

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

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11 August 2005

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Dear Sirs

## **John Andrew Ellis v His Eminence Cardinal George Pell & Ors**

We refer to the above matter and to your letters dated 25 July 2005, 8 August 2005 and 10 August 2005 and to your Notice to Produce dated 10 August 2005.

We disagree with your assertion that the answers provided in response to your request for particulars was 'not responsive'. This is particularly so, given the time frame in which the answers were provided. In this regard we will draw your attention to the comments of Patten AJ at page 36 of the transcript [at 45] dated 26 July 2005.

Dealing firstly with the requests contained in your letter dated 8 August 2005, we are instructed to respond as follows.

### **Correct Defendant**

We assume that this question is directed to the circumstances pleaded by the Plaintiff in his Statement of Claim. If that is correct, the answer is the Third Defendant.

### **Undertaking by Fr Usher**

Fr Usher has now searched the Parish records, the file of Fr McGloin, the file of Fr Duggan and caused a search of the archives of the Catholic Archdiocese of Sydney. The statutory declaration referred to in Mr SA's affidavit cannot be located.

### **Further Particulars**

Adopting the numbering in your letter:

1. (a) **Gymea Parish**  
Fr Wilkinson (Parish Priest 1958-1979);  
Fr Duggan (From 1 February 1979);  
Fr Greg Flynn (1979); and  
Fr William Hannon (1981-2000).  
[no other records available]

11 August 2005

Begg & Associates

**John Andrew Ellis v His Eminence Cardinal George Pell & Ors**



(b) **St Mary's Cathedral**

His Eminence Cardinal Freeman (Archbishop of Sydney 1981-1982);

Fr D. Willoughby (1981-1982);

Fr Coorey (1981-1982);

Fr Duggan OSB (1981-1982);

Fr Ingham (Vice-Chancellor and Archdiocesan Secretary, 1981-1982);

Fr J Sullivan (Private Secretary to the Cardinal, 1981-1982);

Most Rev. Cardinal Clancy (Archbishop of Sydney, 1983-1984);

Fr Michael McGloin (Administrator);

Fr Dadswell (1983-1984);

Fr Fitzgerald (1983-1984); and

Fr Ingham (Vice-Chancellor and Archdiocesan Secretary, 1983-1984).

[no other records available]

(c) **Camperdown Parish**

Fr Malone (Parish Priest, 1981-1982);

Fr O-Toole (1981-1982);

Fr Byrne (Society of Mary-Marist);

Fr Neville (1985-1986); and

Fr Duggan OSB.

[no other records available]

2. See answer to (1) above.
3. Other than the names provided in answer to (1) above, there are no other records of employees engaged at any of the locations during the specific periods. Specifically, there is no record of any housekeeper at the Parish of Bass Hill between 1975 and 1979.
4. The Second Defendant does not operate under any trading names. All property of the Catholic Archdiocese of Sydney and its agencies is vested in the name of the Second Defendants.
5. The Trustees of Church Trust Property for each Diocese are by virtue of the Roman Catholic Church Trust Property Act 1936 (**the Act**), a body corporate (see section 4(1) of the Act). The body corporate does not engage in activities or businesses in its own right. The Second Defendant does not, for example, have a bank account nor do they employ any staff.
6. As stated in (5) above, the Trustees are a body corporate. Pursuant to section 3 of the Act, the body corporate is comprised of the Bishop of the diocese and the

11 August 2005

Begg & Associates

**John Andrew Ellis v His Eminence Cardinal George Pell & Ors**



Diocesan Consultors of the diocese. Since 1975, the Diocesan Consultors were comprised of the following:

James Darcy Cardinal Freeman 1971-1983;

Edward Bede Cardinal Clancy 1983-2001;

Bishop Thomas Muldoon 1960-1986;

Bishop Edward Kelly 1969-1975;

Bishop Patrick Murphy 1977-1986;

Bishop Bede Heather 1979-1986;

Bishop John Heaps 1981-1992;

Bishop David Cremin 1973-2005;

Bishop Geoffrey Robinson 1984-2004;

George Cardinal Pell 2001 to Present;

Bishop Anthony Fisher 2003 to Present;

Bishop Julian Porteous 2003 to Present;

Father Brian Joseph Lucas 1990-2002;

Monsignor Brian Ernest Rayner 2003-2005;

Father John Joseph Usher 2005 to Present; and

Several other priest of the Catholic Archdiocese of Sydney from time to time.

