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Estates & Wills & Trusts

Sexual abuse suit filed by estate faces technical hurdles



A lawsuit filed by the estate of an Ottawa man claiming a Catholic priest sexually abused him will have to overcome a number of evidentiary burdens if it goes to trial, says Toronto-area estate litigator [Charles Ticker](#).

The [Ottawa Citizen](#) reports the man disclosed details of the alleged assault to his wife only days before his death, and the estate has subsequently brought forward a \$2-million lawsuit against the Archdiocese of Ottawa for sexual abuse he allegedly suffered as a child in the 1960s.

According to the claim, the man was an alleged victim of a now-deceased Catholic priest who pleaded guilty in 1967 to charges of gross indecency involving two teenage boys, the article states.

Ticker tells [AdvocateDaily.com](#) that because it's a civil suit there's a lower burden of proof than there would be in a criminal case, but the estate will still need to provide corroborating evidence.

"That statute (section 13 of the *Ontario Evidence Act*) says you need material evidence to corroborate the deceased's claim where the claim is brought on behalf of a deceased plaintiff by his estate representative or heirs," he says.

Corroborating evidence could include letters or diaries from the deceased, medical evidence, and accounts from other alleged victims, of which media reports suggest there are at least two.

"The lawyer could see if any of the victims from the 1960s are still alive and if they ever had any dealings with the man," says Ticker, an estate litigator and mediator [Charles B. Ticker Law Office](#).

"In addition, there may be problems with admitting the plaintiff's statements as hearsay, although the statements made by the plaintiff as he was dying may qualify as an exception to the hearsay rule," he adds.

In [P.M. v. Evangelista](#), 2015 ONSC 1419 (CanLII), the court grappled with the corroboration requirement in a sexual assault claim where the defendant had died during the course of the litigation.

In the decision, Justice Alexander D. Kurke states s. 13 of the *Evidence Act* should be used to protect the dead from the dishonest claims of the living, but "should not be permitted to serve as a sword to cut short the search for the truth, when the circumstances of the case give no cause for concern about any implicit dishonesty on the part of a living party."

In the present case, both the plaintiff and the individual defendant are deceased.

Ticker, who is not involved in the matter and makes his comments generally, says most trial judges would be sympathetic to the issues raised in the case, but it's not likely to get that far.

"Win or lose, this isn't the kind of case the archdiocese wants in the paper," he says. "Due to the publicity and allegations made, the diocese may well settle with the family."



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“The family is looking for recognition for their husband and father’s suffering,” he adds. “It’s not about the money; it’s about righting an alleged wrong and letting the public know what happened.”

If the family and the archdiocese choose to settle the dispute in mediation, they can identify an appropriate way to right the wrongs of the past, Ticker says.

“In mediation you can be very creative about how compensation is made,” he says. “The family might request a public apology by the church or that a foundation be set up in the name of their husband and father.”

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