

Our reference
PRM/JD/CATH4300-9006837
Your reference
ELL 114/04

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19 August 2005

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Dear Sirs

John Andrew Ellis v His Eminence Cardinal George Pell & Ors

We refer to your letters dated 15 August and 17 August 2005.

Dealing firstly with your most recent Notice to Produce (**the Notice**) dated 12 August 2005. We are instructed that the documents provided to the Court by Mr Rushton SC in response to Items 4, 7 and 15 are the only documents that respond to these paragraphs of the Notice. We **attach** a further document that responds to Item 10 and a further document that responds to Item 11. There are no further documents to produce. In relation to Item 13 we note that this has been withdrawn.

Dealing with the matters raised in your letter dated 15 August 2005, as follows.

Fourth Paragraph of your letter dated 8 August 2005

The question of who is the proper defendant must relate to the Plaintiff's Statement of Claim. As you have been previously advised, in this case, the correct defendant is the Third Defendant.

Numbered paragraphs of your letter dated 8 August 2005

Attached is a list of priests of the Archdiocese of Sydney who were members of the College of Consultors between 1975 and the present.

Requests made in your letter dated 25 July 2005

- 5 There are no documents to produce in relation to the presbyteries listed at (a)-(d). This property is vested in the name of the Trustees pursuant to the Roman Catholic Church Trust Property Act 1936, there are no separate trust documents.
- 7(a) and 8 We have previously answered this question. In our response dated 25 July 2005, we advised you that "*while their defendant remained a monk of the English Benedictine Congregation, he was not bound to follow instructions of the Archbishop Sydney in relation to his pastoral religious and other duties.*" Upon his incardination into the Archdiocese of Sydney on 8 October 1990 the Third Defendant took a vow of obedience to the Archbishop of Sydney.

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- 16(e) As previously stated there are no trust deeds or declarations of trust to produce.
- 16(h) We are instructed that historically, in some parishes, the payment of the wages of those persons employed in the service of that parish was paid by the parish priest himself.
- On 1 July 2002 the Income Tax Assessment Act 1997 was amended by the Taxation Laws Amendment Bill (No 5 of 2001). We have **attached** the relevant provisions dealing with religious practitioners for your information.
- 19 We can confirm that we do not say that the Archbishop of Sydney has direct responsibility for either the professional standards (whatever that may mean) or the discipline of clergy holding appointments within the Archdiocese of Sydney. As stated in our letter dated 11 August 2005, upon incardination, clergy take a promise of obedience to the Archbishop of Sydney. This promise is to obey the instructions of the Archbishop whatever they may be.
- 22(a) and (b) This question does not concern any matter relevant to these proceedings and therefore we do not propose to answer it.
- 23 This question is oppressive and the information sought is irrelevant.

Request made in your letter of 10 August 2005

- (a) The Archdiocese of Sydney is not a legal entity; and
- (b) The list of agencies annexed to your letter dated 10 August 2005 are not sub-entities. These agencies are registered in their own right and they have separate ABN numbers.

Notice to Produce dated 10 August 2005

- 1(1) and (2) The Third Defendant became a member of the Clergy Remuneration System upon his incardination into the Archdiocese of Sydney on 8 October 1990.

Notices to Produce

- 19 July 2005 There are no further documents to produce.
- 27 July 2005 Fr McGloin's file was transferred to the Diocese of Parramatta in 1986. These documents were produced to the Court on 12 August 2005. There are no documents to produce by the First and Second Defendants.

Letter dated 17 August 2005

We do not agree with your contention that you do not require leave to file an amended Statement of Claim. The Plaintiff's application to extend the limitation period was heard on the basis of the current Statement of Claim, which was verified by the Plaintiff and certified by Mr David Begg. Our clients' evidence and cross-examination of the Plaintiff and other witnesses who gave evidence on his behalf proceeded on the basis of that pleading. The Plaintiff did not make an application to amend the Statement of Claim during the hearing.

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Indeed, our clients' Affidavits were read and the witnesses required by the Plaintiff for cross-examination were cross-examined. Subject to the following two matters the hearing is over.

The first matter concerns the further Affidavit of Mr SA [redacted]. In relation to this aspect, please note that we are still considering his claims and will advise you if he is required for cross-examination in due course.

The second matter concerns further evidence which the parties may advance in relation to the question whether the defendants or either of them are proper parties to the proceedings. To the extent that it might be argued that any of the proposed amendments to the Statement of Claim concern this issue, they will be opposed. The proper defendant issue is capable of resolution on the current pleading and the proposed amendments are entirely misconceived.

We note that you refer to the preparation of "further reports including further extensive expert reports". We had understood from what Mr Royle submitted to the Court on 12 August 2005, that significant time was required for the preparation of one report only, namely that proposed to be provided by Dr Rodger Austin. If this is the further evidence to which you refer then we agree to your timetable provided that we receive Dr Austin's report as soon as it is received by you and no later than 9 September 2005. If it is the Plaintiff's intention to put forward further expert evidence in relation to the proper defendant issue, then we cannot agree until you have informed us of the nature of such evidence and the identity of the expert(s) who will give such evidence. This may significantly impact upon the appropriateness of the current proposed timetable advanced by you.

Yours faithfully


P.S. Paul McCann
Partner