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cc "Stephen Rushton" <srushton@selbornechambers.com.au>, flynn@selbornechambers.com.au, mchugh@banco.net.au, Anna Ross/Sydney/CORRS/AU@CCW, Hannah Vozzo/Sydney/CORRS/AU@CCW

bcc

Subject Ellis

Dear all

As most of you already know the Court of Appeal handed down its judgment in this matter this morning. I have **attached** the full judgment to this message.

In short, the Trustees were successful in appealing the decision of Patten AJ at first instance. Cardinal Pell, as cross-respondent, was also successful in defeating the assertion that he should be liable either in person, as a representative of the members of the Archdiocese or as a corporation sole.

Importantly, the judgment was unanimous and unequivocal on every point. At paragraph 9, the court held that:

"In my view, the proceedings in their present form are doomed to fail and ought therefore to be dismissed as against the first and second defendants, both as regards the claim in tort and the claim of breach of fiduciary duty. The first and second defendants are not liable at law or in equity with respect to the matters alleged."

I should draw your attention to the following paragraphs in the judgment.

Paragraph 33: *"There is factually and legally an arguable case that Fr Duggan's superiors in the 1970s (including the then Archbishop) might on some basis be vicariously accountable for his intentional torts."*

Paragraph 53: *"The relationship between members of a Church, such as the Roman Catholic Church and individual office holders in that Church is far remote from any category that has been found to entail vicarious liability."*

Paragraph 75: *"A plaintiff cannot, by means of a procedural mechanism such as a representative proceeding, sue defendants against whom he or she has no cause of action. The present claim does not assert any basis beyond Archbishop Pell's current leadership of the Archdiocese to ground the representative order sought."*

Paragraph 78: *"The nature of the episcopacy in the Roman Catholic Church is, to my understanding, arguably sufficient to ground a finding that the Archbishop has the capacity to control most activities conducted in the name of the Church in the Archdiocese. My point is that this alone does not translate automatically into a basis for establishing some species of vicarious liability in every member of the Church at any point in time or a basis for finding that the Archbishop is a corporation sole."*

The liability of the Trustees is dealt with from paragraph 98 and can be summarised by saying that the court agreed with our submission that the appointment and management of priests was not a power conferred upon the Trustees of virtue of the 1936 Act. The fact that the Trustees hold property for the Church does not render them liable to all legal claims associated with Church activities. Importantly the court held at paragraphs 132 and 140 that the 1986 amendments did not widen the liability of the Trustees.

Cardinal Pell's liability as a corporation sole is dealt with in some detail from paragraph 152.

The court also ordered costs to be paid to us by Ellis. This is important. I have discussed with Michael Moore the possibility of utilising this order as a bargaining tool in persuading the plaintiff not to pursue a application for special leave to the High Court. I imagine that Michael will discuss this strategy further with His Eminence and CCI.

As you know, I am now going overseas until 18 June. Please contact either Anna Ross (02) 9210 6904 or Paul McCann (02) 9210 6241 to discuss this matter further in my absence.

Kind regards

John Dalzell



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