

Witness Name: **GRO-A Mr FH**

Statement No.: WITN0009001

Exhibits: WITN0009002 – WITN0009014

Dated: 15.07.2020

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

FIRST WITNESS STATEMENT OF “EARL WHITE”

I, **GRO-A Mr FH** say as follows: -

1. My full name is **GRO-A Mr FH**
2. I am one of the plaintiffs in what has become known as the *White* litigation.<sup>1</sup> As I was granted permanent name suppression, I will refer to myself in this evidence by the pseudonym the Judge used in those proceedings, Earl White. The names of family members and witnesses granted name suppression are also the pseudonyms used in the public court decisions.

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**Not relevant to the Natural Justice process.**

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<sup>1</sup> *White v Attorney-General*, High Court Wellington, CIV 1999-485-85

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**Not relevant to the Natural Justice process.**

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**Not relevant to the Natural Justice process.**

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**Not relevant to the Natural Justice process.**

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24. At this time, I was still not really going to school. I was stealing stuff and getting into trouble. I got caught stealing bikes and came to the attention of Youth Aid in the Police. I also committed burglaries and would get caught by Police. I also got into trouble at school for stealing.

### **Epuni Boys Home**

25. By 1974, things were getting worse and worse at home. I remember one day after school I got picked up and taken to court. From there I was taken straight to Epuni Boys Home. I was given no warning or any explanation. I now know I was committed to the care of the Director General of Child Welfare. I was around 12 or 13 years of age.
26. When I first got to Epuni they put me in what was called secure. It was like a police cell. Every new arrival went there for the first two or three days. You were pretty much locked up all day for 23 hours. For one hour you got taken out for physical exercise. I remember sitting in there crying, wondering what was going on, frightened at being locked in a cell. I went back to secure on many other occasions during my stay at Epuni for punishment. I recall going in for three days after trying to escape from Epuni.

27. Once I was out of secure and in mainstream it was not very long before the violence started happening. Staff used to give the 15 year old boys cigarettes: they got a certain number each day. I can recall one of the boys who was allowed to smoke was a friend of my older brother's. He gave me a puff of his cigarette. A couple of the other boys in the home didn't like seeing the 'new boy' having a smoke. Someone said something to me and I told them to 'get F'd'. After that everyone went to the gymnasium and I got beaten up by an older Māori boy who tried to take a cigarette from me. I called him a "Black cunt" and he gave me a beating in the corner of the gym. There were about four or five of them who all joined in to give me a beating. I remember one of the boys climbed a rack in the gym and from there dropped a medicine ball on my face. One of the staff members, Mr Chandler, watched this whole incident. He came and told them to clear off when the medicine ball was dropped on my face. It was left all swollen like a beachball and I was taken to the infirmary for a few hours before being returned to my room.
28. I would get beaten quite often by other boys in the home. Kicked and punched. The housemaster and staff were aware of all the fights and would let them happen.
29. My father used the term 'black bastard' in every-day speak. He raised us to speak like that and we didn't know any different. On one occasion I got into an argument with some Māori boys in the recreation room. I called one of the boys a black bastard and I remember being slapped in the face by Mr Chandler. I told Mr Chandler to "get F'd" and then he karate chopped me in the throat which knocked me off my feet. Nothing was done about that. I also saw Mr Chandler punch another boy in the face.
30. There was another staff member, Mr Bartle, who backhanded me and then punched me in the side of the head for backchatting.
31. Another time a staff member called Mr Weinberg was carrying a clipboard and was doing a roll call while we were all sitting down having dinner in the dining room. One of the boys didn't answer his name straight away and Mr Weinberg

cracked him across the head with a clipboard. I said to the boy “don’t worry about it” which Mr Weinberg heard. He then grabbed me by the top of my hair and lifted me from the chair I was sitting in and punched me around the head on at least two or three occasions with a closed fist and one of the other staff members had to come and get him off me. I ended up with a graze on my face and my eye was a little black. There was no action taken against Mr Weinberg for this incident.

32. There was another incident with the night watchman, Mr De Gehrs. I woke up one night to see him rifling through my comics and lollies. When I asked him what he was doing he cracked me on the knee and elbow with the torch he was carrying and told me to shut up and get back to sleep. I remember I pretty much cried myself to sleep every night after that because I was so scared he would come back.
33. It was very violent at Epuni. You would be bullied by the King Pins who were older boys favoured by the staff to control the younger ones. Other boys would bully you too. And the staff would regularly assault us.
34. They would also call me all sorts of names like “loser”, “useless cunt”, “no hoper”, “arrogant prick” and “little bastard”. I think the housemaster always called me “sad sack” because I was always sad. I was actually terrified the whole time.
35. There was not a lot of schooling at Epuni. I have no recollection of doing any schoolwork. I know I wasn’t in classrooms very long before I was back polishing floors and sweeping leaves off the drive. I learnt a lot more about stealing and breaking into shops and things like that from other boys than any kind of school education. I learned how to break into a car and hot-wiring it to start without a key. I did not learn any life skills or anything useful.
36. I know from my records there was a psychological service report dated 21 June 1974 which recommended I be placed in a family-type home. That did not happen. Instead, I was taken to Hokio Beach School.

