

John Dalzell  
ext-6160

25/01/2005 05:50 PM

To: mcasey@ado.syd.catholic.org.au  
cc: Paul McCann/Sydney/CORRS/AU, Anna Ross/Sydney/CORRS/AU  
Subject: Ellis v Duggan

Dear Michael

As discussed this afternoon, we have received a notice from Ellis' solicitor to admit certain facts in the Ellis v Duggan matter. This is a standard Court Notice and is designed to save the parties and the Court time in deciding issues that are not in dispute.

One of the facts that Ellis wants us to admit is that at "*all relevant times, Duggan was engaged as a priest in the service of the Archdiocese of Sydney*".

Now, on the face of it, this is perhaps not such a controversial suggestion, however, as discussed, I do not want to tie our hands for any arguments that we may wish to raise at the substantive trial, should the matter get that far. In particular, we may wish to raise the issue of Duggan's appointment or engagement in any argument about vicarious liability or employment relationship with the Church.

In response to Ellis' notice to admit facts we replied to his solicitors on 20 December 2004 in the following terms:

"We dispute that the Third Defendant was engaged as a priest in the service of the Archdiocese of Sydney. The Third Defendant was a member in the Order of St. Benedictine. Between 1974 and 1990, the Third Defendant was on a period of extended leave (exclaustration) from Fort Augustus Abbey, Scotland. The Third Defendant was not in fact granted leave to be freed from his obligations to the English Benedictine Congregation until 20 September 1990 and was not formally incardinated as a priest of the Archdiocese of Sydney until 27 December 1990."

This information is correct and was taken directly from the correspondence between the Order of St Benedictine and the Archbishop (from Duggan's personal file.)

Ellis' solicitors have contacted us again. They state that from the documents they have discovered (the same correspondence referred to above) and paragraph 6 of Mgr Rayner's affidavit, that it is "very clear" he was a priest in the service of the archdiocese.

Paragraph 6 of the Mgr's affidavit refers to the Official Directory of the Catholic Church for 1975, which states that two priests were resident at the Parish of Christ the King, Bass Hill. Duggan was one of them.

It seems that Duggan was undoubtedly a priest. The question for you and the Monsignor is whether Duggan was *in the service* of the Archdiocese at the relevant time. Is it possible to be an assistant priest in the Archdiocese and yet not be in the service of the Archdiocese. Would Duggan have been in the service of the Order of St Benedictine, notwithstanding his residence at Bass Hill?

Could you consider this point and let me have your thoughts. We have been asked to give our reply to Ellis' solicitors by 31 January 2005.

Thank you in advance

Kind regards

John D