Submissions for Bert Franzen (Royal Commission- Case Study 21)

The Response of the Satyananda Yoga Ashram to allegations of abuse (2014)

Mr Franzen’s position with regards to the submission from Counsel Assisting

1. It is Mr Franzen’s position that Counsel Assisting the Royal Commission has made an error of fact in finding F30:

“The Ashram relied on the advice of Bert Franzen, a human resources consultant, in determining how best to respond to survivors of child sexual abuse who had engaged with the Ashram in 2014, in circumstances where Mr Franzen was not qualified in dealing with or responding to survivors of child sexual abuse, or in any relevant Australian law”

Mr Franzen’s Role and Appointment to Taskforce

2. It is submitted that when first approached by the Ashram in early December 2013 for his advice in relation to an appropriate response, Mr Franzen made it clear that he had no experience in the field of sexual child abuse or in preparing a response. He also stated that he would be ‘flying by the seat of his pant’. This conversation was with Yogasandhan (Fiona Steiner) and Gurubhakt (HR Manager) and was subsequently communicated to the Ashram’s Management Committee. This communication was confirmed in writing on the 13 December 2013 in the minutes of the Management Committee:

“Bert Franzen was informed and asked for his opinion. He admits that this is new territory for him so is “flying by the seat of his pants” but also acknowledges that it is not a common situation so there are few people that would have experience with this......”

3. Suryamitra (Sarah Tetlow) in an email dated 21 March 2014 announced the formation of the taskforce. Suryamitra confirmed in this email that Mr Franzen’s appointment was to be within his capacity of HR Consultant.

It is proposed that the task force be made up of:

- Atmamuktananda (SYA)
- Ahimsadhara (SYA)
- Suryamitra (SYA)
- Poornamurti (SYA)
- Haribodhananda (SYA)
- Krsnadhara (SYTA)
- Amarnath (Manly Yoga)
- Bert Franzen (HR Consulting)

1 YAM.0001.001.1250
2 SYA.0003.001.2450_R Page 4 of email stream. Email form Suryamitra (Sarah Tetlow)
4. It is submitted, Mr Franzen provided evidence to the Commission in his statement that he was invited to join the Taskforce to help structure a response to the historic abuse but held no special position or influence other than simply as a member.

Mr Franzen in his statement to the Commission has at all times maintained:

1. I was invited to join the Taskforce and was also asked to act as the chair which I declined due to time constraints.
2. I was, and continue to be, an active member of the taskforce. I saw my role as being the establishment of a project plan, schedule of activities and providing direction as and when required.
3. Where possible I produced drafts of documents and undertook research.
4. It is my goal to do all things possible to ensure that the victims are treated with compassion and dignity and that the Ashram could structure an optimum response.
5. It soon became clear that no-one in the Taskforce had any experience in the field of child sexual abuse and facilitating an appropriate response.
6. It was at this time that we sought the advice and guidance of an external expert Mr Terry O'Connell. Mr O'Connell specialised in this area and worked for an organisation call Real Justice.

5. Mr Franzen’s submits that it was his understanding that his appointment to the taskforce was purely in the capacity of HR Consultant, to provide general assistance in accordance with Suryamitra’s (Sarah Tetlow) email of the 21 March, 2013 (see point 3 above).

6. Mr Franzen also provided his services on a voluntary basis no fees were charged or benefits derived by him by his involvement.

Ashram’s access to external legal advice

7. It was Mr Franzen’s understanding that the Ashram had access to External legal support. As stated in Suryamitra’s (Ms Sarah Tetlow) email dated 21 March, 2014:

We will take advice from the Royal Commission and potentially others such as Kate Eastman (legal).

8. Yogasandhan (Fiona Steiner) also made a reference to seeking legal advice from a Nityapuja (Craig Leggat SC) a lawyer associated with the Ashram.

I asked Nityapuja (Akhandananda's lawyer for the appeal) if Satyananda had been reported for sexual abuse. He did not think so but said to check the high court papers.

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5 STAT.0398.001.0001_R clause 3 e (ii)
6 STAT.0398.001.0004_R 3(b) b-d
5 SYA.0003.001.2453_R Page 4 of email stream. Email form Suryamitra (Sarah Tetlow)
6 SYA.0003.001.2074_R (last paragraph)
9. On the 13 November 2012 Mr Brian Thomas had also sought advices from Nityapuja (Craig Leggat) asking for his advice regarding exposure to the Royal Commission.  

In view of the complete change of management, different organisational structure, and strict child-protection procedures we have in place nowadays, would we, in your opinion, still have any new claims to answer relating to anything that happened back then?  

[Craig Leggat] potentially yes but unlikely  

Do you have any comments or suggestions to make for us on the matter? [Craig Leggat] There is probably not much that 'the ashram' can usefully do I at present apart from wait to see what occurs. The matters you have set out [child protection procedures etc] are very positive and will be very useful if allegations are made and claims arise.

10. We submit that in his capacity as a taskforce member Mr Franzen shared a number of discussions, with his legal associate David Mendelssohn and with the members of the task force. This advice was not intended or purported to be formal “Legal” advice nor was the advice submitted in writing.