## Hokio Beach School

37. Hokio was no different from Epuni, with lots of violence. Being one of the only Pakeha kids there I received a whole lot of bullying by other boys. The King Pin system was well established. The King Pins were able to roam around and did as they pleased to the younger boys. I was beaten up by the King Pin on at least two occasions and bullied a lot. I was called "honki" and beaten around, punched in the head and kicked. Mainly for cigarettes. There was obviously anger from being in a place like that which got the better of a lot of people who took it out on those who were weaker. There was no protection offered to anyone on the receiving end. Staff would watch the fights and did nothing.
38. I saw staff members, such as Hoko Gardiner and Mr Davidson slap the boys around or cuff them around the ears for backchatting and smoking. They would take boys for exercise in the gym if you were on penalty which happened when you committed a misdemeanour. This would consist of doing sit-ups, press-ups, and running around the concrete yard until they told you to stop. If we stopped too soon they would hit us with a stick or give us a kick up the behind and tell us to get moving again. Because I was a skinny boy I had trouble doing press-ups and sit-ups and when I didn't do these properly, Hoko Gardiner would throw a medicine ball at my stomach.
39. There was also verbal abuse. Being called a loser and being sworn at constantly. I was always in fear of the violence and of being hurt.
40. I was also put into secure during my time at Hokio for punishment. I got a few tattoos while I was at Hokio. Some dots across my hand and ankle. I never received a proper education at Hokio: the only things I learned there were how to improve my hot-wiring skills and to break into peoples' houses.
41. I also experienced sexual abuse while at Hokio. At some stage, I was put into the kitchen to do dishes. One day I was in the storeroom and the cook, Mr Ansell, offered me a cigarette. I have been smoking since I was seven years old and very addicted, so I jumped at the chance to have one. As I sat in the storeroom

smoking the cigarette, Mr Ansell pulled my pants down and started masturbating me. Mr Ansell then removed his own pants and then grabbed my hand and put it on his penis and told me to do what he had done to me. After it was over, he gave me three cigarettes and told me not to tell anyone. He used cigarettes as a form of payment.

42. Following that first incident, the abuse by Mr Ansell occurred on trips away from Hokio on another nine occasions, at least. I know from records that I was taken off the Hokio school premises on 13 separate occasions. This would often be with other boys. We would go to Mr Ansell's house or for a drive to the beach or to Levin. When we went to his house, he would take boys into his bedroom. When I would be taken into Mr Ansell's bedroom it was always the same thing, masturbating me and I would be made to then do the same to him.
43. It would also happen in the storeroom and kitchen. I would always get cigarettes as a reward. I was aged between 13 and 15 years old at the time.
44. I remember being told by staff in the welfare homes that you don't inform on the other boys and you definitely don't lay complaints about staff members because it would only cause trouble. If someone did inform they just ended up getting beaten up.
45. Eventually I was discharged from Hokio in 1977 and went back to living with my mother. I was 15 years old at the time.
46. Throughout all these events, there was nobody I could trust, not even the Social Welfare Officers. I feel their failure to protect me meant I never had a chance to make anything of myself, and this has had a huge negative impact on my life, and still does because I can't afford the things I would want to give my grandchildren, like proper housing and nutritious food. I live in a commune in GRO-A At the end of the day, my children and grandchildren are everything to me. My main focus in life is on my family and my need to ensure my family has a better life.



## Post-discharge

47. After being discharged from Social Welfare care, I worked in a delicatessen in Cuba St for around nine months. When I turned 16 I tried to join the armed forces but was turned down because I didn't have an education. From there, I was unable to keep any kind of stable employment and was straight back into stealing from cars and doing burglaries. I ended up being kicked out of my mother's address and ended up living in shop doorways on Cuba Street. I became addicted to alcohol and cannabis and would steal to feed my addiction.
48. I ended up in a Youth Detention Centre. My main memory is drinking two cups of disinfectant to get out of the place in the hope of being taken to hospital. It didn't work and I was just made to vomit it back up.
49. Later, I served terms of imprisonment for burglaries and thefts and regularly appeared in court. I became quite addicted to all sorts of drugs. I just did not see the point of anything and would be in and out of prison. I didn't think much of society and I would just go straight back to breaking the law and doing drugs. I suffer from insomnia and was prescribed sleeping pills while in Mount Crawford prison.
50. It may be hard to understand, but I found the periods I spent in prison easier than the time in the welfare homes. The prison guards were doing their jobs, they were more caring, and I felt safe at night.
51. In 1987, on return from prison leave to attend a funeral, I set myself on fire. I was at such a low point in my life and felt that I had let down everyone in my life, that I wanted to hurt myself.
52. Over the years, I have tried to obtain and keep employment but was trapped in a cycle of crime and drugs. I ended up being out of employment for so long that I have been unable to re-enter for some years. My ability to concentrate is difficult. The 45 years of smoking and all the drugs and alcohol have also severely affected my health.

