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Usher</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JUSHER>

CC: WYDCorpAffLIST Paul McCann</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE  
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BCC:

Subject: Ellis - where to from here

Attachment: ATT1829045.gif

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Dear Michael, Michael and Fr John

I trust that you are all fit and well.

I have been briefed by Paul on the meetings that have taken place between Corrs, the Archdiocese and the terminally ungrateful CCI.

I understand that you would like some consideration to be given as to the lessons which can be taken from the Ellis case and, more generally, how the Archdiocese can capitalise on this result. The following ignores the effect of a successful application for leave to appeal to the High Court. Such an application may be made by Ellis anytime before Thursday 21 June 2007.

What we can learn

I suspect that there are two elements to the Ellis case that are relevant going forward. These do not focus on the Court's decision about those instances when the Archbishop or the Trustees are not liable, rather when they might still be liable and are as follows:

1. Those instances when the Archbishop/ Bishop might be personally or vicariously liable for the acts or omissions of clergy.

appointment of clergy;  
supervision of clergy; and  
receiving and processing complaints against clergy.

2. Those instances when the Trustees might still be liable for the acts of individual clergy

Occupier's liability; and  
Property and finance related claims.

It goes without saying that if the facts of Ellis' claim are believed, there were serious short-comings in the supervision of Father Duggan. Indeed, similar short-comings are a universal complaint/pleading in almost all Sensitive Issues claims. Similarly, the complaint handling process, although much improved with the genesis of Towards Healing, also needs to be re-visited.

I suspect that the day-to-day supervision of clergy who are effectively autonomous in their parish work and self-sufficient in the presbytery is a difficult task. In light of the Court's findings on potential liability of the Archbishop for negligent supervision, we should consider how the risk from negligent or even absent supervision can be addressed and reduced. I dislike the term "whistle blower", however, a forum where school teachers, parents and the wider congregation could be encouraged to come forward and report any suspicious behaviour to a centralised body or person (in complete confidence) would perhaps be a start.

The vetting of clergy is also an issue. I am unfamiliar with the current scheme of vetting of seminarians, and the role which His Eminence plays in this exercise, however, this is an area we should also consider. In this respect, we should consider what steps are taken to establish character, such as police checks, referees etc.

The liability of the Trustees in claims of occupier's negligence still troubles me. Ellis did not raise this issue and so it was not considered by the Court. I am currently researching this point.

Spreading the word

The decision of Ellis did receive some media attention in the Australian (Jill Rowbotham, page 7, 25 May 2007). I suspect that whilst some plaintiff lawyers may be aware of this judgment, it is not yet widely known. There are certain methods which could and, in my opinion, should be employed to circulate this result in the legal press and in the wider public domain. We can discuss the best strategy to capitalise on this result and on a media campaign at our next meeting.

Finally and unrelated to the above, we should consider what effect the decision has on your current insurance policy arrangements with CCI. I would expect CCI to reconsider your annual premiums, particularly given the protection now afforded to the Trustees and the Property Trusts by this result.

Please let me know when it would be convenient to come down to the Polding Centre to discuss these issues further, or alternatively, let me know how you would like me to take this forward.

Kind regards

John

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