

Canada_NGO_National Secular Society_PSWG

United Nations Convention on the Rights of the Child

Alternative Report on Canada

for the 87th Pre-Session

Prepared by the (UK) National Secular Society

August 2020

Short, late urgent submission, prompted by new material released 27-28 August 2020

Compiled by the President Keith Porteous Wood, President

with input from Canadian lawyer Lead Counsel in a class action by RC abuse victims, Angela Bespflug of Murphy Battista LLP

Cluster on violence against children:

- abuse and neglect, including physical and psychological recovery and social reintegration (arts. 19 and 39), together with
- sexual exploitation and sexual abuse (art. 34)

The National Secular Society works towards equal Human Rights for all regardless of religion or belief. Based in the United Kingdom, we also work internationally and have been in special consultative status with the United Nations Economic and Social Council since 2016. The president and Vice President Josephine Macintosh have intervened numerous times at the HRC (the former most notably relative to the Holy See and CSA) and we have worked with the CRC at Committee, Secretariat and Chair level for over ten years.

Contacts: NSS - Email admin@secularism.org.uk Telephone +44 20 7404 3126; Angela Bespflug, Murphy Battista LLP – Email bespflug@murphybattista.com Telephone +1 604 999 0376

Nomenclature: "CSA" is used to describe Child Sex Abuse, or more accurately sexual harassment, assault, or rape. We recognise that some survivors of CSA prefer that term to victims.

Throughout, the Roman Catholic Church in Canada is referred to as the "Church".

Unless stated otherwise, media references and quotations relate to 2019 or 2020.

Underlining has been added for emphasis, not present in original.

Recommendations are shown in bold at the end prior to the Appendix.

=====

Introduction

According to a CBC news report dated 28 August 2020, a class-action has been filed for clerical abuse of minors against the Roman Catholic Church in the Canadian province of British Columbia. The action concerns systemic sexual, physical, and psychological abuse in the Roman Catholic Archdiocese of Vancouver (the "Archdiocese"). The claim alleges that the abuse was repetitive and spanned several decades, and alleges that the Archdiocese

allowed the abuse to continue, in part by:

- a. silencing survivors - who were required to take oaths of secrecy when making complaints to the Archdiocese about assaults perpetrated on them by clergy, and
- b. silencing clergy - who faced strict penalties, including excommunication, for publicly revealing details of allegations of sexual abuse by priests.

The attitude of the Roman Catholic Church in British Columbia to abuse, even today, often appears truculent and unrepentant. In August 2020 a former elementary school teacher who says she was sexually assaulted [albeit as a vulnerable person rather than a minor] by a Roman Catholic priest more than 40 years ago in Kamloops, B.C., was awarded nearly \$850,000 in damages by a judge. ... "Her lawyer had argued that the case is about not only the actions of the priest but also the inadequate actions of an institution that failed to protect her, while the defence countered that it was a 'clear-cut, simple, little, civil, sexual assault case.'"

CSA related to the Catholic Church in the State Party

Scale

The class action is the first to be filed against the Roman Catholic Church in British Columbia for clerical abuse of minors since the Church admitted "confirming at least 36 cases of misconduct dating back to the 1950s".

In 2019, the "Catholic Archdiocese of Vancouver name[d] 9 clergymen in sex abuse scandal".

Basis of Class Action

According to the class action claim, the alleged assault of the plaintiff by a priest in the Archdiocese "included painful vaginal intercourse," when the victim was 11. She claimed the assault was followed by intimidation. "[The alleged perpetrator] told the plaintiff not to tell anyone about the abuse, threatening to have her put into foster care if she did," the filing said.

The claim alleges that many class members were subjected to harm by the same perpetrators: "The Archdiocese knew or ought to have known that keeping class members' allegations of sexual, physical and psychological abuse by Clergy secret posed a risk that abusive Clergy would commit further assaults on class members."

The lawsuit asks for general, special, aggravated, and punitive damages against the Archdiocese for conduct that was "reprehensible and showed a callous disregard for the rights of the plaintiff and other class members".

The claim alleges that the Archdiocese maintained a system that was inadequate to protect class members from abuse at the hands of clergy and, in doing so, the Archdiocese was systemically negligent. The claim also alleges that, as a result of providing clergy with the opportunity to abuse their power and take advantage of a relationship with remarkable power imbalance - and one of psychological and spiritual intimacy - the Archdiocese breached its fiduciary duty owed to class members.

Response of the Archdiocese to Abuse Allegations

Vancouver Archbishop J. Michael Miller, has acknowledged the sexual assault and abuse that has taken place in the Archdiocese and has called for "bold steps to ensure that abusive clergy members are held accountable for the terrible crimes that they have committed." On November 25, 2019, Archbishop Miller recognized the systemic nature of the harms, and apologized for the Archdiocese's role, stating:

I realize that no expression of regret can repair the horror of what happened. Although nothing can undo the wrong that was done to you, I nonetheless wish to offer each of you my heartfelt apology for the trauma, the violation in body and soul, and the sense of betrayal and abandonment by the Church that you feel. For those occasions when we failed to protect you or when we were more concerned with the Church's reputation than with

your suffering, I am truly sorry and ask for your forgiveness as I strive to make amends and bind your wounds.

