s to the 1980s. Further, it argues that the Diocese would not have been vicariously liable for acts of sexual assault committed by its clergy during those years and therefore the Diocese would have no reason to foresee that it would be vicariously liable. Consequently, it argues that such acts would not be considered as material to the risk within the insurance industry at the time because of the state of the law at that time.

(18) In regards to the amount of insurance coverage available, the Diocese submits that the stated amounts of coverage endorsed on the policies are the limits available with respect to each occurrence or event and the coverages are not in the aggregate for the policy periods, except for the periods from 1980 to 1983 when they were in the aggregate of \$5,000,000.00 for each policy year.

(19) Punitive damages are also sought by the Diocese for Aviva's purported wrongful denial of coverage, for alleging the Diocese was involved in a conspiracy of silence in seeking to avoid disclosure of the abuse absent any evidence to support the assertion, alleging criminal conduct on the part of the Bishops with no evidence to support it, for having contributed to the payment of a claim in 2003 relating to a victim abused in 1983

where Aviva did not take the position that coverage was excluded but now asserts that coverage is excluded.

Position of Aviva

(20) Again, Aviva does not dispute that its predecessors issued policies that were in effect for the periods of time in question. However, it notes that there are some periods of time where the actual policy wording has not been produced and as I understand their position, Aviva does not concede that the Diocese has established the wording of the policies throughout those periods.

(21) Aviva does not dispute the amounts being claimed or the reasonableness of the amounts being claimed by the Diocese as reimbursement for what it paid in compensation or the reasonableness of the actions of the Diocese in compensating the victims of its priests. It maintains, however, that the payments made to settle the claims of the victims or being sought by the victims from the Diocese do not fall within the coverage provided under the policies, and that it has no obligation to indemnify the Diocese for any of those claims.

(22) From the perspective of the interpretative principles at play, Aviva argues that the plain wording of the insuring agreements, considered in the context of the surrounding circumstances of this case, confirm that the parties did not intend to extend coverage to indemnify the Diocese for claims for sexual abuse or for the voluntary payments it paid to the victims of their abusers.

(23) Additionally, Aviva argues that the Diocese has not established on the balance of probabilities that it was obligated to pay the damages to the victims by reason of liability imposed upon it by law. Essentially it argues that the Diocese's voluntary payments paid within the conciliation process and by other settlement were just that, voluntarily made to purported victims upon invitation by the Diocese and they were not payments made by reason of an obligation on the part of the Diocese to pay by reason of liability imposed upon it by law.

(24) Alternatively, Aviva argues that if the payments fall within the coverage provisions of the policy, the claim should be denied in any event because the Diocese's purported use of its power and influence to keep the known abuse of the abusive priests quiet, transferring them from parish to parish, failing to report them to the police and failing to remove them and enabling them to re-abuse allowed a foreseeable risk to materialize again and again and aided the abusers to continue to offend and escape detection. This, Aviva argues, constitutes intentional and criminal conduct and the policy excludes coverage for claims arising from bodily injury caused intentionally by or at the direction of the insured.

(25) In the further alternative, Aviva pleads that failure of the Diocese to disclose to it material risks (the purported knowledge of the Diocese of sexual abuse of members of its clergy committed on young parishioners), its purported failure to give notice of claims against it and its voluntary assumption of liability in relation to the claims all void its entitlement to coverage and indemnity under the policy.

(26) At this juncture, I turn to a review of the facts and historical context giving rise to this case.

Overview of the History of Claims for Compensation

(27) The L'Eveque Catholique Romain de Bathurst (the "Diocese") is a corporation sole, incorporated by a 1939 private act of the New Brunswick Legislature.

(28) Monsignor Valery Vienneau was appointed Bishop of the Roman Catholic Diocese of Bathurst in the year 2002. Monsignor Vienneau is now the Archbishop of the Archdiocese of Moncton. Shortly following his appointment as Bishop of the Diocese of Bathurst in the year 2002, and in that same year, Monsignor Vienneau received his first notice of a claim of a victim who alleged that he had been abused by Father Charles Picot a former priest who had ministered in the Diocese of Bathurst for many years. The victim alleged that he was abused by Father Picot in the early 1980s. That claim was eventually settled in the year 2003, with three insurance companies and the Diocese all

contributing to the settlement; the Diocese paying \$15,917.45 and each of the insurers paying \$16,250.00. The defendant, Aviva, was one of the insurers that participated in the settlement.