11. On request from Mr Poornamurti (Phil Connor) a taskforce member inquiring if Mr Franzen had any written legal opinions, Mr Franzen offered to provide the taskforce with a quote for the provision of formal written legal advice via his legal associate Mr David Mendelssohn.

Hi Bert  
Regarding the legal advice you sought on ashram liability- do you have any written version of this?  
Om  
Pm  
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Hi Poonamurti  
No I didn't get a written opinion. The advice I provided was based on a detailed discussion that I had with him relating to the subject.  
If you would like written advice on the subject I'd be happy to ask David for a quote. Just by way of background, when a lawyer gives a written opinion on a subject it is a bit like a legal submission to a court. Accordingly, it typically involves a considerable amount of work by way of researching case law and related ACTs and pertaining section references to support his argument. It is therefore not a simple matter of him writing a letter.....

12. We further submit that Mr Franzen also confirmed in his unchallenged statement that he offered to get a formal legal opinion but this offer was declined due to budgetary constraints.

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7 YAM.0001.001.1249_R  
8 STAT.0398.001.0009_R 3 e (ii) points 7-9  
9 YAM.0001.001.0019_R  
10 STAT.0398.001.0010_R

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Cease and Desist letter to Bhakti Manning and Mary Smith

13. Mr Franzen was asked for his advice in an email dated 4 March, 2014 from Yogasandhan (Fiona Steiner) regarding the communications of two individual Bhakti Manning and Mary Smith. Any advice is appreciated, if you have time. I realise your plate is full.

14. It is submitted that Suryamitra (Sarah Tetlow) made a reference to seeking legal advice regarding the Bhakti Manning and Mary Smith emails in her email on the subject dated 19 March 2014.

It might be time to get some more legal advice as well given the email that went round yesterday from Mary Smith.

15. Mr Franzen’s response was that the option might be to send a ‘Cease and Desist’ letter. It was also Mr Franzen’s advice in a previous communication that the sending of a Cease and Desist letter could be a ‘PR disaster’. Legal options

I have not spoken to my legal associate but am very confident that the ashram has a right to issue a ‘cease and desist’ order and also take legal action for defamation and damaging the brand.

This is not a preferred option in that, even though legally appropriate, could be a PR disaster and damage the brand.

16. At the time the discussions took place in respect to determining a response to the Bhakti Manning and Mary Smith emails and whether or not to issue a Cease and Desist letter, Bhakti Manning had not declared to the Ashram that she herself was a victim of any abuse. She stated in her testimony:

Q. In accordance with your statement, you do make a reference, I think in paragraph 73, that you had not previously, at least, disclosed to the ashram or to anybody else the fact that you were a victim?

A. That’s correct.

17. It is further submitted that, if the Taskforce had known that Bhakti Manning was a victim, Mr Franzen would not have advised that the Cease and Desist letter as being an option as other than being very insensitive and would have been a “PR Disaster” as per point 14 above.

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11 SYA.0003.001.2074_R
12 SYA.0003.001.1533_R
13 YAM.0001.001.1255 (last page in minutes)
14 Transcript day 106 4 December, 2014 Page 11044 lines 4-8

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18. At the time of issuing the Cease and Desist letter Mr Franzen States in his Statement that:

At the time of issuing the cease and desist letter neither party had raised any issues relating to their personal experience relating to sexual abuse. They were making comment about it.

19. It is submitted that the decision to go ahead with the Cease and Desist letter was supported by the other members of the Taskforce including Mr Poornamurti (Phil Connor) who state in an email dated 19 March, 2014:

Dear Bert and All
I agree - they should both be sent a legal notice to desist asap.
I would think the path is already open for legal action against Mary Smith and probably her tutor in this matter (ISHISHY ~)
Sw Niranjan is the one most directly slandered & he may have an opinion on this.
Om
Ps
p.s. I leave for India tomorrow morning so will be out of contact for a day.

20. The final decision to go ahead and issue the Cease and Desist letter was made by Suryamitra (Sarah Tetlow) as confirmed in the email dated 21 March, 2014:

Hi Suryamitra
My legal associate David Mendelssohn is happy with the Cease and Desist letter and will issue under his name accordingly. So, it's ready to go when you give me the go ahead.

Kind regards

Appointment of Real Justice and Terry O'Connor

21. Mr Franzen submits that by the end of March 2014 it became clear to the members of the taskforce that nobody on the taskforce was qualified to structure a proper response. It was at this time that the Taskforce decided to use the services of Terry O'Connor from Real Justice who had extensive experience in this field:

It soon became clear that no-one in the Taskforce had any experience in the field of child sexual abuse and facilitating an appropriate response.

It was at this time that we sought the advice and guidance of an external expert Mr Terry O'Connell. Mr O'Connell specialised in this area and worked for an organisation called Real Justice.