## Disclosure of Abuse

53. At the time it was happening and for many years afterwards, I just thought what happened to me was normal. It wasn't until much later in life that I realised the violence I experienced was not normal and that staff members at places like Epuni and Hokio were not allowed to treat me like they did. It was hard to come to terms with my feelings that neither my parents nor the Social Welfare homes were interested in my safety, wellbeing or happiness during my childhood.
54. In 1999 I was watching television one night and saw a programme about a child that had been killed while under the supervision of CYFS. Something sort of clicked and I started experiencing flashbacks about my past.
55. So in April 1999 I went to the CYFS office and asked for my files under the Official Information Act to see what they had. I already knew in my mind that Child Welfare Officers had witnessed me being beaten by my father. At first, I got mucked around but eventually I got to see some of the things which were recorded.
56. While it may seem a small thing to others, when I picked up my CYFS files, they were all mixed together and in no chronological or placement order, so I had to spend hours going through them trying to get them in the right order to make sense of what had happened. I found this distressing and a very difficult exercise to go through.
57. When I finally received and looked through the file I was shocked to see exactly what they had known about the abuse, and the comments they had made. They had pretty much black-listed my mother and had put all their effort into having my brother and me sent to live with my father. This was despite the fact that it had been clearly written in my file how violent my father was, and how he taught my brothers and me how to steal. It was also despite the letters my mother had written warning that we shouldn't be left to live with my father.
58. Through a friend of mine I found a lawyer who dealt with these cases, Sonja Cooper.

59. I never told anyone about the sexual abuse until I met Sonja Cooper. I didn't really understand at the time it was happening what Mr Ansell was doing to me. I have always had problems talking about things and getting help. I could never talk to my partner or family about it because I was too ashamed to explain what happened.
60. As part of the legal process I ended up talking to a psychiatrist, Dr John Crawshaw. For the first time, I talked about all the abuse which occurred in my childhood. I told him about the sexual abuse by Mr Ansell.

### **Litigation**

61. Sonja Cooper filed a claim for damages against the Attorney-General on behalf of my brother, Paul, and me in December 1999. I was 38 years old at the time. It took eight years before the facts of the case were heard in mid-2007. Finally in 2011, after twelve long years, I received an ex-gratia payment from MSD. I don't feel my claim has 'settled' because the Crown has never taken responsibility for the harm I suffered. The only way to describe the whole experience is that it was a nightmare, and certainly not the quick process or outcome that it should have been. I felt that the Crown treated me like the defendant in a criminal trial rather than a victim of abuse. The whole process left me feeling re-traumatised and abused all over again.
62. After starting the legal proceedings and the interview with Dr Crawshaw, the memories of my childhood came back even more. Almost every day I would remember something new. I started drinking more heavily and using drugs to block it out.
63. A few months after I saw Dr Crawshaw, I asked my doctor for help, which was a huge step for me to finally talk about the abuse and try to get help.
64. It was only during the trial preparation process that I became aware that Mr Ansell had been convicted in 1976 of sexually abusing other boys at Hokio. I wasn't

discharged from Hokio until 1977 but no-one ever spoke to me about Mr Ansell, checked if I had been abused or whether I needed counselling.

65. I believe the Crown knew the abuse happened to me from everything they knew about events at Epuni and Hokio, but during the trial they tried to make it look like it was my fault the abuse had happened, and they used every available excuse and technicality in court to 'win'.
66. If the Crown had immediately fact-checked what was in my claim, and then told us they knew Mr Ansell had been convicted of abuse in 1976, which was while I was there, and acknowledged that the events I told them about were accepted, and offered a genuine apology, I would have accepted any amount of money they offered. Instead I was put through twelve years of what felt like torture, and in some ways was worse than the abuse I suffered. Every time I saw a Cooper Legal letter in the letterbox, I thought maybe it was over and I could move on with my life, but it just kept going on and on and on. It was hugely stressful and the depression and anxiety was inevitable.
67. I feel if it had been over earlier, I may have had the chance for my life to take a different direction, but I wasn't given that chance. To be honest, I am pissed off that I had to wait so long. Justice is supposed to be swift, but it certainly wasn't for me.
68. I didn't feel justice was done then, and I still feel that way. I don't call myself a 'survivor' because I am still waiting to be rescued and that can't happen until I receive justice. For me, that would be a proper, genuine apology from the Prime Minister or the Governor-General on behalf of the Queen to all of the thousands of children who have been harmed, including me and my brother. It should not be a standard letter from a nameless, paid official, that on the one hand says 'sorry' but doesn't accept any liability at all for the abuse or harm suffered. I don't trust any government agency now.

69.

**Not relevant to the Natural Justice process.**

concerning my family after we first came to their attention in 1959, and the treatment we suffered in the various social welfare institutions.

