

**ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing - Case Study C42
(Day C160)**

Newcastle Court House,
343 Hunter Street, Newcastle
Court Room 6.1

On Wednesday, 10 August 2016 at 9.30am

Before:

The Chair:	Justice Peter McClellan AM
Commissioner:	Mr Robert Fitzgerald AM
Commissioner:	Mr Robert Atkinson AO APM

Counsel Assisting:	Ms Naomi Sharp
	Ms Kirstie Raffan

.10/08/2016 (C160)

C16884

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1 MS SHARP: Good morning your Honour and Commissioners.

2

3 THE CHAIR: I can now confirm that we will resume this
4 hearing in Newcastle on 29 and 30 of August. If, as
5 I expect may happen, it does not finish on those two days,
6 then we will have to find more time which, I think, will
7 almost certainly be in Sydney, but when that can be,
8 I don't know at this stage, but we will be back here for
9 this hearing on 29 and 30 August.

10

11 MS SHARP: Thank you for that indication, your Honour.

12

13 Could I start today by tendering two statements.
14 Copies of both of them are contained in your Honour and the
15 Commissioners' bundles.

16

17 I will start with a statement at tab 32 which is a
18 statement of James William Jackson dated 20 July 2016.
19 I tender that statement.

20

21 THE CHAIR: That will be exhibit 42-041.

22

23 **EXHIBIT #42-041 STATEMENT OF JAMES WILLIAM JACKSON**
24 **DATED 20/07/2016**

25

26 MS SHARP: Secondly, I will tender a statement which is
27 located at tab 40A of the second volume of statements.
28 That is a statement of Jean Sanders dated 25 July 2016.

29

30 THE CHAIR: That will be exhibit 42-042.

31

32 **EXHIBIT #42-042 STATEMENT OF JEAN SANDERS DATED 25/07/2016**

33

34 MS SHARP: I now call Mr Gary Askie. A copy of his
35 statement is located at tab 2AA of the first volume of
36 statements.

37

38 **<GARY ASKIE, affirmed:** **[9.36am]**

39

40 **<EXAMINATION BY MS SHARP:**

41

42 MS SHARP: Q. Sir, is your full name Gary Askie?

43

44

45 Q. Your address is known to those assisting the
46 Royal Commission?

47

48

1
2 Q. You have prepared and signed a statement dated
3 5 August 2016?

4 A. Yes.

5
6 Q. Are the contents of that statement true and correct to
7 the best of your knowledge?

8 A. Yes.

9
10 MS SHARP: I tender that statement.

11
12 THE CHAIR: Yes. It will be exhibit 42-043.

13
14 **EXHIBIT #42-043 STATEMENT OF GARY ASKIE DATED 5/08/2016**

15
16 MS SHARP: Q. Mr Askie, it is correct that you worked
17 for John Farragher Removals for around 12 months in 1998?

18 A. Yes.

19
20 Q. During 1998, is it correct that you assisted in moving
21 the house contents of Peter Rushton?

22 A. I packed his stuff. I don't remember moving his
23 stuff.

24
25 Q. I'm sorry, you packed his stuff at sometime in 1998.

26 A. That's right.

27
28 Q. You were assisted with Robert Blanchard in doing that?

29 A. Correct, yes.

30
31 Q. Was anybody else present assisting with the packing?

32 A. I don't remember.

33
34 Q. You have referred in your statement to locating some
35 DVDs or videos as you were packing Rushton's contents?

36 A. Yes.

37
38 Q. Could you describe to the Commission what you saw,
39 please?

40 A. I saw a few movies with male people having sex with
41 each other on the covers, on the cover of them, and on one
42 of them there was a couple of pictures of a young person.

43
44 Q. That young person you saw, was that a male or a
45 female?

