



S O L I C I T O R S

28 October 1996

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BY FACSIMILE: 9667 0313

Your Grace

"Legal Technicalities"

During our meeting on Wednesday we briefly discussed some of the legal issues that arise in the special issues litigation against the Church and the question of whether they are "technicalities" or substantive legal points. You commented that you would appreciate a further briefing on these matters, and that is the purpose of this letter.

Claims against the Archbishop

Some plaintiffs seek to sue the Archbishop. In the past, they did this by naming "Sir T F Little", or by naming "The Roman Catholic Archbishop of Melbourne".

Liability is alleged on four bases:

- (a) That the Archbishop is "a corporation sole", or "the successor in title and law to the Archbishops of the Archdiocese", or the representative of "The Roman Catholic Church in Victoria and its clergy and laity". In essence, these allegations seek to hold the Archbishop liable on the basis that the law recognises the office of an Archbishop as a legal entity. The term "corporation sole" effectively means a company consisting of one person. Some Archbishops are corporations sole. The Archbishop of Perth is one example. The legal entity is created by Western Australian legislation.

There is no equivalent legislation in Victoria. Accordingly, the Archbishop of Melbourne could only be a corporation sole at common law (ie. based on cases and precedents). No Victorian court has yet ruled on the issue. Our view, after analysing several hundred years of Victorian and English case law, and going back to the times of Henry VIII and the establishment of the Church of England, is that the Archbishop of Melbourne is not a corporation sole.

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Assuming that conclusion is correct, then as Archbishop, you are only liable for your own deeds. In particular, the knowledge of your predecessors does not attach to you.

Accordingly, if say Archbishop Mannix could be held liable because of knowledge that he had, that liability died with him.

The allegation that the Archbishop is the "successor in title and law to the Archbishops of the Archdiocese", is effectively another way of putting the corporation sole argument. Our view is that the allegation is simply wrong in law.

The third allegation put against the Archbishop (whether that be the person or the office), is that he represents "the Roman Catholic Church in the State of Victoria and its clergy and laity". We consider that this allegation is wrong, both as a question of civil law and in Canon Law.

A more difficulty allegation to meet would be that the Archbishop represents the Church in the Archdiocese in Melbourne. As a matter of Canon Law, that may be correct. We consider that in civil law, it is not correct because, as discussed below, the Archdiocese is not a legal entity.

- (b) The second way in which the allegations have been put against the Archbishop is that he is "responsible for the control and management" of priests. Our response is that from the time that Archbishop Little was appointed, he had the powers, rights and duties cast upon him by the Code of Canon Law. We would say that the same applies to Your Grace. However we say that an Archbishop has no responsibility for the control and management of priests in relation to a period prior to his appointment as Archbishop.
- (c) Some plaintiffs have alleged that the Church is a voluntary association and that the Archbishop can be sued as representing its hierarchy and members. We consider that this allegation is wrong at law. Sporting clubs can be voluntary associations, but the Church is not.
- (d) The final allegation that has been put is to the effect that the Archbishop is liable as the employer of a priest. Once again, we take the view that this is simply wrong. The relationship between a priest and his Bishop is of course regulated by Canon Law. It is not an employment situation.

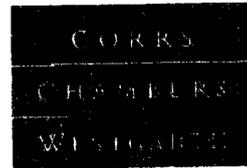
Claims against the Church

A number of plaintiffs have sought to sue the Church. The defence of these allegations has of course attracted criticism because the claim that "the Church does not exist" has been taken out of context. Perhaps a more helpful way of responding to the allegation is to say that trying to sue "the Church" is like trying to sue "the people of Victoria" or "the residents of Richmond".

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There are some groups of people that are recognised by the law. These include companies, incorporated associations, sporting clubs, governments and councils. There are other groups of people that are not recognised by the law. It is possible to sue the Victorian Government, but not all the people of Victoria. It is possible to sue the Richmond City Council, but not all of the residents.

We say that the Church in Victoria is not an entity known to law. That does not mean that the Church does not exist, any more than the people of Victoria do not exist. However, as we have often said, if people wish to seek remedies from the legal system, then they can only do so within the confines of the law.

We trust that the foregoing is helpful. Please do not hesitate to contact Richard Leder if you have any queries.

With kind regards


Barry O'Callaghan

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