

Submissions Regarding Proposed Bill No. 30

An Act Respecting the Roman Catholic Archdiocesan Corporation of Halifax-Yarmouth and Roman Catholic Archdiocese of Halifax-Yarmouth.

Honourable members thank you for taking the time to hear my submissions today regarding proposed Bill No. 30. I would like to make some comments regarding the Bill and what I believe to be its proposed purpose.

First I would like to introduce myself. My name is John McKiggan I am lawyer practicing with the firm of McKiggan Hebert here in Halifax. For the past 27 years a large portion of my practice has been dedicated to representing survivors of historical childhood sexual abuse.

Over the course of my career I have represented over 1000 victims of childhood sexual abuse.

Nova Scotia's legislature is to be commended in recognizing the lasting harm that survivors of childhood sexual abuse suffer with the 2015 amendments to Nova Scotia's *Limitation of Actions Act* which eliminated any time limit for victims of sexual abuse to file claims for compensation for the harm they suffered as children.

So what does this have to do with the proposed Bill 30?

In order to understand my concerns about the proposed legislation I have to provide you with a little legal history.

The Archdiocese of Halifax-Yarmouth was created by statute. Specifically Chapter 102 of the Acts of 1888 titled *An Act Respecting the Roman Catholic Archbishop of Halifax*.

That statute designates the Archbishop as the legal representative for all purposes of the Archdiocese. Title to all property within the Archdiocese, no matter which parish it is located in, is held by the Archbishop for the benefit of the parish and the Diocese and the Archbishop can dispose of the property as he sees fit.

Bill 30 will change the way the Archdiocese has managed its legal affairs for more than 100 years. The proposed legislation allows the Archbishop to create separate parish corporations and to transfer title of property currently held by the Archdiocese to the individual parish corporations.

Why would the Archdiocese give up control of the property within the Diocese to individual parishes?

In 2004 the Supreme Court of Canada rendered a landmark decision in *Doe v. Bennett and the Roman Catholic Diocese of St. George*.

The facts of that case are important. For a period of almost two (2) decades Father Kevin Bennett, a Catholic Priest in the Diocese of St. Georges Newfoundland, sexually abused hundreds of boys in his parishes. The plaintiffs sued the Diocese and it's Roman Catholic Episcopal Corporation. One of the issues was whether the Diocese of St. George's could be held responsible for sexual abuse by one of it's priests. The legal principle where an employer is held responsible for wrongful acts of an employee is called vicarious liability.

For over 200 years the legal principle of vicariously liability stated that employers are responsible for acts of employees committed within the course of their employment. However, employers generally were not vicariously liable for criminal acts like sexual abuse committed by employees. Criminal acts were usually held to be outside the scope of their employment.

The Supreme Court of Canada found that the purpose of ecclesiastical corporations like the Roman Catholic Episcopal Corporation of Saint Georges was to serve as the legal representative between the Roman Catholic Church and the community at the diocesan level. The purpose of the episcopal corporation was not simply to hold property. The episcopal corporation, embodied by the Bishop is, for all intents and purposes, the corporate soul of each diocese.

According to the Supreme Court of Canada, the Bishop, the enterprise of the diocese and the episcopal corporation are legally one in the same.

The Supreme Court of Canada ruled that the St. George's episcopal corporation could be held vicariously liable for the sexual abuse by Father Kevin Bennett because the Diocese created the circumstances that allowed the abuse to happen.

Simply put:

- The Diocese provided Father Bennett with the opportunity to abuse his power;
- Bennett's wrongful acts were strongly related to the psychological intimacy inherent in his role as a priest; and
- The Bishop conferred an enormous degree of power on Bennett relative to his victims.

Since 2004 it has been clear law throughout Canada that catholic bishops and Diocesan episcopal corporations are legally responsible for acts of sexual abuse by diocesan priests.

The experience in Nova Scotia

In 2007 Ron Martin disclosed that he had been sexually abused by a priest in the Antigonish Diocese, Hugh Vincent MacDonald. Ron's brother David had committed suicide because of the effects of abuse by the same priest. Ron Martin filed a class action against the Diocese of Antigonish to hold the Church responsible for it's part in allowing David and Ron to be victimized as children.

In the Supreme Court of Nova Scotia certified a class action against the Roman Catholic Diocese of Antigonish on behalf of more than 140 victims of sexual abuse by priests employed by the Antigonish Diocese. The Diocese paid in excess \$13,000,000.00 to victims of childhood sexual abuse perpetrated by its priests.

In order to meet its legal obligations to survivors under the class action the Diocese of Antigonish collected and liquidated some of the assets of the Diocese held by various parishes of the Antigonish Diocese as it was legally entitled to do by statute, by canon law and by common law.

The Antigonish Diocese used the funds raised through the sale of Diocesan assets to help compensate more than 140 people that had been abused as children by Diocesan priests.

How many potential victims of priest sexual abuse are there in the Archdiocese of Halifax?

It is public record that a number of former priests of the Archdiocese of Halifax-Yarmouth have been convicted of sexually abusing children.

What is not public record is the number of priests who have had allegations of sexual abuse made against them but who have not faced criminal charges. The Halifax Archdiocese has faced numerous compensation claims for abuse by its priests. It has never publically disclosed how many priests it is aware of that have committed acts of sexual abuse.

However, most professionals who work with survivors of sexual abuse agree that the number of victims who come forwards to pursue criminal charges are just the tip of the iceberg. Some professionals suggest that just 10% of sexual assaults are ever disclosed by victims to authorities.

A study by Dr. Anne Burges and Dr. Nicholas Croth concluded that the average pedophile will molest over 200 children during their lifetime.

I remind you that the Diocese of Antigonish is half the size of the Halifax Archdiocese. That class action resulted in claims by more than **140 victims** of sexual abuse by more than a **dozen** priests.

One has to ask the question: How many priests is the Archdiocese aware of that face allegations of sexual abuse? How many potential victims of priest sexual abuse have had their lives destroyed by priests employed by the Archdiocese of Halifax?

If this legislation passes the Archdiocese of Halifax will be able to divest itself of assets it currently holds throughout the Diocese and place them into sub-corporations held by individual parishes. I would suggest, the only reason for this proposed change to legislation that has existed for over 100 years is to make it more difficult for survivors of priest sexual abuse to be able to receive just and fair compensation for their injuries.

I believe, and the victims of priest sexual abuse that I represent believe, that the Archdiocese of Halifax is concerned that it may face the same type of class action by victims of priest sexual abuse that the Antigonish Diocese faced. If the Halifax Archdiocese is concerned that this may happen, one has to wonder if they are aware of reasons why it should happen.

In the future, if a victim of sexual abuse by a priest obtains a judgement against the Archdiocese, the Archdiocese may very well say that it has no assets available to pay the judgement. A judgement against the Archdiocese arguably wouldn't be enforceable against individual parishes that hold assets because the parishes would argue that they are separate legal corporations that are not responsible for legal judgements against the Archdiocese.

In 2015 the Nova Scotia legislature did the right thing on behalf of sexual abuse survivors by recognizing that there should be no time limit for being able to pursue a claim for harm suffered by victims of childhood abuse.

The legislature must resist this attempt to make it more difficult for survivors of childhood abuse to be able to receive compensation for the harms they have suffered at the hands of the Archdiocese of Halifax.

Thank you for your time today.

John McKiggan