

Foott, Law & Co.

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Our Ref: PJR:REB 06-0030

18 January 2007

G. O. Blake SC Esq.,
Barrister at Law
DX 397 SYDNEY

Dear Sir,

RE: THE CORPORATE TRUSTEES & NORTH COAST CHILDREN'S HOME

We refer to our telephone conversation of 20 December 2006. As requested, we enclose copy correspondence as follows:-

- a. Copy open letter dated 14 December 2006 to NRH
- b. Copy "Without Prejudice" letter dated 14 December 2006 to NRH
- c. Copy open letter dated 15 December 2006 from NRH
- d. Copy "Without Prejudice" letter dated 15 December 2006 from NRH
- e. Copy letter from NRH addressed to Archbishop Phillip Aspinall dated 18 December 2006.
- f. Copy "Without Prejudice" letter from Foott Law & Co., to NRH dated 21 December 2006.
- g. Copy "Without Prejudice" letter from NRH to Foott Law & Co., dated 9 January 2007.
- h. Copy "Without Prejudice" letter from Foott Law & Co., to NRH dated 9 January 2007.
- i. Copy "Without Prejudice" letter from NRH to Foott Law & Co., dated 11 January 2007.

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As discussed in our telephone conversation, representatives of NRH namely Simon Harrison, Dan Sutherland and Greg Loriston-Damm travelled to Grafton for a meeting with Rev'd Pat Comben, Mr. Joe Fahey of this office and the writer. The meeting opened with Mr. Harrison setting out the contended basis for his clients' claims against the Corporate Trustees. We were also advised that the pastoral care and assistance package contained in our letter dated 15 December 2006 was rejected.

With regard to the limitation issues, Mr. Harrison referred us to recent High Court decisions namely *Stingel v Clark* and *Davison v State of Queensland* claiming that they had "fairly good grounds" for believing they would be successful on the limitation issues.

In relation to the substantive issues of vicarious liability and/or non-delegable duties of care Mr. Harrison also referred to House of Lords case *Lister v Hesley Hall* and Canadian case *Bazley v Curry* as well as the *Lepore & Samin* decisions. He made particular reference to the intimate nature of contact between staff and residents at NCCH. He also made reference to "ostensible authority" in relation to the alleged connection between the Diocese and the Children's Home. He also attempted to place weight on alleged admissions made by Rev'd Pat Comben in discussions with claimants Richard "Tommy" Campion and CA prior to notification of proposed legal proceedings. At this stage Rev'd Comben threatened to take no further part in the discussion. However he was persuaded to remain on the basis that no further reference would be made to comments made by Rev'd Pat Comben in pastoral care context.

Mr. Harrison discounted the unreported New South Wales District Court decision in *Henderson v Cole* referred to in our open letter dated 15 December 2006.

We were advised that NRH were prepared to pursue the alternative course of action referred to in our letter dated 15 December 2006. At this point Rev'd Pat Comben suggested a figure of \$10,000.00 for each claimant in the lowest compensation band. This offer was rejected. A further offer of \$600,000.00 in total was then submitted by Rev'd Pat Comben based on a figure of \$15,000.00 per claimant.

The meeting resumed on 20 December. Simon Harrison made reference to the previous offer of pastoral care and assistance and said that this would be an important consideration for his clients. It was mentioned that one of their clients had an expectation of \$500,000.00 for compensation. Mr. Harrison then indicated that the previous nine bands of compensation

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would be compressed into three for ease of negotiation. These bands had been reduced to \$30,000.00 for the lowest band to \$45,000.00 for the highest. Counselling and medical treatment would be included with the lump sum as well as legal fees of \$1,000.00 to \$3,000.00 for each client. Total amount projected for such a settlement would have been \$1,606,000.00.

Mr. Fahey suggested to Simon Harrison that his clients consider Applications to the Victims Compensation Tribunal in NSW which would avoid some of the legal hurdles faced by his clients in the proposed proceedings against The Corporate Trustees.

Following discussions with Bishop Keith Slater, Rev'd Pat Comben increased the previous offer to \$650,000.00. In return we were advised that the "bottom line" for the claimants would be \$1,500,000.00.. This was rejected. Subsequently a counter offer of \$750,000.00 was put on behalf of the Diocese. This was also rejected by the claimants' solicitors.

When the meeting resumed after lunch on 20 December a counter offer of \$1,450,000.00 was made by NRH and was rejected. A further offer of \$1,200,000.00 was submitted by NRH with the opportunity for accepting such offer extended to 4pm on 21 December. This was immediately rejected by Rev'd Pat Comben. Subsequent correspondence between the parties is listed above.

We shall advise you of further developments.

Yours faithfully,
FOOTT, LAW & CO.

Per:

Peter Roland

Encl.