



Dr Steven Lovell-Jones

From: John.Dalzell@corrs.com.au
Sent: Thursday, 14 December 2006 9:30 AM
To: John Usher; Michael Casey; Michael Moore; MWright@ccinsurances.com.au
Cc: Paul.McCann@corrs.com.au
Subject: Ellis.appeal.

Dear Michael, Fr John and Marita

The Ellis matter ran for three days in the Court of Appeal and finished yesterday. The Court was constituted of Justices Ipp, McColl and President Mason. Ellis was once again represented by Dr Morrison SC and Richard Royle. We were represented by Richard McHugh SC and Patrick Flynn.

As you may recall there were several appeals and cross-appeals. The substantive matters were rather technical, although they can be broadly summarised as follows:

Appeal by the Trustees:

- That the Trustees were not (in the 1970s) liable for the individual tortious acts of clergy;
- That the Court at first instance were wrong to extend the limitation period (for a variety of reasons);

Appeal by Ellis:

- That if the Court were to find that the Trustees were not liable then Cardinal Pell is the proper defendant because:

- (i) His office has perpetual succession and therefore must inherit the liabilities of his predecessor; or
- (ii) In the alternative, he should be named as a representative (in the legal sense) of the Archdiocese of Sydney.

There was another limb of Ellis's appeal which was that the Archbishop's office was a corporation sole and therefore his office retains liability notwithstanding the office holder at any given time (similar to point one above). This argument was not developed by Ellis but the Court of Appeal appeared to show some interest in this concept. Ellis relied heavily upon the Code of Canon Law and the report of Dr Rodger Austin in support of this argument.

Generally speaking, the hearing went very well. Although the Court were not attracted to our argument about the liability of the Trustees, they were unwilling to accept Ellis's proposition that the Trustees and the Consultors were effectively 'mixing their business' and on that basis alone they should be liable. Neither was the Court prepared to accept that Cardinal Pell should be named as a representative of the Archdiocese.

On the limitation period matter, the Court showed some unwillingness to accept Ellis's submission that it was not until September 2001 that he became aware of the nature and extent of his injury. The Court (and in particular Justice Ipp) dismissed Ellis's claim that it was not until he was sacked from the partnership if Baker and McKenzie layers that he realised that the abuse was a material fact of a decisive nature.

The Court has reserved its judgment. I suspect that we will have to wait for several months before this is handed down. I will keep you informed of any developments.

Please do not hesitate to contact me to discuss this matter further.

Kind regards

14/12/2006

John Dalzell

Senior Associate

john.dalzell@corrs.com.au

Tel +61 2 9210 6160

Mob 0419 168 345

Fax +61 2 9210 6611

www.corrs.com.au



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