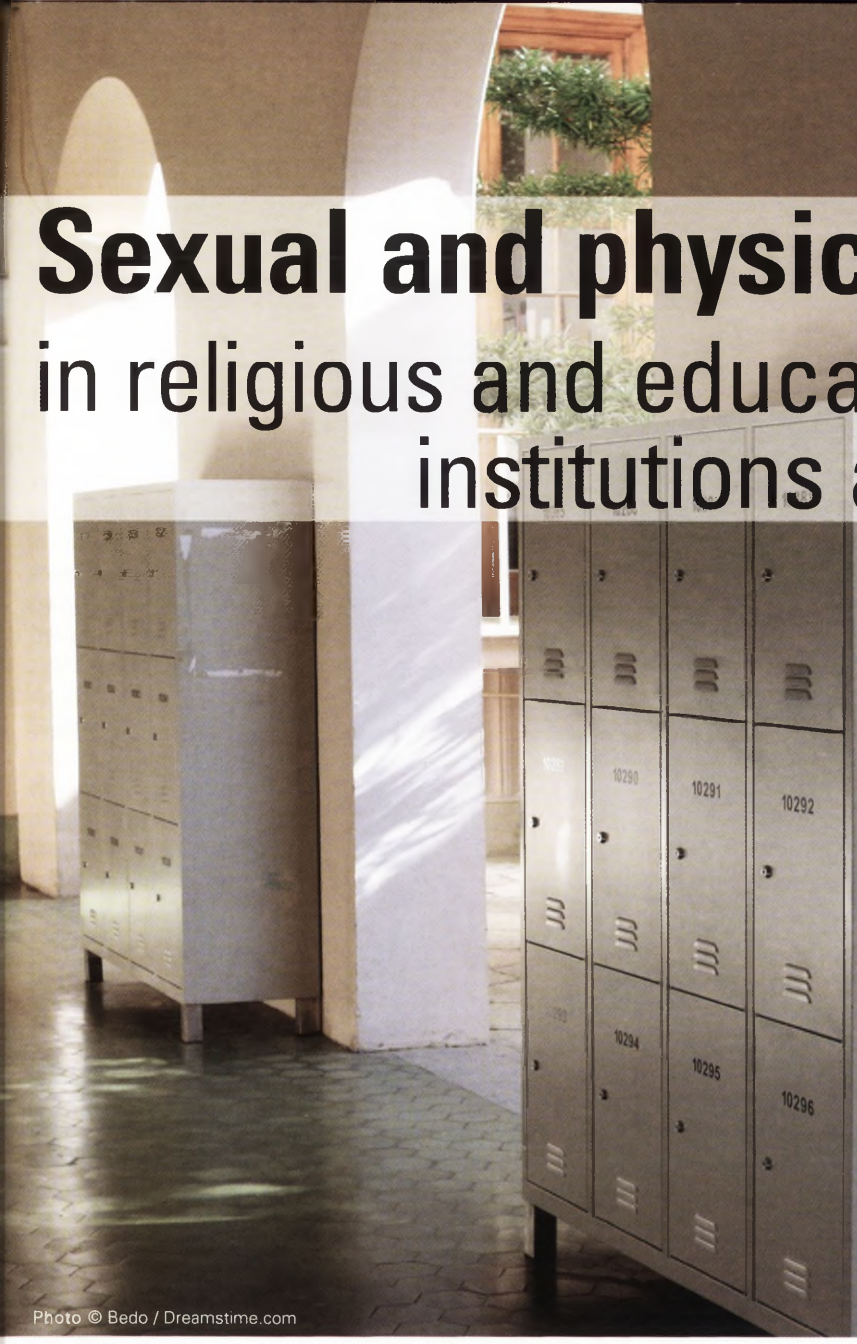
By Dr Andrew Morrison RFD SC

# Sexual and physical abuse in religious and educational institutions and state care



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**The following five cases are drawn from my own experience, as a Senior Counsel appearing for plaintiffs who allege they have suffered sexual abuse as children. All five have been litigated, albeit with only three concluded. All are in the public arena, so they can be frankly discussed. The final summary concerns an interesting but never concluded claim against a school and headmaster in relation to an alleged misleading reference for a teacher who later sexually abused a pupil.**

