

**IN THE ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE  
IN STATE CARE**

**UNDER**

The Inquiries Act 2013

**AND**

**IN THE MATTER OF**

To inquire into and report upon responses by institutions to instances and allegations of Historical Abuse in State Care between 1950 and 2000.

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**RESPONSE BY AMANDA HILL AND SONJA COOPER ON BEHALF OF  
COOPER LEGAL TO THE EVIDENCE OF ROBERT OAKLY**

**Dated: 30 November 2020**

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**RESPONSE BY AMANDA HILL AND SONJA COOPER ON BEHALF OF COOPER LEGAL TO THE EVIDENCE OF ROBERT OAKLY**

1. On 24 November 2020, Cooper Legal was advised by the Royal Commission of Inquiry into Historical Abuse in State Care and Faith-Based Institutions ("Royal Commission") that Robert Oakly would be a witness in the hearing into Faith-Based Redress. We were provided with an excerpt from Mr Oakly's witness statement which made adverse comment about Cooper Legal and advised that, in accordance with the rules of natural justice, we were entitled to make a response ("natural justice letter").
2. Until we received the natural justice letter, we were not aware that Mr Oakly was going to be a witness. This was even though we have acted for Mr Oakly since October 2017, and continue to act for Mr Oakly, in relation to his claim against the Anglican Diocese of Nelson.
3. The only contact we had with the Royal Commission about Mr Oakly occurred in July 2020, after Mr Oakly agreed to speak with investigator Sarah Cato, and on 3 July 2020, Ms Cato advised that she would be giving Mr Oakly a call the following Monday. This email correspondence is included on Mr Oakly's correspondence file. As we were not asked for Mr Oakly's file, we presumed that he was not giving evidence.
4. Had we been aware that Mr Oakly would give evidence, we would have sought his consent to provide Mr Oakly's file to the Royal Commission, to enable it to have a full picture of the claims process as it has impacted on him. It appears that Mr Oakly's statement has been prepared without reference to any correspondence, documents, or any other material on Mr Oakly's file, except for limited emails in his possession. This means that some matters in Mr Oakly's statement are not factually correct. This is through no fault of Mr Oakly's. He cannot be expected to produce documents which are not in his possession.
5. Upon receiving the natural justice letter, we obtained Mr Oakly's consent to provide a copy of his file to the Royal Commission, which has been provided together with this statement. We hope that it will enable the Commissioners to have a fuller understanding of the experience of Mr Oakly throughout the redress process.
6. We have not received a full copy of Mr Oakly's statement from the Royal Commission. We have only seen the excerpt included in the natural justice letter. As a result, there may be some replication between this statement and the evidence of Mr Oakly.
7. At the time Mr Oakly instructed Cooper Legal, there was no standard process in place with the Anglican Church (or its many parts) to

resolve claims. We had not progressed a claim against the Diocese of Nelson before. We were aware that the Anglican Church was seeking to introduce a process, but Mr Oakly was in the invidious position of bringing a claim without many precedents. Inevitably, this means more time is taken over a claim, more correspondence is generated and there is a much higher degree of uncertainty. The experiences of people who find themselves in a new or fluctuating process are rarely straightforward or wholly positive.

