

UPDATE 46

Royal Commission Wollongong Gerard Nestor

Sydney



Thursday 26 June 2014 – Day 3

The Royal Commission heard evidence today from Dr Kevin Matthews, a canon lawyer and parish priest of the Port Pirie Diocese, Fr Mark O'Keefe, priest of the Wollongong Diocese, and the Bishop of Wollongong, Bishop Peter Ingham.

Dr Matthews was Fr Nestor's canonical advocate from 1998.

He told the Commission that accusations alone against a priest in the nature of those made against Fr Nestor were sufficient for a bishop to place the priest on administrative leave.

Dr Matthews said there is a *lacuna*, or gap, in canon law. He said that when investigation of allegations revealed insufficient proof to meet the required standard for a canonical penal process, a priest cannot be tried. However the suspicion about the priest may be such that the Bishop cannot permit the priest to return to ministry.

Dr Matthews said in such cases, the priest remained a priest but was not given an ecclesiastical appointment. This effectively left him on permanent administrative leave.

Dr Matthews agreed that Bishop Wilson's proposal that Fr Nestor undergo an assessment at Encompass was an appropriate way to approach the issue of risk in his case.

Dr Matthews gave evidence that he had not seen key documents, including the judgement of Judge Phelan in the NSW District Court, during the time he was assisting Fr Nestor.

Dr Matthews said that only in preparing for the Royal Commission hearing had he become aware of the evidence on which Bishop Wilson and subsequently Bishop Ingham had proceeded in taking the steps they had taken against Fr Nestor. He said he thought Bishop Wilson had proceeded very carefully, and had done everything in his power to ensure correct steps were taken.

Fr Mark O'Keefe gave evidence that, following Fr Nestor's acquittal on appeal of criminal charges, Fr O'Keefe wrote to Bishop Wilson in September 1997 in support of Fr Nestor. Fr O'Keefe's view at that time was that following the acquittal the Diocese should have affirmed Fr Nestor. Fr O'Keefe had been unaware of the further allegations against Fr Nestor that Bishop Wilson had received.

Fr O'Keefe agreed he had been critical of Bishop Wilson. He thought Fr Nestor was being treated unfairly and had been concerned by the delay in steps taken by Bishop Wilson in relation to him.

Following the decision of the Congregation for the Clergy in favour of Fr Nestor, Fr O'Keefe had been surprised that Fr Jones, the Administrator of the Wollongong Diocese decided to appeal.

Fr O'Keefe said he was now aware of information that, if he had known it at the time, would have caused him to change his actions.

After lunch, Bishop Peter Ingham, current Bishop of the Diocese of Wollongong took the stand.

Counsel Assisting took Bishop Ingham through the processes whereby Fr Nestor sought recourse to the Congregation for the Clergy against Bishop Wilson's decrees limiting the exercise by Fr Nestor of his priestly faculties. Then Bishop Ingham described the five year process leading to the Diocese' successful appeal to the Apostolic Signatura against the decree of the Congregation for the Clergy.

Bishop Ingham described Fr Nestor' s persistence throughout this time in seeking to exercise his priestly faculties at various places overseas.

During this time the Australian Bishops wrote to the Holy See expressing their support for the Diocese of Wollongong in appealing the decision of the Congregation for the Clergy.

Bishop Ingham said if the appeal hadn't been successful he would have had to resign as Bishop. Bishop Ingham said it's a serious thing for a bishop to resign. "But you couldn't live with your conscience", he said.

Upon Fr Nestor's return to Australia, Bishop Ingham instigated an investigation under the Ombudsman Act (NSW) into the sexual abuse allegations against Fr Nestor. The findings of the investigation that certain allegations were sustained ultimately became part of the case which Bishop Ingham presented to the Congregation for the Defence of the Faith in relation to Fr Nestor.

Bishop Ingham will continue giving evidence tomorrow.

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