### *GRAHAM RUNDLE v THE SALVATION ARMY (SOUTH AUSTRALIA) PROPERTY TRUST AND KEITH ELLIS* [2007] NSWSC 443, *SALVATION ARMY (SOUTH AUSTRALIA PROPERTY TRUST) v GRAHAM RUNDLE* [2008] NSWCA 347

In 1960, Graham Rundle was eight when his father placed him in full-time care and custody at a home called Eden Park in South Australia, run by the Salvation Army. This boys' home conducted a farm and the children were required to work on farm activities. Graham Rundle claims that several months after arriving at the home he was sexually assaulted by another boy. He complained to Keith Ellis (known then as Sergeant Ellis), who was a full-time carer and supervisor. He says Ellis took no action. Subsequently and over five years, he was regularly sexually assaulted by other boys, and Ellis himself sexual abused him. This included taking him to Ellis' mother's home in Adelaide, where (as with other boys) extensive sexual abuse, including oral sex and buggery, occurred.

In addition to the sexual abuse, Graham Rundle claims that he was physically abused and beaten for complaining. Solitary confinement and deprivation of food and warmth were used as punishments.

He commenced proceedings in NSW in 2003. He applied for an extension of time in which to sue. He had to prove under the old South Australian legislation that he sued within 12 months of discovery of a material fact not within his means of knowledge. At first instance, Simpson J in the NSW Supreme Court on 7 May 2007 found that the allegations involved at least 300 or 400 sexual assaults, quite apart from those alleged against Keith Ellis. The physical punishment included being locked up for two to three days at a time in an isolation cell without food or blankets. The violent physical assaults on him and beatings continued until he was about 13 years of age. After one beating, the marks were observed by his school soccer coach, who in turn reported it to Eden Park, which resulted in further beatings. Simpson J accepted the plaintiff's evidence and notes that it >>

was not in any significant way challenged.

Simpson J was highly critical of evidence given by solicitors acting for the Salvation Army as to attempts to locate witnesses. One of the solicitors had written in 2001:

> 'We have put your allegations to the officers named by you and also to Mr Ellis. We would like now to meet again with you in conference to discuss the various responses to your statements and also to the report of [your counsellor].'

The Salvation Army suggested that medical reports from the psychiatrist who attended Eden Park were no longer available and that a relevant officer from Eden Park had died. The Salvation Army failed to disclose to the Court, as Simpson J noted, that it had already obtained a statement from the officer before he died and that it knew that the psychiatrist had never seen or treated Graham Rundle.

On 18 August 2003, on an ABC program, *Four Corners*, a spokesman for the Salvation Army, Mr John Dalziel, was interviewed. He admitted significant abuse in Salvation Army children's homes during the period. It was put to him by the interviewer that the Salvation Army's lawyers were raising defences in a whole series of claims based upon the expiry of the limitation period. He said:

> 'That's the first time I've heard that and they should not have said it because, as I have previously stated, we have no statute of limitations applying to victims of the Salvation Army ... we will never close the book on anyone who has gone through our care as long as they live, and I believe we've demonstrated that with the people we've been helping.'

In Graham Rundle's case, the Salvation Army has maintained a limitation period defence and vigorously contested any extension of time, notwithstanding that assurance given on national television.

Simpson J found that material facts in relation to the medical condition and indeed the true legal identity of the defendant first came within the means of knowledge of Graham Rundle less than 12 months before he commenced proceedings. The next question was whether the Salvation Army was prejudiced by the delay so as to prevent a fair trial in accordance with the principles laid down by the High Court in *Brisbane South Regional Health Authority v Taylor*.[1] That case established that the onus of establishing that the discretion to extend time in favour of an applicant lies on the applicant and that delay is evidence of *prima facie* prejudice. The test, however, is whether a fair but not perfect trial is still possible. Simpson J noted that Keith Ellis was facing criminal trial in South Australia in 2009 on a range of charges involving similar complaints to those made by Graham Rundle and including Rundle's complaints. *Ellis* has (in 2009) finally been convicted of a large number of offences.

Simpson J was satisfied that there was some prejudice to the Salvation Army from delay but 'not nearly as great as the solicitors would have had me believe'. However, that delay did not prevent the Salvation Army, having already conducted its own investigation, from mounting an adequate defence and a fair but not perfect trial was still possible. She extended time.

Graham Rundle claims that as a result of the way he was treated at Eden Park, he was poorly educated and has tried to commit suicide on two occasions. He is left with nightmares and trouble sleeping. He has had counselling and been on anti-depressant medication.

