

MEMORANDUM

To: Catholic Church

Subject: Conference 5 October 2004

1 Plaintiff's Application to Extend Time Limits

1.1 Plaintiff's knowledge of the injury and the causal connection between the injury and the abuse.

Background of Ellis etc.

1.2 Prejudice to the Defendants – Just and Reasonable Test

(a) Witness availability:

- Cardinal Freeman (Archbishop at the time of abuse), Deceased
- Fr Farrar (worked with Fr Duggan in 1975), Deceased
- Immediate chain of command eg Vicar-General, Chancellor etc, probably deceased

2 Substantive Defence

2.1 Correct Defendant's?

(a) George Pell

Our first point must be that George Pell does not appear for or on behalf of the Roman Catholic Church.

In paragraph 1 of the Statement of Claim, George Pell is correctly described as being a juridical person having perpetual succession established under the Code of Canon Law.

This, however, does not explain why George Pell should inherit the liabilities of his predecessors. George Pell was not Archbishop at the time of Fr Duggan's incardination.

Moreover, George Pell's status under Canon Law has no bearing on his liability under Civil Law.

(b) The Trustees of the Roman Catholic Church

The Plaintiff is correct in his submission that the Trustees are a body corporate having perpetual succession established under the Roman Catholic Church *Trust Property Act 1937 (NSW) (the Act)*.

Section 4(1) of this Act, establishes "*the Trustees as being capable of suing and being sued under their corporate name and of doing and suffering all such acts and things as bodies corporate may by Law do or suffer*".

The Act, sets out the objects of a "Body Corporate" which include the operation and conduct of educational, welfare and health institutions, organisations or other Bodies.

Also, the performance of all such acts matter and things of any nature which may be of the benefit of the Church.

Fundamentally, the Trustees seems to be more concerned with the management of the Church's property rather than the day to day control of what happens in the Church (confirm with Dominic)

The Pleadings

The allegation is broadly that Fr Duggan sexually abused the Plaintiff and that the First and Second Defendants failed to protect the Plaintiff and are therefore also liable.

It is specifically alleged that the First and Second Defendants had care, control and management of the Bass Hill Parish in New South Wales. On this point, it is difficult to how the Archbishop or indeed the Trustees would have any day to day management responsibilities of this Parish.

It is further suggested that Fr Duggan was an agent of the First and Second Defendants and that there was an employment relationship between Duggan and the Church. As I understand it, a Priest is an autonomous position and although they take a vow of obedience to the Church they are not actually engaged by either the First or Second Defendant.

One of the main allegations against the Church is that they failed to take responsible steps to protect the Plaintiff from foreseeable harm. To that end, the First and Second Defendants must of have had or ought to have had knowledge of the Third Defendants activities.

There is no suggestion in Fr Duggan's personal file that previous allegations of this nature had every been brought against him. Nor, was there any cause for suspicion from his time in Scotland and the UK.

To the contrary, Fr Duggan was a popular man, well liked by his contemporaries and members of the Church hierarchy both in Sydney and at Fort Augustus. Finally, there is an allegation that the First and Second Defendants are vicariously liable for the actions or failures of Fr Duggan. In the case of *New South Wales v Lepore*¹ the High Court held "*that the actions constituting the commission of the torte must have a sufficient connection with the activities that the employee is employed to do*". This raises the question of what the employment activities of Fr Duggan actually were. As a Priest, Fr Duggan would undoubtedly have had a role in the instruction and education of the alter boys in his Church. Whether the conduct of Fr Duggan was done in the intended pursuit of the employer's interest or in the intended performance of the contract of employment is a moot point. Indeed, whether Fr Duggan was actually an employee is also an issue.

¹ 2003 (195ALR 412)

- Letter to Dr Burns – End Stage Alzheimer's Disease
- Fr Alexander's evidence on Fr Duggan's character