

Recent Decision Casts Doubt On Use Of Matthew 18: 15-18 To Address Church Disputes

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...Moreover if thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother. But if he will not hear [thee, then] take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he shall neglect to hear them, tell [it] unto the church: but not if he neglect to hear the church, let him be unto thee as an heathen man and a publican. Verily I say to you, whatsoever ye shall bind on earth shall be bound in heaven; and whatsoever ye shall loose on earth shall be loosed in heaven. [Matthew 18:15-18]

A. INTRODUCTION

Matthew 18:15-18 has traditionally been interpreted as directing Christians to resolve their disputes without recourse to the courts. As a result, clergy have frequently recommended the application of Matthew 18:15-18 to their congregants as being in keeping with the Scriptures. A recent court decision in Ontario, however, has called into question the appropriateness of relying on Matthew 18:15-18 in resolving disputes and the correctness of clergy's advice to that effect.

B. FACTS IN THE *V.B. v. CAIRNS* CASE

The Honorable Mme. Justice Molloy ("Justice Molloy") of the Superior Court of Justice in the matter *V. B. v. Cairns et al.* (2003) 65 O.R. (3d) 343, made the following findings of fact:

- ◆ An adult plaintiff, who was raised as a Jehovah's Witness, was sexually molested by her father when she was a child.
- ◆ When the plaintiff was 19 years of age she disclosed the abuse to a church elder. The church elder advised the plaintiff that Matthew 18:15-18 applied to her situation, and that she should confront her father directly with her allegations in front of the elders of her church and give her father the opportunity to repent.
- ◆ Despite this advice, the plaintiff was unable to confront her father. She was ultimately brought into a meeting with her father, which was set up by church elders. At this meeting, the plaintiff publicly confronted her father in keeping with Matthew 18:15-18. This meeting and the resulting confrontation were traumatic for the plaintiff.
- ◆ The church elders convened a second meeting. This meeting was a judicial committee meeting intended to deal with punishment of the father. The plaintiff, unaware of the intent of the second meeting was asked to attend and recount her story for an elder who had not been present at the previous meeting.
- ◆ Due to the appearance that no sanctions had been taken against the father at the second meeting, the plaintiff was left estranged from her mother and feeling that her church community had ostracized her.

In 1998, the plaintiff commenced an action against the church elders who participated in the meetings and the Watch Tower (the governing body of the Jehovah's Witnesses in Canada) for negligence in having had the plaintiff confront her father. After reviewing the facts of the plaintiff's case, Justice Molloy held that in certain situations, advising victims to confront their abusers pursuant to Matthew 18:15-18 may be tantamount to negligence, if the victim suffers harm as a result of the confrontation.

C. FINDINGS OF THE COURT WITH RESPECT TO MATTHEW 18: 15-18

Briefly stated, Justice Molloy found that:

1. Matthew 18:15-18 did not apply to situations involving child abuse;
2. the Watch Tower was vicariously liable to the plaintiff in negligence for the conduct of elders who advised the victim that Matthew 18:15-18 applied to her situation;
3. the first meeting and the resulting confrontation between the plaintiff and her father, was undertaken in negligence as it was based on the elder's negligent application of Matthew 18:15-18 in this situation; and
4. the second meeting was not undertaken in negligence, as it did not involve a confrontation between the plaintiff and her father pursuant to Matthew 18:15-18 but was undertaken as a quasi-judicial proceeding to discipline the father.

D. IMPLICATIONS OF THIS CASE

The decision of Justice Molloy is significant for a number of reasons. Firstly, Justice Molloy appears to have made the first ruling involving “clergy negligence” in Canada which does not involve damages arising from abuse, but instead involves damages arising from negligent counseling or advice by a clergyman. As a result, Justice Molloy’s ruling is important for all clergy or individuals involved in pastoral counseling, as it establishes a precedent for liability being imposed against churches, clergy and pastoral counselors in situations where they provide negligent counseling or advice.

Most pastors and clergy will no doubt be disturbed by this aspect of Justice Molloy’s ruling, as it appears to undermine any argument that advice, counsel or direction based on the Scriptures, or carried out by clergy in his or her professional capacity, is protected as an expression of religious beliefs which should be free from interpretation or interference by the state.

American courts have traditionally rejected claims based in clergy negligence as a result of their interpretation of the First Amendment to the United States *Constitution*. Canadian courts have also recognized that freedom of religion is a fundamental right that is protected under the *Canadian Charter of Rights and Freedoms*. Canadian courts have, however, also held that freedom of religion is not absolute, and have traditionally been willing to limit the right to freedom of religion in certain situations, such as where the welfare of a child is endangered as a result of a religious practice. As Justice Molloy stated

“...the fact that a principle of religious freedom may be involved will not necessarily be a bar to a litigant’s right to a remedy before the courts. The extent to which the rights of the individual will take priority over the principles of religious freedom will depend on the circumstances of each case. As is demonstrated by the cases to which I have referred above, courts will commonly favor the health and safety of children over the religious values of their parents if their religious practices are harmful to their children. The same would hold true for other vulnerable persons who are harmed as a result of the religious beliefs of others. The free will of competent adults to choose their own religious faith must be recognized. Having chosen a particular religion, or voluntarily elected to remain a member of it, a person will not be heard to complain later that he was injured in some way as a result of the application of principles of that faith. Likewise, matters of a purely internal nature such as membership or discipline within a congregation would rarely, if ever, be subject to review by the courts. In each case the court must consider the nature of the religious principle relied upon, the context in which it arises, the circumstances of the person harmed, and the nature of the harm in

the course of determining whether the rights of the plaintiff should be recognized notwithstanding the impact on the religious freedom of the defendant” [paragraph 140].