7.
  - (i) the Catholic Education Office – Archdiocese of Sydney (ABN 82 780 246 140) is an agency of the Catholic Archdiocese of Sydney (ABN 72 823 907 843). The Executive Director of Schools has delegated authority from the Cardinal Archbishop to employ educational staff in systemic Catholic schools. The registered proprietor of systemic Catholic schools in the Archdiocese of Sydney is the Second Defendant.
  - (ii) No. Centacare Australia Limited is a public company established by the Australian Catholic Bishops Conference.
  - (ii) No. Australian Catholic Social Welfare Commission is also a body established by the Australian Catholic Bishops Conference.
  - (iv) There is no Catholic Schools Office in the Archdiocese of Sydney. The Catholic Education Office – Archdiocese of Sydney carries out a similar function.
  - (v) No.
  - (vi) No.
8. Yes.

11 August 2005

Begg & Associates

**John Andrew Ellis v His Eminence Cardinal George Pell & Ors**



With regards the List of agencies numbered (a)-(aaa) referred to in your letter dated 10 August 2005, with the exception of the following, these are agencies of the Catholic Archdiocese of Sydney (ABN 72 823 907 843):

**Not operated by the Archdiocese of Sydney:**

- (a) Archdiocesan Business Manager (employee of Catholic Archdiocese of Sydney – Chancery Office ABN 16 389 108 075);
- (b) Archdiocesan Director of Liturgy (appointee of Catholic Archdiocese of Sydney – Liturgy Commission ABN 72 602 108 075);
- (g) Australian Catholic University;
- (h) Notre Dame University;
- (i) Caritas Australia (Sydney);
- (s) Catholic Superannuation and Retirement Fund;
- (dd) Clergy Remuneration and Retirement Plan, Board of Management (incorporated under Roman Catholic Communities Lands Act 1942);
- (ii) Institute of Counselling (incorporated association);
- (qq) Sedevic Family Resource Centre (Parish facility); and
- (zz) Aged Care Facilities (The Archdiocese does not operate Aged Care facilities. There are thirteen parish based Aged Care Hostel/Nursing Home facilities in the Archdiocese of Sydney. The parishes listed in paragraph (aaa) are bodies of persons with their own individual ABN registration numbers.

None of the agencies numbered (a)-(aaa) are operated by the Second Defendant. As you know, pursuant to the Roman Catholic Trust Property Act 1936 (NSW), Archdiocesan Property is held on trust by and vested in the name of the Second Defendant.

Dealing with the questions in your letter dated 25 July 2005, and using the amended paragraph numbers:

4. (c)-(h) This question was answered fully in our letter dated 26 July 2005. We remind you, the Archdiocese of Sydney does not hold any documents recording any payments to the Third Defendant and accordingly cannot respond to this question. We have however already set out the usual practice for the payment of a stipend and other day-to-day expenses in our previous answer.
5. The Second Defendant holds the Presbytery at the Parish of Bass Hill on trust for the Catholic Parish of Christ the King Bass Hill. Similarly, any other accommodation in the Archdiocese of Sydney in which Fr Duggan resided would have been owned by the Second Defendant and held on trust for the relevant parish.
6. We have answered this question in our letter dated 25 July 2005.
7. (a)-(b) We have answered this question in our letter dated 25 July 2005.