(29) Another claim surfaced around 2006, a few years after the first claim. In this claim the victim alleged that he had been abused by Father Levi Noel, another parish priest in the Diocese. The Diocese settled and paid the claim with its own funds which was for approximately \$40,000.00. A third claimant surfaced in or about 2008 who was seeking a payment of \$2,000,000.00 for alleged abuse by Father Noel in the early 1970s. This victim also advised he would report the abuse to the RCMP which he apparently did as Bishop Vienneau was contacted by the RCMP and Father Noel was eventually charged and convicted in 2010.

(30) As a result of the publicity surrounding the charges brought against Father Noel, the indication from the third claimant that there were others who had been abused by Father Noel, the appearance of three other alleged victims of Father Noel with a plaintiff lawyer from Ontario on the local news, as well as advertisements in the local papers from a group of lawyers from Nova Scotia seeking potential claimants with similar claims, Monsignor Vienneau contacted and sought guidance from Bishops from other areas of the country who had to deal with similar situations.

(31) Monsignor Vienneau was referred to legal counsel and following discussions with counsel he determined a course of action. The Diocese first managed to locate several of the policies of insurance issued to the Bishop by Aviva's predecessor companies, Canadian General Insurance Company (CGIC) and Commercial Union Assurance Company (CUAC) and then contacted Aviva to determine if it would provide coverage for the claims which were becoming public and known to the Diocese.

(32) Aviva advised that its position was that there was no coverage. In his testimony, Monsignor Vienneau did not state the specific reasons given to him by Aviva for its denial, however at paragraph 21 of its Statement of Defence Aviva admits the Diocese's

allegation that "On or about January 21st, 2009 AVIVA advised the DIOCESE that it denied coverage in respect to claims arising out of sexual abuse".

(33) Shortly following Aviva's denial of coverage, in consultation with the Diocese's lawyers, Monsignor Vienneau decided to establish an alternative dispute resolution process or "conciliation" process to address and to satisfactorily resolve the claims of the identified claimants and any other unknown claimants who may have been abused by priests of the Diocese and to seek, if possible, their forgiveness.

(34) The Diocese's objectives in establishing the conciliation process were multi-fold and included:

- a) public recognition by the Diocese and the Church of the sexual abuse and the harm done to the victims of the sexual abuse by the priests involved,
- b) establishing the actual incidences of abuse and what happened,
- c) identifying which priests were involved so that the Bishop could ensure that they were no longer ministering,
- d) providing a confidential and non-adversarial alternative forum to the courts for the victims to come forward to seek redress,
- e) paying fair financial compensation to the victims if and as warranted,
- f) limiting and avoiding the expense of litigation as much as possible to ensure that the actual victims got most of what limited financial resources the Diocese had available to pay compensation as opposed to lawyers receiving the bulk of the funds,
- g) pay fair compensation to the victims expeditiously, many of whom were elderly, without the inordinate delays that can accompany the litigation process
- h) seeking the forgiveness of the victims and reconciliation with the church, if possible.

(35) In March of 2010, the Diocese retained the services of the Honourable Michel Bastarache, retired justice of the Supreme Court of Canada, to act as an independent conciliator, to establish the parameters of the conciliation process and ultimately to recommend to the Bishop the nature and amount of compensation to be paid to the victims. In his report of October 29, 2010, Mr. Bastarache summarized his understanding of the Bishop's objectives in establishing the conciliation process as well as the nature of his role as conciliator:

