

UPDATE 32

Royal Commission Christian Brothers Case Perth



Day 4: Thursday 1 May 2014

Day 5 Friday 2 May 2014

Day four of the Royal Commission into Institutional Responses to Child Sexual abuse continued in Perth with the public hearing into Christian Brothers' orphanages and farm schools in WA with evidence about a class action on behalf of residents.

Between 1993 and 1996, more than 200 men signed on to a class action, run by Slater & Gordon, seeking damages for the abuses suffered at the institutions.

The Commission heard from the two lawyers involved in the litigation: Hayden Stephens, from Slater & Gordon and Howard Harrison, a partner with Carroll & O'Dea, who represented the interests of the Christian Brothers and individual defendants.

Evidence was given concerning the issues that were raised by the litigation; the limitation period in which such action could be taken and who was the proper defendant to be sued.

The class action was resolved by the establishment of the WA Institutions' Reconciliation Trust, to hold the \$3.5 million paid by the Christian Brothers as part of the settlement to be dispensed by the Trustees by way of payments and other assistance to the former residents.

In addition to the payment into Trust, \$1.5 million was paid to Slater & Gordon for its legal costs. The payment made to former residents was a minimum of \$2000 each with some former residents receiving up to about \$40,000, and one former resident receiving over \$70,000.

Mr Stephens told the Commission about the history of the litigation and the subsequent settlement negotiations between the Christian Brothers and Slater & Gordon.

In evidence, Mr Stephens told the Commission that while litigation had a place in resolving sexual abuse claims he said "if these claims could be resolved without the need to drag these men through a lengthy court battle then they should..."

Mr Stephens, after questioning from Chief Commissioner McClellan, agreed that the issues of time limitations and identifying an appropriate organisation to sue were the key legal hurdles during the litigation.

Following the conclusion of Mr Stephens' evidence Mr Howard Harrison, Carroll O'Dea Partner with the conduct of the litigation on behalf of the Christian Brothers, commenced giving evidence.

Mr Harrison gave evidence about the Brothers' awareness of the abuse at the time and of their understanding at the time of the litigation.

Mr Harrison also gave evidence about the reputation of Slater & Gordon as an aggressive law firm with a history of running major class actions and the extent to which this influenced some of the legal decisions.

Mr Harrison said the Brothers preference would have been to have the cases resolved with some kind of pastoral approach but the Court proceeding required a legal response.

“I was well aware from my conversations with Brother Julian and other Brothers that they were far from comfortable with a legal defensive posture in relation to these cases. They accepted that the Slater & Gordon kind of tsunami had to be managed, but underneath all of that was a need, in terms of the values and mission of the Christian Brothers, to get these cases into some kind of resolution where there was some prospect of reconciliation and healing,” Mr Harrison said.

Day Five of the Perth hearing started with Howard Harrison continuing to give evidence.

During his testimony Mr Harrison said a legal solution to determining issues of sexual abuse is “no solution”.

Mr Harrison said the way in which the Christian Brothers deal with cases of abuse now is vastly different to the approach in the early to mid-1990s including encouraging victims to gain legal representation which is paid for by the Brothers.

The Brothers will also hear the complaint in whichever forum the complainant wishes whether that be courts or through mediation. The Christian Brothers always now make themselves available to meet with the victims if the victim so wishes.

Mr Harrison said the process including the timing is now driven by the wishes of the complainant.

The days’ hearing concluded with evidence from Narrell Lethorn from the WA Government about Redress WA, which was established by the WA Government to make ex-gratia payments to victims of Child sexual abuse from all WA institutions.

The Commission concluded its hearings for the week at lunch time on Friday 2 May. The hearing will resume on Monday.

For more information on the Truth Justice and Healing Council go to: www.tjhcouncil.org.au

For information on the Royal Commission go to: <http://www.childabuseroyalcommission.gov.au/>

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