

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00044

ROBERT DUPUIS,	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT THE
	)	ROMAN CATHOLIC BISHOP OF
v.	)	PORTLAND'S MOTION TO REPORT TO
	)	THE LAW COURT PURSUANT TO
THE ROMAN CATHOLIC BISHOP	)	M.R. APP. P. 24(c)
OF PORTLAND,	)	
	)	
Defendant.	)	

Before the court is the Motion to Report to the Law Court filed by Defendant The Roman Catholic Bishop of Portland ("RCB") pursuant to Maine Rule of Appellate Procedure 24(c). RCB asks the court to report the court's decision denying RCB's Motion for Judgment on the Pleadings filed under Maine Rule of Civil Procedure 12(c).

BACKGROUND

This case is one of thirteen similar cases pending in the Business & Consumer Docket ("BCD"). Counsel represents that there are eight additional cases pending in the Superior Court for a total of twenty-one cases. In each of them, the plaintiff claims that he or she, when a minor, was the victim of sexual acts committed by adults recruited, selected, trained, supervised, and retained by RCB to serve as priests, clergy, lay educators, or in other roles at RCB's parishes in the State of Maine. In each of them, the statute of limitations had expired by 2021. In 2021, the Legislature removed the statute of limitations for "all actions based upon sexual acts toward minors regardless of the date of the sexual act and regardless of whether the statute of limitations on such actions expired prior to" the amended statute's effective date. 14 M.R.S. § 752-C(3) (2022). The court, based on the parties' representations, anticipates that there are many more cases to come.

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as “relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. *Whether the questions might not have to be decided because of other possible dispositions.*

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until "the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence." *Drilling & Blasting Rock*

Specialists, Inc. v. Rheume, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

The plaintiff does not need to anticipate a statute of limitations defense and plead fraudulent concealment. *Angell v. Hallee*, 2012 ME 10, ¶ 10, 36 A.3d 922. If a defendant prevails on a statute of limitations claim, then a plaintiff should amend the complaint if he or she has the basis to assert the fraudulent concealment. *See McAfee v. Cole*, 637 A.2d 463, 466-67 (Me. 1994). The court recognizes that some of the plaintiffs may not be able to assert that claim given the highly individual and factual basis of the “due diligence” part of that analysis. Nevertheless, the court assumes for this analysis that the cases will go forward even if the Law Court decides for RCB. This third factor weighs in favor of the Plaintiff.

As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/2023



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00048

ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
PORTLAND'S MOTION TO REPORT TO
THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

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With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

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such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

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The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00049

)
)
 Plaintiff,)
)
 v.)
)
 THE ROMAN CATHOLIC BISHOP)
 OF PORTLAND,)
)
 Defendant.)
)

ORDER GRANTING DEFENDANT THE ROMAN CATHOLIC BISHOP OF PORTLAND'S MOTION TO REPORT TO THE LAW COURT PURSUANT TO M.R. APP. P. 24(c)

BACKGROUND

This case is one of thirteen similar cases pending in the Business & Consumer Docket (“BCD”). Counsel represents that there are eight additional cases pending in the Superior Court for a total of twenty-one cases. In each of them, the plaintiff claims that he or she, when a minor, was the victim of sexual acts committed by adults recruited, selected, trained, supervised, and retained by RCB to serve as priests, clergy, lay educators, or in other roles at RCB’s parishes in the State of Maine. In each of them, the statute of limitations had expired by 2021. In 2021, the Legislature removed the statute of limitations for “all actions based upon sexual acts toward minors regardless of the date of the sexual act and regardless of whether the statute of limitations on such actions expired prior to” the amended statute’s effective date. 14 M.R.S. § 752-C(3) (2022). The court, based on the parties’ representations, anticipates that there are many more cases to come.