On 11 December 2008, in the *Salvation Army (South Australia Property Trust) v Graham Rundle*,[2] the Court of Appeal dismissed an appeal by the Salvation Army against the extension of time. The Court – McColl, Basten and Bell JJA – held there was no error on the part of the trial judge in her approach and nothing justifying appellate intervention. The Court also upheld the order against the Salvation Army in respect of costs, on the basis that the findings as to misleading conduct by the Salvation Army justified such an order.[3]

This case settled at mediation in July 2010.

### *ANGELO LEPORE v THE STATE OF NEW SOUTH WALES* (2003) 212 CLR 511

Angelo Lepore was a pupil in a government school aged seven in 1978. With other pupils he was taken for alleged misbehaviour from the classroom into a storeroom adjoining it and made to remove his clothes. He was struck and the assault had a sexual element. He complained of this and action was taken against the teacher, who was charged with four counts of common assault, including assault upon Angelo Lepore. The magistrate 'expressed bemusement' that the charges were not more serious. The teacher pleaded

guilty. However, the principal punishment inflicted was merely a recommendation to the Education Department that the teacher should not teach pupils below Year 7.

At first instance, Downs DCJ determined liability separately and concluded that the teacher had assaulted the plaintiff. This was unsurprising, since no one asserted otherwise. Unfortunately, he made no findings as to the nature of the assault or the number of assaults, so as to render this finding useful. However, he concluded that the Education Department had not been negligent in the supervision of its employee teacher.

On appeal to the Court of Appeal, the majority held that strict liability arose from the non-delegable duty of care owed by an education authority to a pupil.[4] Mason P found breach of the non-delegable duty of care, and Davies AJA agreed. Heydon JA dissented, but thought vicarious liability was open, although it had not been argued. This was on the basis that the trial judge's finding left open the argument that what was involved was an unauthorised or unlawful form of chastisement, which could be said to fall within the scope of his duties, giving rise to vicarious liability. However, he would have preferred a retrial, given the absence of useful fact-finding at first instance.

With two cases arising in Queensland (*Rich v State of Queensland and Samin v State of Queensland*), the NSW Department of Education appealed to the High Court. The appeal was enlivened by recent superior court decisions in Canada and England. In *Bazley v Curry*,[5] the Canadian Supreme Court had to consider a claim by a sexually abused child against a non-profit children's foundation, which operated residential care facilities for emotionally troubled children. The foundation had unknowingly hired a paedophile. The issue was whether, assuming the foundation had not been negligent, it was nonetheless vicariously liable. The Supreme Court of Canada held that it was. The situation was governed by the Salmond test, which posits that employers are vicariously liable for employee acts authorised by an employer, or unauthorised acts so connected with authorised acts that they may be regarded as modes (albeit improper modes) of doing authorised acts. Thus, employers have been held liable for thefts by employees from customers. The fundamental question is whether the wrongful act is sufficiently related to the conduct authorised. Relevant is the extent to which the wrongful act may have furthered the employer's aims, the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the enterprise, the extent of power conferred on the employee in relation to the victim and the vulnerability of potential victims to wrongful exercise of the employer's power.

In *Lister & Ors v Hesley Hall Ltd*,[6] the plaintiffs were residents at a school for boys with emotional and behavioural difficulties owned by the defendant, which employed a warden who systematically sexually abused them. He was ultimately convicted of multiple criminal offences. The >>

trial judge held that Hesley Hall could not be liable for his criminal acts. The Court of Appeal agreed. The House of Lords unanimously held that the plaintiff should succeed and that the defendant was vicariously liable for the acts of criminal and sexual assault. Their Lordships noted that the Salmond test was not confined to a wrongful act authorised by the master, or a wrongful and unauthorised mode of doing some act authorised by the master, but that Salmond on Torts went on to add that such a person:

> '... is liable even for acts which he has not authorised, provided they are so connected with acts which he has authorised, that they may rightly be regarded as modes – although improper modes – of doing them.'[7]

This was the germ of the 'closed connection test' adumbrated by the Canadian Supreme Court and applied by the House of Lords.

