

L A W Y E R S

22 June 2000

**BY FACSIMILE NO: 03 9600 4100**

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**Partner**

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**Our reference**

DJA/JPC/29233-7545873

**Your reference**

TVL:ERB:H-Brisbane

Dear Sirs

**BRISBANE GRAMMAR SCHOOL  
YOUR CLIENT: HIH INSURANCE**

Thank you for your facsimile dated 14 June.

In view of the details provided in our letter to AON dated 7 June we do not think it is sufficient for HIH to simply state that "the professional indemnity policy does not respond to the threatened claims".

The basis on which the professional indemnity policy should respond is that:

- (a) the policy responds to claims first made during the period of insurance;
- (b) the policy indemnifies our client for breaches of professional duty committed in the conduct of the business;
- (c) our client has become aware of circumstances which are reasonably likely to subsequently give rise to claims. These circumstances have arisen during the period of the policy and notice of those circumstances has been given to your client as required by the terms of the policy.

If HIH considers otherwise, it is incumbent on HIH to explain why.

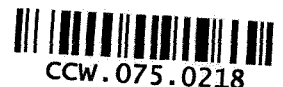
As to your request for more detailed factual information concerning the allegations made against the School, unfortunately, we are not in a position to provide such details. As outlined in our earlier correspondence to HIH, it has recently been reported in the press that a Brisbane law firm has taken instructions from a number of persons with a view to commencing legal action.

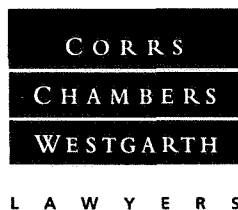
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22 June 2000  
Ligeti Partners

Page 2

**BRISBANE GRAMMAR SCHOOL**  
**YOUR CLIENT: HIH INSURANCE**

No formal demands have yet been made on the School. We are therefore unaware of:

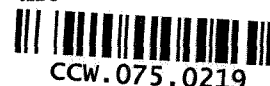
- the number of potential claimants;
- particulars of the alleged misconduct in each particular case (beyond what has been reported in the press); or
- the particular years in which the incidents are alleged to have occurred.

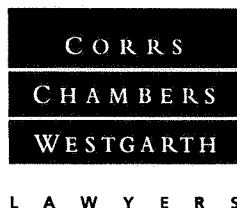
As we also advised in our earlier correspondence to HIH, since these allegations surfaced a number of former students have contacted the School direct to detail their own experiences of inappropriate behaviour on the part of Mr Lynch. The current School Counsellor has documented her conversations with each of those persons. None of those persons have yet made a formal demand on the School nor have any confirmed that they intend to take legal action.

The number of independent complaints made, the factual commonality existing between the complaints, and the level of detail provided (in many cases, by former students who have expressed great support for the School and have stated they have no intention of pursuing legal compensation) leave room for no other conclusion than that there were incidents of impropriety on the part of Mr Lynch during the period of his employment with the School. For the School to publicly assert otherwise would only serve to inflame potential claimants and this increases the risk of claims being made.

As to the concerns raised by you in relation to the Press Release, we note the following:

- 1 A copy of the proposed Press Release was provided to HIH on 8 June 2000 (Notice of Circumstances having been given 24 hours earlier). That fax clearly stated that our client intended issuing the Press Release the following day and invited HIH to advise of any objection. No response or objection was received and the Press Release (in slightly altered form) was duly released as foreshadowed on 9 June 2000. We **attach** a copy of the press release in its final form. HIH had ample opportunity to raise objections prior to the Press Release and did not do so. It can hardly now complain about its contents.
- 2 The Press Release was settled in consultation with Counsel, specifically with a view to ensuring it did not contain any material potentially prejudicial to the position of the School or its insurers. In our view the Press Release is not in any way prejudicial to the interests of either.





22 June 2000  
Ligeti Partners

Page 3

**BRISBANE GRAMMAR SCHOOL**  
**YOUR CLIENT: HIH INSURANCE**

- 3 We fail to see how the comment that “it is impossible to accurately ascertain what occurred” could possibly have the potential to compromise either the School’s position or that of its insurer. It is 15 to 20 years or more since these incidents occurred, the very nature of the allegations is that the incidents occurred behind closed doors and beyond third party observation, and Lynch died long before he could be called upon to answer the allegations. The statement that it is not possible to accurately ascertain what happened is not only beyond dispute, it is a conclusion which could and would be drawn by any person on an even casual observation of the issues.
- 4 The other sentence specifically complained about by you is that “the School accepts there is now evidence which indicates Lynch engaged in behaviour which was seriously inappropriate in respect of a number of boys”. The sentence does not contain any admission that inappropriate behaviour occurred, nor that the School accepts that inappropriate behaviour occurred. The statement simply says that the School accepts there is evidence of that. The sentence does not indicate the School accepts that evidence, only that it accepts that such evidence does exist. Whether that evidence is accepted or not is a matter for the court. Therefore, the statement is not prejudicial to the interests of either the School or its insurer.
- 5 Would you please clarify what is meant by the penultimate paragraph of your letter.

Our client’s position is that it is entitled to cover under the policy with HIH. If HIH disputes that, our client requires a detailed explanation of the reasons it declines cover.

Yours faithfully

**CORRS CHAMBERS WESTGARTH**

**David Abernethy**  
Partner