70. While I think victims of abuse in care should receive compensation to acknowledge the harm caused to them, my objective in taking the case to court was not about the money, but the desire to receive a proper apology, which I still haven't received.
71. Right from as early as 14 June 2001, through Sonja Cooper, I attempted to have my case settled out of Court.<sup>2</sup> Sonja Cooper wrote to Crown law on behalf of me and my brother to seek alternative dispute resolution and to request an informal discovery process. She made it clear that 'Both [Paul and Earl] have a strong desire to resolve these proceedings as quickly as possible'.<sup>3</sup> We did not want to go through the trauma of an adversarial court process. Sonja Cooper never got a response to this initial letter.
72. She followed up on 12 July 2001 in relation to my brother's claim.<sup>4</sup> Sonja Cooper followed up a third time by letter dated 23 August 2001 again requesting alternative dispute resolution.<sup>5</sup> We finally heard back on 27 August 2001 with a long list of detailed questions.<sup>6</sup>
73. I found the uncertainty of how my claim was going to be resolved distressing. Even as late as 1 August 2003, nearly two years later, we were still requesting alternative dispute resolution without any firm commitment from the Crown to explore that option seriously.<sup>7</sup>
74. I don't have any specific recall of the settlement discussions, apart from generally, and I relied heavily on, and took the advice of, Sonja Cooper, who was the expert in this area, so these events are taken from the correspondence between her and the Crown.

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<sup>2</sup> WITN0009002 - OIA0970003, Sonja Cooper letter dated 14 June 2001.

<sup>3</sup> Ibid.

<sup>4</sup> WITN0009002 - OIA0970003, Sonja Cooper letter dated 12 July 2001.

<sup>5</sup> WITN0009002 - OIA0970003, Sonja Cooper letter dated 23 August 2001.

<sup>6</sup> WITN0009002 - OIA0970003, Crown law letter dated 27 August 2001.

<sup>7</sup> WITN0009003 - OIA0970052, Sonja Cooper letter dated 1 August 2003.

75. On 15 November 2002, Sonja Cooper advised the Crown I was prepared to settle for compensation of \$35,000, payment of my legal costs, which at that stage were \$10,000, and a contribution to my counselling.<sup>8</sup> The Crown asked for an extension of that offer until 12 December 2002 which was agreed.<sup>9</sup>
76. Ultimately the Crown did not accept that offer, saying MSD wouldn't be in a position to consider settling my case until they knew the outcome of two other court cases about ACC cover.<sup>10</sup>
77. Sonja Cooper provided the Crown with a lot of information they had asked for, or which she thought may help get my claim resolved out of court.<sup>11</sup> This included a draft statement outlining the abuse I had suffered and a draft report following a psychiatric assessment by Dr Crawshaw.<sup>12</sup>
78. Given that I understand the Crown eventually spent well over \$1 million, and closer to \$2 million defending this case, it is unbelievable that they didn't accept the offer to settle my claim for a total of \$45,000, particularly given what they already knew about abuse at Epuni and Hokio. In the end, I accepted their "gift" of \$35,000 in 2011: I received \$25,000 and Sonja Cooper got \$10,000. I say "gift" because that is what ex-gratia means (I looked it up when I received their letter).
79. In February 2004 the Crown asked me to agree to an assessment by another psychiatrist, someone they chose, a Dr Chaplow. I agreed because I thought it may help settle my case. I found this really traumatic as I had to tell another stranger all about what had happened to me. I didn't feel comfortable talking to Dr Chaplow. It seemed to me that he was blaming me for everything that had happened to me, especially the sexual abuse. He asked me why I had let it happen to me so many times. I kept thinking, 'but I was only a boy and Mr Ansell

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<sup>8</sup> WITN0009003 - OIA0970052, Sonja Cooper letter dated 15 November 2002.

<sup>9</sup> WITN0009002 - OIA0970003, Sonja Cooper letter dated 9 December 2002.

<sup>10</sup> WITN0009002 - OIA0970003, Crown Law letter dated 13 December 2002

<sup>11</sup> WITN0009003 - OIA0970052 Sonja Cooper letter dated 26 June 2003.

<sup>12</sup> WITN0009004 - OIA1120156 Sonja Cooper letter dated 5 May 2005

was an adult in a position of power'. I was really upset and distressed by this, and it made me even more depressed for many months afterwards.