In *State of New South Wales v Angelo Lepore & Anor*,[8] the appeal of the state of NSW was allowed in part and a retrial was ordered. In substantial measure, the reasoning of Heydon JA (as he then was) in the NSW Court of Appeal was adopted by the majority. Gleeson CJ said that vicarious liability was open, and that intentional wrongdoing, especially intentional criminality, was relevant but not conclusive as to whether or not it was proper to hold the Education Department liable. He referred to the sufficient connection test. Where there is a high degree of power and intimacy, the use of that power and intimacy to commit sexual abuse may provide a sufficient connection between the sexual assault and employment to make it just to treat such contact as occurring in the course of employment (para 74).

Gaudron J held that where there is a close connection between what was done and what that person was engaged to do, vicarious liability might arise, and an employer may be estopped from denying liability for deliberate criminal acts of an employee.

McHugh J took the approach of the majority in the Court of Appeal – that non-delegable duty meant strict liability.

Gummow, Hayne and Callinan JJ would not extend vicarious liability to deliberate criminal acts. However, Gummow and Hayne JJ agreed that a retrial should occur.

Kirby J agreed with the approaches in Canada and UK and would have found for Angelo Lepore on the basis of vicarious liability. Accordingly, there was a majority of four for the proposition that the plaintiff could succeed, but no agreement between them as to why. It is to be noted that that all four members of that majority have since retired.

The action went back to the District Court to be reheard and ultimately settled in a satisfactory fashion. It remains quite unclear whether in Australia there can be vicarious liability for deliberate criminal acts in the way left open by the majority in *Lepore*. It is also clear that the majority in the High Court have reduced the non-delegable duty to no more than a duty to do what is reasonable in employing someone, so that it is not clear that the content of the duty is any greater than a delegable duty of care.

The gaps between Australian law and those of Canada and England remain significant, and further developments in the High Court are likely but will not necessarily be in the interests of those who have suffered abuse.

### *GERARD GREGORY LLOYD v ANTHONY GERARD BAMBACH AND THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE DIOCESE OF NEWCASTLE/MAITLAND* [2005] NSWSC 80

Gerard Lloyd was one of two students sexually abused in a co-educational Roman Catholic primary school, St Michael's at Nelson Bay, run by the Roman Catholic Church. The assaults consisted of the teacher seating a boy on his lap behind the teacher's desk at the front of the classroom, so that the desk obscured the view of the other pupils. He would place his hand inside their pants and masturbate them. Subsequently, the teacher started taking the plaintiff out during lunchtime and he engaged in anal intercourse with the 10-year-old child. He threatened the boy that if he said anything he would kill the plaintiff and his family and, specifically, would 'kill your mum'. Neither Gerard Lloyd nor the other pupil told their parents about the assaults. It was only when a fellow student told his father about the strange behaviour in class that police were notified. Bambach was arrested in September 1988 and charged with two counts of sexual abuse of a minor. He was given a suspended sentence subject to entering into a good behaviour bond. His employment was terminated.

Subsequently, Gerard said that he had not disclosed the full extent of the sexual abuse that had occurred – in part because of his embarrassment, and in part because of the traumatic effect it had on his mother. He had not disclosed to police the anal intercourse. The plaintiff claimed that the sexual abuse had a traumatic effect on his life, damaging relationships, his ability to maintain employment and causing the development of an alcohol problem.

Unfortunately, these two boys were by no means the first to be sexually assaulted by Bambach as a school teacher. Before being employed by the Catholic education system, Bambach had been employed by the NSW State Department of Education. In 1962, Bambach appeared before Clapin DCJ at East Maitland, charged with 12 counts of indecently assaulting young boys during the course of his employment as a teacher and assistant principal at Stroud Central School, operated by the State Education Department. The charges of indecent assault involved five different boys with allegations disturbingly similar to the present case. He pleaded guilty in respect of three of the 12 counts. He admitted the indecent handling of four boys and ultimately a deferred sentence and the remaining nine charges were not proceeded with. The deferral sentencing was conditional upon psychiatric treatment and not seeking employment or associating with young persons of either sex, but particularly males.

He was subsequently employed by the second defendant through the Catholic Education Office in 1974. His employment file with the Catholic Education Office had gone missing before hearing. However, Bambach revealed that in obtaining employment with the Catholic Education Office, he had fully disclosed his previous criminal convictions to the responsible Bishop, and the Church did not challenge this evidence.