46 A. Sorry, it was a male, yes.

1 Q. Was that young person clothed or naked?
2 A. They were all naked.
3
4 Q. When you say "young person", exactly what do you mean?
5 A. It was a young boy.
6
7 Q. Are you able to give any estimate as to what you
8 perceived the age of that boy to be, based upon your
9 observations of his image?
10 A. Well, I would think he would be around 12, you know -
11 yes, a 12-year-old.
12
13 Q. Are you quite certain that you were not viewing an
14 image of an adult?
15 A. Oh, definitely.
16
17 Q. How did that make you feel when you viewed that
18 material?
19 A. Absolutely shocked and horrified, and sick.
20
21 Q. What quantity of material was there that you saw?
22 A. There was only, what, a few: I remember seeing three.
23
24 Q. Is it right that you reported to your bosses
25 Phil Kerry and John Farragher what you saw that day?
26 A. Yes.
27
28 Q. What did you report to them?
29 A. Exactly what I seen, yeah, throughout the - what
30 I packed, yeah.
31
32 Q. Did you report that you had viewed images of males who
33 were naked and appeared to be young?
34 A. Yes, I did.
35
36 Q. What happened after that? Were you ever asked to sign
37 any sort of document or statement, or what?
38 A. I was, yes.
39
40 Q. What were you asked to sign?
41 A. I'm pretty sure it was something to the events where
42 I wasn't allowed to talk about it. I was told that the
43 Church knew that he was gay and I wasn't allowed to say
44 anything to anyone.
45
46 Q. Who told you not to tell anybody?
47 A. I'm pretty sure it was my management.

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Q. You were asked to sign something?

A. Yes, I was.

Q. Do you know what you were asked to sign?

A. I think it was my statement.

Q. Do you know what your statement said? Did you read it?

A. I did at the time, yes. I would have, yeah.

Q. Did it say anything about what you had seen?

A. Yes, it did.

Q. Did it say anything about the age of the males depicted in the material you had seen?

A. I don't think it would have said the age. I think just more the description.

Q. Are you able to say whether it gave any indication about whether child pornography had been viewed by yourself?

A. Yes, it would have, yes.

Q. What did the statement say about that?

A. That that's what I seen - I seen --

Q. Did you write that statement yourself or did somebody else write it for you?

A. I don't remember.

Q. Are you quite sure that you read that statement?

A. Well, no, I don't remember.

Q. Were you provided with a copy of that statement to keep?

A. No, I wasn't.

MS SHARP: I have no further questions.

THE CHAIR: Does anyone else have any questions?

MR ALEXIS: Thank you, your Honour.

<EXAMINATION BY MR ALEXIS:

MR ALEXIS: Q. Mr Askie, Alexis is my name. I appear

1 for the Professional Standards Director for the Diocese.
2 A. Right.

3
4 Q. There's only two very brief matters I want to take up
5 with you, if I may. According to your statement, you were
6 born in 1970?

7 A. Yes.

8
9 Q. If I have got it right, that would mean that you were
10 about 28 years old in 1998?

11 A. That's correct.

12
13 Q. In relation to the written statement that learned
14 Counsel Assisting has been asking you some questions about,
15 could I invite you to look at the computer screen in front
16 of you and a document at tab 37 of exhibit 42-001 will come
17 up momentarily. I am taking you to this just to get some
18 timing right. You will see that it is a letter that was
19 written to the Bishop. You will see that at the top of the
20 letter and you will see the date, 2 December 1998. Do you
21 have that?

22 A. Yes, I do.

23
24 Q. Just go through the first paragraph with me, if you
25 would. You will see that the author of the letter, the
26 identity of who doesn't matter for the purpose of this
27 question, says that on the Tuesday, the day before the date
28 of the letter, he spoke with Jim Jackson of John Farragher
29 Removals and that he, Mr Jackson, "had spoken with three
30 men involved in the Removal of N's furniture and
31 possessions ...". do you see that?

32 A. Yes, I do.

33
34 Q. You can take it from me, sir, that "N" is a reference
35 to Father Rushton. Should we understand that you were one
36 of the three men involved, as referred to in that
37 paragraph?

38 A. Yes.

39
40 Q. You will see that he goes on to say:

41
42 *... and has written statements from them*
43 *about the material they had seen.*

44
45 Do you see that?

