



November 2021

Institutional Response to Disclosure of Sexual Abuse

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There have been several cases where courts have considered whether an institutional response to receiving allegations of sexual assault has been appropriate. In some instances the courts have found the institutional response to be inadequate and negligent. When looking at the cases and possible trends it is important to note the date the allegations came to the attention of the institution. As with all inquiries into negligence, institutions are judged according to the standards of the day.

In *F.S.M. v. Clarke*, [1999] B.C.J. No. 1973 (B.C.S.C.) a male plaintiff sued the dormitory supervisor of the Indian Residential School (Clarke), the Anglican Church, and the Crown. The plaintiff was approximately nine (9) years of age when the abuse commenced in the late 1960s. The court found both the Crown and Church negligent in failing to properly supervise Clarke and detect signs of abuse. The court also found the Church negligent for doing nothing after the plaintiff's **1973 disclosure** of the sexual assaults, because the Crown was deprived of an opportunity to contain the psychological injury and the plaintiff was denied rehabilitative measures to deal with his trauma, shame and guilt. No specific damages were allocated to this negligence.

In *J.R.S. v. Glendinning* [2004] O.J. No. 285 (ON SC), three (3) siblings were abused by a priest. The court found the Diocese was negligent in failing to appreciate that Glendinning had children in his apartment overnight when it ought to have known such was the case and made no enquiries in this regard. The court also found the Diocese negligent because it failed to render assistance to the plaintiffs after Glendinning was exposed in **1974**, and failed to take steps to reduce the impact of his assaultive behavior. Again, no specific damages were allocated to this negligence.

A different conclusion was reached in *K.M.M. v. Roman Catholic Episcopal Corp. of the Diocese of London in Ontario*, [2011] O.J. No. 1807 (ON SC). In this case a female plaintiff was sexually abused by a priest between ages of 7 and 10 (1976-1979.) The priest was the parish priest who resided in the rectory of the Catholic school she attended. The court held that the Diocese was negligent and vicariously liable for the abuse because the Diocese was aware of prior sexual assaults by the priest. The plaintiff also alleged that Bishop Sherlock was negligent in failing to contact the plaintiff's family and attend to her

needs after the abuse was disclosed. The court found that this argument was without foundation, considering the lack of understanding and knowledge that existed at the time (1979) as to the degree of damage sexual abuse might have on a survivor.

Last year, in *C.O. v. Williamson and Trillium Lakelands District School Board [2020] ONSC 3874 (ON SC)* a judge found a school board negligent based on its response to a student's disclosure of sexual abuse by a teacher. In this case the student reported the abuse contemporaneously in 1983. The board fired the teacher but allowed him to continue working for three months until the end of the school year. The Board offered the student a couple of sessions with a guidance counsellor who was a student teacher. The court found that aside from that brief counselling, nothing else was done to provide help to the plaintiff and assist her with her emotional damage. The court found that the Board's actions were directed at protecting itself. The Board ought to have referred the plaintiff to a qualified counsellor for therapy and by allowing the teacher to continue teaching until the end of the school year, the board breached its duty to protect the plaintiff from harm. The court also found the school board was vicariously liable and awarded the plaintiff significant damages. No damages were specifically attributed to the Board's conduct after the plaintiff's disclosure.

V.B. v. C. (2003) 65 O.R. (3d) 343 (ON SC) is one of the few cases where damages were awarded solely for negligent response to disclosure of abuse. This case also offers insight into what steps should be taken in the face of disclosure. Here the plaintiff disclosed past sexual abuse by her father to a Jehovah's Witness church elder in 1989. The Elder advised her that she should confront her father directly in front of elders and give him a chance to repent. A meeting was arranged at the plaintiff's family home. The plaintiff found having to describe the sexual abuse in detail in front of her father and two elders to be traumatic. A second meeting was arranged with the same two elders and a third elder where the plaintiff was asked to repeat her story as the third elder had not been present at the previous meeting. After the meeting, rumours that the plaintiff had accused her father of sexual abuse leaked out into the community. No sanctions appeared to be imposed on the father, and so the plaintiff believed that she was perceived as having fabricated the accusations and felt ostracized. Her mother resented the fact that the plaintiff had revealed the sexual abuse and was estranged from her when she died.

The plaintiff sued the Watch Tower (the governing body of the Jehovah's Witnesses in Canada) and a senior elder who was involved in the steps taken. The court held that it was readily foreseeable that the course of action recommended and followed would cause emotional harm to the plaintiff. Because the elders had no expertise in the area of sexual abuse, it was incumbent upon them to consult with a professional as to how the harm to the plaintiff could be minimized or avoided altogether. However the court found that the defendants were not responsible for the gossip in the community or any actual perceived shunning of the plaintiff. General damages were assessed at \$5,000.

P.D. v. Allen, [2004] O.J. No. 3042, (ON SC) is a case where the court did not find negligence after a 1992 disclosure. Here, a female plaintiff was abused by a priest, Allen, when she was 13 years old. There was also a second period of abuse during the years of 1978 and 1981 when they had a sexual relationship as adults. The Diocese admitted that it was vicariously liable for Allen's conduct during the childhood period, and was found vicariously liable. The Diocese was not directly liable for negligence in either the childhood or adult period. The court held that the conduct of the Bishop after learning of the abuse in not providing financial assistance to the plaintiff (who was without therapy for many years before trial) was callous and may have operated to aggravate the plaintiff's injury, but it did not amount to negligence.

Obviously today we have much greater knowledge about and understanding of the importance of a proper institutional response to disclosure of sexual abuse. There is medical literature to support the idea that a proper response and messaging, as well as therapy, can significantly mitigate the damage caused by sexual abuse. Over the last 25 years or so, I have seen a tremendous change in many institutional responses. Today, some organizations offer counselling as soon as an allegation is made. However for those institutions that do not respond appropriately, I expect we will see specific damages awarded, particularly if the plaintiff leads evidence of the industry standard of the day and expert evidence of what harm was specifically caused by the inadequate institutional response. As the court said in *V.B. v. C.*, institutions are well advised to consult with sexual assault experts when planning a response to disclosure. Of course, the institution's insurer should also be consulted regarding any potential response in order to avoid any coverage issues.

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