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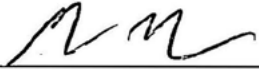
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Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00060

ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
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THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

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Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until "the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence." *Drilling & Blasting Rock*

Specialists, Inc. v. Rheume, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

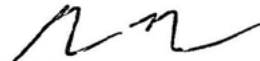
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00061

ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
PORTLAND'S MOTION TO REPORT TO
THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as "relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. *Whether the questions might not have to be decided because of other possible dispositions.*

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until "the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence." *Drilling & Blasting Rock*

Specialists, Inc. v. Rheau, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

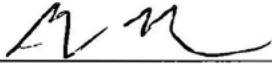
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

~~Entered on the docket: 04/07/2023~~

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00062

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ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
PORTLAND'S MOTION TO REPORT TO
THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

BACKGROUND

This case is one of thirteen similar cases pending in the Business & Consumer Docket (“BCD”). Counsel represents that there are eight additional cases pending in the Superior Court for a total of twenty-one cases. In each of them, the plaintiff claims that he or she, when a minor, was the victim of sexual acts committed by adults recruited, selected, trained, supervised, and retained by RCB to serve as priests, clergy, lay educators, or in other roles at RCB’s parishes in the State of Maine. In each of them, the statute of limitations had expired by 2021. In 2021, the Legislature removed the statute of limitations for “all actions based upon sexual acts toward minors regardless of the date of the sexual act and regardless of whether the statute of limitations on such actions expired prior to” the amended statute’s effective date. 14 M.R.S. § 752-C(3) (2022). The court, based on the parties’ representations, anticipates that there are many more cases to come.

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as "relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. Whether the questions might not have to be decided because of other possible dispositions.

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until “the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence.” *Drilling & Blasting Rock*

Specialists, Inc. v. Rheume, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

The plaintiff does not need to anticipate a statute of limitations defense and plead fraudulent concealment. *Angell v. Hallee*, 2012 ME 10, ¶ 10, 36 A.3d 922. If a defendant prevails on a statute of limitations claim, then a plaintiff should amend the complaint if he or she has the basis to assert the fraudulent concealment. *See McAfee v. Cole*, 637 A.2d 463, 466-67 (Me. 1994). The court recognizes that some of the plaintiffs may not be able to assert that claim given the highly individual and factual basis of the “due diligence” part of that analysis. Nevertheless, the court assumes for this analysis that the cases will go forward even if the Law Court decides for RCB. This third factor weighs in favor of the Plaintiff.

As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

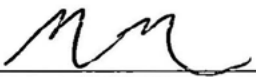
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00063

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ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
PORTLAND'S MOTION TO REPORT TO
THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

V.

M.R. APP. P. 24(c)

Defendant.

BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as "relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

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The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00064

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) ORDER GRANTING DEFENDANT THE
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) ROMAN CATHOLIC BISHOP OF
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) PORTLAND'S MOTION TO REPORT TO
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) THE LAW COURT PURSUANT TO
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BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

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M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as “relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. *Whether the questions might not have to be decided because of other possible dispositions.*

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

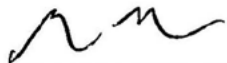
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00065

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RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as "relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. *Whether the questions might not have to be decided because of other possible dispositions.*

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until “the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence.” *Drilling & Blasting Rock*

Specialists, Inc. v. Rheame, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

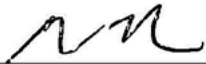
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00066

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BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

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an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

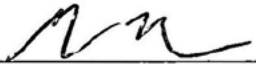
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00067

ORDER GRANTING DEFENDANT THE
ROMAN CATHOLIC BISHOP OF
PORTLAND'S MOTION TO REPORT TO
THE LAW COURT PURSUANT TO
M.R. APP. P. 24(c)

BACKGROUND

1

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

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As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00068

Before the court is the Motion to Report to the Law Court filed by Defendant The Roman Catholic Bishop of Portland (“RCB”) pursuant to Maine Rule of Appellate Procedure 24(c). RCB asks the court to report the court’s decision denying RCB’s Motion to Dismiss filed under Maine Rule of Civil Procedure 12(b)(6).

