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CARROLL & O'DEA

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CARROLL & O'DEA

SOLICITORS

19TH LEVEL, ST JAMES CENTRE,
111 ELIZABETH STREET,
SYDNEY, AUSTRALIA, 2000.

DX: 183 SYDNEY.
FAX: (02) 221 1117

TELEPHONE: (02) 232 2133.

OUR REF: HGH:TMR

YOUR REF:

PRIVATE AND CONFIDENTIAL

13 December 1993
Brother Julian McDonald
Provincial
Christian Brothers
Private Bag 144
HABERFIELD NSW 2045

Attention: Fax No. 716-8840

Dear Brother

RE: SLATER & GORDON CLAIMS

We refer to our discussions in Sydney on 6th December last.

Since this meeting there have been a number of further discussions with Mr McKenzie, Mr McGowan & Mr Gamble Solicitor of Dunhills (Solicitors for Catholic Church Insurances in Melbourne).

We have requested Catholic Church Insurances Limited ("CCI") to confirm their position in relation to indemnity as regards to the New South Wales Trustees in respect of these claims from the point of view of the Special Issues Policy and all other liability policies in place with CCI. We anticipate that indemnity will not be granted but expect there will be some further delay before CCI's position is finalised.

Accordingly, and following our discussions on Monday we have conferred with Mr Gross QC and Mr Peter Johnson of Counsel as to the position that should be taken on behalf of the New South Wales Trustees in respect of the actions filed on behalf of & in Victoria.

Counsel have reiterated the various problems confronting the Plaintiffs, the obvious defects in the pleadings as drafted and

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PARTNERS:

S.A. CARROLL, LL.B.
MICHAEL O'DEA, B.A., LL.M.
D. DE CARVALHO, B.A., LL.B.
M. CONCANNON, LL.M.
A.J. BAINE, LL.B.
R.P. HIGGINS, B.A., LL.M.
H.G. HARRISON, B.EC., LL.M.
P.J. PUNCH, B.A., LL.M.
P.A. CARROLL, B.A., LL.B.

CONSULTANTS:

S.J. CARROLL, LL.B.

ASSOCIATES:

N. DILANCHIAN, B.A., LL.B.
C.H. STONE, B.COMM., LL.B., A.C.A.
R.D. CRAWFORD, LL.M.
D.B. FARAH, B.A., LL.B.

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the range of objections and applications that would be open to the Trustees in respect of the proceedings commenced.

We will have written advice from Counsel shortly. Generally Counsel advise that:

1. There is little likelihood of the Melbourne Court forcing the matters to Perth having regard to the fact that the Plaintiffs reside in Victoria, the First Defendant is a New South Wales body and previous Court decisions which indicate that actions will not be forced into another jurisdiction simply to be struck out on the basis of the Statute of Limitations in that jurisdiction or some other technical matter.
2. A form of appearance should be entered on behalf of the Trustees. Following recent amendments to the Commonwealth Service and Execution of Process Act as well as decisions of the High Court such as Stevens v Head it would appear that little now turns on whether an appearance is conditional or otherwise.
3. A detailed request for particulars will be required of the Statements of Claim and Junior Counsel is currently finalising the form of such request.
4. At an early time a form of Defence should be filed incorporating all relevant denials and technical defences including the statute of limitations, issues arising out of the Roman Catholic Church Communities Lands Act etc.
5. It may be that the Plaintiffs would then file a reply pleading for example common law estoppel as regards the statute of limitations.
6. It is likely that the Plaintiffs would proceed with processes of discovery and interrogatories.
7. It is considered that the Plaintiffs would inevitably be forced to make an application to the Court for an extension of time to sue. The Plaintiffs would then have the evidentiary onus in respect of these applications being required inter alia to make out a prima facie case against each Defendant. In respect of these applications the Defendants would have an opportunity to argue

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vigorously the various legal propositions which appear to significantly confront the successful prosecution of the Plaintiff's claim. In short it would be argued on behalf of the Trustees that it would be futile to extend the limitation period as the Plaintiffs simply do not have a sustainable cause of action against the Trustees.

Arising from our discussions on 6th December it would seem that arguing these matters as a Defence to steps taken by the Plaintiff would be a more acceptable path to the Brothers having regard to current public relations considerations and philosophical issues.

We confirm that we would propose retaining Mr McKenzie to act as our agent in Melbourne in respect of these matters. Whilst separate legal representation is probably not necessary we would expect that Brother Faulkner would be represented by Phillips Fox Solicitors of Perth. We understand that CCI are conducting the Defence on behalf of the Arch Bishop of Perth and accordingly Mr Gamble of Dunhills in Melbourne would act in that capacity.

Mr Gamble is to confer with Mr Frank Costigan QC in Melbourne later this week in respect of these matters generally and we would obviously seek to liaise with Mr McKenzie, Mr McGowan and Mr Gamble to resolve an agreed course of action on behalf of all three Defendants in respect of these preliminary matters.

We will let you have a copy of Mr Gross' advice as it comes to hand.

Yours faithfully
CARROLL & O'DEA
Per: