

MEMORANDUM**RE ROMAN CATHOLIC ARCHDIOCESE OF MELBOURNE**

Further to matters discussed at our recent conference, I summarise my preliminary views in relation to how the Tribunal might operate and other matters associated therewith. I emphasise that they are my tentative views own and obviously, they will have to be discussed further with my instructing solicitors and the Tribunal. Some of the matters raised may require discussion with the Commissioner. I thought it may be helpful to set out my preliminary views so that they may form a basis for further discussion.

- (a) From an administrative point of view, I assume that the Tribunal will have access to administrative staff to the extent where someone will, in the first instance, receive applications, queries and other correspondence and material associated with the functions of the Tribunal and process them in the usual way. I anticipate that this person may form part of the administrative staff that will be supporting the work of the Commissioner.

- (b) So far as the workings of the Tribunal are concerned, the most efficient manner of processing the applications that are to come before it, is through a person who performs functions similar to those of a Registrar and counsel assisting. Consequently, such a person should be legally qualified and have advocacy and administration experience. That person should also be able to apply common sense to the situation at hand. We have discussed the name

and qualification of the person whom I favour for appointment and I enclose that person's C.V. on a confidential basis.

- (c) As to membership of the Tribunal, I confirm my view that it would be sensible to appoint to it a lawyer with some experience in assessment of compensation in the personal injury and workers' compensation fields. I do not think that person has to have great seniority, but some experience would be necessary. I have made some enquiries and suggest that this matter be discussed at a mutually convenient time.
- (d) I have thought again as to the general approach the Tribunal may take in dealing with assessments and remain of the view that its approach should not be one whereby it seeks to compensate the applicant for economic loss, pain and suffering as may be done in the workers' compensation or personal injury contexts. Rather, the Tribunal may see its role as doing no more than deciding the appropriate amount that should be paid to the applicant by way of ex gratia payment in recognition of the physical, mental and spiritual sufferings experienced as a result of the relevant wrongful conduct.
- (e) For reasons which I gave during our conference, I feel that from a legal point of view, the Tribunal will be doing no more than making recommendations to the Church as to the appropriate amounts that should be paid to the applicants. Legally, it will probably be better for the Church to retain the right to make the ultimate decision as to the amount which should be paid, although for obvious reasons, it will probably commit itself publicly to paying the amount

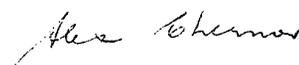
that is recommended by the Tribunal. It may obviate a lot of potential legal difficulties if the matter is handled in this way rather than the Tribunal awarding an amount to an applicant. Matters such as need for appropriate releases, etc., virtually dictate that the Tribunal's function should be one of recommending the appropriate amount to the Church.

- (f) The Tribunal will only assess the application once it has been established that the relevant wrongful act has been committed. For obvious reasons, it should not be the function of the Tribunal to investigate for itself the facts and circumstances surrounding the claim in order to determine whether a wrongdoing had occurred. It would be sensible if the Tribunal could accept what has been found in that regard by the Commissioner. I assume that it will be possible to achieve a situation where the Commissioner's relevant findings will be made available to the Tribunal although this matter is not all clear, bearing in mind particularly the terms of the Commissioner's appointment. It will probably be necessary to discuss this issue with him. But assuming the Tribunal will receive the Commissioner's relevant findings, it will be necessary for the Tribunal to inform the applicant of them and to make it known that it will be proceeding on that basis. If the applicant disagrees with the Commissioner's findings and wishes, for example, to point to other alleged wrongdoings that should be included in the Commissioner's findings, the applicant should approach the Commissioner to seek to persuade him to make an appropriate change to his determination. If the Commissioner declines to do so, the Tribunal will act on the Commissioner's original findings.

- (g) An appropriate confidentiality agreement should be signed as between the applicant and the Tribunal. I envisage that a document along the lines that is normally signed at mediations will be appropriate. I also anticipate that there will be a relevant agreement signed as between the Church and the applicant.
- (h) If the applicant proposes to submit, say, medical reports in support of the application, the Registrar may, in consultation with the Tribunal, decide that the applicant should be examined by a medical practitioner nominated by the Tribunal. In the normal course of events, it would be counter-productive to permit cross-examination on such medical reports and my tentative view is that this should not be allowed. It will probably be necessary, however, to give the applicant the opportunity to be heard on the question of the effect of the wrongdoing on the applicant. It may be appropriate for such evidence to be tested by the Registrar. Also, where the applicant is legally represented, it may be desirable to require the legal adviser to prepare for presentation to the Tribunal in advance of any hearing, a written statement of what the applicant will say and an outline of the submissions that will be made on the applicant's behalf. As to the timing, it should be possible for the Tribunal to make its assessment at the conclusion of such hearing or shortly thereafter.
- (i) I also confirm that if practicable, the Tribunal should have access for purposes of meetings, hearings, etc. to appropriate accommodation in the inner city area, rather than by way of office environment in a city centre.

At the moment, it is probably impossible to estimate how many applicants will make claims, what amounts will be sought or when the Commissioner is likely to make relevant findings. Until such findings are made, it will probably not be possible for the Tribunal to advance with its work. Consequently, some time may lapse before the Tribunal meaningfully deals with an application. Nevertheless, it is important to finalise as early as practicable, the composition of the Tribunal and the appointment of the Registrar. Once that has been done, the Tribunal can proceed to formulate informal rules relating to its proposed workings with a view to making them ultimately known to the applicants.

When my instructing solicitors have had the opportunity of reading this memorandum, would they contact me with a view to making a mutually convenient time to discuss matters flowing from it.



ALEX CHERNOV

Owen Dixon Chambers West

7 November, 1996