

SUPREME COURT OF NOVA SCOTIA

Citation: Martin v. Roman Catholic Diocese of Antigonish, 2009 NSSC 331

Date: 2009/09/10

Docket: Hfx 297827

Registry: Halifax

Between:

Ronald Martin

Plaintiff

v.

Raymond Lahey in his capacity as Bishop of the Roman Catholic Diocese of Antigonish and The Roman Catholic & Episcopal Corporation of Antigonish commonly known as the Roman Catholic Diocese of Antigonish

Defendants

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Judge: The Honourable Justice David MacAdam

Heard: September 10, 2009, in Halifax, Nova Scotia

Oral Decision: September 10, 2009

Written Decision: November 6, 2009

Subject: *Class Proceedings Act*; class proceeding certification hearing; criteria for certification of class proceeding; approval of settlement agreement

Summary: The plaintiff sought an order, on consent, conditionally certifying the action as a class proceeding and approving a settlement agreement negotiated by the parties. The action involved a claim for damages arising from sexual assaults by priests of the Diocese of Antigonish. Mr. Martin was the proposed representative plaintiff. The parties to the class action had reached a settlement, for which they sought the approval of the court.

Issues: (1) Whether the action should be certified as a class proceeding pursuant to ss. 6 and 7 of the *Class Proceedings Act*, and (2) whether the settlement is fair, reasonable and in the best interests of the Class as a whole.

Argument: (1) The court reviewed the law respecting the certification of class proceedings, and held that the proceeding should be certified. The Amended Statement of Claim established a cause of action. The plaintiff established that there was an identifiable class. The requirement for a common issue was established. The certification of the class proceeding, combined with the settlement agreement, constituted the preferable procedure for the fair and efficient resolution of the proceeding. The proposed representative plaintiff was the plaintiff in the proceeding and had been involved throughout the proceeding. Any potential conflict arising from the representative plaintiff's (or any other class member's) interest in ensuring that total claims did not exceed the agreed settlement, so as to avoid pro-rating, was one that would arise in the case of any class member, and, in view of the desirability of having a class member as the representative plaintiff, was not the type of conflict intended by the Legislature to disentitle Mr. Martin from acting as the representative plaintiff.

(2) Pursuant to s. 38(1)(a) of the *Class Proceedings Act*, a class proceeding could be settled or discontinued only with the court's approval. The settlement agreement would eliminate risks associated with a common issues trial and a contested certification hearing, due to the waiver of certain defences, the moderation of the adversarial process, the creation of safeguards for confidentiality and reducing the degree of proof required in some cases. Consistency and transparency would be observed by using common experts and a retired judge, and by ongoing reporting obligations. Counsel had expended considerable time and effort negotiating the settlement. The representative plaintiff had been directly involved in the negotiations leading to the settlement agreement and was in regular consultation with class counsel. The settlement agreement constituted a fair and reasonable settlement that was in the best interests of the class as a whole, provided significant benefits to class members and met the "range of reasonableness" test.

Result: The action met the criteria for certification pursuant to ss. 6 and 7 of the *Class Proceedings Act*. The settlement agreement constituted a fair and reasonable settlement that was in the best interests of the class as a whole, provided significant benefits to class members and met the "range of reasonableness" test. The action was conditionally certified as a class proceeding and the settlement agreement was approved. Also approved was the Phase 2 notice and notice plan for notification of potential class members of the certification and settlement, including their right to opt out.

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