

***THE STORY OF THE BISHOPS' COMMITTEE FOR PROFESSIONAL
STANDARDS OF THE AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE***

[BISHOP PETER CONNORS]

Thanks and appreciation to the Catholic Church in the United States which has been among the pioneers in this very important apostolate of making an appropriate response to the tragic phenomenon of sexual abuse of children by clergy and religious.

1. Our story commences about 1987 with the following significant events:

- The visit of Mr. Chris O'Malley, General Manager of Catholic Church Insurances Limited, to the United States, when he brought back disturbing reports;
- Allegations made to two priests of the Archdiocese of Sydney, Father John Usher, Director of Centacare (the Archdiocesan family welfare agency) and Father Brian Lucas (who is here at this conference) concerning sexual abuse of children;
- A visit by Fathers Usher and Lucas to the plenary meeting of the Australian Catholic Bishop's Conference to inform the bishops of the storm clouds on the horizon;
- Material made available by Father Thomas Doyle, O.P., who had visited Australia as a guest of the Canon Law Society of Australia and New Zealand;
- More and more publicity from the United States and Canada about cases and law suits which were given wide coverage in the Australian media;
- Publicity about the British Child Migration Schemes.

2. A decision was taken in 1988 to establish a committee (then given the title "Special Issues Committee"). The initial committee comprised: Bishop Ron Mulkearns, the chairman of the Bishops' Committee for Clergy and Religious, Father John Usher (who had qualifications in social work and vast experience in dealing with these matters), Father Brian Lucas (who had qualifications in civil law and experience in child protection in the juvenile courts), Father Dan Torpy, a member of the staff of the Regional Seminary of the State of Victoria (who had a degree in psychology from the Gregorian University), and Brother Frank Chappel, Provincial Superior of the Christian Brothers.

The Archdiocese of Melbourne had formed its own committee to deal with problems caused by the criminal charges of paedophilia being laid against a priest who had already served a custodial sentence for the serious sexual abuse of a young girl. The expertise of this committee, which included an eminent psychiatrist and a Queen's Counsel in its membership, also assisted the national committee in chartering a strategy for a response from the Catholic Church to allegations which were increasing in number.

Representatives of Catholic Church Insurances Limited were part of the committee. They have been very generous and supportive at all times to its work. Eventually the Special Issues Committee took on the more appropriate title of Bishops' Committee for Professional Standards.

Our present committee comprises:

Three bishops, one of whom is the chairman of the committee;
 Three representatives of the Australian Conference of Leaders of Religious Institutes (one man and two women);
 Fathers John Usher and Brian Lucas;
 One laywoman with qualifications and experience in social welfare;
 One religious woman who has a degree in psychology and has been very involved in continuing education of clergy around Australia.

3. The rather unique involvement of Catholic Church Insurances Limited (CCI) in the Australian story explains the presence of Mr. Laurie Rolls at this conference. He will describe the process adopted by his company to assist bishops and congregational leaders around Australia with risk management procedures and to prepare themselves for writs for damages from victims of sexual abuse by clergy.
4. From the very beginning there has been outstanding co-operation between the Australian Catholic Bishops Conference and the Australian Conference of Leaders of Religious Institutes (ACLRI). Sister Angela Ryan has been a member of the Bishops' Committee since her appointment as President of the ACLRI and she will comment on this co-operation and on some of the peculiar difficulties experienced by religious congregations. She will also comment on the wider mandate which has now been given to the committee to deal with violations of sexual boundaries by clergy and religious.
5. The first task of the committee was to draw up procedures which would be used by Catholic Church authorities in dealing with allegation of sexual abuse by clergy and religious against minors which in most States of Australia means under the age of 18 years. The aim was to have a national procedure but the implementation of this had difficulties associated with the geography of the country.

[In Australia there are 31 Dioceses in the six States and two territories of the nation. There are 128 Religious Congregations. To give some idea of the spread of population, most Australians live along the Eastern seaboard. The State capital cities are each about 500 miles apart with the exception of Perth in Western Australia which is 1500 miles from Adelaide.]