46 A. Yes.

47

1 Q. Does that assist in enabling you to call to mind that
2 the written statement that you gave; that is, you have said
3 this morning included a reference to child pornography, was
4 a written statement that you had provided on or by
5 2 December 1998?
6 A. That seems to be right.
7
8 Q. Assuming the letter is correct in terms of its date?
9 A. Yes.
10
11 Q. The written statement that you gave, was that provided
12 to Mr Jackson?
13 A. I don't remember, no.
14
15 Q. What did you understand the purpose of you recording
16 what you had seen in a written form to be at the time?
17 A. Pardon, can you --
18
19 Q. What did you understand you were doing when you put
20 the pen on the page and signed the written statement to
21 confirm what you had seen? What did you understand was
22 going to happen with the statement?
23 A. That they were aware of what I seen.
24
25 Q. Yes. You knew, I gather, that a complaint had been
26 made to the Church about what you had been exposed to?
27 A. Yes.
28
29 Q. And I gather you knew that what you were recording in
30 writing and putting your name to was important because
31 people were going to rely upon it in relation to the
32 complaint that had been made?
33 A. I don't understand.
34
35 Q. What I am really getting at is this: you knew that a
36 complaint had been made to the Church about what you had
37 been exposed to?
38 A. Yes.
39
40 Q. You knew that a written statement was asked of you?
41 A. Yes.
42
43 Q. You knew that the statement was going to be used in
44 relation to the complaint that had been made?
45 A. Yes.
46
47 Q. It was pretty important, therefore, to get what you

1 said in your statement as accurate as you possibly could?
2 A. Yes.

3
4 Q. Because you knew that it would be relied upon in
5 relation to that complaint?
6 A. Yes.

7
8 Q. All right. That is all I was getting at, sir.
9 A. Yes, that's fine.

10
11 Q. There is just one other thing. Did you ever become
12 aware of any agreement or arrangement to have the child
13 pornography that you had seen at Father Rushton's residence
14 disposed of in some way?
15 A. At the time I was a bit confused as what I'd seen and
16 all that sort of thing, so I didn't really know what to do.

17
18 MR ALEXIS: Thank you, sir.

19
20 THE CHAIR: Does anyone else have any questions?

21
22 MR HEALY: I have a question.

23
24 <EXAMINATION BY MR HEALY:

25
26 MR HEALY: Q. Are you aware that after you raised your
27 complaint --

28
29 THE CHAIR: Mr Healy, you better tell us --

30
31 MR HEALY: Oh, sorry.

32
33 Q. Healy on behalf of Archbishop Herft. Are you aware
34 that after you raised your complaint with your bosses
35 Farragher Removalists, that they engaged lawyers to advise
36 them in relation to what they should do?

37 A. I don't know the course of what they did, no.

38
39 Q. Can I show you a copy of this letter at tab 39. That
40 letter is from Sparke Helmore dated 7 December 1998. If
41 you look at the first paragraph, it says:

42
43 *We refer to the writer's recent telephone*
44 *conversations with you and confirm that we*
45 *have instructions to act for John Farragher*
46 *Removals ...*
47

1 That was who you were employed by?

2 A. Yes, sir, that's correct.

3

4 Q. If we go down to the fourth paragraph, it says:

5

6 *Our client has now investigated matters*
7 *further and has instructed us to advise you*
8 *that it could find no evidence to suggest*
9 *that Father Rushton's belongings included*
10 *paedophilic material.*

11

12 Do you see that?

13 A. I see that, yes.

14

15 Q. Then it says:

16

17 *We confirm the writer's telephone advice to*
18 *you late last week that our client and its*
19 *employees withdraw any suggestion that*
20 *Father Rushton's belongings included*
21 *paedophilic material. Our client*
22 *apologises for any distress or concern*
23 *which the abovementioned statements may*
24 *have caused.*

25

26 If you look at the next paragraph, he then says:

27

28 *We confirm the writer's advice to you that*
29 *we now hold copies of written statements*
30 *prepared by our client's employees in*
31 *relation to certain matters observed by*
32 *them when packing Father Rushton's*
33 *belongings.*

34

35 Those written statements, is that what you have referred to
36 as a written statement that you would have prepared in
37 relation to what you saw?