This case is one of thirteen similar cases pending in the Business & Consumer Docket (“BCD”). Counsel represents that there are eight additional cases pending in the Superior Court for a total of twenty-one cases. In each of them, the plaintiff claims that he or she, when a minor, was the victim of sexual acts committed by adults recruited, selected, trained, supervised, and retained by RCB to serve as priests, clergy, lay educators, or in other roles at RCB’s parishes in the State of Maine. In each of them, the statute of limitations had expired by 2021. In 2021, the Legislature removed the statute of limitations for “all actions based upon sexual acts toward minors regardless of the date of the sexual act and regardless of whether the statute of limitations on such actions expired prior to” the amended statute’s effective date. 14 M.R.S. § 752-C(3) (2022). The court, based on the parties’ representations, anticipates that there are many more cases to come.

RCB filed either a Motion to Dismiss or a Motion for Judgment on the Pleadings in each of the cases pending in the BCD. In its motions, RCB challenged plaintiffs' complaints regarding: (1) whether retroactive application of the removal of the statute of limitations after the plaintiff's claim had already been extinguished by the preexisting statute of limitations divested RCB of vested rights and violates its substantive and procedural due process rights guaranteed by the Maine State Constitution, and (2) whether section 752-C may be applied to institutional or organizational defendants.

DISCUSSION

Maine Rule of Appellate Procedure 24(c) provides:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

M.R. App. P. 24(c). The process should be used sparingly to avoid both piecemeal litigation and requests to the Law Court for advisory opinions. *Littlebrook Airpark Condo. Ass'n v. Sweet Peas, LLC*, 2013 ME 89, ¶ 9, 81 A.3d 348. In order to determine whether the need for an interlocutory appeal overcomes the policy reasons for requiring a final judgment before appeal, the Law Court considers three factors. *Id.* They include: (1) whether the question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation; (2) whether the question might not have to be decided because of other possible dispositions, and (3) whether a decision on the issue would, in at least one alternative, dispose of the action. *Id.* (quotations and citations omitted). The court balances the three factors. Failure to show one of the factors is not fatal to the report. *See id.* ¶¶ 11, 12, 14 (weighing each factor). For example, with respect to the third factor, the Law Court has described it as "relevant to the trial court in assessing whether to report

an issue.” *Id.* ¶13. The court is not required to take that factor into account. *Id.* (citing *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038).

1. *Whether the questions reported are of sufficient importance and doubt to outweigh the policy against piecemeal litigation.*

Here, there is no dispute as to whether the issues are of sufficient importance and doubt. The Legislature’s amendment has opened the door to a multitude of cases that had been foreclosed by the statute of limitations. Both parties have indicated there likely will be more cases filed in the future. A determination of these issues may substantially impact the Superior Court and BCD dockets. They are important to the public as the Legislature’s decision to lift the statute of limitations on cases relating to child victims of sex abuse could affect the rights of numerous victims as well as multiple institutions who may be liable for sexual misconduct towards children by their employees.

With respect to doubt on the statute of limitations issue, there is no Maine decision that was presented to the court whether the Maine State Constitution’s due process clause protects a defendant from the retroactive removal of an expired statute of limitations. Similarly, there is no Law Court decision as to whether section 752-C applies to organizations or institutions that employ an individual who sexually abuses a minor child. One trial court decision addressing the issue suggests that the question is close and that reporting the issue would be appropriate. *Boyden v. Michaud*, Nos. CV-07-276 and -331, 2008 Me. Super. LEXIS 88, at *13 (May 14, 2008). This factor weighs heavily in favor of reporting the issues.

2. *Whether the questions might not have to be decided because of other possible dispositions.*

The second factor to consider is whether the question raised on report “might not have to be decided at all because of other possible dispositions.” *Littlebrook Airpark Condo. Ass’n*, 2013 ME 89, ¶ 9, 81 A.3d 348. If, for example, fact-finding or determination of a preliminary issue

such as the statute of limitations may render the reported question moot, the question may be discharged. *Liberty Ins. Underwriters, Inc. v. Est. of Faulkner*, 2008 ME 149, ¶ 8, 957 A.2d 94 (quotations and citations omitted).

