

PRIVATE & CONFIDENTIAL

DISCUSSION PAPER

Alleged Sexual Misconduct by Teachers at Knox College Circa Between 1980/1990 Insurance Issues

Background

Three teachers employed by Knox College have recently been arrested by the police and a number of charges laid for alleged offences involving improper acts against juveniles/students (the complainants) purportedly committed in the 1980's.

For the purpose of this paper it is accepted that:

- There are at least 9 separate persons affected.
- No formal claims have as yet been made upon the School or the Church
- The insurers have accepted notifications of potential claims against
 - The Professional Liability Policy held with Allianz expiring 31st March 2009
 - The Directors and Officer's Policy also with Allianz expiring 31st March 2009

The purpose of this paper is to identify the nature of insurance available to protect the Church and other Insured Entities against claims and costs that might arise as a result of the alleged incidents. The comments are not intended to be an exhaustive study of policy entitlements or liabilities and which must necessarily await the determination of the criminal proceedings.

The Professional Indemnity Policy

This policy provides indemnity to the Church and the School for claims for compensation in respect of personal injury suffered as a result of the professional negligence of the Church and the School. Such cover includes indemnity for claims brought by persons that rest upon allegations of sexual misconduct.

It is considered that a claim by each separate person will constitute a separable matter and which will be covered by the Professional indemnity policy subject to a separate limit of indemnity and a separate deductible. The limit of indemnity is more than adequate to cover the claims if and when made.

The amount of the deductible is as applicable for the period in which the claim was notified. On the basis of the present knowledge the deductible is \$100,000 per claim in accordance with the policy expiring 31st March 2009.

Whilst that may indicate that the Church /School may have a potential exposure per claim of \$100,000 there is no information to suggest that all complainants will lodge claims or that the range of damages would be of substantial magnitude.

The policy will also respond to costs in defending such claims and that have been incurred with the consent of the insurer.
This policy does NOT respond to legal or other costs that are not related to the settlement or defence of the claims for compensation.

Thus it is considered that costs for general legal advice to the corporate body or officers, public relations, liaison with the police and similar costs are not recoverable under the terms of this policy.

Directors and Officers Policy

This policy provides indemnity to "Insured Persons" for claims for compensation as a result of a wrongful act. It does not include claims for compensation for personal injury (exclusion 19). Thus the Professional indemnity policy and the D & O policy are, in respect of claims for compensation for personal injury, mutually exclusive.

The policy has an extension in relation to defence costs incurred in defence of a claim.

Claim includes

"a criminal proceeding commenced by summons or charge"

The policy provides that the insurer agrees to pay

"defence costs in respect of a claim under this policy

- a) that the insurer incurs
- b) that the insured incurs with the insurers consent.

However the operation of this section of the policy is also subject to the general terms of the policy including the above mentioned exclusion 19 as amended and also exclusion 21 that reads:

The insurer is not liable for any claim directly or indirectly attributable to or in consequence of any

- a) dishonest, fraudulent, malicious, or reckless act or omission; or
- b) willful violation or willful breach of any statute or regulation

Provided that the act omission, violation or breach is established by judgment or other final adjudication.

Costs Recovery

Whilst I am not in a position to express a concluded view on the matter my preliminary opinion is that;

- a) The teachers are not entitled to be indemnified by the D& O policy for costs incurred in defending the criminal charges.

- b) The legal costs incurred by the school associated with the criminal prosecutions of the former teachers are not recoverable under the D& O policy.
- c) Any financial assistance that may be given by the School to the three former teachers is not recoverable under the D & O policy.
- d) Any costs that may be incurred by the school for participation in an official investigation may be recoverable. However I do not believe the criminal prosecutions satisfy the definition of "official Investigation".
- e) Other costs such as public relations advice are not recoverable under either the D & O Policy or the Professional indemnity policy.
- f) The Professional Indemnity policy will only provide indemnity in respect of claims made against the school or the Church for personal injury and defence costs but no other costs. The indemnity is subject to the applicable deductible.

Recommendation.

My recommendation is that the School/Church make an initial provision for an uninsured contingent liability in respect of legal and other costs for an amount of \$200,000 subject to any internal allocation within the Church structure. This preliminary reserve will need revision in the light of future developments.

The insurer has already indicated informally that the costs of engaging Gadens can be utilized for the erosion of the deductible.

Les Emerson
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30th March 2009