38 A. I'm unsure. All I know is I didn't retract any
39 statement. I was never asked to retract any statement.
40 I was only told that - what I said before, that once we
41 signed whatever we signed, we weren't allowed to talk and
42 that was it. I was never told that I had to retract
43 something.

44

45 MR HEALY: No further questions.

46

47 THE WITNESS: Because what I was - sorry.

1
2 THE CHAIR: Q. What were you going to say?
3 A. I was going to say is what I seen was what I seen.
4 That's what I seen.
5
6 THE CHAIR: Anyone else?
7
8 MR O'BRIEN: Just one question.
9
10 **<EXAMINATION BY MR O'BRIEN:**
11
12 MR O'BRIEN: Q. Sir, I appear for a number of people who
13 were abused by various clergy as children: Mr Paul Gray,
14 [CKA], that's a pseudonym given to that person, and a
15 another person going by the letters [CKG]. You have been
16 asked by a number of lawyers, just in the moments gone by,
17 about correspondence from lawyers. Did you ever see any
18 correspondence from lawyers?
19 A. No, I have not, no.
20
21 Q. If there is a letter to the effect of that letter that
22 you have just seen there, that the removalists and the
23 packers didn't see any child pornography material, that is
24 obviously untrue, isn't it?
25 A. That second letter?
26
27 Q. Yes.
28 A. Well, I haven't seen it.
29
30 Q. If the letter --
31 A. That's the first time I've seen it.
32
33 Q. If the letter from the lawyers to the Bishop said,
34 "The people who were packing Mr Rushton's stuff never saw
35 any child pornography", that's blatantly untrue, isn't it?
36 A. I don't understand.
37
38 Q. You saw child pornography material?
39 A. Yes, I did.
40
41 Q. When you were packing Peter Rushton's stuff?
42 A. Yes, correct.
43
44 Q. If the lawyers have written to the Archbishop saying
45 that the people doing the job that you were doing never saw
46 any child pornography material, that's wrong, isn't it?
47 A. Well, yes, that's right.

1
2 MR O'BRIEN: I have nothing further. Thank you for your
3 time.
4
5 THE WITNESS: That's fine.
6
7 THE CHAIR: Anyone else?
8
9 MS SHARP: I have nothing arising.
10
11 THE CHAIR: Thank you, Mr Askie. Thank you for your
12 evidence. You are excused.
13
14 THE WITNESS: All right. Thank you.
15
16 **<THE WITNESS WITHDREW**
17
18 MS SHARP: Your Honour and Commissioners, the next witness
19 is Peter Mitchell. His first statement can be found at
20 tab 36 in the second volume, and the second statement can
21 be found at tab 36A of the second volume of statements.
22
23 **<PETER WILLIAM MITCHELL, sworn: [9.53am]**
24
25 **<EXAMINATION BY MS SHARP:**
26
27 MS SHARP: Q. Your full name is Peter William Mitchell?
28 A. Yes.
29
30 Q. Your address is known to those assisting the
31 Royal Commission?
32 A. Correct.
33
34 Q. You have prepared a statement which you signed, dated
35 19 July 2016?
36 A. Yes.
37
38 Q. Are the contents of that statement true and correct to
39 the best of your knowledge?
40 A. Yes.
41
42 MS SHARP: I tender that statement.
43
44 THE CHAIR: It will be exhibit 42-044.
45
46 **EXHIBIT #42-044 STATEMENT OF PETER WILLIAM MITCHELL,**
47 **DATED 19/07/2016**

1
2 MS SHARP: Q. Mr Mitchell, you also prepared a statement
3 dated 29 July 2016?

4 A. Yes.

5
6 Q. Are the contents of that statement true and correct to
7 the best of your knowledge?

8 A. They are.

9
10 MS SHARP: I tender that statement.

11
12 THE CHAIR: That will be exhibit 42-045.

