

Exclusive National Victoria Courts

# Heartbreak relived: Catholic Church seeks abuse victim's abortion record

By **Tammy Mills**

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A woman who was sexually abused by a Catholic priest says the church is now trying to subpoena deeply personal medical records, including of an unrelated abortion, as part of her lawsuit against the archbishop.

The woman, a former teacher now aged 60, is suing the Melbourne archdiocese over allegations the abuse her parish priest subjected her to from the age of 13 caused psychiatric injury, including post-traumatic stress disorder and depression.



The 'Loud Fence' in Ballarat, where abuse survivors tied ribbons to the church fence. DYLAN BURNS

The survivor and her lawyers say, while the church accepted she was sexually assaulted by Preston assistant priest Father Francis Thorp in the 1970s, its legal team intends to subpoena sensitive medical records as part of the claim.

The records flagged for subpoena include information about a termination she had when she was in her late 20s, a decade after the abuse ceased, a contraceptive device she had implanted and her obstetric records.

The woman, who cannot be identified for legal reasons, told *The Age* the records were “absolutely irrelevant” to her claim against the archdiocese.

“My husband and I made a choice 35 years ago,” she said.



St Patrick's Cathedral, the home of the archdiocese in Melbourne. LUIS ENRIQUE ASCUI

“It was a heart-breaking decision. And now I have to explain myself again.”

She said she and husband chose to undergo the procedure as she had two infants, one of whom was a few months old, and she was struggling with depression and trauma.

The woman, who recently obtained a Juris Doctor in law, described the legal tactic as “extraordinarily aggressive”.

“It's shattering,” she said.

A spokesperson for the archdiocese would not comment specifically on the case because it was before the courts, but said in any matter “all relevant material should be brought before the court”.

“In all matters we seek to deal very sensitively with issues, and will continue to do so,” the spokesperson said.

Victorian Attorney-General Jaclyn Symes said the justice system must recognise the unique trauma involved when victim-survivors seek justice for the abuse perpetrated against them.

“Victim-survivors of sexual offences need to be given every opportunity to seek justice, while being protected from unnecessary re-traumatisation,” Ms Symes said.

Victorian Attorney-General Jaclyn Symes. JUSTIN MCMANUS

Sydney lawyer Bill Madden, who wrote a book about institutional abuse litigation, said defendants accused of causing psychiatric harm by abuse typically request medical records to point to other incidents that might have caused injury. He said, under normal circumstances, those defendants would not know what was in the records when they request them.

“It can be quite important working out how a person has been affected, and to therefore try and put a dollar value on their compensation amount,” Mr Madden said.

“Unfortunately that means access to all sorts of records, depending on the nature of the claim.”

Melbourne University law school emeritus professor Ian Malkin, who specialised in torts law, agreed that the intent of the subpoena was to find other reasons for psychiatric harm.

“This is probably not a surprising strategy, but it’s an unfortunate and disappointing one,” Professor Malkin said.

Prominent survivors’ advocate Chrissie Foster, whose two daughters were [horribly abused by another Melbourne priest](#), said the church’s strategy was outrageous.

“They know they are negligent and responsible and yet after a royal commission, the Victorian parliamentary inquiry and all the law changes, they are still behaving like hoodlums,” Ms Foster said.

The church in this case is represented by its long-standing lawyers at Corrs Chambers Westgarth.

A spokesperson for the firm said it would not comment on client matters.

Rightside Legal’s Michael Magazanik, who is representing the plaintiff, said there was no legal justification to request records about the contraceptive choices his client made 30 years ago.

“These sorts of tactics are absurd and oppressive and should be a thing of the past,” Mr Magazanik said.

“You also have to ask, as the archbishop prepares for Christmas, does he approve of what is being done to an admitted abuse survivor?”

Such a subpoena would require the permission of a judge, and Mr Magazanik said he would seek a court order to prevent access to the records.

This case will be before the Victorian Supreme Court next year.

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