The thrust of the protocol which was developed was that the bishop or congregational leader who received an allegation would refer the matter to someone from a committee of suitably qualified persons in each State, nominated by the bishops of the Provinces (which are generally organised on State Boundaries). The person to whom the allegation is referred would arrange for the complainant to be interviewed within a very short time. The alleged offender would be interviewed after which the bishop or congregational leader would be given a recommendation for a course of action. At all times there would be no interference with the right of the complainant to approach the civil authorities whether they be the police or child protection agencies.

6. The document containing the procedures, which went through several drafts, was meant to be an in-house document to assist bishops and congregational leaders. However, it soon fell into the hands of the media and victims support groups, who criticised it for being too legalistic, and over concerned with the rights in civil law of the alleged offender. The insurance cover provided for bishops and congregational leader also became an issue which drew strong criticism from the media. In 1992 Father Brian Lucas travelled to five cities in United States and Canada to check out the procedures and policies in the light of other experience.
7. Presently the national committee is revising the procedures which have been in operation since April 1992 but which will always be regarded as being draft procedures. Many State Conferences of Bishops and individual dioceses or religious congregations have adapted or modified the national procedures, but they cannot substantially vary from the national procedures if they wish to retain the assistance and insurance cover from CCI. The aim of the revision is to make the procedures more victim oriented.
8. The national committee provides assistance and guidance to bishops and congregational leaders and to the State Professional Standards Resource Groups in making an appropriate response to allegations of child sexual abuse and other instances of sexual misconduct by clergy and religious and other church personnel.

9. Matters which have caused concern over the years have been :

- Gathering information concerning cases which have been made known to the bishops and congregational leaders for insurance purposes;
- The encouragement of a plea of guilty in criminal courts by clergy and religious who are known to be guilty even when advice from lawyers may be to the contrary;
- The discovery in civil litigation of documents which have been drawn up by church officials and devising appropriate procedures for keeping records;
- Inservice training of members of State Professional Standards Resource Groups and the provision of information to clergy and religious;
- The need to provide counselling services for victims of sexual abuse;
- Meetings with Victims Support Groups
- The future ministry of those who are guilty of paedophilia.

10. There are two major challenges at the present time:

The first challenge is the publication of a revised statement of principles which will guide the bishops and congregational leaders in dealing with the sexual misconduct of Church personnel. The difficulties we are encountering with this are twofold. Firstly, the ambit of the document needs to be wider than paedophilia. Secondly there is a tension between the document being victim oriented on the one hand and acting in accordance with legal advice, mindful of the need to protect the material patrimony of the diocese or congregation, on the other hand.

The second challenge is the establishment of a therapy programme for clergy and religious. The report was presented to the bishops and congregational leaders in April 1996 (a few copies are available for perusal).

Sister Angela Ryan will now discuss the problems from the perspective of the religious congregations . Thereafter Father Brian Lucas will deal in more with some of the practical problems we have encountered and Mr. Laurie Rolls will explain our insurance arrangements.

THE ROLE OF RELIGIOUS

[SISTER ANGELA RYAN CSB]

1. In Australia the bishops and congregational leaders have worked together:

- The initial committee was established by the Bishops' Conference and a Christian Brother was invited to join.
- Subsequently a woman religious was invited to join the national committee and the role of the committee was extended beyond child and adolescent sexual abuse to include any sexual boundary violation by church personnel, especially by clergy or religious.
- The advantages of this working together include:
 - using the same protocol with a similar approach to victims, survivors and perpetrators;
 - joint organisation in regard to treatment programmes, insurance, media approaches, and the presentation of the voice of the Church on appropriate occasions;
 - although the independence of each diocese and religious congregation is maintained, the attempt at co-operation gives support and solidarity, especially in cases where both clergy and religious are involved.
- The difficulties of this working together include:
 - the different timing of the meetings of the Conferences of Bishops and the Conference of Religious Leaders;
 - the number of bishops (31 dioceses) and congregational leaders (128 institutes, mostly women);
 - the fact that the committee is a bishops' committee with religious invited to join and not specifically a joint committee can cause a difficulty in the response of religious congregations at times;
- On balance this presentation of a united front within the Church is a very positive feature of the Australian approach to issues of sexual abuse within the Church.