80. Dr Chaplow's report was very different to Dr Crawshaw's, and minimised the effects the abuse had on my life.
81. I have had to speak to so many psychiatrists in relation to my court case. I was and am not happy about that. It is not a process that helps victims of abuse, instead re-traumatising them every single time, but I went along with it because I didn't think I had any choice if I wanted my claim settled.
82. On 26 April 2005 the Crown offered to settle for \$20,000, including legal costs.<sup>13</sup> Sonja Cooper believed there were strong legal arguments that I should be entitled to a higher settlement, and on her advice a counter-offer was made to settle for \$100,000, including legal costs.<sup>14</sup>
83. The Crown offered to settle my case in July 2005 for \$30,000, including legal costs.<sup>15</sup>
84. Sonja Cooper replied on 26 July 2005. She challenged the Crown's position of saying that my claim related to one incident of sexual abuse, which they described as being relatively minor sexual abuse. On Sonja Cooper's advice, she told the Crown I would accept \$30,000 in full and final settlement, but would also need \$21,500 to settle my legal costs. She also said that if this was rejected we would take my case to trial.<sup>16</sup> She told the Crown that what her firm now knew from other clients in the same institutions at the same times, there was a lot of corroborative evidence of sexual abuse by Mr Ansell and the physical abuse I suffered at Epuni and Hokio.
85. Sonja Cooper wrote to the Crown again in March 2006. I had instructed her to make an open settlement offer. It repeated my earlier offer to settle for \$30,000 plus payment of my legal costs. She said they would exceed the \$21,500 she

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<sup>13</sup> WITN0009005 - OIA1120152 Crown Law letter dated 26 April 2005

<sup>14</sup> WITN0009004 - OIA1120156 Sonja Cooper letter dated 5 May 2005

<sup>15</sup> WITN0009006 - OIA0640165 Crown Law letter dated 15 July 2005

<sup>16</sup> WITN0009007 - OIA1120159 Sonja Cooper letter dated 26 July 2005

had mentioned to them a year before, and reminded the Crown that a 9-week trial would likely exceed \$500,000.<sup>17</sup>

86. A further letter was sent on 6 April 2006. Sonja Cooper had filed amended pleadings and discussed those with me. On her advice, the settlement offered now was \$60,000 compensation, and payment of my legal costs.<sup>18</sup> I don't think Sonja Cooper ever got an answer to that letter.
87. There were further letters between the Crown and Sonja Cooper in September 2006. The Crown had asked the Court in June 2006 that we include even more specific information, but the Judge had said Crown Law was never going to get the specifics they were asking for, because it would be an impossible task for us, and he didn't see what more we could be asked to do in terms of our pleadings. Sonja Cooper said we were still willing to settle if the Crown changed its mind, and stressed it was not our actions that were unnecessarily adding to costs.<sup>19</sup>
88. On 25 September 2006 the Crown wrote back saying it would be "counter-productive for us to incur further costs in lengthy correspondence over these matters, when we plainly do not agree" and said they did not accept that Paul and I had made reasonable offers to settle.<sup>20</sup> The Crown said:

You are well aware that by pursuing very broad, and in some cases novel claims in the [White] proceedings, and putting the Crown on notice that you will be taking the same approach using largely generic pleadings in hundreds of similar claims, you have to a very large extent tied the Crown's hands on settlement. If the Crown settles on the basis of the claims as pleaded in the [White] proceedings you will undoubtedly look to the Crown to do the same for your hundreds of other clients

89. Unfortunately because Paul and my case was the first major one about abuse in social welfare homes to go to trial, I feel we got caught in the legal cross-fire. Having thought about it over the years, I feel we were dragged through the courts so the Crown could use our case to test things like the Limitation Act and the

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<sup>17</sup> WITN0009008 - OIA0920202 Sonja Cooper letter dated 13 March 2006

<sup>18</sup> WITN0009008 - OIA0920202 Sonja Cooper letter dated 6 April 2006

<sup>19</sup> WITN0009009 - OIA1120194 Sonja Cooper letter dated 22 September 2006

<sup>20</sup> WITN0009010 - OIA1120192 Crown Law letter dated 25 September 2006



ACC bar, so they could stop future claims being made, and limit what they paid other victims of abuse who came forward.

90. Sonja Cooper wrote again on 27 October 2006.<sup>21</sup> She mentioned the possibility of the government looking at options to settle these types of claims through an out-of-court process, with a recommendation expected by April 2007. She said:

Within that context, it is difficult to understand what is hoped to be achieved by forcing [Earl and Paul White] to litigate their cases. If Government is intending on embarking on an "out of court process" for resolving claims of this client group, the relevance of establishing some legal precedent appears to be fairly limited.

91. She emphasised there was now very little time to settle our claims before the costs of preparing for trial got very expensive, estimating her costs (to be paid by the Legal Services Agency and a debt owed by Paul and me) would conservatively be \$550,000-\$720,000. She also estimated the Crown's costs as being between \$1.0-\$1.6 million. She stressed that the settlement offers made by Paul and me were not excessive, but also said:

Certainly, they have escalated because of the sense of frustration and ongoing trauma of being "dragged" through the litigation process – without realistic settlement offers being made. [Earl and Paul White] have always been prepared to settle their claims and have made numerous attempts to do so. This was referred to in my letter of 22 September 2006.

92. I can say without any doubt that I was frustrated and traumatised by the litigation process. I had been prepared to settle for \$35,000 in 2002 and would have settled for that now just to get it over and done with. And this was before I had any idea of how much longer it would take for my case to be heard, and how brutal the trial was going to be.

