

MONAHAN + ROWELL

LAWYERS

5 September 2008

By email: jbucci@ccinsurances.com.au
& lhirten@ccinsurances.com.au

Attn: Mr Joe Bucci & Ms Lesley Hirten
Catholic Church Insurances Limited
DX 30577
SOUTH MELBOURNE

Dear Joe/Lesley,

**MARIST COLLEGE CANBERRA – CLAIMS RELATING TO BR KOSTKA CHUTE
EARLIER SETTLEMENT RELATING TO AAI**

Our Ref: **pjm / 070578**Your Ref: **2723013**

1. Thank you for sending me the (very interesting) material relating to the recent settlement concluded by Howard Harrison and Michael Salmon relating to AAI
2. As you have indicated in your email of instruction, the claim involved Br Kostka and related to sexual assaults on AAI which occurred in 1962, when he was a student at St Anne's College, Bondi Beach, New South Wales. Further, the documents reveal that the victim's mother, Mrs REDACTED went to see the Principal of the College (Br Philip Phillips) in 1962 to complain about the sexual assaults against her son. Further, her husband also spoke to a Br Walter Cranney about the matter. There is also information (in Mrs REDAC TED Statement) that other parents at the school had gone to complain to Br Philip.
3. In your email, you raised the question of what the Provincial of the Marist Brothers in 1962 knew of Br Kostka's paedophile activities at the time, given that (to use your words) "*it appears to have become common knowledge at that time amongst some of the staff and students*". You have raised the possibility of "*prior knowledge*" with the Provincial in 1962.
4. The question is clearly relevant to two separate topics –
 - ❖ Indemnity; and
 - ❖ Legal liability in regard to the current batch of claims.
5. In the course of a broader discussion she was having with Br Alexis Turton yesterday, Kirsty Symons asked him who the Provincial was in 1962. It was apparently Br Quentin Duffy, who is deceased. Kirsty did not find out whether the Headmaster (Br Philip Phillips) or Br Walter Cranney are still alive.

In association with Colin Biggers & Paisley - Sydney

070578/legc/481185/1

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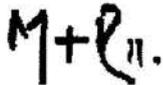
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6. Br Alexis did say to Kirsty that he had learnt around 1994/95 that Br Philip did have a complaint made to him in 1962, but that Br Philip never passed that on to the Provincial.
7. I stress that this information comes from a very brief discussion between Kirsty and Br Alexis.
8. My recommendation is that I should arrange to conduct a formal telephone interview with Br Alexis to find out much more about the circumstances surrounding this issue, and to establish whether Br Philip and Br Walter are still alive, and whether I am able to talk to them about the case.
9. Of course, unless we can show that the information was conveyed to the Provincial of the day, CCI would not ordinarily consider denying indemnity for later claims. So that will be the key enquiry. If Br Quentin is dead, and if Br Philip has said that he never conveyed the information to Br Quentin, it is hard to see how we can advance our enquiries in a way which might call indemnity into question.
10. As to legal liability in regard to our current batch of claims arising from Marist College Pearce in the late 1970's/1980's, this new information (never previously mentioned to us by Howard Harrison or Br Alexis) is obviously a further cause for concern. Of course, that concern will only manifest itself in a practical way if Jason Parkinson becomes aware of this information. In that regard, I do note from the papers you have sent me, that the **REDACTED** family seem to have followed the recent publicity, and to be aware of the current batch of litigated claims. We therefore obviously cannot exclude the possibility that they will decide at some point to communicate their information to Jason Parkinson, given his media profile.
11. Of further concern in this regard is that the papers refer to a number of other victims of Br Kostka at St Anne's College in Bondi Beach in the very early 1960's. Another obvious possibility is that further such claims will emerge, given the publicity surrounding Br Kostka and his recent criminal trial.
12. That possibility is exacerbated by the fact that, it would appear, a number of parents at the school complained to Br Philip in 1962. If those parents are still alive and following the latest developments, they would not doubt be particularly angry and distressed that Br Kostka was allowed to remain in a teaching position within the Marist Community, and re-offended so prolifically. One could not be entirely surprised in this situation if they (or their sons) came forward with claims, or chose to provide helpful information to Jason Parkinson(!!!).
13. On a more positive note, I do note the following concerning the **REDACTED** matter:-
 - ❖ The Statements written by both **AAI** and his mother **AAI** are framed in quite reasonable terms.
 - ❖ **REDACTED** is still clearly a very religious person.
 - ❖ Both of them have been prepared in the past, and even at the time of their Statements, to forgive Br Kostka.
 - ❖ The stated expectations of **AAI** (in his TH Statement of Complaint) were modest and included "*some financial help of approximately \$15,000 which will help me in my future plans*".
 - ❖ The settlement amount of \$20,000 exceeds that sum.

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- ❖ It is therefore quite realistic to hope that AAI has in fact been happy with the Towards Healing process, the speed with which his claim was handled, and the outcome.
 - ❖ These factors could militate against him "*stirring things up*" any further.
 - ❖ His mother is now quite an elderly lady, well into her 80's, and has presented her suggestions to the Church in very moderate terms.
14. In summary, then, my expectation is that our enquiries will not call indemnity into question, but that this new information is certainly not helpful in regard to legal liability, or in regard to possible further adverse publicity, particularly if it comes into the hands of Jason Parkinson (which is a possibility one certainly could not exclude).
15. As mentioned earlier, my recommendation is that I should conduct a telephone interview with Br Alexis Turton and that we should consider the matter further after we have both reviewed the transcript of that interview. If you agree, could you please let Liz know, and she will arrange the interview.

Yours sincerely,



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