
THE LIABILITY OF CHURCHES FOR THE HISTORICAL SEXUAL ASSAULT OF CHILDREN BY PRIESTS

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SUMMARY

Could a church be held liable for the sexual assault of children by priests when the victims claim as adults only many years after the event? Complainants can claim damages on the basis that the church is either directly or vicariously liable for the alleged acts. If the victims rely on vicarious liability, they will have to prove that the wrongdoer was an employee of the defendant and will further have to prove that the assaults were committed within the course and scope of the wrongdoer's employment. The requirement that a priest must be an employee has in the past created a hurdle for victims, since courts in different countries have traditionally held that priests are not employees of the church as they are servants of God, subject to ecclesiastic law and not civil law. However, in *John Doe v Bennet* in Canada and *JGE v Diocese of Portsmouth* in the UK the courts have recently held that even a relationship akin to employment is sufficient to be a basis for vicarious liability.

In *Bazley v Curry* the Canadian Supreme Court moreover extended the traditional meaning of the "course and scope of employment" by developing the "close connection" test. The court found that the acts of a warden of a children's home were so closely connected with his duties that it was fair that his employer (a charitable organisation) should be held liable for his conduct. The close connection test was followed by the House of Lords in the United Kingdom and by the South African Constitutional Court in *K v Minister of Safety and Security*, although in another context.

Adult complainants in cases such as these will further have to prove that their claim has not expired as a result of prescription. In Canada, the UK and South Africa courts have in different ways acknowledged the fact that victims of child sexual

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abuse are often not able to process their claims timeously, because of psychological factors. The victims are allowed to bring their claims often decades after commission of the wrongful acts. These developments have undoubtedly broadened the vicarious liability of employers and more specifically the liability of churches.

KEYWORDS: vicarious liability, church, priests: sexual abuse; children.