

Your Ref:

Our Ref:

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Reply to:

Melbourne

16 June 1997

BY FACSIMILE: 9899 2342

Mr Graham Sapwell
Director, Employee Relations
Salvation Army
Territorial Headquarters
5 Hamilton Street
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Dear Graham

Compensation schemes

You have asked us to provide an overview of the compensation scheme proposed by Parker and Parker for victims of Charles Smith and our advice as to the schemes applicability as a model for compensating any other victims of the alleged actions of officers or employees of the Salvation Army.

Such advice is also sought in the light of the current County Court proceedings by Ross Rogers.

The County Court in Victoria provides a framework that does enable disputes to be resolved, essentially in accordance with the model proposed. The Rules of the Court provide for the disclosure of documents, compulsory exchange of medical reports, an early directions hearing, compulsory mediation of disputes prior to court hearings and generally enables appropriate assessments to be made with a view to resolving claims either directly with the claimants or as an outcome of mediation.

We would therefore recommend that an appropriate approach to compensation ought be one that deals with claims in stages.

Stage 1 - Direct negotiation

A victim through his/her appointed solicitor ought be encouraged in the first instance to negotiate directly with the legal representative of the Salvation Army. We suspect that many claims may be resolved at this stage on the basis of medical evidence supplied by the victims lawyers, without the need for further independent assessment by a psychiatrist or counsellor.

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Stage 2 - Mediation

Mediation is an informal process, by which an independent and impartial person is appointed to facilitate frank communication of the issues and needs of those involved without prejudicing their legal rights. A mediator cannot impose a decision but can canvass options to assist the parties in reaching an acceptable settlement.

In our opinion mediation ought be attempted in all claims for compensation in the event that direct negotiation or informal resolution fails.

Stage 3 - Arbitration

In our opinion arbitration ought be a last resort and should only be undertaken when claims for compensation cannot be resolved either by direct negotiation or mediation.

Overview

The resolution of any claim against the Salvation Army ought first be attempted by way of direct negotiation. A victim through his legal representatives can be asked to provide copies of all relevant medical records, reports and any other documents intended to be relied upon. At some stage the victim's lawyer can be asked to give an indication of the amount of compensation sought and it may be that there is no necessity to have a victim examined by an independent psychiatrist or counsellor unless the matter is unable to be resolved by direct negotiation and proceeds to the mediation stage.

We believe that each case has to be looked at on its merits and with regard to the circumstances of the alleged wrongful acts and the impact upon the victim. It will clearly be sensible to retain the same solicitors and counsel to ensure a uniform approach.

Other matters

You have sought our advice as to whether the Salvation Army ought be talking to other organisations in order to develop a uniform approach towards compensation for victims.

In our opinion a settlement of any claim for compensation should be confidential. Each claim should be treated upon its merits having regard to the injury to the victim and having regard to the Salvation Army's concern for the victim. This may not necessarily be the approach adopted by other organisations and accordingly it is our opinion that on balance, the Salvation Army ought keep its own counsel in respect of the resolution of individual claims. This is not to say that the Salvation Army should not liaise with other organisations to exchange information and ideas about the resolution of compensation claims at the general level.

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Accordingly in our opinion the proposed model of Parker and Parker is appropriate for the resolution of compensation claims but an emphasis should first be placed upon negotiating settlement of claims direct with a claimant's lawyers prior to obtaining independent reports and/or proceeding to arbitration.

If you have any queries arising out of this advice please do not hesitate to contact Philip Brewin of our office.

Yours faithfully


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Philip Brewin
Partner