

**FLOWER & HART**

SOLICITORS &amp; ATTORNEYS

Founded 1872

**Partners**

Michael John Douglas Meadows  
 James William Alley Acc. Spec. (Fam.)  
 Robert James Cunningham  
 David John Herbert Watt  
 Robyn Gay Lyons  
 Warren Grant Denny  
 Stephen John Tonge  
 Brian Walter Smith  
 Brian Francis Ward  
 Sharon Ann Winn

**Consultants**

Maxwell Roy Lockhart  
 William Hamilton Hart (Notary Public)

**Senior Associates**

Katharine Patricia Philp  
 Gail Maree Black

6 August 2002

**Partner:** Robert Cunningham Ph: (07) 3233 1214  
**Email:** rjcunningham@flowerhart.com.au  
**Our ref:** RJC:220947  
**Your ref:**

**Private & Confidential**

The Most Reverend Dr P. Aspinall  
 Archbishop of Brisbane  
 Anglican Diocese  
 GPO Box 421  
 BRISBANE QLD 4001

Dear Archbishop,

**MR GILBERT CASE**

I refer to our meeting on 6 August 2002 when we discussed the issues that arise in considering whether or not to stand down Mr Case.

**Allegation against Mr Case**

The proposition, as I understand it, is that Mr Case so mismanaged the conduct of the Lynch affair while he was Principal of St. Paul's School that he is unfit to head the Anglican Schools Commission. An allegation of that kind would have to be particularised in any action to dismiss Mr Case. The particulars might be:-

- that he failed to set in place systems to prevent the abuse occurring;
- that he failed to heed specific warnings about Lynch;
- that he failed to take action to find other victims;
- that he covered up the scandal.

**Address**

Level 19, National Bank House  
 Creek & Adelaide Streets  
 Brisbane, Australia  
 GPO Box 219, Brisbane 4001  
 DX 144

**Telephone****(07) 3233 1233****Email**

flowerhart@flowerhart.com.au

**Facsimile**

(07) 3229 4555

**Web Site**<http://www.flowerhart.com.au>

The Most Reverend Dr P. Aspinall  
Archbishop of Brisbane

6 August 2002

---

## **2000 Publicity**

I advised you that there had been considerable publicity about the St. Paul's matter in 2000 (copies enclosed) and that the issues raised in that publicity ought to have been taken into account by the selection panel which chose Mr Case to be executive director of the Schools Commission. It seems to me that if an organisation appoints somebody to a position having knowledge of certain facts, they cannot use the same facts subsequently to justify termination without being exposed to a claim for unfair dismissal.

## **Earlier Considerations**

You considered standing Mr Case down earlier this year. I expressed concern about that to Bernard Yorke for the following reasons:-

- Unless there were new grounds on which to base the termination, I could see the Diocese being exposed to further payments for wrongful dismissal.
- There was a need for Mr Case to participate in the mediations without fearing that anything he said could be used against him in employment matters.
- If there were any harm in Mr Case being head of the Schools Commission, that harm had already been done when he was appointed.

## **Why Stand Down?**

I suggested to you at our meeting today that there might be two broad reasons for standing a person down from a position:-

- that the person might harm the organisation;
- that the person might influence an investigation.

As indicated previously in this letter, I believe that any harm resulted from the appointment of Mr Case. His remaining in the position was not likely to cause any harm to the church but could actually assist it by helping it through the mediations and the subsequent inquiry.

I am not aware of any way in which Mr Case can influence the inquiry which must investigate and draw some conclusions about the manner in which the Lynch affair was handled. The only influence he may have is as a witness to that inquiry.

## **Council Membership**

As a member of the Diocesan Council elected by Synod in June this year, Mr Case may have an opportunity to contribute to resolutions affecting the course of the enquiry. It would be proper for him to declare his interest generally and to absent himself from those discussions and any votes on resolutions relating to the enquiry.

The membership of the Diocesan Council will be regulated by the *Diocesan Council Canon*. Paragraph 11 of that Canon provides that the Council may declare the seat of a member vacant if the member is absent for four consecutive monthly meetings without permission or is "guilty of such misconduct as to interfere seriously with the conduct of business". I do not believe the circumstances enable the Council to declare Mr Case's seat vacant at present.

## **Mediations**

Mr Case did participate in the mediations. In doing that, he was exposed to vilification by a few of the victims. As the purpose of the exercise was to reach a conclusion that was reasonably satisfactory for both parties, it was important not to antagonise the victims by denying their assertions or appearing to

The Most Reverend Dr P. Aspinall  
Archbishop of Brisbane

6 August 2002

justify the school's position. That position would have been very difficult for Mr Case. I believe it would have been much more difficult to have accepted allegations silently if he had also been under threat of his employment if the allegation were not denied.

### **Natural Justice**

It will be important to observe principles of natural justice in any proceedings against Mr Case. Proceedings may include his standing down as well as the termination of his employment.

"Natural justice" has been defined quite concisely in the protocol we are drafting at present as follows:-

*The principles of natural justice will apply to decisions to be made under the protocol. As the consequences of a decision for any individual become more severe, so the importance of demonstrably acting fairly increases.*

*The two fundamental principles of natural justice are:-*

- *that those making a decision are not biased;*
- *nobody should be condemned unless they are given prior notice of the allegations against them and they have a fair opportunity to be heard."*

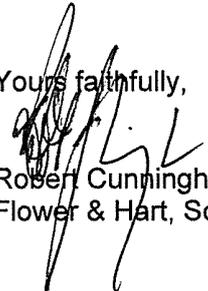
A decision to stand down Mr Case ought not be made without allowing him to respond to the allegations that are being made. It should be observed that Mr Case has not been given an opportunity yet to answer the allegations other than through the draft statement that I prepared prior to the mediations.

### **Morale**

Another important issue to be taken into account is the need for you to demonstrate to the members of the church and more particularly all of the people who work in the church as clergy, employees and voluntary workers that you will insist on fair process in dealing with employment or engagement of personnel in the context of sexual abuse allegations. The weight of opinion has swung behind the victims but it would be very demoralising for workers if their careers were damaged unfairly.

At the conclusion of our meeting, I advised you that I believed it would be best not to stand Mr Case down now. His employment can be reviewed when the inquiry gives you its findings.

Yours faithfully,

  
Robert Cunningham, Partner  
Flower & Hart, Solicitors