2. There has been a range of cases involving religious:

- In orphanages:

one major case in Western Australia of children who were part of the British Child Migrant Schemes and who were featured in a television drama *The Leaving of Liverpool*;

other cases of sexual and physical abuse and neglect mainly in boys' institutions but some cases in orphanages and institutions for girls;

- In schools:

[Australia has a very large Catholic School coverage with a primary school in almost every parish and Congregational and Diocesan secondary schools accessible to most students. Approximately 20% of school children are educated in Catholic schools. There are still a significant number of boarding schools and until the 1960s there was a boarding school in most of the larger rural centres as well as a number in each of the capital cities]

there are cases of sexual abuse by religious in Australian boarding schools;
in day schools there are some cases of abuse by both religious and lay teachers;

- With aboriginal children:

there have been allegations of abuse within indigenous communities;

- Within health care and social welfare:

[Australia has a broad Catholic system of health care and social welfare agencies which complement Government facilities]

allegations of sexual abuse and boundary violations have been reported in some of these institutions and agencies, including in counselling situations;

- Within parish and general pastoral ministry:

paternity cases;
sexual boundary violations involving a cleric or religious and a lay person;
relationships between male and female religious or between a female religious and a diocesan cleric;

- Within religious congregations themselves:

A homosexual element, with some overlap into sexual exploitation of younger members, has presented some problems within a few congregations.

3. Effects on Religious Communities:

- In male congregations there has been shame, fear, anxiety, but in general the initial reaction has been followed by processes within the congregations which are open, educative and positive. The strain on congregational leaders has been very great and has included the need to respond, in some instances, to the suicide of a member. Response to victims, short term and longer term response to alleged and actual perpetrators, and media issues are on-going issues in many congregations.
- In women's congregations there is still a large amount of denial and some underlying anxiety about what the future may hold especially in regard to physical or emotional abuse and neglect within child care institutions. Women religious are acutely aware of sexual boundary violations especially by clergy whether involving religious or lay women.
- There would be an informal belief that there are an above average number of women religious who have themselves been abused when they were young, either at home, by a known family acquaintance or by a cleric or religious. This is coming out into the open more frequently and can explain some of the difficulty with relationships in a community or pastoral setting. This does not seem to be as much the case with the men's congregations.

4. General points:

- In the beginning many of the institutes sought their first advice from Fathers John Usher and Brian Lucas and this assisted in establishing the shared approach with the bishops as they were tapping the same expertise;
- Some few institutes have tended to act more on their own at times and this has caused some confusion in the public arena.

SOME PRACTICAL ISSUES

[FATHER BRIAN LUCAS]

I am the secretary of the Archdiocese of Sydney and act as an official media spokesman for the Archbishop. I am grateful to the organisers of this conference and privileged to be able to speak to you about the Australian experience.

My segment is to outline some of our problems, some of the lessons we have learned and especially to comment on media issues. We have found it is very difficult to be right and very easy to be wrong in dealing with allegations of child sexual assault by church personnel.

Our experience may lead to some further questions for the Conference.