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<sup>21</sup> WITN0009008 - OIA0920202 Sonja Cooper letter dated 27 October 2006

93. On 22 March 2007 Sonja Cooper wrote to the Crown making a last settlement offer before trial, which was \$110,000 compensation and \$100,000 for my legal costs.<sup>22</sup>

94. In their reply dated 23 April 2007,<sup>23</sup> the Crown said:

Contrary to the view expressed in your letter, our assessment is that Mr [Earl White] has a very weak claim. This assessment takes into account our<sup>24</sup> review of the plaintiffs' evidence, the evidence to be called on behalf of the defendant and the legal defences open to the defendant.

So far as the Ansell incident is concerned, it is alleged to have occurred after the commencement of the ACC scheme on 1 April 1974 and accordingly, even if it did occur (which is denied) the claim for general damages is statute-barred. The facts do not support an award of exemplary damages.

For these reasons, the offer contained in your letter is rejected.

95. Throughout the years leading up to my case going to court, it seemed to me the Crown was quite aggressive in the tactics they used. Some of the defences they argued, which seemed to change repeatedly, were over the top. Initially they didn't put forward any defences.<sup>25</sup> Then about six years later, after I amended my statement of claim, they said it was barred by ACC and the Limitation Act.<sup>26</sup> Before the trial they added further defences, saying that for me to continue to seek redress was an abuse of process because people had died, or couldn't remember or recollect what I was talking about.<sup>27</sup> I thought describing it as an 'abuse of process' was unfair. They also argued that I had failed to mitigate what had happened to me,<sup>28</sup> which had contributed to my own loss and damage,<sup>29</sup> and then at a later stage withdrew contributory negligence as an affirmative defence.<sup>30</sup>

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<sup>22</sup> WITN0009008 - OIA0920202 Sonja Cooper letter dated 22 March 2007

<sup>23</sup> WITN0009011 - OIA1070112 Crown Law letter dated 23 April 2007 - Response to Open Settlement Offer

<sup>25</sup> Pages 1-9 on the Case on Appeal in the Court of Appeal. Statement of Defence dated 7 March 2000.

<sup>26</sup> Page 109 on the Case on Appeal in the Court of Appeal. Amended Statement of Defence to Further Amended Statement of Claim Dated 6 April 2006. Note the first Statement of Defence did not contain any affirmative defences.

<sup>27</sup> Page 320 of the Case on Appeal in the Court of Appeal.

<sup>28</sup> Page 320 of the Case on Appeal in the Court of Appeal.

<sup>29</sup> Page 320 of the Case on Appeal in the Court of Appeal.

<sup>30</sup> Pages 355-356 of the Case on Appeal in the Court of Appeal.

96. There were also times when I felt the Crown were being uncooperative and strategic. I felt they wanted to 'win at all costs' despite the harm I had experienced and the trauma the legal proceedings were causing.
97. My brother and I wanted permanent name suppression before any trial happened. This was critical in order to protect my privacy, and that of my family, and to avoid being victimised. To me the reasons were obvious. We were victims of sexual abuse and did not want our true names to be published. On 19 March 2007 the High Court decided only to grant interim name suppression, and then subsequently said that all witnesses (both ours and the Crown's) would only have name suppression until 25 June, when we were set for a hearing.<sup>31</sup>
98. For me this created a great deal of anxiety and uncertainty. Having certainty that my privacy would be protected throughout the whole process was absolutely critical. Sonja Cooper filed an appeal in May 2007. I was disappointed that the Crown contested this appeal and did not understand where I, as a victim of sexual abuse, was coming from. They said that permanent name suppression should be dealt with at the trial, and that the High Court was not wrong to give only interim name suppression, as this was 'highly discretionary'.<sup>32</sup> To me this was disappointing, created a great deal of uncertainty and stress in the process, was unnecessarily technical and caused increased costs for us, and didn't show any compassion or understanding, or recognition of the particular vulnerability of sexual abuse victims.
99. I was stunned to learn the Crown had hired a private investigator. I found out because a man approached my older sister. She later told me about it and said he was trying to see if she had anything bad she was prepared to say about me. She wasn't prepared to talk to him, but she felt very unsettled by this, and wondered why they were trying to find dirt on me and Paul when we were the

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<sup>31</sup> WITN0009012 - OIA0590020 – Crown memo. [Earl and Paul White] v Attorney-General: Appeal from interim name suppression orders.

<sup>32</sup> WITN0009012 - OIA0590020 – Crown memo.[Earl and Paul White] v Attorney-General: Appeal from interim name suppression orders.

victims of abuse. A man also went to the house of my daughter and her boyfriend. He didn't say who he was or what he was doing, but asked for my daughter. Her boyfriend said she wasn't home. My daughter's boyfriend said he had also seen this man up the road, watching them and their house.