En mars 2010, l'Évêque de Bathurst m'a demandé, par le truchement de son conseiller juridique, Me Mark Frederick, si j'accepterais de mettre sur pied et de mener une procédure de conciliation dont l'objet serait d'indemniser les victimes d'agressions sexuelles commises par des membres du clergé du Diocèse. Cette décision a été prise peu après la condamnation par une cour criminelle du père Lévis Noël, le principal responsable de ces agressions, mais la conciliation devait dès le début viser toutes les victimes, connues ou non à l'époque, de tout membre du clergé du Diocèse. J'ai accepté le mandat, dont il est important de dire qu'il me laissait carte blanche pour définir le processus de conciliation et le mettre en œuvre. Je ne serais donc pas le représentant de l'Évêque, mais une personne indépendante dont le mandat serait d'identifier les victimes, de vérifier leur admissibilité, d'évaluer leur cas et de proposer une indemnisation qui serait juste et équitable. La participation au processus serait volontaire et toute victime insatisfaite du processus pourrait se retirer sans renoncer à ses droits de poursuite civile, la même chose étant acquise pour la victime qui serait simplement insatisfaite du montant de l'indemnité proposée.

Bien que j'aie obtenu un statut très particulier en matière d'indépendance, il reste que mon rôle consistait à faire des recommandations; la décision ultime de payer une compensation demeurerait donc celle de l'Évêque. Pour favoriser la participation et éviter d'évaluer lui-même la situation de chacun en vue de décider d'une indemnité, l'Évêque s'est engagé à accepter d'avance mes recommandations sous réserve d'une révision générale de mon approche et des fonderies générales de mes recommandations, compte tenu aussi des disponibilités financières du Diocèse. Nous avons convenu que j'établirais une grille d'analyse permettant de catégoriser les victimes selon la gravité des agressions et les conséquences de celles-ci, et, à partir de cette grille, d'établir une échelle pour les indemnités qui refléterait autant que possible ce que prévoient normalement les tribunaux dans les cas qui leur sont soumis.

Le but de la conciliation était d'offrir aux victimes un véhicule qui leur permettrait d'obtenir une indemnité juste sans avoir à prendre la voie des tribunaux judiciaires, qui les obligerait à témoigner, à patienter avant d'obtenir une décision, à engager des frais d'avocats substantiels. En somme l'Évêque voulait que les ressources disponibles aillent aux victimes, que l'on évite la confrontation et que l'on favorise la réconciliation avec l'Église. L'objectif était aussi de disposer de la question avant la fin de l'année en cours. L'Évêque m'a aussi demandé de communiquer aux victimes son intention de demander pardon pour les actes commis, soit par écrit, soit en personne, et sa détermination à mettre à jour sa politique qui a pour objet d'empêcher, tant que se peut, que de tels actes

puissent être posés à l'avenir. Dans un rapport subséquent je présenterai mes conclusions et recommandations à cet égard.

History of Abuse

(36) As noted by Mr. Bastarache, at the time of establishing the conciliation process, it was originally believed that Father Noel was the principal abuser, however, Monsignor Vienneau was also aware of allegations of sexual abuse and the settlement of an abuse claim involving Father Picot. Mr. Bastarache and the Diocese also anticipated at the outset the existence of potentially thirty victims. As already noted, to date the number of priests in the Diocese who were alleged to have sexually abused parishioners totalled twenty-six, while the number of alleged victims identified total one hundred and fourteen. Of the first 74 victims identified, 37 (50%) of them alleged that they were abused by Father Levi Noel while 7 of the victims alleged that they were abused by Father Picot. Based upon the evidence presented to the conciliator and in this trial, Father Noel was clearly a serial sexual abuser of young boys.

(37) The personnel files of the Diocese for fifteen of the priests who were alleged to be abusers were entered into evidence. Only two of those personnel files, Father Charles Picot's and Father Levi Noel's, specifically identify complaints of inappropriate conduct on their part in relation to youth or young boys and they do so in very vague terms with no details of the actual conduct complained of. On April 29, 1993, Father Picot pleaded guilty to two counts of sexual assault and one count of sexual interference that occurred between June 1980 and September 1985. He was sentenced to seven months imprisonment. Father Noel served as a priest in the Diocese from 1956 to the early 1990s. He was also charged with and pleaded guilty to numerous sexual assaults committed against young boys in the Diocese during his tenure. He was sentenced to eight years in prison in January 2010.

