

Our reference
PRM/JD/OFFICE-LT02

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Date 31 March 2006
Pages 5 (including this page)

To David Begg & Associates
Tel (02) 9232 5377
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Your ref ELL:114/04

From John Dalzell
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Email john.dalzell@corrs.com.au
Our ref PRM/JD/CATH4300-9006837

Sydney
Melbourne
Brisbane
Perth
Canberra
Gold Coast

Dear Sirs

John Andrew Ells v His Eminence Cardinal George Pell & Others

We refer to your facsimile which we received today, 31 March 2006.

We will endeavour to notify you of our instructions regarding any application to seek leave to appeal by close of business, Friday 7 April 2006. We shall further endeavour to file the ordinary summons of appeal, should this become necessary, as soon as possible thereafter. In this regard, we are acutely aware of our obligations to assist the court in reaching an expeditious resolution of the matter.

We also agree that until our position is clarified, there is little utility in re-listing the substantive proceedings for directions.

Issues on Appeal

Given that the plaintiff's Notice to Admit Facts was served only 3 working days after his Honour Acting Justice Patten handed down judgment on the plaintiff's notice of motion, and particularly given the nature of the communications between Mr Begg and John Dalzell from this office, we do not believe that you are seriously pressing any notion of 'deemed admission' by the second defendant. It has been abundantly clear from the communications between the parties that the second defendant is considering its position post-judgment. Indeed, the Notice to Admit Facts was served well within the 28 days in which a holding summons or an application for leave to appeal is to be filed.

For the avoidance of any doubt, we **attach**, by way of service, a Notice Disputing Facts. If your client seeks to rely upon a deemed admission of any of the facts contained in the Notice to Admit, we will produce all correspondence and records of communication between the parties, including this letter, in support of an application for indemnity costs in any application for leave pursuant to UCPR r 17.3(3).

31 March 200

David Begg & Associates

John Andrew ELLS v His Eminence Cardinal George Pell & Others



Costs for Cardinal Pell

We remind you of his Honour's comments in respect of your client's action against Cardinal Pell, both in his written judgment dated 3 February 2006 and his comments in open court on 30 March 2006:

- (a) Cardinal Pell was sued personally;
- (b) there is no basis upon which the cause of action can be maintained against [the Cardinal]; and
- (c) there was no "*arguable basis*" for the joinder of Cardinal Pell and he is entitled to his costs.

In the circumstances, we can confirm that there are costs, indeed significant costs, which have been reasonably incurred in Cardinal Pell's defence of these proceedings. We will endeavour to have these costs assessed as soon as possible and will communicate the same to you so that your client may make provision for payment.

If you wish to clarify any of the above points in this facsimile, or indeed clarify any communications that have taken place between your office and John Dalzell from this office, please contact John Dalzell directly on (02) 9210 6160.

Yours faithfully

Corrs Chambers Westgarth

John Dalzell
Senior Associate

attachments