

CORRS
CHAMBERS
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ARCHDIOCESE OF MELBOURNE
FOSTER LITIGATION
POSITION PAPER

- 1 The amended statements of claim fail to disclose a cause of action against, at least, Archbishop Hart and probably the RCTC and we will proceed with a strike out and summary judgment application if the matters do not settle.
- 2 On the facts, the claims against all defendants will fail. The claims will fail because:
- (a) O'Donnell was PP at Oakleigh until his resignation in May 1992;
- (b) Prior to the time of his resignation, there were no complaints about O'Donnell's conduct brought to the attention of any of the defendants;
- (c) In the absence of prior knowledge on the part of the defendants, there was no breach of duty by them.
- 3 Limitations issues re claims by Anthony and Christine.
- 4 The amended statement of claim alleges as the first particular of knowledge the so called "general complaints" (13(b)(i)). This is not a proper particular of knowledge.
- 5 Three specific particulars of knowledge are alleged:
- (a) The "1958 complaints" by REDACT to Moran – even accepting that this complaint was made, knowledge of it died with Moran. Archbishop Little was not aware of it and nor were the other defendants.
- (b) The "St Francis complaints" – we have no knowledge of this. We do not know who the priest to whom the complaint was allegedly made was but in any event, the defendants have no knowledge of it. *Mr Dosecca presb*
- (c) The "Salvano complaints" – *this complaint was not made in early 1992 but later, after O'Donnell had retired, and accordingly could not have prevented abuse of the plaintiffs – TO BE CONFIRMED.*
- 6 Further, it is alleged against the 6th defendant (Fr Guelen) that in 1958 he observed O'Donnell abusing a boy. Fr Guelen denies this.
- 7 For the reasons set out above, the claims against the defendants will fail.
- 8 Nevertheless, consistent with the principles announced in 1996, the Archdiocese is willing to consider a resolution along the following lines:
- Emma has been found by the Commissioner to be a victim. The compensation panel offered her \$50,000 (the then maximum) which she accepted but the acceptance did not proceed. This offer remains on the table. The panel's maximum is now \$55,000. ? increase offer to this.



- Katherine – a complaint has been made to the Commissioner but he has not made a finding and she has not been to the panel. ? offer her an amount up to \$55,000.
- Emma, Anthony and Christine – “secondary victims”. ? offer an amount of up to \$55,000 but less than the offers to Katherine and Emma. The Commissioner has accepted “secondary victims” in the following limited contexts:
 - Two children fathered by priests;
 - A mother who was told by her child contemporaneously of the abuse, who complained to another priest and was fobbed off.
- ? legal fees could be paid on top of the above.
- In considering the above offer, note that counselling and treatment costs of approximately [TED TO ADVISE] have already been paid by the Archdiocese.
- Regarding future counselling and treatment, a settlement could:
 - Exclude these from the release; ie they would continued to be paid via Carelink and would be unlimited; or
 - Calculate a NPV and pay this as part of the settlement on the basis that comprehensive releases are provided.

Richard Leder

22 June 2005.