The Mechanics of a Personal Injury Lawsuit

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A claim of negligence against a church or ministry can have very serious consequences. There are many possible types of legal claims: torts, breach of contract, employment claims, intellectual property and so forth. Because of the potential high value of the claims, and because it is a common type of lawsuit that can take many forms, this post reviews the tort of negligence resulting in a personal injury, with the church or ministry as a defendant. While individual defendants are usually named, some sort of shared liability with the organization is likely because it has greater financial resources.

For liability to exist, each of several elements must be present. The first element is a duty of care. Religious organizations can expect nowadays that they will have both the duty of care of an employer to an employee and the duty of care of a religious organization to its members, and possibly other duties as well. The second element is breach of duty, or whether the organization was negligent. Did it somehow fail to carry out this duty of care, and was that failure reasonable? This analysis will depend on what a reasonable person would be expected to do, given the specific facts of what happened. The third element is causation; whether the negligence caused an injury. If no injury was caused, or if the injury would have happened anyway without the negligence, then this element isn't met. The last element is that there must be harm, or injury. The recovery sought by the plaintiff is called "damages," which implies that it is a measure of the harm.

A further necessary element, though not a legal element, is a source of cash. Personal injury litigation rarely happens if no one has any money. Therefore, in addition to individual defendants who are alleged to have made bad choices or done wrong things, there will nearly always be an organizational defendant if one is available. Especially dangerous to the organization are scenarios where the damages sought are extremely high and/or there are multiple plaintiffs (or a pool of potential plaintiffs). If the litigation goes badly, and particularly if insurance coverage is inadequate, such litigation can and often does bankrupt an organization.

Tort law has existed as a concept for a long time, but it was in the 20th century that it became the system we know. The change was triggered partly by the industrial revolution, which not only introduced a new set of injuries, but the

concept of corporate defendants.[1] Also, insurance was an important development that gave a way to transfer losses throughout society as a whole rather than leave either the injured person or the tortfeasor (the negligent person or entity) bearing the whole burden.[2] Many people consider the modern tort system to be out of control, and a number of states have enacted statutes for tort reform, but that is a different discussion.

Once an organization faces a lawsuit, defense attorneys will try to show that one of the elements was not met. If the elements are met, the legal arguments will focus on how great—or completely insignificant—the damages are.

Litigation is difficult, unpleasant, emotional, draining, and expensive for both sides. Lawsuits take a long time and can easily cost hundreds of thousands of dollars. The injured person does not feel nurtured in the process and the organization may face very serious consequences if it loses. Alternative dispute resolution approaches such as mediation are not only Scriptural but also practical.

But best of all is to prevent negligence by organizational and legal preparation, training, and member care. Although not cheap, the dual goals of protecting people and the organization are worthwhile. Insurance of the right kind and amount is also important. Prevention and insurance are like vaccines that don't provide complete protection for serious diseases. You may still get sick, but you are much less likely to die.

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[1] D. Ibbetson, "The Tort of Negligence in the Common Law in the Nineteenth and Twentieth Centuries." In *Negligence: The Comparative Legal History of the Law of Torts*, edited by E. Schrage (Berlin: Duncker & Humblot, 2001).
[2] Mark Lunney and Ken Oliphant. *Tort Law: Text and Materials*. (Oxford University Press 2008) (3d ed.), 15, 16.