

**IN THE SUPREME COURT OF
NEW SOUTH WALES
SYDNEY REGISTRY
COMMON LAW DIVISION**

FILE NO: 20308 of 2004

DEFENCE

Filed for: **His Eminence George
Cardinal Pell, Archbishop of Sydney
and the Trustees of the Roman
Catholic Church for the Archdiocese
of Sydney**

JOHN ANDREW ELLIS
Plaintiff

**HIS EMINENCE CARDINAL PELL
ARCHBISHOP OF SYDNEY FOR AND
ON BEHALF OF THE ROMAN
CATHOLIC CHURCH IN THE
ARCHDIOCESE OF SYDNEY**
First Defendant

**THE TRUSTEES OF THE ROMAN
CATHOLIC CHURCH FOR THE
ARCHDIOCESE OF SYDNEY**
Second Defendant

REVEREND AIDAN DUGGAN OSB
Third Defendant

CORRS CHAMBERS WESTGARTH
Lawyers
Level 32, Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
AUSTRALIA
Tel: (02) 9210 6500
Fax: (02) 9210 6611
Ref: PRM/JD/9006837

DEFENCE

1 In answer to paragraph 1 of the amended statement of claim (**the statement of claim**), the first and second defendants (**defendants**):

(a) admit that the first defendant is the person for the time being occupying the office of Archbishop of Sydney for the Roman Catholic Church; and

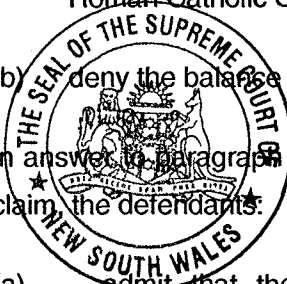
(b) deny the balance of the paragraph.

1A. In answer to paragraph 1A of the statement of claim, the defendants:

(a) admit that the First Defendants is presently a member of and the heard of the Catholic Archdiocese of Sydney (**Archdiocese**);

(b) say that the members of the Archdiocese, including the First Defendant, do not have the same liability (or indeed any liability) or the same interest (or indeed any interest) in these proceedings and therefore no representative order may or should be made; and

(c) the defendants to do not admit the balance of the paragraph.



Particulars

- (a) The current membership of the Archdiocese is estimated to be in excess of 580,000 people, and includes the plaintiff, but its precise extent is unknown.
- (b) There is no test for determining, in the case of individuals, membership of the Archdiocese which is of sufficient certainty to afford a criterion of liability at law.
- (c) The current members of the Archdiocese do not have a common interest in defending the proceedings.
- (d) Separate defences may be open to members of the Archdiocese.
- (e) The statement of claim does not disclose a cause of action against, nor any liability (whether joint or several) in, the members of the Archdiocese.

2 The defendants do not admit paragraph 2 of the statement of claim and will refer to and rely upon the terms of the Act.

2A. In answer to paragraph 2A of the statement of claim, the defendants:

- (a) admit the Second Defendant has the functions, powers and duties given to it pursuant to the Act;
- (b) admits that the Second Defendant in the capacity conferred by the Act is a member of the Archdiocese;
- (c) say that, the members of the Archdiocese (including the Second Defendant) do not have the same liability (or indeed any liability) or the same interest (or indeed any interest) in these proceedings and therefore no representative order may or should be made; and
- (d) the defendants do not admit the balance of the paragraph.

Particulars

- (a) The defendants repeat the particulars to paragraph 1A above.

3 The defendants deny paragraph 3 of the statement of claim.

4 In answer to paragraph 4 of the statement of claim, the defendants:

- (a) say that the third defendant was a monk in the Order of Saint Benedict and was granted a leave of absence by the Abbot of Fort Augustus Abbey at Inverness, Scotland, in

approximately November 1974 and at that time commenced pastoral work in the Archdiocese;

- (b) say that the arrangement referred to in paragraph (a) above was extended from time to time;
- (c) say that in November 1990 the third defendant was incardinated into the Archdiocese; and
- (d) deny the balance of the paragraph.

5 The defendants deny paragraph 5 of the statement of claim.

6 The defendants do not admit paragraph 6 of the statement of claim.

7 The defendants do not admit paragraph 7 of the statement of claim.

8 The defendants deny paragraph 8 of the statement of claim.

9 In answer to paragraph 9 of the statement of claim, the defendants:

- (a) deny that they were under any duty of care to the plaintiff; and
- (b) do not admit the balance of the paragraph.

9A. The defendants deny paragraph 9A of the statement of claim.