1. Some problems:

- If you show sympathy to a victim you risk being accused of prejudging the offender. If you show sympathy for the offender you risk being accused of insensitivity to victims.
- If you insist that litigation be resolved in the courts you are obstructionist and traumatising victims. If you settle out of court you are buying them off.
- If you receive a complaint and institute an inquiry you are accused of intimidating victims and not believing them. If you take the complaint on face value you risk injustice to the offender.
- If you sack a person who is accused but not convicted you will be sued by him. If you don't sack him you will be sued by any subsequent victims.
- If you tell people to go to the police and they get a bad time they will blame you. If you don't tell them to go to the police you may later be accused of a cover-up.
- If you are told by a victim not to go to the police and you don't, you will be accused of leaving others at risk. If you do go to the police you have betrayed the victim.
- If you write policies and procedures legalistically the lawyers love you and the victims hate you. If you write sensitively and pastorally some victims may love you, your lawyers will be nervous and the plaintiffs' lawyers may use your words against you.
- If you do not reappoint an offending priest you lack compassion and a sense of forgiveness. If you do reappoint you have not taken the victims seriously.

- If you keep documentation it may be open to scrutiny by a search warrant or discovery. If you do not keep documentation it is hard to prove what really happened or was said.
- If you are open with the media they will still turn against you when it suits them. If you re not open with them they will force the issue anyway.
- If you express concern to help victims you will be asked whether this involves compensation. If you refuse to discuss compensation or shift that discussion to the legal forum you can be made to appear shallow and insincere in your caring.
- If you admit liability in one case it is presumed you are liable in every case. If you do not admit liability in a particular case it is presumed you will oppose every claim.
- If you settle claims easily the people think you may be irresponsible with their money. If you take a tough approach the legal costs can be crippling.

I am sure we could all add to this list. The dilemmas can be impossible. In my experience bishops and congregational leaders have agonised over such matters and many are still not resolved.

2. We have learned a few lessons:

- We have to work together (Sister Angela has dealt with this). One statement or one inept action by anyone, almost anywhere in the world, affects us all.
- We cannot allow ourselves to panic or be intimidated by the media agenda or fear of a bad press. There has been plenty of that. We have to do what is right, not what might appear to be popular at a particular point in time.
- We must have procedures that bring cases to the attention of the highest level of church authority. The curia official who tries to protect his otherwise pressured bishop is not doing him a favour. The congregational leader who does not fully brief his successor is not doing him a favour. The leaders have to take responsibility in the end. We need to work harder at supporting them in the loneliness of such a position.
- It is better if matters are resolved with some finality than have offenders wait for the next knock on the door. A plea of guilty, even in cases where there might be prospects of putting the prosecution to proof, can bring the matter to an end. Offenders have a better chance of making a new life.

Insisting on a police investigation (where this is possible and accords with responsibilities to victims) shifts some of the suspicion of a "church cover-up" which can arise if investigations are kept in-house.

- Documents can either damn you or save you. We need to keep records in good order. If victims give directions about how they want a matter handled they must be reduced to writing. Recollections can change ever so subtly and the direction by a victim to a church official not to go to the police can be reinterpreted later on and in a different context as intimidation of the victim and a cover-up.
- We have had a number of suicides. We need to be vigilant to put support systems in place at the time of any confrontation.
- Dealing with victim's groups is difficult as the ground can shift and it is not always clear what is the real agenda.
- We have not yet had some of the most fundamental legal principles tested in our courts: Undecided issues are:
 - Statutes of Limitations and their scope
 - Liability of the Trust Corporations
 - Extent of liability of religious superiors for actions of subordinates
 - Criteria for quantum of damages
 - Criteria for assessing the standard of care in negligence suits

3. Some of the Media Problems we have faced are:

- Lawyers are promoting speculative civil litigation and rely heavily on media coverage to pressure settlements and recruit clients.
- Australia has a widespread Catholic school system. Some 20% of children go to Catholic schools. An impression has been created that cases only exist in our system. A case involving a Catholic school will usually get more attention than one involving the State system. Stereotypes are constantly being reinforced.
- There is guilt by association and constant use of generic terms 'the Catholic Church' and 'clergy' to describe the wrongdoer. Lay teachers are often described by reference to the congregation in whose school they teach.
- In New South Wales at the moment there is a Royal Commission into corruption in the Police Service. This involved protection of paedophile rings. Some Catholic Church cases are being used as examples of ineffective policing. We are facing saturation media coverage.

