

NICOL ROBINSON HALLETTS  
LAWYERS  
ESTABLISHED 1890

Our ref: SJH:HM:526420

14 February 2007

Mr Richard Campion

REDACTED

By Express Post

Dear Richard

**The Church of England North Coast Childrens Home**

We would confirm that since the conference there has been an exhaustive number of telephone and written negotiations that we have undertaken to ascertain whether these matters are capable of settlement at all.

This letter is being sent to all claimants without alteration.

We had made a number of proposals to the Church both before and during the conference as to the amounts that we may be able to recommend to our clients.

At the conference itself discussion took place to the effect that we may be willing to recommend to our clients a figure of \$1.2 million to be distributed to all 41 clients. From that amount would be taken any refunds, outlays and of course legal costs.

These were exploratory negotiations and we of course confirmed that we could not make formal offers without our clients' agreement.

The church ended the conference with a proposal of \$750,000.00.

We have continued, as have the Church, to negotiate.

As an aside, even without an uplift of 30% on our costs our work in progress presently stands at some \$487,000.00.

On the weekend of 27 January 2007 the Bishop of Grafton and the Bishop-in-Council met to discuss various matters including North Coast. The view of that group we understand was mixed. Their own Counsel and many of the delegates were of the view that \$750,000.00 was too high. We also understand that there were others, who we would regard as more pragmatic, who suggested that an increase should be considered, but there was apparently no consensus reached.

The Bishop-in-Council therefore will now meet on 22 February 2007 to specifically address the claims and will then advise as to what their position is. Their lawyer as well as the Bishop and the Reverend Comben will also be in attendance at that meeting.

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We have advised the lawyers that if we are to recommend that our clients settle these claims without commencing court proceedings, then we would consider putting a proposal to our clients in the total amount of \$950,000.00 less outlays, refunds and costs

We are satisfied that the Diocese would certainly not offer to settle for anything above \$950,000.00 and indeed they may inform us on 23 February 2007 that they will only settle for \$750,000.00 or a figure between the two.

These are of course informal negotiations and as such neither side can enforce a settlement upon the other.

Both parties have pressed home their own respective positions legal and otherwise endlessly in this process, as you would expect.

Once we have been informed of the Church's position we will contact you either on 23 February or no more than a few days after that date. We are also meeting this Thursday with the Archbishop's representative to ascertain whether Archbishop Aspinall can assist further.

The Church have said that any offer would have to be for the whole group of claimants and would have to be accepted by all claimants.

One of their concerns is that if one claimant does not settle then they will still have to incur significant costs in defending the action.

There are now three options :

1. Firstly, we agree to settle this matter informally. We will advise as to the amount you would receive in your hand on or after 23 February when the offer is known.
2. Secondly, you consider a further pastoral care and assistance proposal put by the Church which consists of meeting(s) administered by two "facilitators" (who the church advise would have counselling and also legal qualifications respectively). We would represent you, the Church would be represented by its own legal advisors.

It is suggested by the Church that these facilitators, "if they consider it appropriate in all the circumstances, may make a recommendation to the Church representatives". It appears to us that this option would take us back to the position that we are in now but would also draw matters out and increase costs (the Church would only agree to pay some of your costs).

3. Thirdly, you decide to ignore option 1 and 2 and issue court proceedings. There are several significant issues that arise if court proceedings are the chosen option and it is our duty to you as your lawyers to ensure that you understand the significant risks that would be encountered if you litigate, we will address those now:
  - (a) We will have to firstly argue that you should be entitled to bring your court action even though you are out of time. By that we mean that the law provides a three year period in which to commence a court action from a person's 18th birthday, (where the assault occurred whilst the person was a child).

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The court will in rare circumstances allow people to bring a later claim if the Court is in its absolute discretion permits it. This, as we have repeatedly advised, is not granted readily.

The Court has to decide that a material fact of a decisive character was not within the means of knowledge of the claimant until much later than his/her 21<sup>st</sup> birthday and that they commence court proceedings within 12 months of that material fact. The court also has to weigh up whether that delayed reporting would cause the proposed paying party prejudice (the Church in this case).

Simply issuing proceedings within the 12 months is not enough however.

In very basic terms, we would need to convince the Court that a reasonable person standing in your shoes could not have made the link between the acts that were committed against you to the injury you sustained and that link then to who would be liable for those injuries. You would need to convince the Court that you did not, and more importantly, could not have been expected to have drawn that link earlier and that it was not in your economic interests to bring the claims earlier than you did.

The Court would also have to weigh up the prejudice to the Church ie. would there be witnesses that they would want to call who are no longer alive but could have helped defend the claims? Can witnesses memories be relied upon for both parties? Etc.

We would advise at the outset that these considerations are the most complex of areas and depends in great part on the individual case which is why it is difficult to make a prediction of likely success.

(b) We also have to establish that the Church were responsible and not the Management Committee for the Home itself. We believe that although there are legal difficulties with that issue we nevertheless have a good argument to put to the Courts as to the role of the Church and this would be the least of our concerns should you litigate.

(c) The third issue for litigating is that the Church would say that even if it were responsible for the Home, that it could not be responsible for individual crimes committed by individuals at the Home. Such behaviours it will argue would not be within the scope of the alleged abusers terms of employment or engagement. The case law in that respect is not settled, indeed at the present time we would suggest it leans slightly towards an institution not being liable for the crimes of those it engages. That having been said, we would argue that the Church's duty of care extends to such unlawful behaviours because it could be expected in a home environment that children would be in a more exposed position and therefore there would be more opportunity for abuse than if they had been criminally assaulted in a day school for example.

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Again the present case law is not settled on that point and therefore we would be of the view that the matter would be appealed by either party.

The risk of not succeeding is that the other side, the Church, would be entitled to recover any costs that it incurs from you if you were not successful.

As these matters are so involved and are matters of significant importance to claimants and the Church for very different reasons, we can expect that either party will appeal and it may well be the case that the claim(s) would end up in the High Court. It would be our estimation that this may take another two years with again the build up of costs and your potential liability.

It is our recommendation that very serious consideration be given by you to settle your claim informally.

Should the claims proceed to litigation then the risks are considerable.

We would be instructing an ecclesiastical lawyer to advise as well as Senior Counsel, supporting Counsel and interstate Junior Counsel.

You will appreciate that our costs will continue to increase, albeit that we can not recover more than 50% of any settlement after deduction of outlays and refunds.

We can expect that the Church will also be engaging similar experts and therefore if they were successful their costs would be considerable and recoverable from you and other claimants.

† Each and every one of our clients advised, when we accepted instructions, that this was not "[about the money]", it was about getting the Church to acknowledge the abuse and to try and achieve some justice. We can advise that as a result of the present process we have been able to locate two persons of interest to the claim who we understand carried out their ministry from the Home. The NSW police are now proceeding to investigate the complaints.

We appreciate these are difficult matters and we will address any questions or concerns that you have when we speak with you shortly.

Yours faithfully  
NICOL ROBINSON HALLETTS  
per:



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