

Facing the Truth

Learning from the Past How the Catholic Church in Victoria has Responded to Child Abuse

Fact Sheet 9 Is there an 'Ellis defence'?

19 April 2013

The Ellis case

John Ellis was abused when he was an altar boy from 1974 to 1979 by Father Aidan Duggan, the assistant priest at the Bass Hill Parish of the Catholic Archdiocese of Sydney.

In 2004, Mr Ellis sued Father Duggan, Cardinal George Pell in his capacity as Archbishop for and on behalf of the Archdiocese of Sydney, and the body corporate, The Trustees of the Roman Catholic Church for the Archdiocese of Sydney, which was established under the *Roman Catholic Church Trust Property Act 1936 (NSW)* to hold property on trust for the diocese and its parishes.

Later in 2004 Father Duggan died.

The trial judge in the Supreme Court initially found that the Trustees could be sued by Mr Ellis in relation to the abuse, and granted him an extension of time to allow him to pursue his claim against them. The judge also held that as Cardinal Pell was not the Archbishop of Sydney at the time of the abuse, he could not be responsible for the abuse, and the court dismissed the claim against him. Both the body corporate and Mr Ellis appealed the decision.

In its appeal, the body corporate accepted that the abuse had occurred, but its limited functions meant that it did not control and was not responsible for Fr Duggan's conduct. The Court of Appeal found that neither Cardinal Pell nor the body corporate could be held liable for Father Duggan's criminal conduct.

In 2007, Mr Ellis sought leave to appeal to the High Court, which was not granted.

Although Mr Ellis' court action was unsuccessful, the Archdiocese of Sydney took responsibility for his abuse, and he has since received several hundred thousand dollars in financial assistance.

While the Court found that the body corporate was not responsible for the assistant priest, it did not set up a so-called 'Ellis defence' or any new law. This decision is consistent with the longstanding rule of law that you cannot be liable for the criminal actions of others unless you are directly or indirectly responsible for supervising their conduct, and there has been negligence or other actionable conduct.

The Church takes responsibility

Importantly, through the *Melbourne Response* and *Towards Healing*, the Church accepts responsibility where abuse has taken place. Because the Church is committed to helping victims of abuse, where responsibility is clear, it seeks to settle claims. As a result, very few claims against the Church in Victoria involve civil proceedings being issued.

The Church has not deliberately sought to structure its affairs and does not use the legal structure of its property trust to protect its assets from victims. Instead, the Church has set up mechanisms to ensure that victims are treated justly and that compensation or reparation is able to be paid to victims. This is funded by insurance and from the assets of the particular diocese or religious congregation.

The *Melbourne Response* offers compensation up to a cap of \$75,000, which is \$20,000 higher than victims of crime can be awarded under Victorian law, and ongoing counselling and treatment which is not capped. There is no cap on reparation through *Towards Healing*.

All victims have the right not to proceed through the *Melbourne Response* or *Towards Healing* but instead to issue legal proceedings. In those circumstances, the process will, of course, be more legalistic and less pastoral. This is because civil litigation is not centred on restorative justice but rather on a plaintiff who is seeking monetary compensation from a defendant. However, even in these circumstances the Church's preference is always to resolve the claim through mediation, rather than requiring a victim to prove their case in court.

For more information and support

www.facingthetruth.org.au

The *Melbourne Response*

Ph: (03) 9225 7979

www.cam.org.au/Melbourne-Response

Towards Healing

Ph: 1800 816 030 or (02) 9669 6218

www.catholic.org.au