- Overseas media reports (especially from North America and Ireland) have a cumulative effect in reinforcing the stereotypes of ineptness, cover-up, and 'its all because of celibacy'.
- Celibacy is central to media coverage and no amount of rational analysis can counter the stereotype that unmarried clergy and religious are 'prone' to paedophilia. Our rigid sexual ethic is thrown back to us. Hypocrisy is the catch word.
- A priest was released from prison a few weeks ago. The judge noted at the time of sentencing the nature of his offences and the extent to which he had been rehabilitated. Notwithstanding he is not a risk to anyone, the media and public opinion will probably mean he has no future in ministry.
- We have learned that no matter how bad it is, it is better to be honest with the media because the scandal of being caught manipulating the truth is so much worse.

4. **Some questions for this Conference:**

- We may wish to consider whether, as a witness to the kingdom, compulsory celibacy of the clergy has reached its "use-by" date. At least we need thoroughly to investigate what impact these scandals have had on the laity and their perception of any connection with celibacy and whether there has been and will continue to be damage to our credibility as ministers and church leaders.
- We may wish to consider whether the canonical provisions for clergy or religious disciplining and dismissal need to be modified to allow a more workable process in these cases.
- We may wish to consider whether there are any factors peculiar to the Catholic Church (eg. formation in novitiates and seminaries) which contribute to the problem of child sexual abuse by clergy and religious.
- We may wish to consider what impact our understanding of sexual ethics has had in contributing to paraphilic behaviour by some clergy and religious as well as to the tone of media coverage.
- We may wish to consider how we prepare for the next stage of sexual misconduct scandals involving sexual boundary violations with adults and consensual sexual activity by clergy and religious within congregations or with lay peers.

THE INSURANCE PERSPECTIVE

[MR. LAURIE ROLLS]

When in the late 1980s, having observed experience in the United States and elsewhere, it became apparent to the bishops and congregational leaders that Church authorities in Australia would very likely encounter substantial claims relating to the criminal sexual activity on the part of clerics, religious and employees, the question of the financial resources required was a matter for early consideration.

All dioceses and most religious congregations participate as shareholders in, and insure with, Catholic Church Insurances Limited, ('the Company'), a company established in 1911 to provide cover for property and liabilities of Church related agencies throughout Australia. Whilst in general terms the Company is required to perform in the ordinary commercial way, being a company licensed by the Federal Government's Insurance and Superannuation Commission, and required to operate within the terms of government legislation, there is a unique proprietorship link between the Company and its clients which provided considerable assistance in the matter of developing adequate resources to deal with impending claims of this nature.

Whilst it is true that the dioceses and congregations had, for many years, insured against liability for injury, it was recognised that in earlier years the limits of liability of such policies were low by modern standards and further, that, in some circumstances, it may well be that claims of the nature to be dealt with here may not have arisen from circumstances in respect of which indemnity is required to be granted by the insurer. Further, it was recognised that, for the most part, claims would arise from events occurring as long as forty or fifty years ago. It was clear then that church authorities would be facing claims which arose at a time then there was perhaps, no cover at all or when cover, if in force, was for a very limited amount. Consequently a way had to be found to supplement what resources might be available in the way of indemnity under public liability insurance policies.

These policies were issued to provide indemnity in respect of liability in negligence to pay compensation for injury sustained by accident. Subject, therefore, to the usual conditions relating to prior knowledge of an insured and questions of non-disclosure, it was accepted by the insurer that the effects upon the victim were in the nature of an injury and that the events, from the point of view of the authority responsible for the diocese or congregation, were accidents. It was nevertheless clear that resources were required to be developed which would complement the limited amounts available under public liability policies issued some time ago. Accordingly a two pronged strategy was developed.