Father Levi Noel

(38) Father Levi Noel was born November 6, 1926, ordained on April 15, 1956 and took up his first post as a vicar in the parish of Saint-Isidore in the Diocese of Bathurst on April 25, 1956. He was transferred to the parish of Paquetville in 1958 where the first complaint was raised against him with the Bishop on February 2, 1961. At that time a parishioner advised the Bishop, Camille Andre LeBlanc, of an accusation against Father Noel "cum juvenibus", which was translated by Monsignor Vienneau in his testimony as meaning "with youth".

(39) According to Bishop LeBlanc's notes, the youth confided to him as "one of his victims", followed by the latin words "rem habuisse cum vicario", the translation of which was not sought from or provided by Monsignor Vienneau. Bishop LeBlanc summoned Father Noel to his office a few days later and on February 6, 1961 noted that Father Noel would be sent for a five day stay with the Trappistes, which was an order of monks with a monastery located in Rogersville, New Brunswick.

(40) On February 7, 1961, Bishop LeBlanc wrote to Father Noel confirming their agreement that he would be transferred to be the vicar at Rivière-Portage as of February 14. In his letter, the Bishop also says that he will not put to paper what he told Father Noel, that he knows what he must do and instructed him that what occurred must never happen again. The details of what the issue Bishop LeBlanc was referring to and what was specifically discussed with Father Noel does not appear in the Diocese's personnel file.

(41) Another entry was noted to Father Noel's file by the Bishop on June 5, 1962 which indicated that the Bishop was advised by a fellow priest that Father Noel's conduct had not improved. He noted that Father Noel was sleeping in a family home, was up until 2:00 a.m. and it speaks of inappropriate conduct with youth which was affecting the youth's conscience. It also notes "emotionally unbalanced and grave".

(42) Eight days later, the Bishop sent a letter to Dr. Philippe Michel, a psychiatrist, at the Provincial Hospital located in Campbellton stating that he was obliged to refer one of his priests to him so hopefully with the grace of god and his science the priest's issue

might be resolved. There is no issue that the priest the Bishop was referring to was Father Noel. The Bishop confided to Dr. Michel that the issue was not alcoholism but a vice that he considered extremely grave which was hopefully curable or at least controllable. The Bishop scheduled Father Noel's visit for June 18, 1961. There is no record in the personnel file to indicate whether or not Father Noel kept the appointment or what occurred as a result of the Bishop's referral to Dr. Michel.

(43) It appears that despite the Bishop's concerns, Father Noel remained at Rivière-Portage until June 21, 1963 when he was transferred to the Parish of Tracadie where he remained until July 8, 1965 when he was transferred again, but this time to Campbellton.

(44) On July 7, 1965, the Bishop wrote to Father Noel once again, this time confirming that the next day he would be leaving Tracadie for the extreme north of the Diocese. The Bishop confirmed that Father Noel wanted the transfer and that the Bishop believed he would be more at ease there as nobody knew of his past and it would be easier for him to minister with greater efficiency. The Bishop also told him that in Tracadie it was felt he stayed up far too late and individuals had questions about him as a priest.

(45) The Bishop then confirmed that he made no inquiries or investigation, that he would not do so and that he simply wanted to advise and admonish him that he must absolutely conduct himself as an adult from now on, that he was getting older and it was time that he behaved like a priest. He also instructed Father Noel that he absolutely forbade him to spend any vacations in the company of youth or young boys of any age, that Father Noel "knows it" (presumably the issue he is alluding to relating to youth or young boys) and "exposes himself to it". Finally, the Bishop advised Father Noel that he did not say anything to Father Doucet so that Father Noel would be at ease. Presumably Father Doucet was the pastor at the northern parish of Campbellton.

