

Margaret O'Reilly

From: Michael Casey
Sent: 23 March 2005 18:23
To: Margaret O'Reilly
Subject: FW: Confidential and legally privileged: Ellis

Importance: High



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-----Original Message-----

From: Anna.Ross@corrs.com.au [mailto:Anna.Ross@corrs.com.au]
Sent: Wednesday, 23 March 2005 4:25 PM
To: Michael Casey
Cc: Paul.McCann@corrs.com.au; John.Dalzell@corrs.com.au; pso@cathprofstandards.com
Subject: Confidential and legally privileged: Ellis
Importance: High

Dear Michael

I refer to your fax of 21 March 2005 attaching the letter sent to His Eminence by Brother McDonald of the NCPS.

We are concerned that complying with several of the recommendations made in the report commissioned by the NCPS (Report) into the review of John Ellis's Towards Healing complaint may prejudice the Archdiocese in its defence of proceedings commenced in the Supreme Court by Mr Ellis. Several recommendations in the Report require the Archdiocese to make apologies/admissions and engage in a further facilitation with Mr Ellis. We consider that the recommendations are not appropriate given Mr Ellis has commenced proceedings and his previous attempts to leverage apologies/admissions by the Church and criticisms in relation to Towards Healing in the proceedings. In our view, the Report indicates that the panel either had not been made aware of Mr Ellis's civil proceedings or at least did not understand the nature of those proceedings.

Simply objecting to those recommendations, or refusing to implement them, is likely to reflect poorly on the Archdiocese should the Report ever come before the Court in the Ellis proceedings or otherwise become public. We consider the more appropriate course is to remit the report to the panel in order for them to reconsider their recommendations in light of the Ellis proceedings. We recommend that you ensure that the panel be made aware not only of the existence of the proceedings but the manner in which Mr Ellis is seeking to use any admissions or apologies by the Church and any criticism of the Towards Healing process to his advantage in those proceedings. We would be pleased to assist you to brief the panel if you and NCPS consider this approach appropriate.

We are also of the view that the balance of the recommendations made by the panel should not be implemented without further review and consideration. Implementing the recommendations would require far-reaching amendments to the management of Towards Healing complaints at both a State and National level. Our understanding is that the panel conducted a 'paper' review of Mr Ellis's complaint and no interviews were conducted either with Mr Ellis or any person involved in managing his complaint in New South Wales. In particular there does not appear to have been any material before the panel that reflected that, in our view at least, Mr Ellis's own behaviour in his dealings with the Church was not beyond criticism particularly regarding his apparent lack of good faith. Accordingly, it must be said that the material considered by the panel was limited in nature.

It is no criticism of the panel to say that their review is by necessity limited in its nature and that any wide ranging recommendations made as a result of any such

review should be considered conservatively. To implement recommendations of such significant impact and expense for the Church on the strength of a limited review of one complaint, albeit by highly qualified and respected persons, is not a course that we would recommend.

We do consider however that the panel's report could appropriately be considered by Mr Barry Mahoney QC in the course of his current review of the role of the NCPS. Mr Mahoney's terms of reference comfortably cover the recommendations made by the panel. Indeed, Mr Mahoney's interim report indicated that he has already identified the subject matter of several of the panel's recommendations as matters of interest in his review.

We attach a draft letter from His Eminence to Brother Julian McDonald proposing this course of action. We are also aware that Mr Ellis has written to Michael Salmon requesting a response to the NCPS report sent to Mr Ellis earlier this year. Accordingly, we recommend that you instruct us to liase with Michael Salmon to formulate an appropriate response to Mr Ellis's request.

Please do not hesitate to contact me to discuss these matters on 9210 6904.
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(See attached file: 3540028v1_Letter_to_NCPS_re_Ellis.doc)

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