



COIN

COMMISSION OF INQUIRY NOW

Justice for victims of Catholic Clergy Sexual Assault in Victoria

23 August 2013

Justice Peter McClellan AM,
Chair, Royal Commission into Institutional
Responses to Child Sexual Abuse
GPO Box 5283
SYDNEY NSW
2001

Dear Justice McClellan,

Royal Commission into Institutional Responses to Child Sexual Abuse COIN Submission No 5

“Corporation Sole and the Roman Catholic Church”

Corporation Sole COIN submits that the law should be reformed such that current Church office-holders may be held vicariously liable for civil damages¹ or be prosecuted for criminal conduct² (eg “aiding and abetting”) in relation to the sexual abuse of victims *occurring during the period of their predecessors office*, be such predecessors a priest, Monsignor, Bishop, etc. Such unlawful acts are herein called “officials’ liability”.

Once way of achieving this result, such that officials’ liability does not expire with retirement from office, or death, of the “offending” official, is to declare the relevant office, or offices, an entity with continuing legal existence (like a company under the corporations law), burdened by continuing rights and liabilities that do not terminate by reason of changes in that office’s occupant i.e. a “corporation sole”.

Australian Common Law Australia inherited much of the British common law, including the law in relation to what constitutes a corporation sole. The current position in Australia is that the Roman Catholic Church (“the RCC”) does not exist as a legal entity and thus cannot, of itself, be sued; and an ex-officer in the RCC hierarchy, e.g. a Bishop, is not a corporation sole. The recent NSW case *Trustees v Ellis and Anor* [2007]³ contains a useful exploration of these issues.³

¹ See COIN’s separate submission on “Vicarious Liability and the Catholic Church”

² See COIN’s separate submission on “Crimes Act (Vic) ss323-326: Catholic Church Hierarchy: *Aiding and Abetting the crime of sexual abuse by priests*”.

³ *Trustees v Ellis and Anor* [2007]³ NSW 117, 158-170

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English Law In summary, the ecclesiastical corporation sole developed in the Middle Ages as a response to legislation prohibiting perpetual gifts of land to the Church. It was a way of explaining how a gift to a particular priest (for example), would transfer, upon his death, to the next incumbent priest. These corporation soles were formed under canon law, not English common law, by the authority of the Pope. This power to authorise corporation soles was not questioned until the English Reformation, when the Church of England was formed. While the concept of corporation sole survived the reformation, it became a designation to be granted by the King, or an Act of Parliament. *Trustees v Ellis* confirms this to be the status of the law in Australia.

Corporation Sole and the Catholic Church in the USA In the USA, corporation sole as applied to the Catholic Church, is not recognised unless incorporated by statute – *Wright v Morgan* (1903).⁴ Thus, to ensure perpetual succession to the next bishop, priest, etc, the corporation sole of the relevant ecclesiastical office must be recognised under statute.

Sixteen states in the USA recognise corporation sole under statutory law, usually in relation to non-profit corporations or religious societies. These include Alaska, California, Colorado, Hawaii, Michigan and Washington. Other jurisdictions have “legal” corporation soles created under special or private charters.

Australian Statutory Position To the best of our knowledge, no Australian Statute recognises this common law entity of corporation sole. Indeed, the *Corporations Act 2001* (Cth) explicitly excludes it from the definition of a corporation in s 57A.

Proposal for Law Reform The position in Australia is similar to that expressed in *Wright v Morgan* – corporation sole can only be recognised through statute. However, no such statutes have been enacted in Australia. If Australia is to address the problem of sexual abuse of children within religious organisations, liability for such sexual abuse must be legally transferable from one incumbent leader to the next, i.e. Australia needs a Statute requiring religious leaders to become corporation soles.

In *Ellis*, (a civil case for damages) the NSW Court of Appeal pointed out that “corporation sole” originally began as a means of ensuring property succession, and therefore may not allow for the transferal of torts or liabilities from one incumbent to the next.

Thus, a provision similar to 10007 of the California Corporations Code should be enacted:

10007. Every corporation sole may:

- (a) Sue and be sued, and defend, in all courts and places, in all matters and proceedings whatever.
- (b) Contract in the same manner and to the same extent as ac natural person, for the purposes of the trust.
- (c) Borrow money, and give promissory notes therefor, and secure the payment thereof by mortgage or other lien upon property, real or personal.
- (d) Buy, sell, lease, mortgage, and in every way deal in real and personal property in the same manner that a natural person may, without the order of any court.

⁴ *Wright v Morgan* 191 U.S 55, 59 (1903)

(e) Receive bequests and devises for its own use or upon trusts to the same extent as natural persons may, subject, however, to the laws regulating the transfer of property by will.

(f) Appoint attorneys in fact.⁵

COIN requests that this submission be placed on the Commission's public list of submissions.

Yours faithfully,

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⁵ California Corporations Code, § 10007