(46) On June 22, 1966, less than a year after Father Noel's transfer to Campbellton, Bishop LeBlanc makes another note to Father Noel's file recording serious accusations levelled against Father Noel with respect to his conduct with young boys. The note indicated that one boy spoke to his parents and that the parish was partially aware. It also

noted that scouts were refusing to go camping because of his past conduct. The Bishop met with Father Noel the following day and also wrote to him saying that he was going to be transferred and that this had not been anticipated. The Bishop told him that he had to make a number of changes with his clerical appointments to make the transfer but that the burden of having to transfer other priests to accommodate him was nothing if it corrected what they discussed and that Father Noel knew of what he spoke, which it appears would have been the misconduct described in the note of June 22, 1966. The Bishop advised Father Noel that the transfer would be to Shippagan as of July 6, 1966 and implored him to follow the advice he gave him and that his future as a priest was at stake.

(47) Father Noel was transferred from Shippagan to the parish of Lameque in June 1967, from there to Inkerman on May 24, 1968 and then to Notre Dame des Erables on August 15, 1969. The reasons for those transfers are not apparent, however, his appointments to Inkerman and Notre Dame des Erables were for the first times to the positions of pastor, rather than as a vicar which were all his previous appointments. Unfortunately, despite the appointments to the higher position of pastor, Father Noel's improper conduct in relation to young boys does not appear to have improved.

(48) Father Noel's personnel file contains an undated note that would have been prepared by Bishop Edgar Godin, the bishop of the day, sometime during Father Noel's tenure at Notre Dame des Erables between August 15, 1969 and July 3, 1972. Bishop Godin noted that he received a call from a teacher from the school who had written to him a week earlier and asked to meet with him. The Bishop then noted that he received a call from Father Noel fifteen minutes later asking for a transfer to another parish, that Noel's tone of voice had some urgency and that he told the Bishop that psychologically he could no longer remain there and suggested several possibilities to the Bishop for transfer immediately.

(49) Bishop Godin then noted some difficulties he was having in arranging a transfer to another parish and that he met the teacher and her husband that afternoon who advised that a small boy who was serving mass stated in class that morning that he had been approached in an immoral fashion by the curé (pastor). The Bishop also met with the

principal of the school a bit later who had learned of the rumour spread in class regarding the pastor and the little boy. She had apparently called the pastor about it and he admitted the conduct but gave no further comment. She asked the teachers to be discreet but believed in conscience she had to come and speak to the Bishop. As already noted, Bishop Godin's final note asks: "can we in conscience continue to expose children to these scandals".

(50) Apparently, Bishop Godin answered that moral question in the affirmative as Father Noel, following a period of study leave in Paris as of August 14, 1971 returned to the Diocese to the position of vicar in the parish of Tracadie from July 3, 1972 to July 1, 1981, his longest period in a parish. No incidents of complaints of improper conduct are recorded in Father Noel's file during that nine year period.

(51) In December 1981, Father Noel was apparently in France once again as Bishop Godin wrote to a priest in France and advised that since his ordination, Father Noel has always acted as an assistant priest (vicar) and that he had a good pastoral way of doing things. He mentioned that there was an issue of morality in 1971 and Father Noel resigned as vicar of the parish. This was likely related to the incident in 1971 at Notre Dame des Erables. No earlier incidents were mentioned in the letter. Bishop Godin questioned whether the reasons for Father Noel wanting to leave was a personal reason as he was aware of one event which was known by all of his colleagues and was a cause for embarrassment. No details of this event were divulged in the letter however.

(52) Bishop Godin closed his letter to the priest in France by saying that in all conscience he believed that he was able to recommend Father Noel to the priest's attention and that he could provide good services. This in relation to a priest who over the past twenty years was the subject of five reported incidents or complaints in relation to his immoral or inappropriate conduct with children which resulted in multiple transfers from parish to parish, periods of reflection and trips for pastoral leave to France and for whom Bishop Godin previously asked if in good conscience he could continue to expose children to these scandals.

(53) In any event, Father Noel's time in France in 1981 did not last long as he was back to the Diocese of Bathurst, posted as a vicar in the parish of Sheila as of February 1, 1982. The Diocese's personnel file contains a letter from another priest in Sheila that appears to be in response to a letter from Bishop Godin. The priest's letter advises Bishop Godin that everything was in order and that he regretted being absent when this event occurred. The event is not described in any detail, but the priest then writes about a young handicapped individual who holds himself out as a small saint but whose stories are lies, that everybody is against this child and the priest (presumably Father Noel) was set up. The letter appears to indicate that the incident was not the fault of Father Noel and it was all the fault of the handicapped child who was telling stories.

