



Church sex suit rejected

ROLLS

Archbishop Hickey should have acted on priest's past: woman

By Pamela Magill

A WOMAN has failed in a bid to sue Catholic Archbishop of Perth Barry Hickey after she had sex with a priest who was counselling her over marital difficulties.

Carmel Smith, of Maddington, claimed Archbishop Hickey breached his duty of care and failed in his fiduciary duty by appointing Father Edward Hewitt

as local parish priest. A fiduciary is someone who holds a position of trust.

Mrs Smith said Archbishop Hickey was, or should have been, aware that Father Hewitt had been convicted of two wilful exposure charges, the first in 1986 and second in 1996.

But Supreme Court Master Craig Sanderson struck out Mrs Smith's claim yesterday, saying it could not succeed and ordering her to pay costs.

He said that the mere fact that Archbishop Hickey was responsible for appointing priests to the parish of Maddington could not be said to give rise to a duty of care or a fiduciary duty.

Master Sanderson said a significant point in the case was that Mrs Smith sought to render Archbishop Hickey liable for the actions of Father Hewitt and that he breached his duty of care by not controlling those actions.

"As a general rule, no one is under a duty of controlling another to prevent his doing damage to a third," he said.

There was not sufficient evidence to establish that Archbishop Hickey knew Father Hewitt would engage in a sexual relationship with Mrs Smith.

"Mere knowledge of the conviction of Father Hewitt of an offence of wilful exposure eight years before the liaison with Mrs Smith

occurs is not in my view sufficient to give rise to the pleaded duty of care," he said.

Master Sanderson said the duty of care claim arose from the fact that Archbishop Hickey had responsibility to appoint a parish priest and would be aware that part of the duties as a priest may include counselling to people experiencing marital problems.

He would also have been aware that people seeking counselling would be emotionally vulnerable and he was aware that in the past Father Hewitt had engaged in inappropriate behaviour.

Mrs Smith claimed that in March 1994 she and her husband were experiencing marital difficulties

and she sought counselling from Father Hewitt.

She said between March and November of that year she had numerous counselling sessions, during which she was in an emotional state of mind and vulnerable.

A sexual relationship allegedly developed between Mrs Smith and Father Hewitt between September and November 1994 and continued until January 1996.

Mrs Smith said that because of the relationship she suffered injury and loss and damage.

Mrs Smith has also taken legal action against Father Hewitt, claiming he abused his position of power. This is proceeding.

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