

HIGH COURT RULES MINISTERS OF RELIGION CAN BE EMPLOYEES - IT ALL DEPENDS ON THE FACTS IN EACH CASE

The High Court of Australia has recently handed down an important decision on the question of whether a minister of religion can be an employee (with all the rights that flow from that status) of his or her church or a church agency. While there have been a number of decisions on this issue in other parts of the common law world (particularly the United Kingdom and United States), as well as in State courts in Australia, the High Court's decision in *Ermogenous v Greek Orthodox Community of South Australia Inc* [2002] HCA 8; 7 March 2002, appears to be the first time in its 99 year history that the Court has dealt with this question.

The case concerned Archbishop Spyridon Ermogenous, who made a claim for employment related benefits (annual leave and long service leave) against the Greek Orthodox Community of South Australia Inc. The case involved an appeal from a decision of the Full Court of the South Australian Supreme Court, which had held that the original ruling by a South Australian industrial magistrate that the Archbishop was an employee of the Greek Orthodox Community, was wrong. The High Court in effect decided that the South Australian Supreme Court was wrong when it ruled that the Archbishop was not an employee of the Community because the parties never intended to enter into legal relations (ie they never intended to have a relationship which gave rise to rights and obligations enforceable in the ordinary judicial system of this country). The High Court, to the contrary, said that on the facts before the industrial magistrate there was an intention to enter into such relations.

This decision can be contrasted with the earlier decision of the President of the NSW Industrial Relations Commission, Justice Wright, who held in the case of *Knowles v Anglican Church Property Trust, Diocese of Bathurst* [1999] I.R.47, that the Reverend Knowles (an Anglican Priest) was not an employee of his Church, as the relationship between them was not a contractual one, but a religious one.

While the High Court made it very clear that its decision in relation to this matter (which concerned arrangements within the Greek Orthodox Church in Australia) would not necessarily have application to other churches (including other churches within the Western or Latin tradition), nevertheless the case does establish some broad general principles which will be of enduring importance.

Those principles are as follows.

■ First, while it may be quite true to say that the relationship between a minister of religion and the relevant religious body or group in which, and to which, he or she ministers, is at its root, concerned with spiritual matters, it by no means follows that it is impossible for the relationship between the minister and the body or group which seeks or receives that ministry to be governed by a legally enforceable contract.

■ Secondly it is not helpful to proceed upon the basis that, in relation to a minister of religion, it is to be "presumed" that, unless the contrary is shown, there was no intention between the relevant parties to create legal relations. To some extent this statement of

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principle appears to depart from the approach of the New South Wales Court of Appeal in the case of *Teen Ranch Pty Limited v Brown* [1995] 87 I.R.308 case, where it was said that certain relationships (including those in religious associations) "normally" do not give rise to binding contracts because there is not the necessary intention.

■ Thirdly, in any particular case where it is alleged that a minister of religion is an employee of a church body or group to which he or she ministers it will simply fall to the person or entity asserting that the minister of religion is an employee to establish, on the evidence of the particular case before the court, that:

- (i) there was an intention to create legal relations between the relevant parties; and
- (ii) the nature of that legal relationship was that of employment according to the common law tests for establishing that relationship.

■ Fourthly, the "essentially spiritual" character of the relationship between minister and church group or body may take on a different character when one of the parties to the arrangement (the putative employer) is not itself a spiritual body but is for example (as referred to by Staughton LJ in *Coker's case* (1998) ICR 140 at 150) "a school, a duke or an airport authority".

It is suggested that the essential basis of the High Court's decision in this matter is summed up in this sentence from the joint judgment of Justices Gaudron, McHugh, Hayne and Callinan:

"To say that a minister of religion serves God and those to whom he or she ministers may be right, but that is a description of the minister's spiritual duties. It leaves open the possibility that the minister has been engaged to do this under a contract of employment."

What then might be the practical effect of this decision?

Firstly, it can no longer be assumed, or presumed, that a minister is not an employee when exercising "spiritual" duties for a church group – rather, each case will have to be judged upon its own facts to determine whether it

was the intention of the parties that there be a legally binding (and thus enforceable) relationship between them, or whether their relationship was one not of that character.

Secondly, if a minister is engaged by a body which is not itself a spiritual body (eg a school or another agency which has a mixture of spiritual and worldly purposes) there is a possibility that the minister might ultimately be held to be an employee of the governing entity. Much of course will depend upon the facts in each case.

Furthermore, and most fundamentally, there can be no "presumption" that, simply because a person is a minister of religion he or she will not "normally" or "usually" be an employee of the church group to whom he or she ministers. On this last point it should be borne in mind that the decision of Justice Wright in the Knowles' case was based, at least in part, on the reasoning in the Teen Ranch case, which reasoning has been somewhat undermined by the High Court's rejection of the existence of any "presumption" that a minister's relationship with his church is not legal but spiritual. ■

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