

John Usher

From: Danny Casey
Sent: Friday, 5 August 2005 3:26 PM
To: Brad Woodhouse
Cc: Michael Casey; John Usher; 'Paul McCann (paul_mccann@corrs.com.au)'
Subject: Proper defendant argument

Hi Brad

I am sorry for the delay in responding to the request for instructions in relation to the proper defendant argument. We would like to proceed with preparing the advice as you have outlined. The estimates of costs are acceptable. In preparing the advice, we should ensure that it addresses:

1. The issue of public perceptions and media interpretations (like the need to sue God etc.); and
2. How legally we might use the argument in different situations.

It is one thing to say the Trustees are not the proper defendant because they are the property holding body only. And it is relatively straight forward to say that if you want to sue a third party for the wrongs you have suffered at the hands of someone else you have to show that they were put on notice and therefore liable. But what happens in cases where (for example) the Chancellor or the Archbishop has been put on notice and fails to act?

Previously, Corrs have suggested that in these cases we would not run the proper defendant argument, but what does that mean? Does it mean we do not object when a plaintiff sues the Trustees? or does it mean they have to sue the Chancellor or the Archbishop personally? in these cases should the Chancellor or Archbishop be indemnified? If so, by whom? the Trustees? the Archdiocese? and if these entities can indemnify their "agents" (if that's what they are of course) why can't they be sued as the entity likely to be liable? Just saying that the Archdiocese cannot be sued because it doesn't exist does present a serious pr challenge - and the legal issues in doing this need to carefully examined.

We accept that we don't necessarily want to give answers to these questions to plaintiffs, the courts or the media, but it seems that we need to think the matter through more - both from a legal and a communications perspective - so when different situations emerge we now how to proceed.

Thanks Brad. I hope this clarifies the precise requirements we have for this advice. I look forward to reviewing on my return.

Regards

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16/08/2005