Justice Molloy noted that there have been cases in Canada where a church or member of the clergy have been found liable in negligence, though these cases have traditionally involved sexual or physical abuse. However, Justice Molloy was not referred to any cases involving negligent pastoral counseling as the basis of an action by counsel in the proceedings, nor could she find any such cases on her own.

Under the circumstances of this case, Justice Molloy held that there is an obvious close and direct relationship between a member of the clergy and a parishioner seeking advice, and that in such a situation the clergyman would be expected to know that the parishioner seeking his advice would be directly affected by the advice provided stating:

“...Counselling and providing advice to parishioners is part of the normal duties of a member of the clergy. Further, clergymen are typically regarded by members of their congregation as having a special status or position of authority. The relationship is one of trust. The parishioner would, to the knowledge of the clergyman, be likely to rely on him. It would be reasonable for the parishioner to expect that the clergy member would exercise a reasonable degree of care in dispensing advice...Given the direct relationship, it is easily foreseeable that harm may befall the parishioner if the member of the clergy is negligent in dealing with the matter before him...” [paragraph 146]

As a result, Justice Molloy felt justified in ruling that the relationship between clergy and their parishioners seeking advice is sufficiently proximate to hold clergy liable where they provide advice to parishioners, and damages arise from such advice.

Secondly, Justice Molloy’s ruling is important in that she held that Matthew 18:15-18 was misapplied in the plaintiff’s situation, and that such misapplication constituted negligent advice. Further, Justice Molloy held that the Watch Tower was negligent when one of its church elders advised the victim that her situation was subject to Matthew 18:15-18. Justice Molloy made a finding that Matthew 18:15-18 does not apply to situations involving breaches of “God’s laws”.

It is noted that no expert evidence was provided by Biblical scholars to assist Justice Molloy in her interpretation of the meaning and application of Matthew 18:15-18. Instead, Justice Molloy relied on the testimony of a church layperson to make the following statement:

“In my view, much of the confusion surrounding the Matthew 18 issue stems from the fact that it does not actually apply to a situation such as this one. I accept the evidence of John Didur that it is not now the policy of the Jehovah’s Witness to require a victim of abuse to proceed through the steps envisioned in verses 15-18 of Matthew 18, nor was that the policy in 1989. He explained that Matthew 18 applies to private disputes between people, such as disputes over financial matters, and cannot be applied to a serious sin against God’s laws. Such as child abuse...”

With all deference to Justice Molloy, her interpretation of Mathew 18:15-18 is questionable. Matthew 18:15-18 makes no such distinction between private disputes between people, such as disputes over financial matters as “lesser matters or sins”, and “serious sins against God’s laws”. In fact, Matthew 18:15-18 simply references trespasses. Black’s Law Dictionary defines a trespass, in part, as:

Doing of unlawful act or of lawful act in unlawful manner to injury of another’s person or property.

While Black’s Law Dictionary may not substitute for expert evidence on the interpretation of Matthew 18:15-18, it does provide a legal definition of trespass, and calls into question the distinction accepted by Justice Molloy. A sensible reading of Matthew 18:15-18, without reference to the evidence of Biblical scholars, would lead one to conclude that all forms of trespass are covered by it, including assaults and sexual assaults.

Further, Justice Molloy’s finding on this issue of the interpretation of Matthew 18:15-18 is of little assistance, and may prove in time to confuse matters, as it introduces the concept of a division or distinction between “sins against God’s laws” and apparently lesser transgressions such as financial disputes. What is troubling about reliance upon the language of “God’s laws” is that there is no indication as to what are “God’s laws”, or which laws of God Justice Molloy would deem to be too serious to be covered by Matthew 18:15-18. Finally, Justice Molloy’s interpretation doesn’t accord with commonly held beliefs about “God’s laws”, and the application of Matthew 18:15-18.

By introducing her interpretation of Matthew 18:15-18 into case law, Justice Molloy has set a dangerous precedent. Scriptures are inevitably subject to varying interpretations which reflect the belief systems of adherents. In Christianity, the divides which exist between the various denominations in many regards reflect different interpretations of Scripture. It would have been reasonable for Justice Molloy to turn to Biblical scholars for guidance regarding the proper interpretation of Matthew 18:15-18 within the faith of the

Jehovah's Witness, to confirm whether the passage was being properly interpreted within that specific faith. Justice Molloy, however, did not restrict her interpretation, or analysis to the specific circumstances of an allegation of negligence against the Jehovah's Witness, but instead, made a generalized finding of law regarding the interpretation and appropriateness of applying Matthew 18:15-18 in cases of sexual assault. As such, her ruling is applicable to all Christian denominations, regardless of how they actually interpret Matthew 18:15-18 or apply it within their particular belief system.

