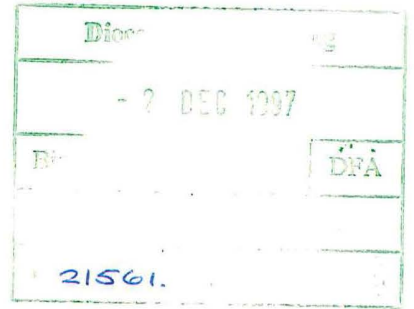


**MAKINSON & d'APICE**

SOLICITORS AND NOTARIES



28 November 1997

Partner: Bill d'Apice

Mr Tony Abela & Sister Elizabeth Delaney  
 Diocese of Wollongong  
 PO Box 1239  
 WOLLONGONG SCMC NSW 2521

Dear Sister Elizabeth &amp; Mr Abela,

RE: **FATHER JOHN NESTOR**

I refer to discussion in our office on 24 November 1997 and note that you seek our advice in relation to the request by Father John Nestor for assistance with the expenses incurred by him in defending accusations in respect of which he was acquitted.

Whilst I am not aware of the detail of the allegations, I am aware that these allegations related to alleged sexual abuse by Father John Nestor.

I note that the Australian Catholic Bishops' Conference and the Australian Conference of Leaders of Religious Institutes have established procedures for dealing with matters of sexual abuse in their document known as "Towards Healing". We note that in the introduction it states that:

"This document binds us *ad interim*, that is, we bind ourselves to follow the provisions of this document until a further development of it takes place".

We note that no further development has yet occurred and no subsequent document has been published by either of these bodies touching on this aspect of sexual abuse.

Whilst it does not have the force of law, it is our view that the Diocese should consider itself bound by its provisions.

Section 6.5 of Part 2 of "Towards Healing" provides:

"6.5 The accused has the right to obtain independent legal advice.

RICHARD JW d'APICE, A.M. • WILLIAM R d'APICE • ALEXANDER KOHN • ANTHONY F McDONALD • STEWART J ROBERTS  
 CONSULTANTS • JOHN WC d'APICE • HUGH DO d'APICE • GORDON L BEARD  
 SENIOR ASSOCIATES • NANCY A BRAMLEY-MOORE • JOHN R BAXTER

- 6.5.1 This advice shall be at the accused's expense. It is not appropriate that a Church authority should indemnify a person for legal expenses relating to alleged criminal behaviour or professional misconduct.
- 6.5.2 An exception to the above rule may be necessary in the case of a member of a religious institute who has taken a vow of poverty".

Technically, when one indemnifies another one promises in advance to hold someone harmless against loss as a result of entering into some transaction with a third party or involving oneself in a particular process. Whilst the request from Father John Nestor may not amount to a request to "indemnify" in a strict legal sense, I believe that the intent of the document extends to a request for assistance and reimbursement of those expenses.

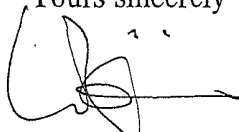
I note that Father John Nestor is not a member of a religious institute who has taken a vow of poverty.

Therefore, we believe that the Diocese should adhere to the principles in "Towards Healing" and should indicate to Father John Nestor that it is unable to assist him with the expenses incurred in defending these matters under principles laid down in the "Towards Healing" document.

Should you have any questions in connection with this matter or should we be able to assist in drafting a response to Father John Nestor, please do not hesitate to contact me.

With best wishes,

Yours sincerely



**Bill d'Apice**