10 The defendants deny paragraph 10 of the statement of claim.

11 In answer to paragraph 11 of the statement of claim, the defendants:

- (a) deny that they were under any duty of care to the plaintiff; and
- (b) do not admit the balance of the paragraph.

12 The defendants deny paragraph 12 of the statement of claim.

13 In answer to paragraph 13 of the statement of claim, the defendants:

- (a) deny that they were under any duty of care to the plaintiff; and
- (b) do not admit the balance of the paragraph.

14 The defendants deny paragraph 14 of the statement of claim.

15 The defendants deny paragraph 15 of the statement of claim.

16 In answer to paragraph 16 of the statement of claim, the defendants:

- (a) repeat paragraphs 8 to 15 above; and
- (b) do not admit the balance of the paragraph.

17 The defendants deny paragraph 17 of the statement of claim.

18 The defendants deny paragraph 18 of the statement of claim.

19 The defendants deny paragraph 19 of the statement of claim.

20 In answer to paragraph 20 of the statement of claim, the defendants:

- (a) deny that the third defendant had the ostensible authority of either the first defendant or the second defendant to behave towards the plaintiff in the manner in which the plaintiff alleges that he did; and
- (b) do not admit the balance of the paragraph.

21 The defendants deny paragraph 21 of the statement of claim.

22 In answer to paragraph 22 of the statement of claim, the defendants:

- (a) repeat paragraph 4 above; and
- (b) does not admit the balance of the paragraph.

23 The defendants deny paragraph 23 of the statement of claim.

24 The defendants deny that the plaintiff is entitled to aggravated or exemplary or any damages at all as against the first or second defendant.

25 The defendants will contend on the hearing of the plaintiff's Limitation Act application that the plaintiff's claim is statute-barred; that any equitable claim is barred by analogy with the statute; that the defendants are entitled to a defence of laches; that the plaintiff was, at least from the age of 18, volens the conduct of which he now complains; and that the defendants are entitled to a defence of contributory negligence by reason of the plaintiff's conduct, at least from the age of 18.

Particulars

- (a) The Plaintiff reached majority on 14 March 1979.

- (b) From 1979, the Plaintiff continued to initiate contact with the Third Defendant by travelling to the Third Defendant's Parish at Gymea, St. Mary's Cathedral and St. Joseph's at Camperdown.
- (c) The Third Defendant was named as a referee for the Plaintiff's employment applications.
- (d) The marriage of the Plaintiff and his first wife was celebrated by the Third Defendant.
- (e) The Third Defendant baptised the Plaintiff's first child in 1987, whilst the Plaintiff was engaged in a sexual relationship with the Third Defendant.
- (f) The Plaintiff continued to have consensual sexual intercourse with the Third Defendant until sometime in 1987.
- (g) The Plaintiff was aware of, or had the means of knowing of, any cause of action which he may have had against the defendants from the time he reached majority. By reason of the Plaintiff's delay in bringing these proceedings, the defendants are prejudiced and are no longer able to obtain a fair trial. The defendants rely on the matters relied upon in opposition to the Plaintiff's application for an extension of time.

26 The defendants contend that they are not the proper parties to this action.

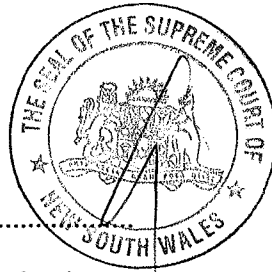
Particulars

- (a) The Third Defendant was a monk in the Order of St. Benedict on loan to the Archdiocese. He was not incardinated into the Archdiocese until 20 December 1990.
- (b) The First Defendant was not the Catholic Archbishop of Sydney until 2001.
- (c) The Archdiocese is not an entity established by law. It is not a statutory corporation, nor is it a corporation sole at common law.
- (d) The Second Defendant has the status of a body corporate, established under the Act. The Second Defendant is not an operating entity; it holds property on trust, manages and deals with that property for benefit of the Archdiocese.
- (e) The Second Defendant is not responsible for the selection, training or supervision of priests.
- (f) There is not employment relationship between the First Defendant and the Third Defendant or the Second Defendant and the Third Defendant.
- (g) Alternatively, the acts alleged against the Third Defendant were outside the scope of any employment.

FILED: 5 September 2005



Paul McCann
Solicitor for the First and Second Defendants




- 5 SEP 2005

CERTIFICATE UNDER SECTION 198L OF THE LEGAL PROFESSION ACT 1987

Date: 5 September 2005

I, **PAUL RICHARD MCCANN**, being a Solicitor certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence in these proceedings has reasonable prospects of success.



.....

Paul Richard McCann