

22 June 2009

By email: mwright@ccinsurances.com.au

Attn: Ms Marita Wright
Catholic Church Insurances Ltd
DX 30577
MELBOURNE VIC

Dear Marita,

MARIST CANBERRA – CCI – INDEMNITY ISSUES
Our Ref: pjm/070578

EXECUTIVE SUMMARY OF M + R REPORT 22 JUNE 2009

1. The M+R report analyses the Policy wording and the law and the evidence concerning the "prior knowledge" issue relevant to the batch of claims in Canberra concerning Br Kostka Chute handled by Jason Parkinson of Porters Lawyers.
2. To constitute an "accident" under the CCI Policy, and therefore qualify for indemnity, the sexual abuse must be both "unintended and unexpected", from the perspective of the Marist Brothers.
3. This will not be the case if any prior Provincial of the Marist Brothers had sufficient relevant knowledge that Br Kostka Chute was behaving in a sexually inappropriate way with young boys, and failed to act decisively to address the risk of that occurring again.
4. We do have significant evidence to this effect from Br Kostka Chute concerning three prior Provincials –
 - ★ 1959/1960 – Br Quentin Duffy.
 - ★ 1967 – Br Othmar Weldon.
 - ★ 1972/76 – Br Charles Howard
5. The evidence is from Br Kostka Chute himself, based upon an interview we had with him in prison. The interview is not transcribed and Br Kostka Chute would not sign a written statement.
6. There is no significant corroboration available.
7. Br Kostka Chute would be challenged in a Court of law as an unreliable witness – a convicted paedophile serving a period of incarceration who is aged 77 and who had evidence led on his behalf at his criminal trial that he is of diminished mental capacity, and accordingly that his recollection of events going back up to 47 years is neither reliable nor credible.

In association with Colin Biggers & Paisley - Sydney

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8. We also have some evidence of "prior knowledge" from Br Terry Heinrich, but this has its own limitations and relates only to claims after 1986, which is quite late in the chronology.
9. We would have major concerns about relying on the evidence of Br Kostka Chute to prove "prior knowledge" of the relevant Provincials.
10. We would regard our prospects of success in that regard in a Court of law or a private arbitration as a lot less than 50/50.
11. The Marist Brothers have proposed that the indemnity issue be resolved between the Marist Brothers and CCI on a 50/50 basis.
12. They have put forward legal and factual arguments to support that proposal.
13. Based upon the analysis in the M+R report, M+R recommends that CCI should accept this proposal, and M+R are motivated strongly in that regard by the forensic difficulties of proof which would be faced if CCI denied indemnity and was challenged to prove it's case in a Court of law or an arbitration.
14. CCI should also consider how it wishes to deal with the costs. The Marist Brothers have proposed that CCI should meet all of the past and future costs of M+R, and that they will meet all of the past and future costs of Carroll & O'Dea, who have been extensively involved in the matter.

Yours faithfully,

M+R.

Patrick Monahan
(Senior Partner)
MONAHAN + ROWELL

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