11 August 2005

Begg & Associates

**John Andrew Ellis v His Eminence Cardinal George Pell & Ors**



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8. We have answered this question in our letter dated 25 July 2005.
12. We have answered this question in our letter dated 25 July 2005.
- 14.-15. As stated in our letter dated 26 July 2005, and above, the Archdiocese of Sydney does not hold any documents recording payments made to the Third Defendant, accordingly, we cannot provide any records as payments to the Third Defendant nor can we particularise what payments were made to the Third Defendant from 1974 onwards.
16. (a) The stipend or other allowance of the Archbishop of Sydney is paid by the Catholic Archdiocese of Sydney - Chancery Office (ABN 16 389 108 075);
- (b) The stipend or other allowance of Sydney clergy resident at the Bass Hill Presbytery would have been paid by the Catholic Parish of Christ the King Bass Hill (ABN 79 255 023 938) or the Parish Priest from his own funds;
- (c) The wages of persons employed within the service of the Parish of Bass Hill would have been paid by the Catholic parish of Christ the King Bass Hill (ABN 79 255 023 938) or the Parish Priest from his own funds;
- (d) The accommodation for the Archbishop of Sydney is provided by the Catholic Archdiocese of Sydney. The accommodation for the Priests resident in the Bass Hill Presbytery was provided by the Catholic Parish of Christ the King Bass Hill (ABN 79 255 023 938). Employees, including the housekeeper, may have resided in their own accommodation or accommodation provided by the Catholic Parish of Christ the King Bass Hill;
- (e) The accommodation provided by the Catholic Archdiocese of Sydney is held on trust for it by the Second Defendant. The accommodation provided by the Catholic Parish of Christ the King Bass Hill is held on trust for it by the Second Defendant;
- (f) The travel and expenses of the Archbishop are met partly by himself, partly by the Catholic Archdiocese of Sydney and partly by the Catholic Archdiocese of Sydney-Chancery Office (ABN 16 389 108 075). The travel expenses of clergy between 1974 and 1989 would have been met personally by the clergy;
- (g) The cost of food and Church apparel of the Archbishop is met by the Catholic Archdiocese of Sydney and also St Mary's Cathedral (ABN 13 120 232 163). The food and Church apparel of clergy at Bass Hill Presbytery would have been met by the Catholic Parish of Christ of the King Bass Hill (ABN 79 255 023 938). The food and Church apparel of employees would have been met by the employees themselves; and
- (h) As the Archbishop and Priests are self employed, no PAYE or PAYG tax was deducted from stipend payments prior to 1 July 2002. PAYG tax would have been deducted from the wages of persons employed within the service of the Presbytery at Bass Hill by the Catholic Parish of Christ the King Bass Hill (ABN 79 255 023 938) or the Parish Priest from his own

11 August 2005

Begg & Associates

**John Andrew Ellis v His Eminence Cardinal George Pell & Ors**



funds during the period 1974 to 1989. PAYG summaries i.e group certificates would have been issued each year by the responsible body deducting PAYG tax.

18. (a) There has never been a workers compensation policy issued for clergy in the Archdiocese, including the Third Defendant. See our answer to this question in our letter dated 26 July 2005;
- (b) See answer to (a) above;
- (c) Employees of the Parish of Christ the King would have been covered by the Catholic Parish of Christ the King Bass Hill (ABN 79 255 023 938) workers compensation insurance policy; and
- (d) See answer to (a) above.
19. In respect of the Third Defendant, see our answer to this question in our letter dated 25 July 2005.
- With regards the Parish Priest and Assistance Priest holding appointments within the Parish of Bass Hill, these clergy take a promise of obedience to the Archbishop of Sydney at the time of their ordination.
20. Within the Archdiocese of Sydney, the Archbishop of Sydney is not answerable to anyone.
21. We have answered this question in our letter dated 25 July 2005.
22. (a)-(b) We have answered this question in our letter dated 25 July 2005. This question still does not make any sense: there is no legal person known as 'the Church'.
23. See our comments above with respect to 'the Church'.
24. We have answered this question in our letter dated 25 July 2005.

#### **Proposed Amendments to Statement of Claim**

We do not agree with the proposed amendments referred to in your letter dated 8 August 2005.

#### **Notice to Produce dated 10 August 2005**

**Attached** is a Notice of Motion to set aside the following paragraphs of your Notice to Produce; 1,2,3,4,7,8 and 9 on the basis that this part of the Notice to Produce is oppressive and seeks documents that have no relation to the proceedings. We will file this Notice of Motion in Court tomorrow morning.

With regard to the documents requested in the balance of this Notice to Produce, we are making further enquiries.

Yours sincerely

**Paul McCann**  
Partner