

E/2006/11338**Complainant**

Nester, John (MR)

Complainant Address**Role Holder**

RoleHolder	Role	Comment
WOLLONGONG DIOCESE	Primary Agency	
Nester, John	Primary Complainant	

Receipt Details

File Type:	Enquiry	Rec Date:	6-Jul-06 11:26 AM
CaseTypeID:	Child Protection Unit files	ReceivedPersonID:	BAYLER, Trisha (Ms.)
HowReceivedID:	Telephone	Reg Date:	6-Jul-06 11:26 AM
TimeSpent:	0(to date)	RegisteredPersonID:	BAYLER, Trisha (Ms.)
CSO:	BAYLER, Trisha (Ms.)	Status:	Closed
Team:	Child Protection Unit 1		

Closure Details

Closed On:	7-Jul-06 11:03 AM	Closed By:	PHELAN, Sue (Ms.)
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Case UDF's

No Of Investigation Days: Unable to calculate as Police Received Date not yet recorded on Resolve

Summary

P/C from John Nester (or Nestor)

He advised that he was a Catholic priest with the Wollongong Diocese. In 1996, he was charged with a sexual offense against a child. He advised that he accepted the charges to be heard as a 'summary hearing' before a magistrate. This involved him pleading guilty, being charged and then immediately appealing that decision. The appeal was granted without the need to have any witnesses presented by the defense in late 1997.

After the criminal proceedings were completed, the Diocese of Wollongong conducted its inquiry. John advises that he was never informed of the 'charges' they were looking into. He advised that at this time the 'Towards Healing' program was in place. Two Towards Healing assessors apparently looked at the matter and provided a report. According to John, the Diocese then appointed two different assessors to look into the matter. The Bishop asked him to answer questions from the assessors, which he agreed to do. According to John the two new assessors did not want to interview him, however the Diocese took this to mean that he refused to participate. After approximately 12 months, the inquiry finished and the Diocese requested John to attend a sexual offender's course. John declined and was informed that he would not be reinstated.

John then applied to the Congregation of the Clergy in Rome. The Congregation decided in favour of John and ordered that he should be immediately reinstated. According to John, this was based on flaws within the Diocese's inquiry, including the fact that they could not provide any documentation of witness statements and that the Diocese had not upheld a canon relating to protecting John's good name, as it leaked information to the media during the criminal proceedings and its own inquiry. John reported that the Congregation advised that the Bishop should come to some agreement with him and reinstate him as a priest.

The Bishop appealed this decision, but the Congregation upheld its decision and informed the Diocese that John had to be reappointed. The Diocese did not do this, but sent an appeal to the Apisticle Saganitaura (unsure of spelling) in Rome, which is a higher court than the Congregation of the Clergy. In 2001, the higher court didn't take the case. However, John reported that after intervention from a

Catholic body in NSW, it agreed to take the matter up in 2002. John is not a party in this appeal, which is between the Diocese and the Congregation. John did advise that the Diocese had informed him that they received a letter from the higher court stating that it had found a 'defect' in the Congregation's decision. John is unaware whether this is relating to a 'substantive or procedural issue'. John advised that the higher court has stated it will be another 6 months in making a decision.

In approximately 2001, John obtained work in the USA at the University of Illinois. He advised that he informed the University of all of the above, including providing documentation of the proceedings, prior to being employed. He has been in the US for the past 5 years. According to John, whilst he was there, he was unable to be employed as a priest because the Bishop in Wollongong sent a 'threatening' letter to the Bishop in the US not to employ him.

John returned to Australia last month. He advised that he had a meeting with the new Bishop in Wollongong and his advisor yesterday. They informed him that they are making 'further inquiries' into this matter. The Bishop advised John that the Diocese will appoint an investigator to conduct an investigation as required by the Ombudsman. Once completed, the Bishop will determine whether or not to send it to the Ombudsman's office. According to John, the Bishop advised him that the matter had not been notified to the Ombudsman. John was surprised by this and questioned why. He was advised this was because it wasn't fair to do so when he was in the US.

John is worried about any further inquiry at this stage. His major concern is a conflict of interest with the Diocese being able to fairly investigate. He advised that he had looked on our website in the guidelines and was wondering whether or not he could write and request the Ombudsman to investigate the matter rather than the Diocese. John's understanding is that the Diocese is looking into the same five matters (allegations) from 1994, which led to the charges in 1996. He advised one of those allegations went to criminal proceedings, involving a sexual offence of a child. One of the allegations was that he put his hand on the shoulder of a young person. One is that he used inappropriate language at a homily with a Year 7 student. One is that he told inappropriate jokes to a group of young people. And, the other is that an unknown person claimed that he witnessed John molesting his 10 year old brother. John advised that he does not know the name of the person who made this allegation, when it allegedly occurred and that it appeared that the 10 year old did not ever make a complaint.