13
14 **EXHIBIT #42-045 STATEMENT OF PETER WILLIAM MITCHELL,**
15 **DATED 29/07/2016**

16
17 MS SHARP: Q. Mr Mitchell, you were the Registrar of the
18 Diocese of Newcastle from January 1993 to January 2002?

19 A. Correct.

20
21 Q. You resigned from that position because allegations
22 had been made that you had fraudulently misappropriated
23 money from the Diocese?

24 A. That is correct.

25
26 Q. You pleaded guilty to those allegations at the first
27 opportunity?

28 A. I did.

29
30 Q. You were convicted of fraudulent misappropriation?

31 A. Correct.

32
33 Q. And you spent some time in custody for that reason?

34 A. That is correct.

35
36 Q. You made attempts to pay back at least some of that
37 money?

38 A. I paid back all of that money.

39
40 Q. It is correct that it was over \$200,000 that you
41 misappropriated?

42 A. No, it was 193,000 and some dollars.

43
44 Q. You did that by way of 23 separate transactions over a
45 period of time?

46 A. The defrauding, yes, apparently.

1 Q. Could you please indicate what the principal
2 responsibilities of the registrar were when you held that
3 position?
4 A. The principal responsibilities were to provide
5 financial and administrative advice to the Bishop and to a
6 range of boards, trustees and committees.
7
8 Q. It is right that in that position you were responsible
9 for managing the documents held by the Diocese?
10 A. Yes.
11
12 Q. It is right that the Registry held details on when
13 priests were licensed within that Diocese?
14 A. Correct.
15
16 Q. It is correct that the Registry held the diocesan
17 year books while you were the registrar?
18 A. Yes.
19
20 Q. Is it right that at all times while you were the
21 registrar, you were aware that each parish or rectory held
22 a book known as the Register of Services?
23 A. Yes.
24
25 Q. I want to ask you some questions about Keith Allen.
26 Did you have a friendship with him?
27 A. I would call it a professional relationship rather
28 than friendship.
29
30 Q. You knew him over a period of many years while you
31 were the registrar?
32 A. Yes.
33
34 Q. Have you had any conversations with him for the
35 purpose of giving evidence to this Royal Commission?
36 A. None whatsoever.
37
38 Q. When was the last time you were in contact with
39 Mr Allen?
40 A. In contact? Well, apart from saying hello to him as
41 we passed in the corridor yesterday, the last time I had
42 contact with him was January 2002.
43
44 Q. You are aware of who Peter Rushton is?
45 A. Yes.
46
47 Q. It is right that he was the Archdeacon of Maitland

1 while you were the registrar of the diocese?
2 A. Yes, he was.
3
4 Q. That was a position of some leadership within the
5 diocese?
6 A. Correct.
7
8 Q. May we take it you saw Peter Rushton reasonably
9 frequently?
10 A. Quite frequently.
11
12 Q. Did you have a friendship with Peter Rushton?
13 A. No, not at all.
14
15 Q. While you were the registrar, it is right that
16 Graeme Lawrence was the Dean?
17 A. Correct, he was.
18
19 Q. The Dean is also a position of some leadership within
20 the diocese?
21 A. Yes.
22
23 Q. May we take it you had frequent contact with
24 Mr Lawrence during your period as registrar?
25 A. Yes.
26
27 Q. Were you friends with Mr Lawrence?
28 A. No.
29
30 Q. Do you stay in contact with Mr Lawrence now?
31 A. No, I've had no contact since January 2002.
32
33 Q. Is it correct that during at least part of your tenure
34 as the registrar, Paul Rosser QC was the Deputy Chancellor
35 of the Diocese?
36 A. For part of that time, yes.
37
38 Q. In his capacity as Deputy Chancellor, did you have
39 dealings with him from time to time?
40 A. From time to time.
41
42 Q. Did you have a friendship with him?
43 A. No.
44
45 Q. Mr Mitchell, could I show you your supplementary
46 statement that appears at tab 36A, dated 29 July 2016.
47 I would like to show you paragraph 10.

1 A. Yes.

2

3 Q. Here you recount seeing quite a large carton of 20 or
4 30 videos. Just to situate you, you are here giving
5 evidence about seeing videos that you understood had been
6 taken from Peter Rushton's house?