Bambach was initially placed at St Paul's Primary School at Gateshead. He was subsequently acting deputy principal at St John's at Lambton and Holy Family at Meriwether before being appointed as a Year 5 teacher and vice-principal at St Michael's Catholic School in Nelson Bay. In one of the previous schools, he received a warning 'regarding similar matters' from an officer of the Catholic Education Office. This was not conveyed to the principal of St Michael's before he was employed there. Two years before the assaults on the plaintiff, a complaint was made at St Michael's that Bambach was sitting children on his knee during class. The principal assured the parent that she would speak to Bambach and the practice would be stopped. She drew this complaint to the attention of the Catholic Education Office.

In 1987, another parent complained to the new school principal at St Michael's that there was community concern about Mr Bambach engaging in inappropriate behaviour with school children, including sitting children on his lap and touching them. The parent was confronted in the principal's office with Mr Bambach, who denied the behaviour, and the principal backed his teacher. There was no further investigation.

In 1987, there was a further complaint to the principal from two mothers who had heard their young children tell of a pupil jumping from Mr Bambach's knee and doing up his fly. One of the parents complained to the former headmistress and also to the Catholic Education Office. Again, there was a meeting and Bambach denied the conduct. The principal threatened the mothers that if they made false allegations they could be sued. No students were interviewed and no investigations undertaken. The Director of Schools at the Catholic Education Office was notified and he affirmed 'complete confidence in the integrity of Mr Bambach'.

A further event occurred in 1988. The plaintiff's mother became concerned about inappropriate gifts from Bambach to her son and complained to the parish priest. Nothing was done.

It was only when a parent went directly to the police rather than complaining to the school or the Catholic Education Office that Bambach's predatory abuse of children under his charge was finally brought to a halt. A solicitor parent was told by his son that he had seen Bambach put his hand up a boy's shorts in the classroom and he contacted Nelson Bay Police. Bambach was ultimately convicted on 31 May 1989; sentence was deferred upon entering into a bond in the sum of $1,000, to be of good behaviour for a period of five years.

Bambach continued to attend the local church. The Church community and the local priest were threatening in their behaviour to Mrs Lloyd for damaging the reputation of 'Holy Mother Church'.

Gerard Lloyd sought an extension of time in which to sue. That extension of time was fiercely resisted by the Roman Catholic Church. In *Lloyd v Bambach & Anor*,[9] Master Malpass extended time on 23 February 2005 in which to sue both Bambach and the Trustees of the Roman Catholic Church for the Diocese of Newcastle/Maitland. The Church made a belated attempt to argue that the Trustees could not be liable, but it left this argument too late to be able to raise it. The hearing of the proceedings was ultimately settled as against the Trustees for the Church in a satisfactory sum.

### *JOHN ELLIS v PELL AND THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE DIOCESE OF SYDNEY* [2006] NSWSC 109, [2007] NSWCA 117, [2007] HCA 697 (16 NOVEMBER 2007)

John Ellis alleges that from about 1974, when he was 13, until 1979, when he was 18, he was engaged as an altar server in the Roman Catholic parish at Bass Hill. During this period, he alleges he was subject to frequent sexual assaults by a priest, Father Duggan. He sought a representative order against Cardinal Pell on behalf of the Church as an unincorporated association. He also sought to sue the Trustees of the Church, who held its property under the *Roman Catholic Church Trust Property Act* 1936.

John Ellis became a partner in a major commercial firm of solicitors in NSW, Baker & McKenzie. He married in 1983 but separated in 1992 and entered into a further marriage in 2000, which also experienced difficulties. He commenced counselling and the sexual abuse emerged belatedly during the course of that counselling. Ultimately, he was required to leave as a salaried partner from Baker & McKenzie because his interpersonal skills were so poor that they adversely affected his work and relationships.

