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30/03/2006 12:36 PM

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Subject: RE: Ellis - Costs

Thank you John. Pls go ahead and have HE's costs assessed. MC

-----Original Message-----

From: John.Dalzell@corrs.com.au [mailto:John.Dalzell@corrs.com.au]  
Sent: Thursday, 30 March 2006 11:23 AM  
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Subject: Ellis - Costs

Dear All

I attended the Supreme Court of New South Wales this morning to receive judgment on the costs argument in the matter of Ellis v Pell & Ors.

In short, his Honour upheld his judgment regarding Cardinal Pell, in that he awarded costs in favour of the Cardinal. In addition, his Honour held that in the circumstances the Cardinal's costs should not be payable until the conclusion of the proceedings.

With regard to the Trustees, his Honour held that the costs of the Notice of Motion should be 'costs in the cause'. In other words, whoever wins the substantive trial shall be awarded the costs of the limitation hearing.

His Honour also made the following relevant comments:

the plaintiff only had a flimsy basis for joining Cardinal Pell;

I remain of the view that there was no arguable or possible basis for the joinder of Dr Pell;

In my opinion, the conduct of the trustees in defending the Notice of Motion was not unreasonable in the circumstances;

I should emphasise that I did no more than find that there was only an arguable case against the Trustees. Whether the Trustees are in fact liable is a matter for the trial judge.

In my opinion, the effect of his Honour's judgment is twofold:

1. the plaintiff now faces the prospect of preparing his case for trial with no external funding;
2. although costs have been awarded in favour of Cardinal Pell, the fact that these are not payable until the conclusion of the proceedings is, in some ways, advantageous. This element of the judgment saves

us from the prospects of enforcing costs and thereby bankrupting the plaintiff at this stage of the proceedings. Whilst some clients would happily bankrupt the opposition without a second thought, I have discussed this with Michael Casey and understand the ramifications that would invariably flow from such an act.

With your instructions, we shall now endeavour to have Cardinal Pell's costs assessed.

Finally, as discussed with Michael Casey this morning, I will ensure that a Holding Summons is filed in the Court of Appeal today. This will have the effect of extending the time by which an ordinary Notice of Appeal should be filed by a period of three months. I have, instructed Counsel to ensure that the grounds of appeal are settled, at the latest, by next week.

If you have any queries please do not hesitate to contact me.

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