

## SOLICITORS AND NOTARIES



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COPY

DRAFT - FOR DISCUSSION PURPOSES ONLY

Cranston McEachern  
Lawyers & Attorneys  
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BRISBANE

DRAFT

Dear Colleagues

Re: The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane -  
ats- Joan Isaacs

Further to our letter of 27 October 1999, we are able to confirm that the massive cash common law claim advanced on behalf of your client will not be paid by the Church or any of its other agencies on an ex gratia basis.

Our client respects the right of your client to institute common law Court proceedings should she wish to do so. For the reasons previously indicated, we do not consider that our client is liable for the criminal and wrongful conduct of others and any Court proceedings instigated will be defended.

Our client has confirmed that the facilities and ongoing support available under the *Towards Healing* program will be made available to your client in accordance with the principles and procedures established under that protocol and as explained in our letter to you of 27 October 1999.

Our Mr Moore has had a number of discussions with you over the common law claim that you have submitted and we have engaged in much lively discussion over the matter. Mr Deed sees the events that occurred more than 30 years ago as the present day responsibility of the Catholic Church. For our part, we see the Church as being unable to arbitrarily alienate funds entrusted to the Church for other purposes to meet claims arising more than 30 years ago for which it is not civilly liable. This would comprise bequest monies, trust monies and parishioners funding. **[\*\*Not sure if we should put this sentence in\*\*]** As we have indicated to Mr Deed, we find these cases extremely difficult. The Church has established *Towards Healing* which provides facilities for help and ongoing counselling. Your position is that the Catholic Church, as an institution, is financially responsible for the conduct of Church personnel who have acted totally outside the scope of their

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authority and in total breach of the duties entrusted to them and in complete contradiction to the teachings of the Church. It is on this issue of civil compensation, that we respectfully differ. The media, of course, does not make a distinction so far as individual wrongful conduct is concerned. The media and many "no win/no pay" lawyers generalise that such conduct is in fact conduct of the "Church". From a civil liability point of view, that is obviously incorrect.

In our present society, "human beings" (whether they assume duties as Priests, doctors, nurses, social workers, solicitors, teachers, judicial officers, cricket umpires from Tasmania or clerical workers from anywhere in the world) who pursue their own wrongful agenda must face the criminal and civil consequences of their actions personally. For their crime, they can be prosecuted, even a very long time after the event has occurred and even in circumstances where the guilty parties have rehabilitated and re-established themselves in society with an otherwise unblemished record. As the sentencing Judge in Derriman's case commented:-

*"There is much truth in Lord Chancellor Bacon's aphorism, 'Swift Justice is Best'. Retribution in this case, though slow, was sure; the proverbial chickens have come home to roost". [over 30 years in Derriman's case]*

One sees many cases where individuals act wrongly and abuse trust to perpetrate their wrongful conduct. We emphasise that it is "human beings" rather than the category of "Priests", "Judges", "doctors", "parents" or "cricket umpires" or whoever. No matter what position in life they occupy, they are personally responsible for their wrongful actions.

In the case of Derriman, you suggest that some Church officers had prior notice. The material on which you rely does not, in our view, establish that at all, quite aside from the unfair oppressiveness and prejudice that is brought about by an inability to investigate such assertions some 30 years later because the people referred to have since passed away. Prejudice of this kind is a ground in itself for there to be a permanent stay of such civil litigation. This complicates legal consideration of these matters even further.

You will appreciate that in a general sense, we have found this matter incredibly difficult. We are quite confident as to the legal position, but even the "moral" position leads us to the conclusion that not only is your client a "victim", so too is the Church, its Priests and Church members. All of the tremendously good social welfare and religious objectives sought to be achieved as part of the mission of the Church suffer as a consequence of offenders' serious and unacceptable conduct which has given rise to enormous public "back lash". The offenders have caused serious harm to a great many people as a result of their disgraceful and criminal actions. One of the big problems we see from an analysis of these cases is that offenders frequently present as respectable and caring people, seemingly quite exemplary in their public life. This makes early detection very difficult and our system of presumed innocence until proven guilty also adds to the dilemma.

All in all, these issues present a problem incapable of solution. The *Towards Healing* program has been a very positive initiative but the issue of civil damages compensation is entirely problematic for a whole range of accountability issues not readily appreciated and which, understandably, are of no interest to you, but are of very real legal and ethical concern for the Church and its agencies.

### **SUMMARY**

The issue of civil liability and responsibility for the wrongful, disgraceful and independent actions of others is complex. The Brisbane Archdiocese offers its support in the *Towards Healing* program to your client but it cannot offer an ex gratia payment of the substantial common law payment that is sought with respect to Derriman.

Cranston McEachern

The opportunity to pursue that claim against Derriman is open to your client and he has been punished with a jail sentence as a result of the criminal charges that were determined in the District Court. His reputation and standing in our community is destroyed.

The Church is in a "no win" position when it comes to civil compensation claims. On any basis, the total amount of your claim would need to be significantly discounted. If a small ex gratia payment were made, it would be regarded as uncaring and an insult. The Church has legal and fiduciary responsibilities for the use of funds made available to it today. It cannot freely use funds to compensate for events that have happened many years ago in circumstances where we do not consider there is a civil liability. It has fiduciary and legal responsibilities as well, especially in today's legalistic environment.

\* { In short, we offer our analysis of the position to try and explain some of the issues we have considered, although this will be of little comfort to your client and for that we apologise. We appreciate that we have not suffered from the sexual abuse your client has and nor have we encountered the trauma that your client has. The whole situation is one of great sadness and we do not know what the answer is. Another view is that we all have to make our way through life the best we can and it (life) certainly does not always proceed in the direction we all would like. There are many tragedies that happen every day with serious ongoing consequences that affect many people to differing degrees. Loved ones are lost at an early age. Violent crimes occur. People end up in jail. Individuals struggle with serious disabilities, intellectual impairment and illness. Churches try to assist many of these disadvantaged people while others don't. Obviously your client will be receiving legal advice with respect to her matter and the Church entirely understands that your client may seek to pursue a civil damages claim. Any such claim will, however, be defended and it is important that we clearly express this position to your client so there is no misunderstanding. It is equally important to indicate that the legal costs incurred in defending the civil claim will be sought from your client. This is an obvious consequence of the defence of such an action.

Thank you for your client's patience over this matter.

Yours faithfully

"(Signed) Thyne & Macartney"

\* on reflection, Tom consider this is better left out as we are responding to the legal position.

*J. K. S.*