

John Usher

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Sent: Wednesday, 3 August 2005 11:47 AM
To: Danny Casey; John Usher
Subject: RE: Catholic Archdiocese - Proper Defendant Argument

DC: the approach makes good sense, and I think we would all value having a discrete advice on this important issue.

We should ask them in preparing the advice to address both: 1) the issue of public perceptions and media interpretations (eg: for Ellis, that he needs to sue God etc); and 2) how legally we might play different claims 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 be carefully examined.

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

MC

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