



## Summary of Judgment

### *DP (a pseudonym) v Bishop Paul Bernard Bird [2021] VSC 850*

22 December 2021

DP claimed that in 1971, when five years of age, he was assaulted on two occasions by a Catholic priest, Father Bryan Coffey at his parents' home at Port Fairy.

DP sued the Diocese of Ballarat through the current Bishop, Paul Bird, the named defendant. DP alleged that the Diocese was vicariously liable for the actions of Coffey. Additionally, he claimed that it was liable in negligence by reason of the Diocese's (and the relevant Bishop's) failure to exercise reasonable care in its supervision, and control of the conduct of Coffey.

By reason of —

- (a) the close nature of the relationship between the Bishop, the Diocese and the Catholic community in Port Fairy;
- (b) the Diocese's general control over Coffey's role and duties within St Patrick's parish;
- (c) Coffey's pastoral role in the Port Fairy Catholic community; and
- (d) the relationship between DP, his family, Coffey and the Diocese, which was one of intimacy and imported trust in the authority of Christ's representative, personified by Coffey

— the Court held that the Diocese may be held vicariously liable for Coffey's conduct.

It also held that, notwithstanding that Coffey's conduct was unlawful, Coffey's role as a priest under the direction of the Diocese placed him in a position of power and intimacy vis-à-vis DP that enabled him to take advantage of DP when alone — just as he did with other boys. This position significantly increased the risk of harm to DP. Coffey misused and took advantage of his position as a confidante and pastor to DP's family; this enabled him to commit the unlawful assaults upon DP and rendered the Diocese liable for his assaults.

This is believed to be the first occasion upon which an Australian superior court has determined that a diocese is vicariously liable for the unlawful actions of a priest engaged in pastoral duties.

In summary the Court found that:

- (a) Coffey assaulted DP;
- (b) The Diocese is vicariously liable for the assaults;
- (c) DP did not establish that the Diocese was negligent;
- (d) DP's general damages (pain and suffering and loss of enjoyment of life) should be assessed at \$200,000;
- (e) Damages for medical and like expenses (past and future) should be assessed at \$10,000; and
- (f) Aggravated damages should be awarded in the sum of \$20,000.

**NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.**