(54) Bishop Godin wrote to the Bishop of Valence, France on August 9, 1982 in response to a letter concerning Father Noel. A portion of the letter from Bishop Godin appears to have been blocked out and immediately below the apparent blocked out portion, Bishop Godin states that he has no hesitation in recommending Father Noel but that he must, in conscience, make him (the Bishop at Valence) aware of those facts. Again, the facts being referred to by Bishop Godin do not appear in the Diocese's copy of the letter.

(55) It does not appear that Father Noel went to France and he stayed in Sheila until he was transferred to the parish of Beaverbrook on November 6, 1982 as the pastor.

(56) The next entry in the personnel file is a letter from Bishop André Richard addressed to Father Noel in Sheila on July 29, 1991. Bishop Richard advised him that he was contacted by a man who told him that he was a victim of sexual abuse as a child by Father Noel, that this person was trying to rebuild his life and asked the Bishop to make arrangements to meet with him and Father Noel face to face. He also advised that the person wanted this to avoid going public and that he believed he would prefer to settle things other than in the public domain. Bishop Richard also expressed his increasing concern of increasing allegations against Father Noel with youth and men of all ages. Due to those allegations he said he must ask him to cease his ministry in the parishes and elsewhere and avoid all engagements already made. Father Noel agreed to meet with this

gentleman and apparently the requested meeting took place where the man requested and Father Noel agreed to pay him \$5,000.00 in two cheques of \$2,500.00 each. The funds paid were Father Noel's funds and not those of the Diocese. No release was obtained.

(57) Bishop André Richard was notified by letter dated December 19, 1991 from the Department of Family and Social Services of a report it received near the end of 1985 alleging that Father Levi Noel indecently assaulted an adolescent in the region of Beaverbrook. The letter indicated that the social workers met with Father Noel on September 9, 1985 and he admitted the allegations. A police investigation was commenced but the social worker said that the investigator was unable to speak to Father Noel as he went to France. They since learned that Father Noel had returned to the Diocese and was seeking his address as well as information on whether or not Father Noel had received treatment for his problem which he advised he had requested.

(58) Bishop Richard responded on December 30, 1991 advising that he had already been aware of the allegations concerning Father Noel. He also advised that he understood that Father Noel did not have counselling for the problems that he recognized having but that he took the initiative to offer him this aid and is awaiting his response. He also provided the social worker with Father Noel's address.

(59) On January 26, 1993 Bishop Richard wrote to Monsignor Labrie in Quebec to advise him that one of his priests, Levi Noel, was in the Quebec diocese, that he is the subject of allegations of sexual abuse on youths, that the Diocese had to investigate his case but no charges were laid, that he instructed him not to be in ministry and that he was in Quebec without his permission.

(60) Bishop Richard wrote to Father Noel May 18, 1999 advising that the ecclesiastical authorities of the Diocese of Quebec advised him that Father Noel was susceptible to being accused of a wrong of a sexual nature. Bishop Richard wrote that he did not know how widespread the knowledge of this was and begged him to use the greatest caution and to conduct himself above reproach in solidarity with other priests.

(61) Bishop Vienneau wrote to Father Noel on July 20, 2006 advising him that he was still incardinated to the Diocese of Bathurst and that a man came and reported to another priest of being a victim of sexual abuse of Father Noel when he was a minor over many years. Monsignor Vienneau instructed Father Noel to cease his ministry as a substitute priest in any parish and to cancel any engagement he might have already accepted in any diocese in which he may be residing. He further advised that he had no right to exercise any ministry while he waited the outcome of allegations of sexual abuse against him and asked him to provide him with his phone number. He also reminded him that he was in Quebec without permission of his prior Bishop, André Richard.