John advises that he would like this whole situation to be settled. He welcomes an investigation, but wants it to be fair. He does not feel confident that the Diocese is able to accomplish that.

It is noted that Resolve holds no records for John Nester or Nestor. I briefly described the function of the CPT at the Ombudsman. I explained that I wanted to speak to management regarding whether or not this matter falls within our jurisdiction. I advised John that I would ring him back after consulting with management.

T. Bayler
IO Team 3

Consultation with Sue Phelan, PI

Advised that she has spoken with the Diocese previously about this matter and contacted it again today. The Diocese advised that it did inform Father Nester yesterday that he will not have an appointment within the Diocese and that there was the possibility of an investigation for Ombudsman purposes. Jurisdiction in this issue is still unclear. The Diocese will formally write to our office regarding the circumstances of this matter to receive formal advice regarding whether or not the allegations against Father Nester are within the Ombudsman's child protection jurisdiction. Advised to speak generally with Father Nester regarding his inquiries. We are not able to advise Father Nester that we have or have not received a notification from the Diocese. We should refer him to the Diocese for confirmation regarding this issue. If the Diocese confirms for Father Nester that they will be notifying our office, he can then write to us with a complaint regarding the impartiality of the investigation. However, if the Diocese is not notifying this matter, then we wouldn't be in a position to deal with his complaint.

T. Bayler

IO Team 3

P/C to Father Nester

I advised Father Nester that I had consulted on this matter. I confirmed that he had been advised by the Diocese that a notification had not yet been made to the Ombudsman, but it was planning to do so. I explained to Father Nester that we wouldn't be taken any action until we received a notification and I referred him to the Diocese to confirm whether or not this matter has been or will be notified. I advised Father Nester that if the Diocese confirms that it has notified this matter to our office, then he would be able to send a written complaint into our office regarding his concerns regarding the impartiality of the Diocese investigation. I explained that if the Diocese does not notify this matter, then Father Nester would need to pursue other avenues of complaint.

Father Nester questioned whether or not the Diocese should notify this matter to the Ombudsman. I explained that I am unable to answer that question at this stage, as I do not have all relevant information on which to base a sound assessment. I explained that if the Diocese is unsure about whether or not it should notify, then it would be appropriate for them to ring our office for advice. Father Nester then questioned whether he would be able to obtain all documentation relating to the Diocese investigation under FOI. I explained that some child protection matters are exempted from release under FOI. However, if an investigation is conducted and Father Nester requests the release of information under FOI, then the Diocese would need to provide him its rationale for releasing or not releasing any of the relevant information. Father Nester questioned the Ombudsman's role in FOI matters. I advised that we have an FOI unit, which could look at a complaint regarding release of information under FOI, if this is a relevant issue for Father Nester in future.

Father Nester thanked me for my assistance and requested my name and contact details, in case he does make a written complaint to our office, which I provided.

T. Bayler
IO Team 3

Notes by Sue Phelan regarding contact with diocese after Trisha Bayler consulted me on this matter:

06/07/06; 13:31hrs; p/c to Fr Peter Comensoli, Chancellor, Wollongong Diocese:

I referred to our previous conversation about this matter (see E/2006/6148) and requested an update about this matter (I did not inform Fr Comensoli of the above phone call from Fr Nestor / Nester):

Fr Comensoli informed that the diocese made a decision some years ago not to provide Fr Nestor with an appointment prior to Fr Nestor undergoing an Encompass assessment. This decision was made by the former bishop of the diocese, Bishop Phillip Wilson. Fr Nestor had refused to do this. Fr Nestor appealed to the Congregation of the Clergy which found in its favour. The diocese appealed to the Apostolic Signatoria which is the highest avenue of appeal. The diocese did not appeal the decision as such, but appealed the Congregation of the Clergy's jurisdiction to make a finding in the matter as the Congregation for the Doctrine of the Faith is the appropriate body to hear matters involving allegations pertaining to priests and children. The Apostolic Signatoria has upheld the diocese's appeal, but has indicated it must wait for its final ruling to be sent to the diocese. This process has taken 6 years.

Yesterday Bishop Peter met with Fr Nestor for the first time. They discussed the issues and the bishop told Fr Nestor he could not give him an appointment in the diocese. Fr Comensoli joined this discussion at the end and explained that the matter may need to be investigated under the Ombudsman Act.

We discussed this issue at length and I indicated that I am not clear as to whether this is necessary given that the SOA has not held an appointment in the diocese since before the CPT jurisdiction came into place [whilst I recognise the Act is retrospective, it would appear that the diocese has acted appropriately in its management of the case, and I was of the view that we would not seek notification about this matter - I did not verbalise this to Fr Comensoli).