John Ellis approached the Church with his complaint. The Church took more than a year to appoint someone to >>

investigate it, by which time Father Duggan was no longer capable of saying anything useful. He subsequently died. The Church opposed an extension of time in which to sue on the basis that it was clearly prejudiced by the death of Father Duggan, and undoubtedly it was. However, after the first day of hearing of the application, another former altar boy came forward and said that he had also been abused by Father Duggan. He was the successor altar boy to John Ellis. More significantly, he said that he knew that John Ellis was his predecessor and would also have been abused. If asked, he would have disclosed this. Stephen Smith gave unchallenged evidence that in 1983 he gave Father McGloin, Dean of the Cathedral in Sydney, a statutory declaration detailing sexual assaults upon him. Instead of investigating this claim, Father McGloin confronted him with the perpetrator and left them alone. Understandably, Mr Smith did not pursue the matter further. The Church produced no records of the statutory declaration or of any investigation. At first instance, Patton AJ noted that, 'It is rather chilling to contemplate that he is the same Father McGloin referred to in the Judgment of the Court of Appeal delivered 18 September 2005, against whom allegations were made similar to those made against Father Duggan by Mr Smith and the plaintiff.' The Church did not call Father McGloin, who is no longer practising as a priest but is in Sydney.

The Church did not challenge the allegations of sexual abuse. It argued, however, that there was no one to sue in respect of the pre-1986 legislation because the Trustees merely held the property of the Church, which was itself not a legal entity. Patton AJ found that because of the membership of the Church was so ill-defined, he could not make a representative order against Cardinal Pell, but found there was an arguable case that the Trustees could be sued. He found that the failure to investigate in 1983 overcame the complaints of prejudice, which were in effect caused by the Church's own misconduct. The plaintiff had first become aware of the seriousness of his condition and its effect on his career when he was sacked from Baker & McKenzie and was entitled to an extension of time.

The Church appealed to the Court of Appeal. On 24 May 2007, it held that neither the current Archbishop nor the Trustees were amenable to suit in respect of the alleged negligence and supervision of a priest said to have sexually abused an altar boy in the 1970s. The Church is a non-incorporated association, as is the Catholic Education Office. The Trustees who hold the property of the Church in each diocese are liable only in respect of property matters, at least for the period prior to legislative amendment in 1986, and possibly thereafter. At least until 1986, there is therefore no one to sue for negligence or abuse by teachers in Roman Catholic parochial schools in NSW. In respect of priests, there is no one to sue after 1986 as well. The Church is continuing to maintain that, even after legislative amendment, it is not liable to suit except in property matters.

The Church had made an offer of $30,000 in full compensation to John Ellis before he commenced litigation, on condition that he gave up his right to sue the Cardinal or the Trustees. No other offer was ever made. Leave to appeal to the High Court was refused in November 2007.

The Roman Catholic Church in NSW and the ACT seems to have so organised its affairs that there is no liability on the part of the Church for the conduct of priests and no liability in its parochial schools for the conduct of teachers prior to 1986 and, the Church argues, even after that. The implications are obviously very serious for those who suffered injury through abuse or negligence from the Roman Catholic Church.

### *TB v STATE OF NSW & ANOR, DC v STATE OF NSW & ANOR* [2009] NSWSC 326, MATHEWS AJ 28 APRIL 2009

The two girls, TB and DC, were repeatedly sexually abused by their stepfather from the ages of eight and five respectively. Their mother did nothing useful to assist them. Finally, in April 1983, TB herself as a teenager telephoned YACS (the predecessor of DOCS) and complained about the sexual and physical assaults upon herself and her sister. The second defendant, an officer of YACS, interviewed the children on 22 April and their mother on 28 April 1983, and was satisfied as to the truth of their complaints. In accordance with the then practice, the two children were charged with being neglected children within the meaning of the *Child Welfare Act* 1939 and taken to court. There were a number of hearings at which the magistrate sought to impose conditions excluding the stepfather from access to the children. However, after a brief period he resumed access and abuse of the children. On 15 September 1983, the second defendant interviewed the stepfather, who freely admitted having sexually abused the children. Her report to the court, however, did not disclose any abuse occurring during the remand period. The abuse of the stepdaughters continued until about March 1984. Both were clearly traumatised and the events had a significant effect upon their future life, although they are now married with children of their own.

In August 2001, both plaintiffs reported the sexual assaults to police. Not until 2004 was the stepfather arrested and charged, and he finally pleaded guilty in August 2005 to a series of rapes, indecent assaults and assault occasioning actual bodily harm on the children. Both of the girls were traumatised by the court proceedings. Both plaintiffs had the benefit of psychiatric assessments in February 2008, which expressed the view that neither of them was fully aware of the nature of their psychiatric injury until the proceedings in court in August 2005.

