

Melbourne

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PHB:WB 2/24423/08

June 24, 1994

Mr. Graham R. Sapwell,
Industrial Relations Officer,
The Salvation Army,
Australia Southern Territorial Headquarters,
G.P.O. Box 1287K,
MELBOURNE 3001

Dear Graham,

Complaints of abuse

We confirm our meeting on 8th June, 1994.

We have considered the issues raised.

1. THE PROBLEM

The community has seen an increase in complaints of alleged sexual abuse against churches, ministers and care providers. In particular, there has been considerable media coverage of such allegations involving the Catholic Church. The Army needs to develop a strategy for dealing with complaints where allegations of abuse or other forms of misconduct or maltreatment might be laid.

The "feature" of these complaints is that they generally relate to events which have occurred many years previous.

2. THE AIM

The Army wishes to establish systems for receiving and dealing with complaints to the ultimate satisfaction of the complainant and the Army.

Clearly, there is a need to do this confidentially and sympathetically to ensure that the Army is seen to respond in an appropriate way given its role as a Christian church.

We note that you wish to provide whatever services and assistance might be appropriate to an individual complainant. Such services might include, counselling by the Army's officers or staff; referral to appropriate "specialists"; and, where appropriate, payment of compensation.

In dealing with such complaints, we understand that the Army would want to be (and be seen to be) responsive in a caring, non-judgemental, and supportive way.

We would encourage you to adopt a more generous standard in relation to proof of allegations, rather than seeking to require strict proof in all cases. In doing so of course, it will be important to bear in mind the "rights" of the individual(s), who may be the cause of the complaint.

3. LEGAL ISSUES

Like any employer, the Army will be liable for any acts or omissions of its officers, staff and volunteers where those acts or omissions have occurred during the course of that person's employment.

However in the case of criminal conduct by employees, it is unlikely that any liability would attach to the Army.

You will be aware that claims have been brought against other Christian churches seeking to hold them responsible for the criminal conduct of their members.

The thrust of those cases is that the organization was aware of complaints against the individuals and, rather than remove them from areas of influence, they have, in effect "covered up" the allegations and thus failed to deal appropriately with the individual. In such instances, liability may well be sheeted home to the organization for their failure to act appropriately when evidence of complaints first surfaced.

In the examples you have instanced, the likelihood is that when the complaint is made to you, it will be your first knowledge of any such complaint and in those circumstances you would not be liable for the actions of the individual concerned. If however, you were not to take appropriate action at that time and the offender were to repeat his offences, then liability might attach.

As the Army wishes to take a more pragmatic view and, not seek to deny liability in a strict legal sense, but rather seek to assist the complainant. Whilst this might give rise to an argument that liability had, in some way, been admitted or accepted by you, we see that as the "lesser of two evils". If the Army were to require strict proof of any complaint before attempting to deal with it, then that would be a difficult position to defend in a "moral" sense.

In offering assistance to a complainant, the Army would do so without any formal admissions and in the event that legal action were to follow the Army's position would not be compromised in any major way.

A number of other possible legal issues might arise which can be canvassed in individual cases.

In cases of child abuse, recent legislation in Victoria requires nominated professionals to notify the authorities if they have reasonable grounds to suspect that a child has been physically or sexually abused. Those nominated professionals include doctors, nurses, teachers, operators of children's services centres, psychologists, social workers and others. In appropriate cases then the Army's officers, soldiers and volunteers may well fall into those categories and would be obliged to report abuse.

Other issues which would need to be addressed in individual cases might include confidentiality, privilege, the criminal law and industrial relations questions.

4. RECOMMENDATION

A policy will need to be developed to deal with complaints both internally and externally.

Internal

Your primary aim will be to deal with problems internally in an attempt to assist the complainant to resolve complaints.

This can be assisted by having a defined policy and complaints procedure which is well understood and complied with.

We could assist you in writing such a policy supported by appropriate procedures.

In simple terms, the policy ought clearly outline your philosophy in dealing with such issues; nominate appropriate personnel to be responsible for dealing with complaints; adequate record keeping; and a referral network.

Policies will ensure that complaints are accurately recorded and outcomes monitored.

We would also recommend the establishment of an advisory committee.

We would envisage its role as initially developing "expertise" in these areas. This would then enable it to advise the senior officers of the Army on the issue generally, on specific complaints; and to facilitate counselling and other assistance to victims and offenders. In time, that committee would become well versed in the nature and extent of complaints and the manner of dealing with them. We would imagine that the committee would also develop a range of internal services and referral sources. In appropriate cases, it would also receive legal advice on complaints and make recommendations as to appropriate settlement or compensation if claimed.

External

There will be instances where complaints will involve outside agencies such as police and the Courts.

In general terms, the same procedures as for internal complaints will be operative. Where however, the police are, or should be, involved, or where actions have reached the threat of or the issue of legal proceedings, then additional policies will need to be developed. In such cases, the Army will wish to receive legal advice and make judgements on that advice via the advisory committee.

5. NEVETT FORD ROLE

We are of course, available to assist in whatever way you deem appropriate.

We envisage being consulted in appropriate cases to assist in preparing recommendations to go to the advisory committee. We would be a resource available to the advisory committee to provide general advice and, advice in specific cases.

In the case of external claims, again we would be seen as a resource available to assist in gathering appropriate evidence and formulating advice to enable the Army to take appropriate action.

In the initial stages, we would be available to work with you in developing appropriate policies and guidelines.

For present purposes, there may be issues arising out of this letter or other issues which we have not canvassed and we would need to speak with you about that.

Once you have had the opportunity of considering this letter, we will await any further instructions you might have.

Yours faithfully,

NEVETT FORD