

# Lawsuit over sex abuse insurance could have consequences for future cases, experts say

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A decade-long court battle between an insurance company and an Ontario Catholic diocese over coverage for settlements in sexual abuse cases could have wide-ranging consequences for victims and religious institutions involved in similar cases across Canada, legal experts say.

The Catholic Diocese of London filed a lawsuit against AXA Insurance Canada in 2008 claiming a breach of policy after the company refused to pay out claims related to settlements between the church and victims of two priests, Father Charles Sylvestre and Father John Harper, who were convicted of sexually abusing children.

The diocese argues it had liability insurance in the 1960s and early 1970s — when the abuse took place — that entitles it to payouts from AXA.

But the insurance company argues in its statement of defence that the diocese's policy is void because church officials knew of, and failed to disclose, sexual abuse allegations levelled at Sylvestre before the insurance policy was enacted. AXA is further demanding the diocese return \$10 million already paid out under the insurance policy.

Both the diocese and AXA's parent company, Intact, declined requests for comment on the lawsuit but legal observers say a victory for AXA could have major implications for victims of sexual abuse and for institutions named in similar legal actions.

“If the insurer is successful, you're going to see every single insurance company in Canada filing similar suits,” said John McKiggan, a lawyer unaffiliated with the case who in 2009 secured a \$13 million settlement from the Catholic Diocese of Antigonish, Nova Scotia, for victims of sexual assault perpetrated by priests.

“If I was running an institution like the Catholic Church or a residential institution, I would be concerned because there is rarely a case where at least the allegation isn't made that persons in authority knew what was going on,” he added.

There have been multiple similar lawsuits across the country, McKiggan said.

A suit filed by the Diocese of Bathurst, N.B., against its insurer — which refused to pay for a settlement on the basis that diocese officials failed to disclose knowledge of sexual assault allegations — is currently being heard by the province's appeal court after a lower court ruled in favour of the insurance company, he noted.

The Catholic Diocese of Sault Ste. Marie, Ont., filed its own, nearly identical, lawsuit against AXA in 2008. At the time, the diocese had 16 distinct insurance claims related to allegations against seven priests accused of sexually assaulting children, court documents show. A lawyer for the diocese said the suit was “resolved and dismissed,” and said a confidentiality agreement prevented further comment.

There could be “huge ramifications” if insurance companies are able to decline institutions coverage for sexual abuse settlements or court-ordered damages, said Susan Vella, a lawyer who specializes in cases of sexual assault.

Institutions would be on the hook to pay victims themselves, which could require them to sell property, or go after parties that owe them money, she said. Institutions may also choose to fight victims in court, rather than make large settlements if they know they will have to pay out of pocket, Vella added.

“It’s going to require victims to perhaps go to trial and perhaps be re-traumatized through that process,” she said.

In the London case, the diocese obtained an insurance policy in 1963 from Great American Insurance — a company since absorbed by AXA — covering liability for “bodily injury” claims including those related to “assault and battery” committed by an employee, court documents show.

AXA alleged in its statement of defence that the diocese knew Sylvestre had been accused of sexual assaulting children before the policy was enacted, and discovered while the policy was in place in 1964 that Harper was facing similar allegations.

The London Diocese has admitted in court that it was made aware in 1962 that Sylvestre had been investigated by Sarnia, Ont., police for the sexual assault of multiple children in his parish, AXA said in its statement of defence.

“If the diocese had disclosed the information it had concerning Sylvestre and Harper, Great American would have refused to provide a policy of insurance or any renewal, would have refused to insure against liability arising from assault and battery, would have included appropriate exclusions, and/or would have increased the quantum of the premium charged given that this information dramatically affected the risk,” the company said in its statement of defence.

Instead, AXA argues, church officials actively worked to keep the allegations secret, and allowed both priests to remain in positions of authority over children.