ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD ABUSE

CASE STUDY 32: Public inquiry into The response of Geelong Grammar School

Submission on behalf of Malcolm John

Introduction:

Counsel assisting the Royal Commission has provided submissions dated 21 December 2015. Counsel assisting concludes that “taking into account all the matters raised above, it is submitted that it is open to the Royal Commission to accept BKL’s account that she disclosed to Mr John the sexual abuse by Guzelian”1.

We submit on behalf of Malcolm John that it is not open to the Royal Commission to make such a finding, based on there being fundamental and incurable deficits in the evidence.

These deficits stem from there being no evidence from the mother of BKL.

A careful analysis of available evidence is therefore required.

Evidence of BKL:

BKL gave evidence that following her disclosure to her mother:

1) She believed her mother contacted the school to tell them;

2) That the person her mother spoke to was Malcolm John; and

1 Submission of Counsel Assisting- para 164
3) That as a result of the disclosure a meeting was held to discuss the school’s response.

The fundamental problem with this evidence, is that BKL’s beliefs are founded upon speculation. In cross-examination BKL agreed that:

1) She was not present when her mother called the school to talk about the incident².

2) She had assumed it was Malcolm John her mother had spoken to, because he was head of music³.

3) She did not know what was discussed during that conversation⁴.

Without the mother’s evidence, the Royal Commission can not know what detail of the disclosure was communicated to the school, and who it was communicated to. It is respectfully submitted that the Royal Commission can not satisfy itself to the requisite degree, in circumstances where BKL has no actual knowledge of what was conveyed. Mr John disputes that the disclosure was made to him.

BKL goes on to say “I believe that my mother had already told Malcolm John about my disclosure and the purpose of the meeting was to talk about the school’s response to the situation”⁵.

She agreed in cross-examination that the allegations were not specifically discussed during the meeting at the school⁶. The only first hand evidence we

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² Transcript C10078- line 10
³ Transcript C10078- line 15
⁴ Transcript C10078- line 20
⁵ Transcript C10072, line 29
have of any conversation with Mr John, is of him allegedly advising BKL and her mother that Mr Guzelian had lost his job because of the disclosure - bearing in mind that we have no evidence of what the disclosure from the mother actually was. BKL also asserts that Mr John told her during this meeting that the abuse was partly her fault. This is an extraordinary comment to make in front of the parent of a child who has disclosed sexual abuse. Mr John denies saying this.

Dealing briefly with the issue of Mr Guzelian leaving the school, it is submitted that if the response of Mr John when learning of the disclosure was to cause him to leave, it appears inconsistent that Mr John would permit his return, without objection to the headmaster. He gave clear evidence that had he known of the abuse at the time, he would have voiced his concerns to someone higher up\(^7\).

**Evidence of Malcolm John:**

There is criticism made of Mr John’s inability to recall BKL. In our submission, this criticism is unfounded. Mr John gave evidence that he recalls BKL’s mother and brother.\(^8\) It is implicit, through his ability to identify BKL’s mother and brother by reference to BKL, that he does have a recollection of her, just not an independent one. The fact that BKL was a gifted musician, ought not place an unrealistic expectation on Mr John to independently recall her. His responses should be assessed in the context of him being asked to recall a student from 37 years ago, where on his evidence, there were lots of gifted students\(^9\), and where his responsibilities spanned over four campuses of students\(^10\).

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\(^6\) Transcript C10078- line 29  
\(^7\) Transcript C11855- line 29  
\(^8\) Transcript C11840, line 45  
\(^9\) Transcript C11846, line 5  
\(^10\) Transcript C11843, line 6
Mr John gave evidence that no complaint regarding sexual abuse was ever made to him during his tenure at Geelong Grammar. It is submitted that he was clear and unwavering in this evidence. It is further submitted that there is no basis upon which to conclude that he has feigned an inability to recollect her, when either way, his evidence would have been that no such conversation took place.

Submission:

In order to make a finding, the Royal Commission must be reasonably satisfied according to the Brigshaw Principle. Counsel assisting considered that the question of whether it is open for the Commission to prefer the evidence of BKL over that of Mr John was finely balanced. In our submission, significant issues with respect to BKL’s evidence have been identified, which, together with the absence of evidence from the mother, place the Commission in a position where no positive finding can be made that, Malcolm John was aware of the abuse.

Kristina Kothrakis

Counsel for Malcolm John

18 February 2016

11 Transcript C11855, line 23
12 Brigshaw v Brigshaw [1938] HCA 34
13 Submissions of Counsel assisting- para 164