

Advice
New
Chancellor?



J.

PIGGOTT WOOD & BAKER
Barristers & Solicitors

6 July 2000

Archdeacon John Harrower (Bishop Elect)

2 ROLES
1 Internal Matters
2 Ethics of the Institution. ARM:VG

Dear John,

The Role of the Visitor

The Administrator, Stuart Blackler, has asked me to prepare a paper for you on the role of the Visitor as you will find yourself in this role in relation to a number of diocesan bodies and the church schools.

The Office and Function of Visitor

The origins of the Visitor are found in ecclesiastical law going back to the 14th Century. The Tasmanian Supreme Court considered the role of the Visitor. In the decision of M v. The University of Tasmania (1986) Tas.R.74. That case dealt with the role of the Visitor in relation to the University of Tasmania where the statute setting up the university provided that the Governor will be the Visitor to the University. Justice Underwood quoted from Commentaries on the Laws of England (1765) where Justice Blackstone said:

"For corporations being composed of individuals, subject to human frailties, are liable, as well as private persons, to deviate from the end of their institution. And for that reason the law has provided proper persons to visit, inquire into, and correct all irregularities that arise in such corporations, either sole or aggregate, and whether ecclesiastical, civil or eleemosynary

With respect to all lay corporations, the founder, his heirs or assigns, are the visitors, whether the foundations be civil or eleemosynary: for in a lay corporation the ordinary neither can nor ought to visit."

Justice Underwood also referred to an English decision in Thomson v. The University of

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London (1864) (33L.J.CH.625 at 634) which described the jurisdiction of the Visitor as follows:

"... whatever relates to the internal arrangements and dealings with regard to the Government and management of the house, of the institution, it is properly within the jurisdiction of the Visitor and only under the jurisdiction of the Visitor and this Court will not interfere in those matters: but when it comes to a question of right of property, or rights as between the university and a third person dehors the university, or with regard, it may be, to any breach of trust committed by the corporation, that is the university, and so on, or any contracts by the corporation, not being matters relating to the mere management and arrangement and details of their domus, then indeed this Court will interfere."

The Visitor is appointed either by statute or under the deed establishing the institution or organisation.

The powers of a Visitor are limited to the internal management of the institution. Specific limitations may exist in the statute or deed appointing the Visitor or establishing the role of the Visitor in that institution. However, they are usually expressed in a general way and are therefore defined by the common law.

The jurisdiction of the Visitor is confined to matters concerning the internal management of the corporation. The Visitor does not have power to deal with matters which arise between third parties and the institution but only matters which arise between the members of the institution.

Generally the powers of the Visitor will involve:

1. The power to settle disputes. This includes the power to decide disputes between members of the institution, including to expel or deprive members of rights, to hear appeals from members relating to any dispute.
2. The Visitor can make determinations on the interpretation of the rules of the organisation.
3. The Visitor has the power to inspect the premises of the institution and the general work of the institution, as it is the Visitor's role to ensure that the values of the institution are upheld.
4. The Visitor can exercise his jurisdiction on his own initiative or on receipt of a petition by a member.

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5. The Visitor also has the power in settling disputes to award compensation, to appoint and remove members and officers of the institution. This power is not generally subject to appeal to a Court. However, the Courts have a general supervisory role if the Visitor's acts in excess of his powers or if the Visitor does not follow the rules of natural justice. Other than this, the Courts will not interfere with the decisions of the Visitor.

The majority of the decided cases deal with the universities who have retained the role of Visitor within their structure and give some useful guidance in how the role of the Visitor should be exercised.

Generally the role is a supervisory one with provision to hear appeals and deal with disputes between members when other processes within the institution have failed. However, where there are statutory requirements, such as the Industrial Relations Commission which deals with employees of an institution, that supersedes the Visitor's role in such disputes.

It is likely that the Visitor will only be called upon in times of crisis to decide disputes or deal with questions relating to the values of the institution where significant change is occurring. The Visitor should have a general understanding and knowledge of the institution and its structures but generally the role will not include active involvement on a day-to-day basis within the institution.

I would be happy to assist in clarification of any of the above or providing advice in relation to any specific matter.

Yours sincerely,



AUDREY MILLS
Chancellor