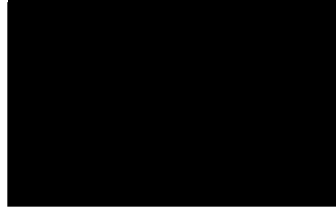


John Andrew Ellis



5 June 2013

Ms Georgie Crozier MLC
Committee Chair
Parliament of Victoria
Family and Development Committee
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Submission to the Inquiry into the Handling of Child Abuse by Religious and Other Organisations

Evidence of Mr George Pell on 27 May 2013

I have not previously made submissions to the Inquiry, as the information I can give first hand related to events and circumstances which took place in New South Wales exclusively.

However, I wish to exercise a right of reply in relation to the evidence given by the Archbishop of Sydney, Mr George (Cardinal) Pell to the inquiry on 27 May 2013. I note that a transcript of that evidence has not been published to date, and so my comments and responses are based on my viewing of the oral evidence given.

Mr Pell during his evidence made reference to the legal proceedings that I brought against the Archdiocese of Sydney and the Trustees of the Archdiocese in 2004. Those proceedings were the subject of a decision of the New South Wales Court of Appeal in 2007 [*Trustees of The Roman Catholic Church v Ellis & Anor* [2007] NSWCA 117, 70 NSWLR 565]

I make the following comments on the evidence of Mr Pell:

1. It was stated that I sought to sue the wrong entity.

It is correct that the outcome of the Court of Appeal decision was that neither the Trustees of the Archdiocese nor the present Archbishop as representative of the Archdiocese were liable to a claim for the wrongful conduct of one of its priests.

The result of this, as stated in the submissions of my legal representatives to the High Court on a Special leave application

(refused) was that for conduct such as I was subjected to, there is no entity on behalf of the Church that can be sued.

This applies at least until 1986, when the relevant NSW legislation was changed to give the Trustees express powers to conduct activities on behalf of the Catholic Church in the Archdiocese.

During the preliminary stages of the litigation, the Archdiocese was asked to identify the proper entity who would respond to the claim. It refused to do so, stating, as Mr Pell did in his evidence before you, that the person liable was the priest concerned.

Its clear position was that there was no entity on behalf of the Archdiocese which is liable for abuse committed by clergy.

2. Comments on the Court of Appeal decision and its relationship to the Archdiocese's present stance:

I will not here cavil with the Court decision. It will stand until overturned. Suffice it to say that different decisions have been reached on similar legislation in other jurisdictions. The Inquiry may wish to look at the Canadian decision of *John Doe v Bennett* [2004 SCC 17] [2004] 236 DLR (4th) 577.

It should also be noted that the primary judge found that there was likely to be evidence that the Trustees had in fact exercised functions in relation to the appointment etc of priests, with the effect that any limitations in the legislation were irrelevant to the liability of the Trustees. The conduct of such activities was confirmed in the Explanatory Note to the Bill to be to amend the legislation in 1986 which stated that the purpose of the Bill was to:

"to make it clear that bodies corporate created by that Act ... may also engage in other activities ... conducted for and on behalf of the Church".

The Attorney General's reading speech similarly confirmed that the amendments merely clarified the existing state of affairs and did not change the objects or purpose of the Trustee Act: Parliamentary Debates, Legislative Assembly, 20 November 1986, p6963 at 28ff.

There was also evidence of a canon lawyer that there was a Canon Law requirement for the Archdiocese to act through a properly constituted legal structure in civil law for all its temporal activities from at least 1917. A copy of that evidence is attached [Appendix A]. The Trustees successfully opposed admission of much of that evidence.

Finally, there was direct evidence of the activities of the persons comprising the Trustees in appointing priests to parishes and the like in the same meetings as they dealt with the property of the Church.

What the present stance of the Archdiocese does is to hide behind the decision of the NSW Court of Appeal (based on incomplete evidence) to deny the fact that the Trustees of the Archdiocese had a hand in running the activities of the Archdiocese. There seems to have been recently a significant resurgence of the fiction that the corporate entities set up by the Catholic Church to hold its assets are only concerned with property dealings.