100. I am not sure why they hired a private investigator to find dirt on me. They already had all my records: criminal convictions, medical records, benefit history, and so forth. I would have thought that was sufficient intrusion into a person's life in the context of a case involving abuse of a child who had been in care, when it was the State's duty to protect me from harm, without also sending out private investigators to dig up dirt on the victim. For me, amongst all the terrible things I was put through, the use of the private investigator was disgusting and unforgivable.
101. The Crown also threw barriers in the way when we were genuinely trying to meet timeframes. They opposed the introduction of late briefs of evidence, when our lawyers, who had very limited resources, were doing their best to bring the claim.<sup>33</sup>
102. The case was heard in the High Court in 2007 before Justice Miller. I gave evidence of all the things which happened to me, both at home and while I was in the social welfare institutions.
103. I was cross-examined by the Crown lawyer, Ms McDonald QC for two days. It was a very difficult experience and Ms McDonald was very aggressive at times. She took me back through each of the incidents of violence and sexual abuse in great detail. A lot was made of the fact my memory was patchy about certain things and the fact I had a criminal history for dishonesty and stealing.
104. The Crown's psychiatric evidence suggested that the circumstances of Paul's and my life were more likely to be a genetic predisposition from our parents and the events of our early childhood, rather than because of the effects of the abuse. I found that really insulting. In any case, I should never have been allowed to

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<sup>33</sup> WITN0009013 - OIA0930013. Crown Memorandum of Counsel Opposing Admissions of Late Briefs.

live with my parents at all, given the Protection Order that I was under when I was born, so I feel that everything that happened in my parents' homes and in the welfare homes was the responsibility of the State.

105. I openly accepted my criminal history and did not hide from the fact I had lied on many occasions previously in the course of theft and stealing. I also made it clear that while my memory was not perfect, I could remember the painful incidents of violence and sexual abuse because they stuck out. This theme of not reporting to people was returned to again and again over the two days of cross-examination. It was very persistent.
106. The Crown's lawyer made a lot of the fact I had not complained to anyone of the abuse at the time, or over the years which followed. I had to explain, on more than one occasion during the cross-examination, that there was a culture of not 'narking' or saying what was happening. Similarly, I had to explain on several occasions how difficult it was to talk to anyone about the sexual abuse.
107. At times Justice Miller intervened to ask what the questioning was about. There was one occasion where he asked the Crown's lawyer about evidence I had given earlier that she was quoting back to me. I remember the Judge asking to clarify it "in fairness to the witness".<sup>34</sup> We took a break and when we came back it transpired that Ms McDonald QC was incorrect.
108. On another occasion, the Crown's lawyer was asking a lot of detailed questions about the sexual abuse by Mr Ansell. The Judge interrupted and asked where the questions were going because it appeared that she was suggesting I consented to the sexual assaults as a child.<sup>35</sup>
109. All of the specific incidents of violence I described by staff members were challenged. I was told they were all denied and that I had made them up as fabrications. I kept responding that I stood by what I had said and continue to do so today. It was quite traumatising to be called a liar and being challenged every time I answered with what I knew to be true.

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<sup>34</sup> Page 822 of the Case on Appeal in the Court of Appeal.

<sup>35</sup> Page 857 of the Case on Appeal in the Court of Appeal.

110. Some of the cross-examination questions suggested that my childhood had not been that bad at all. Reference was made to specific notes where I went to a movie or a trip which sounded fun. Notes about my school performance being below average was referred to as suggesting “it wasn’t that bad was it” and “there was some good things”.<sup>36</sup> My response was always the same. There was the odd moment of happiness, but on the whole my childhood and experience of care in social welfare institutions was frightening, violent and traumatic.
111. A lot was also made of my ability to instruct lawyers in relation to my criminal cases and in obtaining my CYFS files. I wasn’t actually ashamed of my criminal cases: the Police were doing their job and it was a ‘fair cop’ when I got caught. So I didn’t have difficulty instructing a lawyer for them. I went to great pains to explain in court that there was a psychological difference between giving details to a staff member to obtain my records versus having to talk about painful and shameful memories.
112. In the High Court, the Judge accepted I had been physically abused at both Epuni and Hokio, and also that I had been sexually abused by Mr Ansell as I had described, on at least 13 occasions when I was taken to his home.<sup>37</sup>
113. Despite this, the Judge accepted the evidence of the Crown’s psychiatric experts and also that I had ‘not proved on the balance of probabilities that it had a material impact’, and that my “early childhood experiences are dominant, if not the overwhelming cause of [my] difficulties”.<sup>38</sup> To me it was extraordinary for the Judge to accept I had been physically and sexually abused repeatedly over a number of years, but that it hadn’t had any effect on my life. I could not believe that finding then, and still can’t today.
114. The Judge found that our claim was barred under both the Limitation Act and the ACC legislation, so we were not entitled to any damages. Our notice of appeal challenged all of the Judge’s findings on these defences.

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<sup>36</sup> Page 850 of the Case on Appeal in the Court of Appeal.