On the one hand a fund to which all interested participants might contribute, to be known as a "Special Issues Pool", was established. In conjunction with that Pool, the insurer arranged additional protection, which was further enhanced by obtaining support from professional reinsurers.

In 1991 the Pool and a Special Issues policy of insurance to provide additional cover were established. The principle adopted was that claims may be brought to account for treatment by the Pool and its supplementary policy on a "claims made" basis. A claim notified currently would be dealt with although the event in respect of which the claim was made occurred some time in the past. The intention was that, when a claim was notified, the insurer would look first to the policy issued at the time of the event and to the extent that this policy was inadequate in the indemnity it provided, a call would be made on the Pool and its supplementary cover to make up the balance.

In 1991 the participating dioceses and religious congregations were already aware of offenders in respect of whom claims had already been or might very likely be notified. It was agreed that no call would be made upon the Pool and supplementary cover for claims arising from circumstances of which the participants were already aware. However, all claims notified subsequent to the establishment of the Pool of which participants were not aware, no matter when they occurred, were to be brought to account in cases where there was no basic public liability insurance available or the amount of cover was inadequate.

It had been the intention of the participants that the Pool would be managed by a Committee of Management appointed from representatives of the participants and that decisions regarding the continuing level of contributions and acceptance of claims upon the Pool would be made by the Committee. In the early stages dioceses and congregations provided information about the nature of their activities. An actuary was engaged to calculate the risk factors involved in the respective operations so that an equitable contribution to the Pool could be established. However, it became apparent in the course of time, that the incidents of claims against the various congregations and dioceses varied so widely that it would be extremely difficult to determine in future the level of contributions to be required by each participant and further decisions regarding entitlement to indemnity in respect of payments required to be made would become more and more problematic. Accordingly it was decided to disband the pool as at 30th June 1994 and to ask the insurer to arrange in its place a formal contract of insurance, especially designed to provide indemnity in respect of claims relating to criminal sexual activity. The policy was to provide indemnity on a "claims made" basis and participants would pay a premium in the ordinary commercial way rather than contribute to a jointly owned pool. This policy was maintained in force for 12 months to 30th June 1995.

Upon reviewing the situation that time, the insurer advised participants that, from records developed over the period of four years of operation, it appeared the special arrangements on a "claims made" basis have virtually served their purpose and that it might not be in the continuing interests of participants to pay substantial premiums for a cover which seemed less and less likely to be required.

During the course of the four year operation of the window of opportunity provided by the "claims made" contract, it appeared participants had reported all matters which might be expected to give rise to a claim. Meanwhile, the lessons learned by exposure to claims of this nature had led to the development of management techniques which were likely to preclude the likelihood of claims of negligence in the future.

Following the discontinuance of the "claims made" insurance contracts, cover against liability in negligence for claims relating to criminal sexual behaviour is now dealt with under the standard public liability policy in force at the time of the event.

Elsewhere Bishop Connors has described the protocol and other procedures adopted by dioceses and religious congregations, the operation of which it is expected will minimise the exposure of Church authorities to claims of this nature. While confident that the individual dioceses and congregations observe the principles of the protocol, it was decided by the Professional Standards Committee to support the adoption those principles by establishing a risk management service upon which the dioceses and congregations might call if they so desired.

Clearly it is in the interests of the insurer to see that the principles established in the protocols are observed. Accordingly, it was arranged that the insurer fund the establishment of the Professional Standards Risk Management Service. The Service is designed to ensure that the various agencies of the Church adopt management techniques designed to resolve current issues as they arise and, at the same time, install preventive measures to minimise the occurrence of events in the future.

The services assists with the drafting of codes of practice and manuals for issue to the clergy and religious and to the staff engaged in the various activities of the Church in health care, education, social work and financial administration. Upon notification of a potential claim, the contact person of the diocese or congregation can seek assistance with the management of the matter from the first moment. Access to legal advice and counselling services is provided if required. Advice on the handling and control of media exposure is also available.