

MARIST BROTHERS & ACN
Matter No. 070991

TELEPHONE CONFERENCE BETWEEN CCI AND MARIST BROTHERS
at 9.30 am - 27 Wednesday 2008

ACTION LIST/DECISIONS TAKEN

1. We have authority for DLA Phillips Fox to accept service of all current and future Writs concerning Marist Brothers Pearce relating to Br Kostka Chute. KIRSTY will inform Phillips Fox.
2. HOWARD and BR ALEXIS confirm that the Marist Brothers have been correctly cited in the Statement of Claim, and that the allegation in paragraph 1(a) is correct.
3. We provisionally agreed that we should "*not admit*" the allegations in paragraphs 1(b), (c) and (d) of the Statement of Claim, and leave it open for us to raise the Ellis point, either in negotiation or at the trial. Note, however, that we will keep an open mind on that contentious point and discuss it further as matters progress, mindful of the possibility of adverse publicity if the point is taken and pursued.
4. HOWARD confirmed that there is no other relevant Marist Brothers entity or corporate body which could be cited.
5. We will now arrange our own psych examinations and reports, using Dr Saboisky in Canberra. KIRSTY will write to Porters Lawyers asking when their clients will be available for examination, and will then make the arrangements and instruct Dr Saboisky, and copy JOE in on the letter of instructions.
6. Ian Whitehead will be instructed to conduct a completely comprehensive investigation into all relevant facts, documents and issues, and in particular the relevant knowledge held by all the named teachers, Headmasters and Provincials of the Marist Brothers at relevant times. Since our teleconference, PATRICK has telephoned Ian Whitehead and formally engaged him. KIRSTY will send him a formal letter of engagement, and follow that up with a detailed letter sending him documents and information which we at M+R have to hand.
7. HOWARD had already arranged to meet Ian Whitehead at his office this afternoon, and will fully brief and "*background*" Ian Whitehead (who has in any event been working on the matter since December on the instructions of the Marist Brothers). Ian will therefore "*hit the ground running*" and understands the urgency.

- 2 -

8. HOWARD/BR ALEXIS will prepare a preliminary Briefing Paper for CCI/JOE and PATRICK, commenting as far as they can on the allegations in the Statement of Claim.
9. KIRSTY is presently trying to identify from other documents and records held by M+R who the various children/student/parents/teachers are who are referred to in the Statement of Claim. KIRSTY will circulate a note to all of us, once she has completed that task.
10. PATRICK has already written to Porters Lawyers asking them to identify all of these people and give us greater detail of the allegations made, so that we can investigate them. KIRSTY will let everyone know if we receive a constructive response from Porters Lawyers.
11. Ian Whitehead will be specifically focused on the need to give us absolutely definitive instructions on discovery. PATRICK has already explained the importance of this task to Ian, who must locate every relevant document held either at the school or by the Marist Brothers themselves (including Minutes and Papers for Provincial Council meetings or meeting of any other relevant Marist body) relating to the issues in all of these cases, so that an appropriate Affidavit can in due course be sworn relating to discovery.
12. We agreed to engage Junior Counsel to settle the Defences in these matters, and to assist us generally throughout the litigation. Please note that, after our telephone conference, JOE and PATRICK have agreed that we will be engaging Patrick Flynn of the Sydney Bar, who acted as the Junior to Mr McHugh SC in the hotly contested Ellis case, and who therefore has comprehensive knowledge and understanding of all of the issues relevant to limitations and the "*Ellis*" considerations.
13. KIRSTY will today send a letter of engagement to Patrick Flynn and telephone him to give him a backgrounding, and we will send him a more detailed brief shortly.
14. We all agreed that our ultimate strategy was to bring all these Br Kostka matters to early Mediations along Towards Healing lines, or to a similar structured settlement meeting. However, we also agreed that, before we could even start thinking about Mediation/settlement, we need to fully investigate the allegations now made, to put us in a position to respond to them.
15. BR ALEXIS will be responsible for management of the media, with the assistance of his PR advisor, Mike Watson. JOE and PATRICK offered background support.
16. BR ALEXIS will find out full details about –

- 3 -

- ❖ All the allegations against Br Kostka in the criminal proceedings.
 - ❖ Whether there was any plea bargaining deal struck.
 - ❖ To exactly what charges Br Kostka pleaded guilty.
 - ❖ What happened to the remaining charges (noting that we are aware that some of them fell by the wayside because of the *ACT Limitations Act*).
 - ❖ Whether Br Kostka denies or challenges any of the allegations of any of the complainants.
17. BR ALEXIS will in particular arrange for Br Kostka to send a letter/email to Greg Walsh, authorising Greg Walsh to provide us with any documents or information which we require, so as to avoid unnecessary delays if we need to contact Greg Walsh ourselves.
18. KIRSTY has kept a note of the instructions we were given by BR ALEXIS concerning all of the relevant Headmasters of Marist College Pearce from 1970 until 1993 (when Br Kostka was removed from the school in September 1993), and of all of the Marist Brothers Provincials from 1964 to 1995. All of those Headmasters and Provincials will need to be interviewed by Ian, apart from those who are either deceased or medically unfit to assist. Br Joe McMahon and Br Terry Heinrich will be crucial witnesses, as the Headmasters at the school from 1976 until 1989. We all noted that it is a great pity, and of great concern, that two of the Provincials at key times are not available to assist in any meaningful way. Br Keiran Geaney (Provincial 1976 to 1982) has had a stroke and has difficulty with communication. Br Allman Dwyer (Provincial 1983 to 1989) is deceased. Accordingly, we will have a significant gap in our information/instructions at a crucial time.
19. Note that we have identified from Press reports that the teacher referred to in paragraph 2(b)(vii) is Mr John Doyle and the Principal referred to in paragraph 2(b)(viii) is Br Terry Heinrich.
20. BR ALEXIS informed us that the sentencing hearing relating to Br Kostka will proceed on 13 March. BR ALEXIS will let everyone know the outcome.
21. PATRICK expressed his concern about our ability to deal effectively with the 1979 allegation made in paragraph 2(b)(iii) because the Principal referred to is Br Joe McMahon (who has been less than co-operative in the past) and the Provincial at the time was Br

- 4 -

Keiran Geaney (stroke/communication difficulty). This could leave us exposed in regard to legal liability for all abuse perpetrated after the date of that meeting "*in or about 1979*".

22. PATRICK and KIRSTY will "*get on with managing the litigation*" and keep everyone informed.
23. We will all wait with interest for the report of Ian Whitehead, after he has completed his investigations.

P J Monahan
27 February 2008