

Meeting with Lawyers June 19

Present: Howard Harrison, Michael Windsor, Patrick Monaghan, Joe Bucci, Alexis, Graham, Jeff

Technical Clarification: Trustees

Registered as a statutory entity under 1942 act: able to control land

In 1986, amendment passed in NSW parliament to allow such bodies to employ people etc.

Important for us now to see if the Trustees issue group certificates for teachers, have their name on invoices for fees, authorise school bank accounts: i.e. did we in fact take up the possibilities offered by this amendment.

Michael Windsor: the barrister CCI engaged to present its argument in Canberra, operating with John McConicky QC, as chief counsel.

- Basic instructions: to pursue an aggressive brief
- Hence move to strike out certain claims (inadequacy of presentation)
- Got the better of the argument in court: plaintiffs required to replead claims
- New document almost as deficient: will notify plaintiffs of difficulties beforehand
- Next hearing: July 1: further argument re pleading + argument about order for discovery of documents
- (this is a time-consuming and costly process)

Plaintiff legal team believe that the Marist Brothers will not pursue a vigorous defence (i.e. call on statutes of limitations and 'duty of care' argument – *Ellis-Pell judgement*)

They may accept mediation when our defence is clear (i.e. they can see the colour of our money!)

We can expect media pressure to 'soften' our position. There will be disillusionment among some of our supporters that we are 'hiding' behind a legal firewall.

But: in strictly legal terms, it is not clear who the plaintiff should be suing. By law, the Trustees, at least until 1986, are not the right entity. **This is their difficulty, not ours.**

They will use publicity against us. They may try to join former Principals into the action as co-defendants; they may sue the Provincial.

At the moment we are obliged to respond to a series of “interrogatories” – they all sound innocent enough but they are intended to define who/ what entity was/is legally responsible for Marist College. We are using our Constitutions, Trustee documents, land titles to answer the questions. Some of them will be answered “not known”!

Michael Windsor believes that ‘they’ will cross-examine someone regarding the answers. Who would be our ‘best’ performer? Brian Sweeney, Anthony Robinson?

Precedents: the Christian Brothers managed to reach a settlement in the class action against them (290 complainants) in the early 90s for \$5m. The ‘ultimate’ question of ‘responsibility’ was not determined as the matter was mediated in the end.

If we accept legal responsibility, we will be subject to exemplary damages of a high order. CCI will drop its cover of us and we will have to meet all expenses. The fact is that as things stand the Trustees do not have such legal responsibility (‘duty of care’). If we accept legal responsibility, we would be compromising not only ourselves in this case but all future claims against ourselves or other church bodies.

At the end of the legal discussion, we spoke briefly about communication and how to restore goodwill / trust within the Marist College community:

HH offered some rewording of the message for the Marist College community that tries to communicate our position without parsing the phrase “duty of care”. The overall message is one of invitation for the plaintiffs to seek mediation soon and save the legal fees and exposure (each case would have to be argued in court).

At some stage, someone (Jeff?) will have to make himself available in Canberra to answer questions?

We will

Jeff