

CORRS

CHAMBERS

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CONFIDENTIAL MEMORANDUM

S O L I C I T O R S

TO: Alex Chernov QC
Ted Exell

CC: Peter O'Callaghan QC

FROM: Richard Leder

SUBJECT: Compensation panel – basis of compensation

DATE: 11 November 1996

I refer to Alex Chernov's memorandum of 7 November 1996 and to my discussions with each of you on 8 November. I confirm that both Ted and I have expressed our general approval of what Alex has proposed.

The basis on which compensation is to be assessed is raised by Alex at paragraph (d), and following our discussions I propose the following **principles of compensation** for your consideration:

- 1 The panel will decide the appropriate amount that should be paid to the applicant by way of ex gratia payment, in recognition of the physical, mental and spiritual sufferings experienced as a result of the assault.
- 2 The panel will not be bound by the compensation principles applied by the courts, and will not seek to directly compensate the applicant for economic loss, pain and suffering.
- 3 Details of any economic loss, including out of pocket expenses, legal fees, treatment fees and loss of wages may be submitted to the panel by an applicant, and the panel may take these matters into account together with all other matters put before the panel, in order to decide on the appropriate ex gratia payment.
- 4 If the payment recommended by the panel is accepted by the applicant, it will be paid by the Archdiocese subject to the provision by the applicant of appropriate releases. These releases will be arranged by Corrs and will include claims for the economic losses and expenses referred to in 3. Any existing legal proceedings will be resolved as part of this process.

Having re-read paragraphs (f) and (g), I suggest that at the outset of the process, there should be a "package" of documents provided to the applicant that include:

- An explanation of the process including the details Alex sets out in (f), and information about the panel members;
- An authority to the commissioner to disclose (specified or unlimited – ???) information to the panel;
- Presumably an authority to disclose the same information to Corrs;

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- A document whereby the applicant agrees with the panel members, the Archbishop, Corrs and perhaps the independent commissioner that the process is without prejudice and subject to mediation rules concerning not subpoenaing documents or witnesses. Alex refers in (g) to a confidentiality agreement and for clarity I flag that if a settlement is achieved, my understanding is that the amount of that settlement will not be confidential – comments?;
- A clear explanation of the ground rules – ie binding on the Archbishop if accepted, payable in full settlement with releases to be provided, any existing proceedings to be discontinued (with each party to bear own costs – ???);
- Perhaps a draft of the release that will be required;
- Consider requiring applicants to disclose any assistance they have received to date – eg counselling through an Order or another diocese, and authority for the independent commissioner / the panel / Corrs to verify this information by checking with CCI, CASS, etc;
- An invitation / encouragement for the applicant to seek independent advice before settling, a clear warning that settlement involves giving up legal rights that the applicant may otherwise have.

I look forward to your comments.

With kind regards



Richard Leder

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