The girls brought proceedings seeking an extension of time. The Crown, on behalf of both defendants, sought to strike out both proceedings. The complaint against YACS and the second defendant, in particular, was that in 1983 the old offence of misprision of felony still existed in NSW and that by failing to report the stepfather's criminal conduct to the police, the second defendant had committed a criminal offence in the course of her conduct on behalf of the Department, for which the Crown was vicariously liable. Her Honour held in a judgment of 28 April 2009 that, because the legislation permitted but did not mandate

reporting to the police, there had been no breach of duty and the actions were struck out. In *DC & Anor v State of NSW*,[10] the plaintiffs' appeals were upheld, their cases were found arguable and the applications for extension of time (which Mathews AJ did not determine) were remitted to the common law division for hearing.

### *VMT v THE CORPORATION OF THE SYNOD OF THE DIOCESE OF BRISBANE & ANOR* (2007) AUST TORTS REPORTS 81-909 [2007] QSC 219 LYONS J 10 AUGUST 2007

Mr Tony Strudwick was employed as a teacher at Toowoomba Preparatory School in 1980. The school was conducted by the Corporation of the Synod of the Diocese of Brisbane on behalf of the Anglican Church. In late 1980, the headmaster was approached by the mother of two female students who complained that Mr Strudwick had inappropriately touched her daughters. The headmaster confronted Mr Strudwick, who tendered his resignation from the school, which was accepted. However, he was provided with a written reference dated 10 September 1980 by the headmaster, stating that he left the school with the school's blessing and that:

> 'He has also captured the enthusiasm of his pupils demonstrating at all times his deep concern for their welfare and progress as well as maintaining the highest possible standards.'

The reference did not disclose the misconduct allegations. Mr Strudwick applied for and obtained employment with the Queensland Department of Education. Between 1983 and 1998, he was employed at Harlaxton State School. The plaintiff, VMT, was a student and, from 1983 to 1992, Mr Strudwick sexually abused her. The plaintiff claims that the provision of the reference enabled Mr Strudwick to obtain employment and therefore the opportunity to sexually abuse the plaintiff.

An application was brought for an extension of time in which to sue, given that the headmaster's reference was given 27 years before and the abuse commenced 24 years before. Lyons J held that it constituted a material fact not within the means of knowledge of the applicant plaintiff, which was of a decisive character entitling an extension of time. The next question was whether the case was arguable because the duty of care, the defendant contended, could not be owed to an unlimited class of persons, and there was no evidence that the state relied on the reference in employing the teacher. The plaintiff, on the other hand, submitted that there was at least a *prima facie* presumption that the Department of Education relied on the accuracy of the reference in employing the teacher. It was also argued that students coming into contact with the teacher would be 'closely and directly affected' by the headmaster's act in writing the reference and such future pupils should reasonably have been within the headmaster's contemplation when directing his mind to the content of the reference.

Lyons J did not need to consider whether the plaintiff would ultimately succeed. The plaintiff only had to establish 'a case on the hearing of the application to extend time' and not that the plaintiff would, on the probabilities, ultimately succeed. He appears to have been satisfied that there was an arguable case.

In relation to the issue as to whether the discretion should be exercised, he quoted the words of Toohey and Gummow JJ in *Brisbane South Regional Health Authority v Taylor*:[11]

> 'The real question is whether the delay has made the chances of a fair trial unlikely.'

Although some 27 years had elapsed, Lyons J was not satisfied there would be any real prejudice and an extension of time should be granted.

The respondent/defendant sought leave to appeal to the Queensland Court of Appeal. Settlement negotiations then ensued and the claim settled for what is understood to be a not insignificant sum. ■

**Notes:** **1** (1986) 186 CLR 541. **2** [2008] NSWCA 347. **3** [111 and 158]. **4** See *Kondis v State Transport Authority* (1984) 154 CLR 672 per Mason J at 686. See also *Commonwealth v Introvigne* (1982) 150 CLR 258, where Mason J [at 271] held the Commonwealth liable for the negligence of teaching staff in a school run in the ACT by the NSW Education Department. **5** (1999) 174 DLR (4th) 45. **6** [2001] 2 All ER 769. **7** 1st ed 1907 pp83-4. **8** (2003) 212 CLR 511. **9** [2005] NSWSC 80. **10** [2010] NSWCA 15. **11** (1996) 139 ALR 1 at 7.

**Dr Andrew Morrison RFD SC** *is a barrister at 16 Wardell Chambers, 39 Martin Place, Sydney.*