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cc: Paul McCann/Sydney/CORRS/AU, MWright@ccinsurances.com.au
Subject: RE: Ellis - APPEAL

Dear Fr John, Michael and Michael

Attached is the draft of the summary of argument and grounds to appeal in Ellis. Sorry it has taken so long, but as you will see, it is extremely complex.

This version has been sent to Stephen Rushton SC for his final amendments.

Could you all please read this carefully and ensure that you are happy with the basis upon which we will apply for leave to appeal. I specifically need you to be comfortable with the submissions made in relation to the Trustees.

One point that is causing us some anxiety is this. During the case, the following exchange took place between the judge and Dr Morrison SC (counsel for the plaintiff):

His Honour: When did the matters take place that you rely on?

Morrison: Commencing in the 70s, 1975.

His Honour: **Continuing until the plaintiff turned 18?**

Morrison: **Yes. the sexual relationship, as I said earlier, continued to adulthood but relevantly until he turned 18.**

His Honour: That being the statutory age of consent to homosexual activity.

Morrison: As it then was. Indeed there is still some debate, I'm not sure whether it has been amended as yet.

In his judgment at paragraphs [2] and [3], Patten AJ makes it clear that he is dealing with allegations that are said to have occurred between 1974, when the plaintiff was 13 and 1979, when he was 18. You will recall, however, that in the statement of claim, Ellis claims he was "abused" until he was 27 years old (until 1987). The matter is further complicated by Patten's final order in which he extends the limitation period for "the causes of action pleaded in the statement of claim".

The importance of this is twofold:

1. before 1987, the Trust Property Act was unamended and, on a proper construction of the Act, only dealt with the management of property;
2. Ellis's claim is now confined to the abuse occurring between 1974-79.

We have to decide whether to bring this to the Court's and therefore the plaintiff's attention, or whether to "sit on it" and use this should the appeal fail. I feel that the first option is preferable.

If you could let me have your thoughts on the documents as they currently stand, preferably as soon as possible, I will endeavour to have the application for leave made early next week.

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

Kind regards

John



Ellis.na2.doc



Ellis.sb7.doc