

Australian inquiry scrutinizes church

Stephen Crittenden | Dec. 31, 2013
Sydney

Australian survivors of clerical sexual abuse have been complaining for years about their dissatisfaction with *Towards Healing*, the Catholic church's national protocol for responding to abuse.

The inner workings of *Towards Healing* were laid bare in November and December during two weeks of public hearings held here before the Royal Commission Into Institutional Responses to Child Sexual Abuse, chaired by New South Wales Supreme Court Judge Peter McClellan.

The royal commission was established in November 2012 to inquire into how private, public and nongovernment institutions, including churches, have responded to child sexual abuse, and to make recommendations on improvements where systems have failed. With more than 5,000 people expected to come forward to tell their stories, it is likely to take years to complete its work. One thousand private hearings have already been conducted.

One of the most shocking revelations in early December concerned the handling of allegations of abuse by Marist Br. Raymond Foster, a teacher who committed suicide in 1999, just hours before he was due to face charges of abusing a 13-year-old boy in a north Queensland school in the early 1970s.

He left a suicide note: "I bear no ill will against the person who had me charged as he had every right to do so and I ask his forgiveness if he would be so kind." Foster was 68 at the time of his death.

But the Marist Brothers, one of the largest male teaching orders operating in Australia, concealed the note and publicly claimed Foster died of natural causes.

His victim, identified by the pseudonym DG, said he had felt guilty over Foster's death. "They made me feel I was harassing a sick old man rather than seeking justice for the actions of a devious, slothful and drunken child molester."

DG said he had participated in the *Towards Healing* process in 2002 and met with Marist Br. Michael Hill, the order's provincial at the time, but hadn't been told about the suicide note until recently and then from the royal commission.

In his evidence to the commission, Hill apologized for mishandling DG's case.

Another former Marist provincial, Br. Alexis Turton, who was the director of professional standards for the Sydney province between 2002 and 2012, gave evidence that he had received 128 abuse complaints during that period. The order has 234 members.

"We had a significant problem. We have a significant problem," he told the commissioner.

At the time Towards Healing was introduced in 1997, it was the first national abuse protocol developed by the Catholic church anywhere in the world. Towards Healing was intended to provide an opportunity for abuse victims to tell their story to somebody in authority in the church, receive an apology, and be offered pastoral care and reparation.

So far, 1,700 people have been through the Towards Healing process. Three-quarters of the cases relate to incidents that occurred between 1950 and 1980; 43 percent involve abuse by religious brothers; 21 percent by diocesan priests; and 14 percent by religious priests.

The Christian Brothers, followed by the Marist Brothers and the De La Salle Brothers, had the most complaints against them.

Nationally, the Australian church has paid AU\$43 million (US\$38.5 million) in compensation under the scheme.

'Plainly inconsistent'

Towards Healing has also been through a number of revisions over the years. The senior barrister representing the church, Peter Gray, told the commission the process was not perfect. "It is quite plainly inconsistent in its implementation and variable in the outcomes it delivers. That is in part a reflection of the application of the process across the country by so many different church bodies."

The commission also heard the story of Jennifer Ingham, 51, who was abused by Fr. Rex Brown of the Lismore diocese between 1978 and 1982. He died in 2005. In 2013, she received AU\$265,000 from the diocese plus AU\$12,000 toward her legal costs.

In contrast, Joan Isaacs, 60, received only AU\$30,000 from the archdiocese of Brisbane, a 10th of the compensation she was seeking after being abused in the 1960s by Fr. Frank Derriman. Because she chose to be represented by a lawyer, Isaacs endured a grueling two-year negotiation.

"Just after I was offered the \$30,000 [in 2001], I telephoned Archbishop [John] Bathersby and asked him, 'Do you know that after two years of stonewalling I have accrued nearly that amount in legal fees? I will have very little left.' Archbishop Bathersby then said, 'That's your problem.' I was utterly defeated and decided to accept the offer to get out of this terrible situation," Isaacs told the inquiry.

She also gave evidence that she signed a strict confidentiality clause under duress.

"I feel that the deed has silenced me in this respect, and it continues to haunt me to this day," she said. "The silencing holds the same power and control over me that was used by Frank Derriman when he abused me as a child," she said.

In 2011, Bathersby initiated the process to laicize Derriman, who had left active ministry in the early 1970s, according to commission documents.

A former chancellor of the archdiocese, Fr. James Spence, gave evidence that he was concerned at the time that the church's pastoral response to Isaacs was insufficient.

"Did you ever say to the archbishop, 'This isn't right?' " the commission asked.

"I certainly inferred it," Spence answered. "One doesn't generally speak so directly to the archbishop. Perhaps one should."

The director of professional standards for the Catholic church in Queensland, Mary Bernadette Rogers, said in her evidence that Isaacs' treatment under Towards Healing had amounted to a form of re-abuse.

Rogers was asked whether she had ever sat down with directors of the church's professional standards offices in other states to discuss how to make the system more consistent across Australia.

"No, your honor," she answered.

"Never?"

"No, your honor."

"Do you think that someone who complains that someone in another diocese received a much larger sum than they did for similar levels of abuse is entitled to be very upset with the church?" the commission asked.

"Yes."

"Have you discussed that with your colleagues?"

