

MARIST BROS & ORS**ATS**

AAE

1. I am asked to advise as to quantum in this matter.
2. I am briefed with copies of the pleadings, reports from Dr Klug dated 10 March 2008 (qualified by the plaintiff¹) and Dr W Roberts dated 20 August 2008 and 4 December 2008 (qualified by the defendants). I am also provided with copies of the plaintiff's school records from Marist College for the years 1982-1988 inclusive, a statement made by the plaintiff to police and the prosecution statement of facts for the charges which were pressed against Brother Kostka.
3. I note that the defendants contest liability and, should the matter proceed to hearing, will also rely upon the defence available under the Limitation Act 1985. In the meantime I gather that my instructor will be attempting to negotiate a resolution of the claim. I am asked to make

the best estimate of the range of damages which the plaintiff might recover having regard to the evidence as briefed, assuming that he was to succeed in his claim.

4. The plaintiff claims that he was subjected to a pattern of regular genital manipulation by Brother Kostka from Year 7 to Year 10 (1985 to 1988). Indeed, he claims this would occur virtually on a daily basis. Clearly the plaintiff's recall of dates is not entirely accurate, as Dr Roberts points out. Brother Kostka appears to have been overseas for a year from mid-1987 to mid-1988. Nevertheless, notwithstanding some other minor discrepancies in history highlighted by Dr Roberts in her second report on the basis of the evidence as it stands it seems likely that the court will accept the broad thrust of the plaintiff's account.
5. Dr Klug concluded on the basis of this history and his examination of the plaintiff that the abuse had caused him to suffer:

Axis I - Clinical Psychiatric Diagnoses

- 1) *Dysthymic disorder.*
- 2) *Sexual disorder not otherwise specified (NOS).*
- 3) *Severe Cannabis dependence (in remission).*
- 4) *Recent alcohol abuse (since disclosure).*

Axis II - Personality dysfunction or personality disorder

- 1) *Non-specific dysfunctional personality traits and possibly a non-specific personality disorder.*

Axis III - General Medical Conditions

Nil.

He went on to say:

(The plaintiff) has suffered from significant depressive symptoms in the form of a dysthymic disorder. The essential feature of the dysthymic disorder is a chronically depressed mood that occurs in most of the day, more days than not, for at least two years. Four (the plaintiff) this was associated with a general sense that "... things weren't right", a lack of self-confidence and difficulty in making decisions and setting goals in his life.

In association with this he has experienced long-standing confusion about his sexuality...

it also needs to be considered that the combination of the effects of childhood sexual abuse and integrated with his personality development during adolescence and given rise to a personality dysfunction or a personality disorder. He appears to lack assertiveness and an ability to experience certain emotions, has difficulties with

intimacy and difficulty expressing anger. He remains ambivalent about the nature of his relationship with Kostka. He believes, in retrospect, that his life would have taken a better and more constructive part if not for his experiences of childhood sexual abuse at Marist College, Canberra.

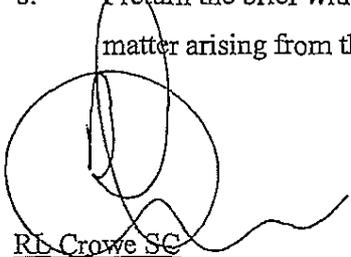
(The plaintiff) would be wise to seek comprehensive psychiatric treatment over the medium to long term. With appropriate bio/psycho/social interventions his psychiatric problems are likely to substantially ameliorate. Clearly, the effect of his psychiatric problems has had a significant effect on working capacity, both now and prospectively. He appears to be functioning at a sub-optimal level and has probably under-achieved. His ability to lead a normal life has been significantly impaired by his psychiatric problems...

6. Dr Roberts thought that rather than suffering from a dysthymic disorder the plaintiff was probably suffering from an adjustment disorder (unspecified). She accepted that he had also suffered from alcohol/drug abuse, but thought that this was in substantial remission. On the basis of the history she accepted that his problems were to a significant extent probably related to the alleged abuse. She recommended that he have 25 sessions of psychological/psychiatric treatment, but had doubts that he would avail himself of this. In her subsequent report she reviewed the documentary evidence including the plaintiff's school records and the letters from Brother Kostka. As noted above she identified a number of discrepancies. In particular she did not think that the school reports supported the hypothesis that the abuse had caused a significant reduction in the plaintiff's academic performance. She suspected that his problems might well have been contributed to by other life events, however, Dr Roberts does not appear to have altered the basic conclusions which she expressed in her initial report.
7. As discussed with my instructor, it is not possible to provide other than a reasonably "broad brush" assessment of recoverable damages. That assessment is made more difficult because there is not a directly comparable case, so far as I am aware, decided by the ACT Supreme Court.² Nevertheless, should the plaintiff succeed in recovering a judgement against the defendant in the absence of evidence with which to seriously challenge his case on causation I would expect him to recover damages within the following ranges:

Heads of Damage	Low	High
General Damages	\$80,000	\$120,000
Interest on Past GDs	\$19,200	\$38,400

Out of Pocket Expenses			
	Past	??	??
	Future	\$3,000	\$6,000
Loss of Earning Capacity			
	Past)	\$75,000	\$150,000
	Interest)		
	Future)		
Loss of Superannuation			
	Past)	\$4,500	\$9,000
	Interest)		
	Future)		
Totals		\$181,700	\$323,400

8. I return the brief with this advice and my fee note. Should my instructor wish to discuss any matter arising from the above she should not hesitate to contact me.


RL Crowe SC

Blackburn Chambers

5 February 2009

¹ I am also briefed with the qualifying letter from the plaintiff's solicitor which attaches a number of self-serving newspaper articles and also copies of letters from Brother Kostka to the plaintiff in 1987/8.

² In *AM v KW* [2005] NSWSC 876 Harrison J awarded a 23 year old man who had been the subject of sexual assaults by a baby sitter between the ages of 6 and 10 \$210,000 for general damages. NSW awards have traditionally been somewhat higher than those in the ACT. There is a risk that the plaintiffs might argue for some parity, given that the courts are applying the common law of Australia. However, I am not aware of any authority mandating such an approach.