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Mr Patrick Saidi
Barrister-at-Law
Selbourne Chambers
DX 531 SYDNEY

By facsimile (02) 9233-6469 ***[delete options not required]***

Dear Mr Saidi

State of New South Wales ats Biles

Conference 12/11/2009

Counsel will no doubt have received an e-mail from Ms Robyn Young of the Department of Community Services dated 2 November 2009, referring to the conference we are to have on 12 November 2009 in the Conference Room on Level 2 of the Crown Solicitor's Office at 9:30am.

Counsel will note that Ms Young would like the opportunity at this conference to discuss the options open to the Department in relation to resolving this claim (or claims). Ms Young further notes that following the conference the Department would require written advice from Counsel regarding each of the Department's options together with the possible consequences of pursing such options (such as attracting further claims, costs etc).

Offer of Compromise

You might recall that I had mooted the possibility of serving an Offer of Compromise sooner rather than later. The offer I had in mind was averaging out each of the 15 claimants in the range of $15,000 - $25,000 coming up with an offer in the range of $225,000 to $375,000 plus costs. My thoughts were purely on a commercial basis and if the matter could be resolved for, say, up to $400,000 plus costs to date, it might, in the long run, save the Department that amount in costs alone, if the matter was to eventually be litigated.

I reasoned that some of the 15 claimants might look on an amount of $15,000 - $25,000 clear of any costs, as a reasonable amount to accept in resolution of the claim they otherwise had and that peer pressure of a few might bring all to accept such an offer. From reading some of the reports served in respect of some of the claimants (and in particular look at the psychology report in relation to the claim by Douglas Biles) some plaintiffs appear to be less inclined than others. Indeed, some of them appeared to have little, if any, memory of any abuse and appeared to be, in a manner of speaking, going along for the ride having been

stirred up by one or more of the other claimants. In particular, I think Kathleen Biles may be the ring leader for the claimants.

I note comments from Counsel recently, as per e-mail dated 19 October 2009, that the Junior Counsel for the plaintiffs, Ms Wall, and the solicitor from the Women's Legal Services, are more motivated in pursuing this action than many of the plaintiffs themselves. Having had the opportunity to reflect on that, I would tend to agree with Counsel that both the solicitors from Women's Legal Services and Ms Wall appear to be far more interested in pursuing the matters than Mr Catsanos and I would assume also some if not most of the plaintiffs, judging on the reports served on behalf of those plaintiffs.

It is because of those thoughts that I had floated the idea of considering the possibility of serving an Offer of Compromise in respect of the one claim for one round figure plus costs.

If the Department has lost any stomach for a fight in this matter, then it could even be persuaded to increase the offer from the suggestion I have made above on a commercial basis, to factor in more funds on a "political" basis.

Against that backdrop, my views are that the Department would need a very strong advice on the question of liability before it decided to fight the claim rather than endeavouring to resolve it.

Liability

I note that we have had some discussions on the question of liability. As I understand the conclusion from those discussions, there may be one or more claimants who bring their claim at a time outside the absolute bar to brining a claim (over 30 years). If that is the case, we need to identify which of the proposed claimants have their claim absolutely barred.

I note having discussed with Counsel the question of whether the Department had any supervisory duties in relation to Bethcar. My recollection of those discussions was that it did not, because each child placed in that centre was placed their either by the parents or by the Court and in the circumstances, the child was not under the supervision of the Minister pursuant to the relevant legislation at the time.

Moreover, it appears that whilst their may have been some funding (and I am not sure of the details of how often and how much over the years) such funding did not impact on the Department or the Minister having any supervisory elements in relation to Bethcar.

On my reading of the Bethcar files, Bethcar wanted no "white" interference in the running of the home. I think the problem for the defendant is that a "political" acquiescence of not getting involved in the supervision and running of Bethcar will not suffice if the circumstances were that the Department and or the Minister otherwise had a direct supervisory responsibility in relation to the running of Bethcar.

I would think that in such circumstances, a Court would be scathing in its criticism of the Department (and so it should be in my view) were it to be established that the Department took no steps to otherwise protect the plaintiffs and children like the plaintiffs on the basis that had it taken any such action it may have stepped on someone's toes.

I would think that this is a consideration that has to be faced, if it transpires that something like that did happen in relation to Bethcar. I am unaware whether our investigations of the

claims are sufficiently advanced to be able to form any conclusion in relation to this either one way or the other. Perhaps this is what Counsel had in mind, or at least partly in mind, in suggesting that Mr Maxwell be at this conference, so as to allow Counsel to direct the future investigation of these claims.

Mediation

As Counsel is aware, the defendant, as the model litigant, has an obligation to consider whether a matter may be resolved expeditiously by way of mediation. I would suggest that Counsel give this aspect some thought, particularly in light of my comments above in relation to an offer to settle the matter.

Just thinking out aloud, I was wondering whether there would be any value in Counsel telephoning Mr Catsanos, the leading Counsel for the plaintiffs, as to whether the plaintiff or plaintiffs had a figure in mind in the event that the Department was minded to settle the matter. I think it is a fair question, if we wanted to make it, because at present the plaintiffs have not particularised their claim and so it is almost impossible to determine where they are looking at. In addition, the figure they might be looking at might be completely useless compared to what they might actually be able to obtain. On the other hand it might be fortuitous to ascertain what the plaintiffs' thinking is on the subject.

Whilst it is possible for me to write to the plaintiffs' solicitor's enquiring as to what their clients' expectations are, my thought is that the same might be achieved and far quicker if you were to speak to Mr Catsanos.

Order No. 5 by Judge Truss changed

I **enclose** a copy of an e-mail I have received from her Honour's Associate in relation to altering Order No. 5 to correctly show 15 plaintiffs.

Conclusion

I note that we are to have a conference with Mr Maxwell, Mr Arblaster and the Department in the Conference Room on Level 2 of the Crown Solicitor's Office on 12 November. I think it might be advantageous to have a chat about it either on the telephone or in chambers prior to 12 November given the matters which the Department wants to discuss on 12 November and in view of my observations above. Would Counsel let me know what his thoughts are in relation to this. I have forwarded a copy of this letter to Mr Arblaster.

Yours faithfully

Evangelos G Manollaras
Solicitor
for Crown Solicitor

Encl. *[delete if not required]*

cc: Paul Arblaster