7 A. Correct.

8

9 Q. You are aware, of course, that an allegation was made
10 that child pornography had been in his possession?

11 A. I think I saw something of that nature, yes.

12

13 Q. Here you're saying that you viewed some of the videos
14 that you had been told were from Peter Rushton?

15 A. Yes, that's right.

16

17 Q. Who provided those videos to you?

18 A. I don't actually recall. I think - I said in my
19 earlier statement, I thought it might have been
20 Bishop Beale who --

21

22 Q. I beg your pardon?

23 A. I thought it may have been Bishop Beale but I don't
24 have an accurate recollection.

25

26 Q. To be clear, he was the Assistant Bishop of the
27 Diocese?

28 A. But he was a retired Bishop.

29

30 Q. He was the retired Bishop?

31 A. Yes.

32

33 Q. Why did he have any involvement in this matter?

34 A. I don't know. I just have a memory that he was
35 embarrassed to have to bring them to the office.

36

37 Q. You reviewed at least the covers of those videos?

38 A. Yes. I looked at the covers and I also opened them
39 and made sure that the labelling corresponded to the cover.

40

41 Q. It is correct, is it, that you did not view the actual
42 film contents of the DVDs?

43 A. No.

44

45 Q. Did it ever cross your mind that you might not have
46 been provided with all of the videos or other materials in
47 respect of which complaint had been made about

1 Peter Rushton?
2 A. No, it did not.
3
4 Q. That never crossed your mind?
5 A. No.
6
7 Q. You accept, of course, that could possibly be the
8 case?
9 A. I accept that as a supposition, yes.
10
11 Q. Could I just take you to a document appearing at
12 tab 38A of the tender bundle. I will give you the pinpoint
13 reference which is ANG.0050.001.1866. Mr Mitchell, you
14 will see that's headed "File Note - Meeting held on
15 3 December, 1998" between Bishop Roger Herft, Mr Greg
16 Hansen and yourself?
17 A. Yes.
18
19 Q. This is a one-page file note. I will have it scrolled
20 through for you. I just wanted to know whether you
21 prepared this file note?
22 A. I believe so.
23
24 Q. You believe that you prepared it?
25 A. I believe so, yes.
26
27 Q. Could I draw your attention to the first paragraph.
28 It talks about "sexually explicit material found in a
29 Priest's possession (N)". May we take it the reference to
30 "N" is a reference to Peter Rushton?
31 A. Yes.
32
33 Q. Could I take you to the fourth paragraph. It is there
34 recorded that Bishop Roger, we may take it that's
35 Bishop Herft?
36 A. Correct.
37
38 Q. Spoke of the offence caused to the removalist and of
39 the uncertainty whether the material involved children and
40 the uncertainty of knowing whether the Church was dealing
41 with a legal matter or an ecclesiastical issue. Can I ask
42 you this: was there a discussion about the fact that the
43 possession of child pornography is in fact illegal?
44 A. Correct.
45
46 Q. There was that discussion?
47 A. I believe so.

1
2 Q. And that's why there was concern about whether the
3 Church was dealing with a legal issue or an ecclesiastical
4 issue?

5 A. Yes.

6
7 Q. Can I draw your attention, please, Mr Mitchell, to the
8 fifth paragraph, midway through, at line 4. It is stated,
9 and I take it this is your note:

10
11 *However, the quantity of videos and*
12 *catalogues, other materials and N's*
13 *attitude suggested a very serious pattern*
14 *of behaviour of addiction, presumably over*
15 *a long period of time ...*
16

17 I take it you did your best to accurately record the
18 contents of the discussion?

19 A. Yes.

20
21 Q. You don't have any reason to doubt that is an accurate
22 note of that discussion?

23 A. No.

24
25 Q. This suggests that there was quite a quantity of
26 videos and catalogues?

27 A. Yes, it does.

28
29 Q. Do you agree that it was always your understanding
30 that there was a large quantity of videos and other
31 pornographic material?