Father Charles Picot

(62) Father Picot was ordained as a priest in the Diocese of Bathurst in 1974 despite previous concerns expressed to the Bishop about his unsuitability to be a priest. Those initial concerns were primarily with respect to his instability, not being a team player, his controlling character and his disrespect of and aggressiveness towards authority. In 1972, one Father AG expressed reservations of Father Picot being a full time priest in the traditional sense but felt that he was prepared to devote himself to the priesthood in his own way which might not be acceptable to his superiors. Father AG felt that he had sound judgment and on balance, although he notes it might be risky, he does recommend him for ordination.

(63) In 1973, Father Picot's curé expressed concerns with his hours of work and noted that his life was very different than his own, with visits of young people during the evening and night which were difficult for him to understand and support. It was also noted in 1974 that some might find it strange that Father Picot gathered with a large number of youth at his place but that there was nothing considered abnormal with that.

(64) Monsignor Vienneau testified that at that time it was often the young vicars who ministered to the youth and participated in their activities. He noted as well, that there was nothing in the Diocese's personnel file to suggest that children were staying overnight or that Father Picot was abusing them until 1992 when criminal charges were

laid against him. In April 1993, Father Picot pled guilty to two counts of sexual assault and one count of attempted sexual assault. He was sentenced to seven months imprisonment.

(65) In early 1999 the Diocese participated in the settlement of a claim of sexual abuse against Father Picot in conjunction with its insurer during the relevant period, which was not Aviva. The settlement was for the sum of \$22,000.00 in addition to the Diocese agreeing to be responsible for any future medical or psychological care or counselling for the victim for the sexual abuse.

(66) In April 2004 a claim of a second victim of Father Picot's was settled between three insurers, one of which was Aviva, and the Diocese. The three insurers each contributed \$16,250.00 to the settlement while the Diocese contributed \$15,917.45. A condition of the agreement to settle the claim was that the victim would sign a Final Release in favour of both the Diocese and Father Picot which also contained a "confidentiality" clause.

Other Priests

(67) The only other priest from the Diocese for whom there is any indication in the Diocese's personnel files may have been involved in inappropriate conduct with a boy is in regards to the priest identified by the initials A.R. in this proceeding. Two letters were written from a parishioner from Petite Rivière de l'Isle in the latter part of 1963 advising the Bishop of the time, Camille André LeBlanc, of concerns with A.R. and a boy, who was known to be *homme à homme* (presumably homosexual) and was apparently staying alone at the rectory with the priest and sleeping there.

(68) The parishioner informed the Bishop of an incident where it was suggested that the priest paid this person to burn a home and that person stole \$350.00 and a car from the priest and was eventually stopped by the police. Afterwards, the person was then staying at the rectory. The parishioner who wrote the letter asked the Bishop if he was going to act or if he was waiting for this person to kill the priest. He informs the Bishop

that the situation pre-occupies people on the island and that from that point on the Bishop was responsible for what happens or goes wrong at the rectory and that he must act according to his conscience. The exact or approximate age of the "boy" being referred to is not indicated in the letters or anywhere else in the personnel file.

(69) Although there are no records of any other priests involved in inappropriate conduct towards parishioners, we now know that there were allegations of sexual abuse through the conciliation process against 26 priests in total, two of whom were determined not to be priests within the Diocese of Bathurst and therefore no compensation paid in the conciliation process to their victims. In total, Mr. Bastarache identified 19 different priests from the Diocese of Bathurst against whom allegations of sexual abuse were made. An additional seven priests were identified as abusers in separate court actions for a total of twenty six.

(70) From the first indication of a problem of inappropriate conduct with youth on the part of Father Noel back in 1961 until the action against Father Picot was settled in 2003, there was never any notice or advice given from the Diocese to Aviva or its predecessors of any of these alleged incidents or complaints or purported conduct on the part of any of the priests of the Diocese.

The Policies of Insurance, Terms of Coverage, Exclusions, Etc. for Periods Known

(71) The policies of insurance issued by Aviva's predecessors provided general public liability insurance to the Diocese, subject to two gaps in coverage for the periods from May 1, 1972 to January 10, 1973 and from June 1, 1975 to May 31, 1980. The Diocese is not seeking damages from Aviva for any claims paid for occurrences during those periods. Further, full sets of policy documents and wording are not available for all of the policy periods for which coverage has been confirmed.

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