The assertion by Mr Pell that the position taken by the Archdiocese in relation to my claim was justified because I had sued the wrong people and had sought to change the law (which appears to put the responsibility for the course of those proceedings onto me), creates a significant doubt that the Archdiocese has in fact learned any lessons from the way I was treated through the litigation and the harm that caused.

It gives me little confidence that this defence will not be used again by the Archdiocese and other Catholic Church bodies.

The overall impression is that the Church reserves the right to continue use this fiction to protect its assets from claims by victims and survivors of sexual abuse, unless and until the legislative protections and special status it enjoys are removed by governments.

If that situation is permitted to continue then the Catholic Church will be in a unique position compared to other corporate organizations in Australia, in that it will be able to take all of the benefits of corporate existence, including in relation to its significant assets, yet at the same time disclaim the liabilities that arise from harm caused by the way it has conducted its activities.

3. Mr Pell stated that the Archdiocese recognized its moral responsibility and only contested the litigation because I was attempting to 'change the law'

This is false and misleading.

The litigation was commenced at the time it was because of a looming cut-off date for an application to extend time under the *Limitation Act*.

It was served with a letter indicating a desire to resolve the claim collaboratively through mediation.

The response of the Archdiocese was to write indicating that the proceedings would be vigorously defended. This was not initially anything to do with the argument that I had claimed against the wrong entity. A copy of that letter is included in Appendix C.

It was only a few days before the commencement of the trial (some 9 months later) that the Archdiocese sought to even raise the defence that the Trustees were not the proper entity to respond to the suit.

This defence was initially not allowed by the Court to be introduced. After it became necessary to adjourn the proceedings for other reasons, the defence was then introduced. It did not succeed at first.

After the trial judge allowed an extension of time for my claim to be brought, the Archdiocese did not proceed to resolve the claim.

Rather, the Archdiocese appealed the decision to the Court of Appeal seeking a decision that neither the Trustees nor the Archdiocese were liable on the claim. This became the primary focus of the litigation.

There was no element of my claim that would have 'changed the law'. Had the Archdiocese not contended that they were effectively immune from suit, it would be no different to the approach adopted by Catholic Church bodies today. On the evidence to the Inquiry of Catholic Church Insurances, there is now a policy not to raise a defence that trustee bodies are not the proper respondent.

Preventing an attempt by me to change the law could therefore not have been the reason the Archdiocese conducted the Appeal. Mr Pell's evidence to the contrary is untrue.

4. Mr Pell implies that the Archdiocese paid 'informal compensation' upon conclusion of the Appeal and waived the Archdiocese's costs.

When the proceedings were concluded, the Archdiocese did not offer any support or assistance to me. Rather it pursued an order for \$755,000 in costs.

I will return to the question of assistance subsequently provided later in this submission.

What I wish to address here is the impression Mr Pell sought to give that he met with me on his own instigation and agreed to provide support and assistance. The impression is that this was at or around the time of the litigation.

What happened within a few weeks of the refusal by the High Court of Special Leave was that the solicitors for the Archdiocese demanded payment of costs. I attach the demand sent in December 2007 [Appendix B].

This matter was pursued for over a year. That action by the Archdiocese compounded the trauma I had suffered through the course of the litigation.

It was not until late February 2009 that Mr Pell met with me and agreed not to pursue the order for costs. At that time, he refused to put that in writing. He later did so in August 2009 through his chancellor. The relevant correspondence is attached [Appendix C is my correspondence to Cardinal Pell and Appendix D is the letter from the Archdiocese].

5. Costs expended in defending my claim

The Archdiocese expended costs of over \$800,000 in relation to the litigation.

While the initial correspondence in Appendix B referred to \$755,000 in costs, I was informed in October 2012 that the amount of legal costs incurred by the Archdiocese was \$800,000.