22. Upon the appointment of Terry O'Connell from Real Justice being made, the taskforce changed direction significantly. The chairperson Ahimsadhara (Helen Cushing) of the

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15 STAT.0398.001.0008_R 3(e) point 7
16 YAM.0001.001.0276_R
17 SYA.0003.001.3632_R
18 STAT.0398.001.0009_R 3e (ii) points 5 & 6
Taskforce issued an email confirming the approach Terry O’Connor’s involvement moving forward\textsuperscript{19}

Hari Om,

I've been wondering how you are all faring since our Mangrove meetings? I have been very tired, climbing back up today. I just had quite a long talk with Terry, so here's the update.

- the only time he can meet with ashram residents before Easter is Good Friday morning. He would come straight from the airport (flight arrives from Darwin at 6.30am) and spend a couple of hours. During that meeting the ‘scaffolding’ would be put in place for the Sunday meeting. Therefore, I don't think the net should be cast too wide, limit it to people involved in the Mangrove program + perhaps Dayasagar and Yogadharma as they have been introduced to the concept. Rishis H and V should be there. Please confirm acceptance of this.

- Sunday as per the timing we worked out. He will have kits for people to take away, which will include the questions cards he used with us. He wants us to put together a form that would ask them to reflect on their experience and let us know where they think they will take it from here. This session will leave people with a way forward. This will include developing support networks for people to continue with as needed. It will be an organic process of allowing a way forward to emerge.

- he will help with the communications we need to do prior to the event - I’ll email him this afternoon with the draft we have and he’ll rework with his phrases etc. He’ll do this for the teachers/visitors + the abuse victims. I’ll ask about something for the websites.

- his fee is negotiable but the figure he named was $4000 + cost of resources ie the kits which could be a few hundred dollars. This covers everything ie all the sessions, phone calls, assistance with communication and whatever. If the fee is a problem I'll kick in $500.

I think that's about it. My conversation with him was really good. He has a keen intelligence about all this, is a realist and reads people like a good cop should! I've looked at the websites - he's part of a movement known as Restorative Justice. There is an organisation called The International Institute for Restorative Practices. He seems to have been a key figure in it from early on. His website is www.realjustice.org, there is a foundation whose page is www.restorativeworks.org The institute is www.irp.edu

I had an email from Atma in NZ and she may be able to visit APP

Mr Franzen's involvement in creation of the Survivor Pack

23. Mr Franzen submits that the approach taken with regards to formulating a concrete written response to the survivors was determined in a group meeting which took place at the Ashram on the 9 May, 2014 which involved the Taskforce members and senior members of the Ashram community:

\textsuperscript{19} SYA.0003.001.1124_R
1. I was instrumental in doing a lot of the research that was provided to the taskforce members is input for a planning meeting held on the 9 May, 2014. Please see attached Annexure P - Planning Document for Management Plan 9 May.
2. On the 9th May the Taskforce met together with representatives from Real Justice and the senior members of the Ashram community.
3. The aim of this meeting was to determine consensus between all stakeholders in terms of how to move forward.
4. I drafted the first version of the Survivor Plan as a direct output from this meet.

24. Mr Franzen wrote the first draft of the Survivor Pack which was subsequently distributed to all the Taskforce Members for their comment. Some of the editing conversation was presented in an email stream date the 14 and 15 May, 201420

Representations to Mr Franzen by Counsel Assisting

25. On 5 December 2014, during the hearing by the Commission, Dr Hayley Bennett, Counsel Assisting represented to Mr Franzen’s solicitor that Mr Franzen would not be called as a witness to give evidence and that Counsel Assisting would not be seeking any findings in respect of Mr Franzen in final submissions.

26. We submit that Mr Franzen relied upon the representations made as to the further conduct of the proceedings and the evidence to be adduced or witnesses to be cross examined in his legal representation at the hearing, Mr Franzen was also not called to give any evidence in the hearing and be cross examined regarding relevant matters.

27. We submit that as Mr Franzen was not given the opportunity to be heard as he was not called as a witness, his position was compromised and was denied natural justice.

28. It is submitted that in the circumstances Mr Franzen’s statement of his evidence provided to the Commission as to his involvement and the nature of the capacity in which Mr Franzen provided services to the Ashram, should be accepted as evidence which was not challenged and not contradicted by any other evidence or witnesses.

Conclusion as to Finding

29. It is submitted that it is abundantly clear from the evidence, that Mr Franzen never purported to be on the taskforce in any other capacity other than that of HR Consultant.

30. It is submitted that the Ashram had multiple points of access to legal advice.

31. The Ashram retained and consulted with other experts in its decision making, other than Mr Franzen. Mr Franzen at no time represented that he possessed any expertise on sexual abuse matters in his capacity as a HR Consultant.

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20 SYA.0003.001.1143_R
32. It is also clear we submit that Mr Franzen, was a member of a team (Taskforce) the composition of which was such that it was not qualified to structure an appropriate response to the historic abuse.

33. It is submitted that the Royal Commission should be satisfied on the evidence that:

The Ashram formed and relied on the advice of Taskforce, in determining how best to respond to survivors of child sexual abuse who had engaged with the Ashram in 2014, in circumstances where the taskforce members were not qualified in dealing with or responding to survivors of child sexual abuse, or in any relevant Australian law.

Dated: 6 March 2015

[Signature]

Danny Lagopoulos
Solicitor for Mr Bert Franzen