

Why the Antigonish Diocese Sexual Abuse Class Action Settlement is the Right Thing to do.

In 2002, Ronald Martin received a telephone call that his brother, David Martin, had been missing in the woods of British Columbia for 2 weeks. Sixteen days later David's body was found, with a suicide note stating he had taken his life because he could not endure the pain caused by sexual abuse he had suffered as a child at the hands of Father Hugh Vincent MacDonald, a priest of the Catholic Diocese of Antigonish.

Ron Martin had been sexually abused by the same priest but neither brother was aware of what the other had suffered. On the day that Ron Martin had to identify his brother's body, he made a promise that there would be accountability for the abuse they had suffered.

David Martin's death was the start of an arduous journey for Ron Martin. After learning there were many other victims, all suffering as he and his brother did, all needing justice and accountability from the Church, Ron decided to file a class action against the Roman Catholic Diocese of Antigonish and Bishop Raymond Lahey.

After months of emotionally draining negotiations, Ron Martin and the Diocese reached an historic agreement to compensate anyone who had been sexually abused by priests of the Diocese between 1950 and 2009.

The class action settlement creates a dignified, confidential and fair process that:

- Required the Roman Catholic Diocese of Antigonish to publicly acknowledge its responsibility to victims of sexual abuse and apologize for its role in failing to protect children from sexually abusive priests;
- Creates a fund of up to 15 million dollars to provide survivors with compensation without having to be re-victimized by the rigours of a public trial;
- Creates a streamlined, faster process to determine compensation;
- Requires the Diocese to give up legal defences that have been used to defeat victim's claims in the past.

The settlement was approved by the Honourable Justice David MacAdam of the Nova Scotia Supreme Court. His Lordship found that the settlement was fair, reasonable and in the best interest of class members. The Supreme Court has an ongoing responsibility to supervise the settlement to ensure survivors are treated fairly.

Confidentiality is a cornerstone of the agreement – not for the benefit of the Church which has publicly admitted its wrong doing, but for the benefit of the victims.

Many class members have never told their family or friends that they were sexually abused. They do not want this information becoming public. The confidentiality of the process means that victims do not have to fear the threat of public disclosure.

Furthermore, the confidentiality of the settlement does not bind class members. So survivors are free to talk publicly about their claims if they wish.

Choice is also an important part of the settlement. The class action settlement provides sexual abuse survivors with a choice that they did not have before.

There may be survivors who chose the adversarial approach of litigation. If a survivor wants to file an individual lawsuit, they must file an “opt out” form with the Diocese by December 4, 2009.

Canada’s civil justice system may be one of the best in the world, but litigation is still time consuming, expensive and emotionally draining.

Public trials require victims of sexual abuse to relive their most painful and traumatic memories in the public eye. Simply put, traditional litigation is a battle that many victims of sexual abuse are not emotionally or psychologically capable of surviving.

The Catholic Church is well aware of the challenges survivors of sexual abuse face in litigation. The traditional approach by the church has been to fight survivor’s claims vigorously. In Newfoundland, despite the findings of the Mount Cashel inquiry, the Diocese of St. John’s has been fighting lawsuits filed by victims of convicted sex abuser Father Jim Hickey for the past 11 years.

In the United States seven catholic dioceses have declared bankruptcy rather than agree to compensate survivors. In Canada the catholic diocese of St. George’s declared

bankruptcy after being sued by victims of convicted sex abuser Father Kevin Bennett.

In negotiating the settlement Ron Martin had to consider that the Diocese of Antigonish does not have unlimited financial resources. Every dollar spent fighting survivors' is a dollar that cannot be spent to compensate survivors.

A major concession made by the Diocese in the class action was to provide a security agreement on all its property to guarantee its financial obligations to the members of the class action.

If they do not opt out, survivors are automatically eligible to participate in the class action.

Survivors must apply for compensation by March 10, 2010. The time to apply may be extended to September 6, 2010 with permission of the Court.

The criticism leveled against the class action settlement is essentially that the class action is different from traditional litigation. That is true – and we see that as a victory for survivors.

Survivors should decide for themselves how they want to resolve their claims. In the end, each survivor will decide what is best for them: a public trial, or the confidentiality of the class action settlement.

Ron Martin and I believe that the settlement provides a better way for survivors of sexual abuse to receive compensation and closure in a safer way than traditional litigation. The process is dignified, confidential and fair.

This settlement is not about the church; it is about the children who were sexually abused. It is about helping them achieve closure and accountability. It is about finding a way for survivors and the church to move forward. Last but not least, it is about Ron Martin fulfilling the promise he made to his brother David.

John McKiggan is a lawyer from Halifax Nova Scotia. For the last 18 years he has dedicated his practice to helping survivors of sexual abuse. He is one of the founding partners of Arnold Pizzo McKiggan. Details of the class action settlement can be found at www.dioceseaction.com .