

From: John.Dalzell@corrs.com.au<John.Dalzell@corrs.com.au>

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To: Michael Moore</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MICHAEL>;
Danny Casey</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=DCASEY>; Michael
Casey</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MCASEY>; John
Usher</O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JUSHER>

CC: Paul.McCann@corrs.com.au<Paul.McCann@corrs.com.au>; Anna Ross - Corrs</O=FIRST ORGANIZATION/OU=FIRST
ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ANNAROSS-CORRS>

BCC:

Subject: Ellis v Pell [2006]

Attachment: None

Dear Michael and Fr John

As you know, the judgment in the matter of Ellis was handed down by Associate Justice Patton this afternoon in the Supreme Court. I have attached the full and somewhat voluminous judgment in this matter for your information.

In summary, the following orders were made:

the limitation period against the Trustees of the Roman Catholic Church for the Archdiocese of Sydney is extended until 30 August 2004;

the case against Cardinal Pell is dismissed with costs against the Plaintiff; and

otherwise costs are reserve for further argument on a date to be arranged.

As you will see, the judgment is rather lengthy, however, the following salient points should be noted:

the Court accepted the Plaintiff's evidence as reliable;

there was no basis upon which the cause of action could be maintained against Cardinal Pell, either personally, or by way of a representative order;

the evidence against the Trustees, although equivocal, is enough to produce an arguable case that they were, at all relevant times, the entity which the Archdiocese adopted and put forward as the permanent corporate entity or interface between the spiritual and temporal sides of the Church legally responsible for the acts and omissions of the Archbishop and his subordinates; and

at all material times, the Plaintiff knew of the acts of Fr Duggan on which his cause of action is founded and that they had caused him some personal injury. The Plaintiff was also aware of the identity of the

Trustees at all material times.

The Plaintiff's application to extend the limitation period against the Trustees was effectively granted on one point. That point was that it was not until September 2001, in his consultation with the psychoanalyst, Mr Murray, that the Plaintiff had the means of knowledge of the nature and extent of the personal injury caused by the alleged assaults of Fr Duggan. Indeed, the Court held that it was not until some time in 2004, when the effects of the abuse raised grave economic consequences for the Plaintiff, that the Court held he should have recognised the nature and extent of his injury to be a decisive fact and therefore brought the action [see paragraph 80 of the judgment].

Importantly, the Court has tempered the above opinion with the precursor that:

"minds might, I think, legitimately differ as to when it might reasonably be said that the Plaintiff was or should have been aware of the nature and extent of the personal injury inflicted upon him by Fr Duggan".
[my emphasis]

In our opinion, it is this legitimate difference recognised by the Court and the Court's finding that it was not until September 2001 that the Plaintiff had the means of knowledge of the nature and extent of the personal injury caused by the alleged sexual assaults, which may form the basis of an appeal against this element of the Court's decision and, therefore, the extension of time against the Trustees.

The Court found that although real prejudice to the Defendants could be identified, whether by the death of the Third Defendant or the difficulties in contacting other witnesses, there could still be a fair, albeit not perfect, trial.

We would suggest that the following action should now be taken:

the costs which relate to the defence of the case against Cardinal Pell should be agreed or assessed. We shall endeavour to ensure this is done straight away;

we should seek the immediate advice of senior counsel as to the merits of launching an appeal against the Plaintiff's successful extension of time against the Trustees.

Perhaps, once you have had an opportunity to read the judgment in full, we should arrange a conference to discuss the available options.

Kind regards

John Dalzell

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