It should be a concern for all citizens of a liberal democracy, when a secular court takes on the role of telling citizens how they should read their sacred texts. As a general principle, such conduct by a court flies in the face of religious freedom. There can be no true freedom of religion and conscience when the courts of a state have the power to formalize the interpretation of sacred texts.

This is not to say that the secular court system should be prohibited from overseeing the conduct of religious institutions in Canada. No institution, regardless of its origin, makeup or mandate, should be above the law. However, at the very heart of religious freedom is freedom of conscience, which in turn, can only be nurtured through freedom of thought. There can be no meaningful religious freedom where the secular court system can interfere with the conscience of believers by telling them what to think. Justice Molloy has overstepped that boundary by fixing the meaning of Matthew 18:15-18. By doing this, she has told Christians what to think and believe in relation to that passage, and thereby how to worship.

Further, in principle, there should be no need for scriptural interpretation at the general level. Religious freedoms, like all the freedoms that are enjoyed, can only be enjoyed to the extent that they do not violate the laws of the land, or the rights and freedoms of others. For example, regardless of what religious beliefs one holds, if a person interprets a sacred text to justify human sacrifice, that person will be held accountable for the death of his or her victims in a criminal court. This goes without saying, and is understood by all.

This is no less true with respect to basic principles of contract and tort law. If a church breaches a contract, it can be held accountable and if it fails to salt its walkways, it will be found liable in damages for its negligence should someone be hurt. As Justice Molloy noted:

... protection of religious freedom does not mandate the denial of any cause of action in negligence against a church or member of the clergy. Principles of religious freedom may be taken into account in determining, on a case by case basis, what standard of care should be imposed, or whether any remedy is available. However, religious beliefs should not be an absolute defense to conduct that is harmful to others... [paragraph 152]

As such, the difficulty with Justice Molloy's ruling is not that clergy might be held accountable for their negligent advice. Clearly, clergy that give advice outside of their area of expertise, or where the advice is within his or her field of expertise but is negligently given, should be held accountable. Justice Molloy is correct in stating that protection of religious freedom should not be equated with a blanket exclusion from liability. The difficulty, though, with her ruling is that for there to be negligence, there has to be conduct below a certain standard, or a wrong committed that should have been foreseeable. In other words, for there to be clergy negligence for advice given, the advice would have to be wrong. However, in this case the advice given, namely that Matthew 18:15-18 applied to the situation of the plaintiff, may have been correct, even if the outcome of that advice was harmful. For a finding of negligence to have been properly made in the present circumstances, there should have been specific expert evidence given regarding the interpretation and application of Matthew 18:15-18 within the Jehovah's Witness faith. That was not the case.

In fact, the circumscribed definition of Matthew 18:15-18 which Justice Molloy ultimately fixed on does not accord with the understanding given to that passage by many denominations. In making a general finding as to its meaning, which may not be in accordance with the teachings of specific denominations, Justice Molloy lowered the bar significantly for negligence by clergy. As a result, the state may have indirectly violated the religious freedoms of many if not most Christian denominations in this ruling, and may force, through the threat of clergy liability, a fundamental shift in the teachings of those denominations regarding and the settlement of disputes between members.

E. CONCLUSION

While the decision of Justice Molloy is only a lower court decision, and has not yet been applied or interpreted by other courts, it should be a signal to all religions that they cannot rely solely on their specific interpretations of their respective sacred texts, and that the secular court system may interfere with and determine the interpretation to be applied.

Christian denominations that rely on Matthew 18:15-18 should review their internal policies regarding when and how they apply this passage, as the decision of Justice Molloy creates a very serious challenge to the appropriateness of using this passage to counsel the resolution of disputes between adherents. At the very least, if denominations are going to rely on Matthew 18:15-18, they should ensure that their interpretation has a sound basis in scripture and put policies in place to exclude its use where the resolution process could reasonably be foreseen to re-victimize the victim or cause greater harm, such as in the case of abuse.

Finally, clergy should ensure that any advice they give is firmly rooted in the Scriptures, and is in keeping with the interpretations placed on the same by their respective denominations. In light of Justice Molloy's ruling, however, relying on the position of a denomination may not be the final answer as to whether clergy might be found negligent in their advice. In light of Justice Molloy's willingness to make a broad and generalized ruling regarding the interpretation of Matthew 18:15-18, which does not acknowledge the subtle differences in interpretation given to scripture by different Christian denominations or that there are even differences of interpretation, clergy may be forced to defend their conduct in the face of interpretations of Scriptures made by the secular court system on an ongoing basis.