### ***Response to Mr Oakly's evidence***

8. To assist the Royal Commission, we first set out a timeline of events in relation to Mr Oakly's claim. The key facts are:
  - a) Mr Oakly instructed Cooper Legal in October 2017 in relation to sexual assaults by Archdeacon Jameson. Archdeacon Jameson was also a Scoutmaster, and some of the earlier abuse Mr Oakly experienced happened on scouting trips. This gave rise to early consideration as to whether Scouts New Zealand was an appropriate respondent to some, or all, of Mr Oakly's claims. Initially, we opened files in relation to both the Diocese of Nelson, and Scouts New Zealand.
  - b) In December 2017, we were advised by Legal Aid that Mr Oakly needed to sign a statutory land charge in relation to his legal aid costs. This was a condition of him being granted legal aid. This means that a charge would be placed over Mr Oakly's property but would not be registered until the proceedings had finished. We advised Mr Oakly that any settlement we negotiated would include a contribution to the legal aid debt and we also advised him of our ability to seek a write-off of the debt. However, Mr Oakly was incredibly distressed by the prospect of a statutory land charge and this became an ongoing trigger for distress for him.
  - c) In mid-2018, Mr Oakly indicated that he was not coping. At that time, we also needed more information from Mr Oakly about where some of his abuse had occurred, which was very traumatising for him. We acknowledge that working through this detail can be very difficult for survivors, and it is a catch-22 that without the information, we are unable to progress claims. We paused work for a time until we felt he was well enough to continue.
  - d) We worked through a draft claim document with Mr Oakly from July 2019. This was after we had determined that the claim should be brought solely against the Anglican Church. Mr Oakly was able to build a relationship of trust with our lawyer

Sam Nightingale, and they worked through his claim documents together.

- e) Mr Oakly's claim documents were sent to the Bishop of Nelson on 6 August 2019. The Diocese advised that it was seeking legal advice. Mr Nightingale kept in contact with Mr Oakly throughout this time, who continued to show significant distress.
- f) The Bishop of Nelson wrote to us, acknowledging that Archdeacon Jameson had been convicted of offending against boys and that the Diocese had known about the offending since 1978. The Bishop noted that the abuse appeared to occur at events organised by the Scouts and said that the Diocese was considering its position.
- g) We responded to the Bishop on 24 October 2019, expressing concern that the Bishop did not appear to accept responsibility for Archdeacon Jameson. We asked the Bishop to confirm whether the Diocese was willing to engage in an out-of-court process in relation to Mr Oakly's claim. There were then further delays in the Bishop's response, which Mr Oakly found extremely traumatic.
- h) On 29 November 2019, Sonja Cooper met with representatives of the Anglican Church about Mr Oakly's claim. We emphasised to the Church representatives how fragile Mr Oakly was. In February 2020, the Archbishop of the Anglican Church provided a more general update on progress being made by the Anglican Church on its redress process.
- i) On 23 March 2020, Bruce Gray QC for the Anglican Church wrote to us and accepted that the Church was vicariously liable for the abuse of Mr Oakly. It was agreed that a meeting would take place to try to resolve Mr Oakly's claim, but the Covid-19 lockdown intervened.
- j) In April 2020, we wrote to the lawyers for the Diocese, setting out a proposal for an out-of-court process to resolve Mr Oakly's claim. This resulted in Mr Nightingale's enquiry to Mr Oakly about the ways in which a claim could be settled in a way that would be therapeutic or financially helpful for him. We also asked if he was interested in meeting with the Bishop, recognising his fragility throughout this process. We acknowledge that this could have been approached in a way which was more therapeutic for Mr Oakly. We took Mr Oakly's instructions and communicated them to the Diocese. That was in June 2020.

- k) There was ongoing correspondence between us, and the lawyers for the Anglican Church, about the parameters of settlement for Mr Oakly. The lawyers for the Diocese stepped back into a legalistic approach, seeking an outline of the case law from us, rather than engaging in a meaningful process. We continued to discuss the parameters of settlement with the lawyers for the Diocese over the next few months.
  - l) In October 2020, Mr Oakly received an offer of settlement from the Anglican Church, which he has accepted.
  - m) The Anglican Church offered no separate contribution to Mr Oakly's legal costs. Subsequently, we applied to Legal Aid to write off the entirety of Mr Oakly's legal costs. Legal Aid agreed to that, ensuring that Mr Oakly does not have to pay any legal costs, and that the statutory land charge will never take effect.
9. Like many survivors, Mr Oakly has found the redress process extremely stressful and traumatic. At times, we have paused our work to ensure he was in a safe space to work with us. We regularly gave him advice about his options. We regularly received distressed emails from Mr Oakly, who would often talk about how the claims were making him ill. We have taken all the steps available to us to reassure Mr Oakly and respond to his queries and concerns. Often, delays were outside of our control.

