

FAX/E-MAIL	
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28 February 1997

**BY FAX TO 03 9899 2342**

(comprises 3 page(s))

Mr Graham Sapwell  
Director, Employee Relations  
Salvation Army  
Territorial Headquarters  
5 Hamilton Street  
MONT ALBERT VIC 3127

Dear Mr Sapwell,

**CHARLES ALAN SMITH**

We refer to previous correspondence in this matter.

We advise that Robert Worthington of this office attended Mr Smith's plea hearing in the Perth Court of Petty Sessions on Thursday 27 February 1997.

As you are aware, Mr Smith pleaded guilty to all 74 offences with which he was charged. We confirm that Mr Smith is due to appear before the District Court on 4 April 1997 for sentencing. Please advise whether you wish Mr Worthington to attend the court on that day.

We noted a strong media presence in the Courtroom yesterday and that the guilty plea was covered by ABC News at 7pm and National 10 News at 10.30pm. We note that Mr Dalzeil addressed the media on your behalf.

As previously discussed, there are a number of avenues we could pursue to obtain copies of the complaints and transcripts of the court proceedings to date. On 21 February you advised Sharron Wise of this office that you were hopeful of obtaining these documents from the Police. Do you anticipate being able to do so? If you would like us to contact the Manager of Records or Mr Smith's lawyer please advise.

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In the meantime, we offer the following preliminary advice with respect to any potential civil litigation.

1. **The Applicability of Limitation Statutes**

- 1.1 At yesterday's hearing, only two charges were read out to the Court. The offences the subject of these charges occurred in 1958 and in 1964. Media reports suggest that all of the offences occurred between 1958 and 1972.
- 1.2 In Western Australia the Limitation of Actions Act provides that a plaintiff must commence an action for negligence within 6 years of the date of the event giving rise to liability. Unlike other states' legislation and more particularly s21A of the Victorian Statute of Limitations, there is no provision in the Western Australian Statutes for extension of the time period.
- 1.3 We are of the opinion that insofar as liability will attach to the Salvation Army for negligence, the time limitation period has expired.
- 1.4 However, the plaintiffs may argue that the Salvation Army has breached its fiduciary duty owed to the victims. There is no specified time limit for bringing an action based on breach of fiduciary duty. The Court has a discretion to hear or refuse to hear such applications. The period of time between the event and any legal action is a matter taken into consideration by the court when exercising its discretion.

2. **The Effect of Mr Smith's Plea of Guilty Upon Any Civil Proceedings Commenced Against You**

- 2.1 In Western Australia a criminal conviction can be used as evidence against a defendant in civil proceedings based on the same facts as the criminal proceedings.
- 2.2 In Mickelberg v Director of Perth Mint, the Director of the Perth Mint was permitted to produce, in a civil proceeding, evidence of the Mickelberg's conviction for theft of gold, to support his case that the Mickelbergs were civilly liable for the theft of the gold.
- 2.3 We are of the opinion that the victims in this case could use Mr Smith's guilty plea as evidence suggesting the sexual assaults took place. Of course, in order to prove a case in negligence, the victims would still need to attribute fault to the Salvation Army and the defendant's plea of guilty will not affect this.



**PARKER & PARKER**

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3. **Conclusion**

We will keep you advised of any further developments.

If you have any further queries please do not hesitate to contact us.

Yours faithfully  
**PARKER & PARKER**

Sharron Wise

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