Those costs were not willingly 'remitted'. They were eventually agreed not to be pursued only because my wife approached the Archdiocese because of my declining mental health caused by the stress of the vigorous action by the Archdiocese's lawyers to seek to recover the costs.

6. Mr Pell stated that comments in the media and the corridors of Parliament that the only thing I was paid was \$30,000 are misleading

I have not heard any such comments. It has been reported in the media that significant financial assistance has been provided to me.

What has been reported is that the only offer that was made under *Towards Healing* was \$30,000. That is correct.

As indicated above, once my legal claim was made in 2004, no further offer was made, and no payments were made to me until after the Archdiocese agreed not to pursue its costs in 2009.

I have never been offered any lump sum settlement. I have never been offered anything for the impacts of the sexual abuse I suffered other than the initial offer of \$30,000 (which was not paid).

What the Archdiocese did in early 2009 was to commence payment of the 'gap' for my ongoing therapy. That continued until mid 2012. I have not quantified those costs, but they are significant. I had attended twice-weekly therapy with a psychiatrist from late 2005.

The Archdiocese later paid for various other things to support and assist me. Once again, I have not calculated the total of the payments, which were primarily to third parties. I cannot say whether Mr Pell's figures are accurate. It is clear that the combined amount of all

payments does not begin to approach the amount expended by the Archdiocese on legal fees. The payments included payment for me to take 3 weeks off work to recover (which I had been unable to do despite my poor mental health because of the financial strain of the years of litigation and the fact that I was unable to obtain income protection insurance). It also included payment for travel and accommodation during that break. Later the Archdiocese contributed to costs of repairs to my house, which had fallen into a dangerous state of disrepair and needed to be partly demolished and rebuilt. This was particularly symbolic given the harm caused by the threats to enforce the costs order, which would have taken our house and left me and my family homeless. The payments to me also included reimbursement of expenses of other victims that I had paid.

When the provision of some support and assistance was agreed, it was expressly on the basis of the stress and impacts (including the legal costs I had expended) of the years of litigation with the Archdiocese that Mr Pell labeled as 'legal abuse'. I had to approach the Archdiocese with each request for assistance, and approvals and payments were often delayed, sometimes for more than 6 months. The process of seeking assistance was often demeaning and embarrassing. Nonetheless, the assistance provided was beneficial and appreciated. It was important to me to know that the Archdiocese recognized that how it had acted in relation to the litigation was repugnant to the principles of justice and compassion and severely damaging to me, and that it was seeking to make amends for that.

To now seek to characterize that support and assistance as an acknowledgement of the Archdiocese's moral responsibility for the sexual abuse I suffered over 12 years at the hands of Father Duggan is false and misleading.

In October 2012, I was informed that all payments to me from the Archdiocese (including payments previously agreed) other than for counselling would cease. I was informed that there was to be no discussion entered into in relation to that decision. No reason was given for the sudden withdrawal of the prior commitments and future support.

No monies whatsoever have been paid since that time.

The impression sought to be conveyed by the Archdiocese of Sydney and other Church leaders that they proactively provide support and assistance to victims and survivors of abuse cannot be sustained.

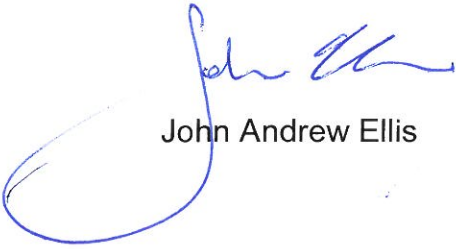
Since 2009, I have advanced or loaned in excess of \$150,000 in direct financial support for victims of clergy abuse where Churches have refused to provide support and assistance. I have also undertaken countless hours of legal work and other support and assistance without

charge for victims of abuse and their families, where Churches have refused to pay for support those people have needed.

I am happy to provide any other information or documents that the Inquiry would find of assistance.

Yours sincerely

John Andrew Ellis

A handwritten signature in blue ink, appearing to read 'John Andrew Ellis', is written over the printed name. The signature is fluid and cursive, with a large loop at the beginning.