#### *Legal Aid*

- 10. Mr Oakly gives evidence about the stress of his accruing legal aid costs. We have already noted that the statutory land charge was never actioned, and Mr Oakly is now free of legal aid debt. We have regularly advised Mr Oakly about legal aid throughout this process, but we acknowledge that, for the few clients who own property, the prospect of a charge is an additional stressor.
- 11. While legal aid is a stressor for some survivors, the reality is that we could not work in any other way. It would be unfair to pick or choose who to work for on a *pro bono* basis. Legal aid rates are exceptionally low, and we always work as efficiently as possible. This is one of the reasons why Mr Oakly has not had a lot of face-to-face contact with us. It was more cost-efficient for us to travel to Mr Oakly, because the cost of travel is spread over the 3-4 clients seen on one day. We have to make special application to Legal Aid to see a client more than once. As Mr Oakly was often stressed about his legal aid costs, further face to face meetings would have added to that stress.
- 12. We do not work on a 'no win, no fee' basis because we believe those arrangements are unfair to clients, as there is never any guarantee of

a successful settlement and such arrangements are often disadvantageous to survivors.

13. Cooper Legal is not the biggest recipient of legal aid in the country. We refer the Royal Commission to the published information on the Ministry of Justice website on this topic for accurate information.

#### *Correspondence with Cooper Legal*

14. We are hopeful that Mr Oakly was provided information about the effect of waiving his legal privilege before including excerpts of our advice to him. As we did not know the statement was being written, we were not able to provide Mr Oakly with this key advice.
15. We have acknowledged above that the correspondence between Mr Nightingale and Mr Oakly described at [87]-[88] of Mr Oakly's evidence could have been conducted in a more therapeutic way. While we always attempt to work in a trauma-informed way, we are lawyers, not counsellors, and correspondence is not always received in the manner we intend.

#### *Delays*

16. We have never advised a survivor that a redress process will be completed in 3-4 months. It is more likely that Mr Oakly was told he would be interviewed by a lawyer within 3-4 months. Mr Oakly was interviewed within 3 months of instructing us.
17. From the point of instructing us, every survivor is advised about the slowness of the redress processes. While it may not have felt like it to Mr Oakly, it is a sad fact that his claim was progressed more quickly than most. Completion of a claim within three years is not something a person claiming against the State could currently achieve. At all times, we are open and honest about the delays a person can expect in this process.

#### *Communication with Cooper Legal*

18. Mr Oakly says he has not received any advice from us about his options. That is not correct. As can be seen from his file, we have repeatedly provided advice to Mr Oakly. To set out the content of that advice would be a breach of the duty of confidence owed to Mr Oakly, but we encourage the Commissioners to review the copy of the file we have provided.
19. Mr Oakly complains that he was not advised about filing proceedings in a court. Many clients ask us about this. Mr Oakly was constantly concerned about his legal aid debt. To file proceedings would have increased his debt substantially, but not necessarily aided his claim.

Such claims take years to get to a hearing and cannot be guaranteed as successful. Most importantly, it was clear to us that Mr Oakly would never have coped with giving evidence or the delays that a civil proceeding would entail. In any case, Mr Oakly's claim has now settled without the issue of proceedings.

*Conclusion*

20. At every stage of the claims process, we have done our best to assist Mr Oakly. We acknowledge that it has been an extremely difficult and distressing process for him. At times, we are the focus for the anger, frustration, and sadness of our clients. We are hopeful that the settlement of Mr Oakly's claim brings him resolution and some peace of mind.

Dated: 30<sup>th</sup> day of November 2020.

**GRO-C**

**Sonja M Cooper**

**GRO-C**

**Amanda L Hill**