The above carefully crafted apology does not, however, mention CSA at all or the Church's responsibility for it or facilitating its continuance.

And, in response to the filing of the class action, the Archdiocese told CBC: "We hope the attendant publicity [of the class action] will help give any other victims/survivors the confidence to come forward and get the help they deserve".

Lead counsel in the class action, Angela Bespflug, hopes that the Archdiocese's response to the class action aligns with these sentiments: "We hope the Archdiocese takes responsibility for its role in perpetuating clerical abuse within the Archdiocese. Our objective is to obtain redress – and much needed closure – for survivors through a negotiated or litigated outcome. We want to create an independent, trauma informed claims process that allows survivors to obtain fair monetary compensation for their harms while creating a safe space for them to share their experiences. We want to end the cycle of silence."

Mandatory Reporting of CSA

We understand that Mandatory Reporting of CSA is in force throughout Canada. Specialist academics (including Prof Ben Mathews, known to CRC), however, have questioned their effectiveness: "Whether [the laws] have had the intended effect of improving children's lives remains an important, unanswered question."

On the other hand, according to Canadian lawyers: "... a Catholic priest may be found guilty of sexual abuse by the Church, but the Church may deny the existence of any record of the abuse, because of the requirement for secrecy. Furthermore, if the priest abuser has died, Canon law requires that the Bishop destroy the evidence that the abuse even happened.

These assertions, they state, are based on the following Canon Law:

The relevant sections of the Code of Canon Law (1983) are as follows:

Canon 1717(1)

Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to inquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this inquiry would appear to be entirely superfluous.

Canon 1719

The acts of the investigation, the decrees of the Ordinary by which the investigation was opened and closed, and all those matters which preceded the investigation, are to be kept in the secret curial archive, unless they are necessary for the penal process.

Canon 489

(1) In the diocesan curia there is also to be a secret archive, or at least in the ordinary archive there is to be a safe or cabinet, which is securely closed and bolted and which cannot be removed. In this archive documents which are to be kept under secrecy are to be most carefully guarded.

(2) Each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since the condemnatory sentence concluded the affair. A short summary of the facts is to be kept, together with the text of the definitive judgement.

Canon 490

Only the Bishop is to have the key of the secret archive.

We recognise some relaxation in Canon Law about pontifical secrets, but while these may lift some restrictions, they do not obligate any disclosure.

Recommendations

We recommend:

A new Mandatory Reporting criminal offence whereby those in a position of personal trust toward children or vulnerable adults who while in their care have reasonable grounds for knowing or suspecting the commission of physical or sexual abuse are required to report it to the appropriate civil authorities. There should be a significant penalty and the prescription period should be at least 40 years, as victims often take many decades to report abuse. (The Australian Royal Commission found it took 33 years on average.) A model Mandatory Reporting law is shown below.

A Canadian law to criminalise the destruction of records or evidence of CSA and failing to disclose it.

Institutions (including religious ones) be required by law to place prominent safeguarding statements in every location advising those concerned about CSA to contact a help line totally independent of the institution (in this case, Catholic Church) at any level.

That the (school) curriculum is reviewed to require that pupils be taught in an age-appropriate manner about CSA, how to recognise it and how to avoid it, and requiring the prominent provision of contact details of one or more help facilities totally independent of the institution at any level to which suspected CSA can be reported by victims or others.

(While the above recommendations are prompted by the class action, which has not yet been adjudicated upon, they are not dependent on its success. The recommendations would be beneficial in any case and we see no adverse implications of their adoption even if the class action were not to succeed.)

APPENDIX

This contains the diocese's media statement and the text of the CBC News report dated 28 August 2020:

August 27, 2020

Archdiocese of Vancouver Media Statement About Class Action Lawsuit

Beginning in late 2018, the Archdiocese of Vancouver — working with victims/survivors and independent investigators — conducted a thorough review of historic files relating to sexual abuse by clergy. Our aim was to reach and help more victims/survivors, address past wrongs and to show more transparency. To the extent permitted by Canadian law, we have shared this journey with the public.

One of the main reasons we have spoken so publicly about sexual abuse by clergy is our desire to reach out to victims/survivors. Our message has been delivered at Masses, in the Church's newspaper, on our website and through other media. The reason we have pushed forward with publication of names and photos of perpetrators, where permitted by Canadian law, is to reach out to other people who have suffered sexual abuse.

When the specific person named in this court case contacted us, in January of 2019, our immediate concern was twofold: to offer help and to protect other people. They received a prompt response from us and immediate counselling as well as the suggestion that they make a report to the police.

To protect other individuals, we also sought immediate assurances from the accused priest's Order that he was no longer in ministry. The Order advised that the priest was infirm and not active in any ministry work. They also

confirmed that there had been no complaints ever received about him, including the incidents from the 1970s reported in this court case.