<sup>37</sup> Para 312 High Court decision

<sup>38</sup> Paras 441-442 High Court decision

115. On the question of us continuing to bring the claim, the Judge said that our claim was “far from an abuse of process”.<sup>39</sup>
116. The Crown tried to get a costs order against my brother Paul, for \$42,917.94 which was opposed by our lawyer.<sup>40</sup> The Crown said this was because of his ‘failure to discover documents relating to his claim against Presbyterian Support Services’ and which caused the defendant additional costs.<sup>41</sup> This caused considerable alarm. We had no money and understood that although we were funded by legal aid, technically Paul could be asked to pay these costs. The Judge refused to award costs personally against Paul.
117. Unfortunately, because our case failed due to the Limitation Act and ACC defences, the legal aid we had been granted when we filed our claim in 1999 was withdrawn.
118. Legal aid asked me to repay just under \$3,000, which I did with WINZ deducting \$5 per week from my benefit until the full amount was repaid.
119. We didn’t have access to legal aid for our Court of Appeal case, and Sonja Cooper did this for us without payment.
120. I can’t understand why legal aid was withdrawn. The physical and sexual abuse I claimed had occurred was found by the Judge to have happened. It seems unjust for legal aid to abandon us at that stage. I accept not all people who make claims are honest, but we had gone through the process and proven the facts, but were still stopped from getting compensation and now we couldn’t even carry on challenging the Crown to see if the High Court decision was right or not.
121. In 2011 when I agreed to accept the amount of payment offered by MSD, I received \$25,000. The payment came with a letter saying it was an ‘ex gratia’ payment, and I felt it didn’t accept any responsibility for what happened to me

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<sup>39</sup> page 529 of the Case on Appeal in the Court of Appeal.

<sup>40</sup> WITN0009014 - OIA0940462. Memorandum of Counsel for Plaintiff in Relation to Costs.

<sup>41</sup> Ibid.

when they had an obligation to protect me while I was in the State homes. I felt disgusted and insulted, and violated all over again.

122. I feel I have been cheated out of a legitimate claim that was proved. The amount I was paid is a joke and insult against the repeated sexual and physical abuse the Court found happened.
123. It is hard to reconcile when compared with the huge cost to the Crown, not only the cost of the Crown's lawyers, but also my legal aid and the costs of the Judge and other department and court staff.
124. I never felt the apology I received was genuine or appropriate. As I have already said, I will not find any peace until I receive a proper, genuine apology from a person in authority, such as the Prime Minister or Governor-General, and not from some official in the Ministry of Social Development. Because I can't get past this, I find counselling has little benefit in helping me get past these events, and doesn't provide much help in dealing with depression and anxiety. I am 'stuck' and need a proper apology to be able to move forward. I am 59 now, and not in good health, so time is running out.

## **ACC**

125. When the Court said that my claim was barred by ACC I thought that meant I wasn't able to get any compensation through ACC, so I didn't make an ACC claim until nine years after the High Court hearing. At that stage a cousin told me that I should make a claim, which I then did.
126. That was also a difficult and unsatisfactory process. I had to see a psychiatrist or psychologist (I don't recall which) and then the information was sent to someone else who 'rated' my case on an American system which came out at around 16-17% impairment. I felt really cheated as that rating didn't seem to relate at all to what the psychiatrist or psychologist report said, and what had actually happened to me. I felt it totally minimised what I had gone through, and made me feel victimised all over again. I felt the same way I did when I got the court judgment, and suffered further depression for several months.



## Recommendations for change

127. While it was never really about the money for me, I do feel it is unfair that other victims, both during and after my court case, could get significantly more money without having to prove the events and go through what I went through, over twelve very long, difficult and traumatic years.
128. The Crown need to take a serious look at what went on in those welfare homes and sort out a solution that is good for the victims, not just lawyers, and psychiatrists and all these other people who are making thousands of dollars off other people's misery. When we prove our misery, we receive a payment that is a joke. The lawyers are still sitting there making thousands of dollars and some of these victims who suffered abuse have received sums as low as \$4,000 or \$6,000. That is a 'cop out' on the Government's behalf because they know all this abuse happened. They have documents that prove it. If the Government wants this country to move forward with young people, they need to take a hard look at what the Government did to the young people's fathers. You will probably find there are a number of fathers and sons sitting in jail now that are second generation, third generation welfare children like me. I found out that my parents and grandparents were welfare children and after the abuse I went through I don't want to imagine what they went through.
129. For me, improvements in the claims process would be that no-one was forced to take civil proceedings and go through the experiences my brother and I had to go through. Instead, there should be an independent process not controlled by the State departments, and once the abuse has been fact-checked, then there should be a genuine apology and fair compensation for the abuse that happened. A victim should not have to go through all the hurdles I did.
130. The one thing in my life which brings me some peace is that I have made sure my kids and grandkids haven't gone through what I went through when I was a child. I am involved in the lives of my grandchildren and they are my reason for living. I take my grandchildren to school every day and pick them up.

**Not relevant to the Natural Justice process.**