With respect to the issues on report, there is no additional fact-finding necessary. The parties agreed at oral argument on the underlying motion that the issue could be decided on the record. Both issues are purely questions of law. Unless there are defense verdicts in all 21 cases, these issues will need to be confronted at some point. The court finds that this factor weighs in favor of a report.

3. *Whether a decision on the issues would, in at least one alternative, dispose of the case.*

The third factor to consider is whether the Law Court's decision on the issue on report would, in at least one alternative, dispose of the case. *Littlebrook Airpark Condo. Ass'n*, 2013 ME 89, ¶ 9, 81 A.3d 348. Here, the Plaintiff argues that if the Law Court concludes that RCB is correct that either the retroactive application of the statute of limitations violates the Maine State Constitution or that the statute does not apply to institutional defendants, the Plaintiff would still be able to press their claim that RCB fraudulently concealed the cause of action. In that case, the Plaintiff would find some relief from the statute of limitations. Therefore, the Law Court's decision could not dispose of the case.

Under Maine law:

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action.

14 M.R.S. § 859 (2022). The statute prevents the commencement of the limitations period until “the existence of the cause of action or fraud is discovered or should have been discovered by the plaintiff in the exercise of due diligence and ordinary prudence.” *Drilling & Blasting Rock*

Specialists, Inc. v. Rheame, 2016 ME 131, ¶ 19, 147 A.3d 824 (quotations and citations omitted).

The plaintiff does not need to anticipate a statute of limitations defense and plead fraudulent concealment. *Angell v. Hallee*, 2012 ME 10, ¶ 10, 36 A.3d 922. If a defendant prevails on a statute of limitations claim, then a plaintiff should amend the complaint if he or she has the basis to assert the fraudulent concealment. *See McAfee v. Cole*, 637 A.2d 463, 466-67 (Me. 1994). The court recognizes that some of the plaintiffs may not be able to assert that claim given the highly individual and factual basis of the “due diligence” part of that analysis. Nevertheless, the court assumes for this analysis that the cases will go forward even if the Law Court decides for RCB. This third factor weighs in favor of the Plaintiff.

As stated on the record, weighing the factors, the court concludes that the high level of importance of this matter outweighs all other factors. The matter involves two questions of law. The court believes that even though the cases may survive even if the Law Court decides for RCB, the character of the cases will be different and there is a chance that many of the potential cases may not be brought. The court recognizes that Rule 24(c) must be used sparingly. Nevertheless, the wide public impact of section 752-C, as amended, and its effect on a growing number of litigants, makes this case an exception that Rule 24(c) intends to address. Therefore, the court concludes that RCB’s appeal of this court’s decisions on the motions to dismiss and for judgment on the pleadings “ought to be determined by the Law Court before any further pleadings are taken.” M.R. App. P. 24(c). Pursuant to Rule 24(c), the court “reports the case to the Law Court” and asks the Court to decide Defendant’s appeal of this court’s ruling on the motions to dismiss or for judgment on the pleadings before further proceedings are taken.

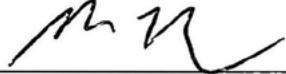
CONCLUSION

Based on the foregoing, the entry will be:

Defendant The Roman Catholic Bishop of Portland's Motion to Report to the Law Court
is GRANTED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference
pursuant to Maine Rule of Civil Procedure 79(a).

Date: 4/6/23



Thomas R. McKeon
Justice, Business & Consumer Docket

Entered on the docket: 04/07/2023

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NOS. BCD-CIV-2022-00069

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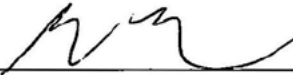
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Thomas R. McKeon
Justice, Business & Consumer Docket

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