At the end of the review process, in November 2019, we hired two non-Catholic lawyers, to conduct a legal review of any and all sexual abuse by clergy in Vancouver. As well, we have instituted a 24-hour/7-day per week phone line (604-363-7338) to an independent counselling service, to give victims/survivors access to more rapid and complete support services.

We cannot make any further comments about this case as it is now before the courts. But we hope the attendant publicity will help give any other victims/survivors the confidence to come forward and get the help they deserve.
END

CBC News report dated 28 August 2020

British Columbia

Catholic Archdiocese of Vancouver covered up systemic abuse, silenced survivors for decades, lawsuit claims

Archdiocese hopes 'publicity' will help give survivors 'confidence to come forward; get the help they deserve'

By Rhianna Schmunk CBC News · Posted: Aug 28, 2020 3:00 AM PT

"The Archdiocese was aware of the abuse and allowed the abuse to continue ... This was especially true in instances of sexual abuse," the claim reads.

The specific claims in the lawsuit have not been proven in court and the archdiocese has not filed a legal response. The Archdiocese of Vancouver has admitted clergymen at the institution were involved in sexual abuse.

THE FIFTH ESTATE

Catholic Archdiocese of Vancouver aware of 36 cases of clergy sex abuse since 1950s, CBC learns

The B.C. Supreme Court claim is first class-action filed against the archdiocese since the district released its own report on clergy sexual abuse in November, confirming at least 36 cases of misconduct dating back to the 1950s.

If the claim succeeds, the lead plaintiff's lawyer said, dozens of survivors could be entitled to compensation from the archdiocese.

"I suspect we're looking at least into the lower hundreds [for claimants], but hard to say for sure," said lawyer Angela Besspflug. "You're dealing with various parishes and then, obviously, parish-run schools ..."

History of abuse

The lead plaintiff, identified only by the initials K.S. in the court documents, said the priest in charge of St. Francis of Assisi, sexually assaulted her while she was a student at the school in the '80s. She was around 11 years old.

The alleged assault "included painful vaginal intercourse," according to the documents. She claimed the assault was followed by intimidation.

"Conaghan told the plaintiff not to tell anyone about the abuse, threatening to have her put into foster care if she did," the filing said.

Conaghan was not among those nine clergymen.

He died at the age of 83 on Aug. 20 — four days before K.S.'s lawsuit was filed.

In a statement, the archdiocese confirmed K.S. reported her case to the office in early 2019. It said staff suggested she file a police report, encouraged her to seek counselling and checked on Conaghan's status within the ministry, "in order to protect other individuals."

By then, it said, Conaghan was "infirm" and not active in the Church. The archdiocese said Conaghan's latest order, or organization, "confirmed that there had been no complaints ever received about him, including the incidents ... reported in this court case."

"We cannot make any further comments about this case as it is now before the courts," a representative for the archdiocese wrote in an email. "But we hope the attendant publicity will help give any other victims/survivors the confidence to come forward and get the help they deserve."

Read the full statement from the Archdiocese of Vancouver [It appears in this report above as the first item in the Appendix]

Archdiocese followed Vatican playbook: lawsuit

The claim alleges the Archdiocese of Vancouver followed marching orders from the Vatican for years on how to bury allegations of abuse within its parish.

According to the court documents, there was a firm "policy of silence and secrecy around sexual abuse claims," said to have been intended to shield members of the clergy from punishment.

The office of the Archdiocese of Vancouver is pictured in Vancouver in 2019. The archdiocese said in November it was aware of 36 cases of abuse by its clergy dating back to the 1950s, including 26 involving children. (Ben Nelms/CBC)

Children and adults who reported being abused by members of the clergy in Vancouver were, until the mid-'90s, "required to take oaths of secrecy when making complaints to the Archdiocese."

Concerned clergy members who tried to speak out about priests' behaviour were penalized, according to the claim, sometimes to the point of excommunication from the Church.

Pope Francis abolished the Church's decades-old policy of secrecy in December, , making it acceptable — though not mandatory — to report claims of abuse to secular law enforcement officials. The Catholic Church has been rocked by abuse scandals for the better part of 20 years, since allegations of rampant misconduct were reported out of Boston in early 2002.

The Archdiocese of Vancouver said it commissioned its own 2019 report on clergy sexual abuse in order "to reach and help more victims/survivors, address past wrongs and to show more transparency."

- Catholic Archdiocese of Vancouver names 9 clergymen in sex abuse scandal

K.S. reported her assault on Jan. 19, 2019.

"She was finally in a place where, I think, she was tired of being silent," said Bespflug. "What she really wants to obtain justice not only for herself, but for all the individuals like her who have lived in silence for so long."

The lawsuit asks for extensive general, special, aggravated and punitive damages against the archdiocese for "reprehensible ... systematic" negligence.

B.C. archbishop turned blind eye to sexual abuse by priest, judge says; diocese liable for \$844K in damages

Certifying a class-action lawsuit can take anywhere from months to years. Given the impacts of the pandemic on legal proceedings, it could be an even longer road ahead.

K.S. left the St. Francis of Assisi school and parish around a year after the assault. She has never gone back to the Catholic Church.

The lawsuit said she remains "terrified of priests and the power of the Archdiocese."