"No."

In a December interview with *NCR*, Wayne Chamley of the Australian victim support group Broken Rites said the recent evidence demonstrated that Towards Healing was a process created to satisfy the church's insurers and to reduce compensation payouts.

He said it was also increasingly clear that Towards Healing was not a single, unified scheme.

"In practice there are as many versions of Towards Healing as there are dioceses and religious orders. It's like a lottery. Victims who have suffered similar abuse and similar trauma can receive wildly varying compensation payouts, but there is no right of appeal. This state of anarchy must cease," Chamley said.

Insurer makes the calls

Broken Rites offers free advocacy services to abuse victims, and Chamley told *NCR* that in his experience, lawyers for the church would rarely say whether they were taking instruction from the church or its insurers. When the church authorities became aware that a complainant had called Broken Rites to represent them, the mediation process could face considerable delays.

"Complainants who entered Towards Healing were like lambs to the slaughter, but if they chose to bring a lawyer the game changed instantly. The insurance company pulled all the strings," Chamley said.

That certainly appears to have been the situation in Isaacs' case. The senior counsel assisting the royal commission, Gail Furness, said the evidence revealed that much of the process Isaacs participated in had been "determined in advance" by the church's insurer, Catholic Church Insurances Limited.

In an exhibit, the commission was read a letter from the insurer giving directions about what the church rep-

representative should say during a mediation with Isaacs, including the form of words to be used in his oral apology. He was instructed to avoid any concession of responsibility on the part of the Brisbane archdiocese and not to discuss compensation.

The insurer also determined the number of counseling sessions made available to Isaacs and was consulted about the wording of the written apology signed by the bishop.

It was clear from Judge McClellan's questions that he is interested in the church's asset structures, including what funds bishops are able to draw on to compensate victims apart from their public liability insurance policies, and what financial reports he might be able to access, if any.

Spence told him that AU\$154 million had been invested in the Brisbane archdiocesan development fund, which was used "like a bank."

Later, current Brisbane Archbishop Mark Coleridge revealed that, over the years, the archdiocese had paid a total of AU\$2.5 million in compensation victims, AU\$1.7 million of which came from the church's insurer. That left AU\$760,000 that had been drawn from the archdiocesan development fund. Coleridge said the fund had earned a surplus of AU\$22 million last year.

"That money has to do many things," he told the commissioner. "The archdiocese of Brisbane is not among the fat cats of this world. We are not poor, but we are certainly not a wealthy diocese."

Chamley told *NCR* that these figures revealed that the Australian church had been able to meet the financial burden of the abuse crisis "with barely a sneeze."

"Towards Healing has saved the church millions of dollars. If they've paid out \$43 million nationally over 17 years, they're not even eating into their capital," Chamley said.

He anticipates that the royal commission may end up recommending the establishment of some kind of independent compensation scheme, to be funded by the churches and administered independently of them.

Over two weeks of testimony, one church official after another expressed support for handing over the financial compensation aspect of Towards Healing to an external body. One of these officials was Coleridge, who told the commissioner, "I think that the sooner we get reparation, or compensation, out of the Towards Healing process, the better for everyone."

In other evidence, Coleridge described the sexual abuse scandal as "a tsunami that blew up from nowhere." He said Australian bishops and heads of religious orders had been caught "like rabbits in the headlights" by the volume of cases in the 1990s.

He said Isaacs' case had been the subject of "spectacular bungling" under his predecessor Bathersby.

Vicarious liability

In his questions, McClelland has been relentlessly chipping away at the argument that clerical abuse is the responsibility only of individual abusers, not a corporate responsibility of the whole church.

In Australia, church property trusts are protected by legislation and the courts don't recognize the vicarious liability of church officials. Last month, a Victorian state parliamentary report on sexual abuse found this

situation to be "clearly unacceptable."

In a sign of possible change, McClelland's argument is that the church should share the responsibility and liability because it asks the public to come forward and place their trust in it, thereby providing "by its very structure" the opportunity for those individuals who breach that trust.

Speaking of the "poverty" of earlier seminary formation as a powerful cultural factor that had combined with personal culpability to create "a perfect storm," Coleridge seemed to support the commissioner's argument: "My own view is that insofar as there are these cultural factors in play -- and there are -- then it really does make sense to talk about some kind of communal or vicarious responsibility or even liability."

That exchange will likely be a cause of concern for other Australian church groups, including the Anglicans and the Salvation Army.

McClellan asked Hill what preparation for a celibate life he had received as a young Marist Brother.

"If you wanted to sum it up in one word," Hill replied, "the word would have been 'Don't.' "

"Don't do what?"

"Anything sexual."

"At all?"

"That's correct."

"Is that a tolerable position for a young man to have to live in?"

"It's intolerable."

The commissioner asked: "Do you see the vow of chastity, imposed upon an 18-year-old, as was imposed upon your generation, as a sensible or appropriate thing to do?"

"Certainly, in 2013, no," the former provincial replied. In some cases, the vow of celibacy was a "probable cause" of abuse, he said.

Inquiries into Towards Healing will continue throughout the life of the royal commission. The first public hearings scheduled for 2014 will focus on homes run by the Salvation Army.

[Stephen Crittenden is a freelance journalist based in Sydney.]

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