32 A. Yes.

33
34 Q. The next paragraph down notes that:

35
36 *[Greg Hansen] undertook to visit N ...*
37

38 That is Peter Rushton:

39
40 *... and to view the material and advise the*
41 *Bishop ...*
42

43 about what he had viewed.

44
45 A. Yes.

46
47 Q. That note accurately records what was discussed at

1 that meeting?

2 A. Yes.

3

4 Q. Could I then take you to a further document, please,
5 Mr Mitchell, at tab 38B. I'm sorry, we are not on the same
6 page. I'll give the pinpoint reference:

7 ANG.0050.001.1908. You will see this is a note headed

8 "Sexually explicit material provided by N". That is your
9 signature at the bottom of that document?

10 A. Correct, yes.

11

12 Q. It says "Received" 4 December 1998?

13 A. Yes.

14

15 Q. We may take it that that was the date you reviewed the
16 videos that you spoke about in your statement?

17 A. Yes.

18

19 Q. Were these all the videos - did you make a note of
20 each and every one of the videos you were provided with?

21 A. Yes, I did.

22

23 Q. The previous file note had spoken about a large
24 quantity of pornographic material. Did you consider this
25 to be a large quantity of pornographic material that
26 suggested a serious addiction?

27 A. Yes, I did.

28

29 Q. Did it cross your mind that you might not have been
30 provided with all of the material?

31 A. No, I don't recall.

32

33 Q. You were involved in the dealings between
34 Bishop Herft, Greg Hansen, Peter Rushton, about the
35 possession of pornographic material?

36 A. Yes. I didn't have any contact with Peter Rushton.

37

38 Q. Is it fair to say that your understanding, at least in
39 the beginning, was Peter Rushton was not being cooperative
40 in the Church's investigations of the matter?

41 A. Yes, that's right.

42

43 Q. Is it the fact that Peter Rushton threatened to sue
44 the Diocese over the matter?

45 A. I've seen a file note about that, yes.

46

47 Q. To be clear, it is your understanding he threatened to

1 sue the Diocese?
2 A. I think the file note said words to that effect, yes.
3
4 Q. At no time during your involvement in what I will call
5 the Rushton pornography matter did you view any statements
6 from the removals who said they had seen the pornography?
7 A. Not from the removalists, I don't think. I had a
8 telephone conversation with the removalist.
9
10 Q. Which removalist did you have a telephone conversation
11 with?
12 A. With Farraghers.
13
14 Q. Sorry, with who?
15 A. With Farraghers, I believe.
16
17 Q. But with who? That's the name of the removalist
18 company?
19 A. Yes. I don't recall the name of the man who phoned
20 me. I think he was one of the managers.
21
22 Q. You never had a telephone conversation with one of the
23 people who actually saw the material when packing up at
24 Peter Rushton's home?
25 A. No.
26
27 Q. And you never saw the statements prepared by those
28 persons?
29 A. I wasn't aware they had prepared statements.
30
31 Q. Can I take you now, Mr Mitchell, to ask you some
32 questions about [CKC]. Do you know who I am referring to?
33 A. Yes.
34
35 Q. There are a number of pseudonyms in relation to the
36 [CKC] matter. Could I ask you, sir, to take care not to
37 reveal the name of the priest and not to reveal the name of
38 the complainants.
39 A. Certainly.
40
41 Q. Take all the time you need to check that pseudonym
42 list.
43 A. Certainly.
44
45 Q. It is correct that at the time of the prosecution of
46 [CKC] in 2000 and 2001, you were close friends with [CKC]?
47 A. That is correct.

1
2 Q. You, in fact, provided a reference for [CKC] for use
3 in his trial?
4 A. Yes, I did.
5
6 Q. I can show you that document at tab 72. Could I draw
7 your attention to the first page. You say you have known
8 [CKC] since 1979, and that was correct?
9 A. Yes.
10
11 Q. A little further down you indicate that [CKC] was the
12 godfather of one of your daughters?
13 A. My only daughter, yes.
14
15 Q. Is it right that at some stage you were the executor
16 of [CKC]'s will?
17 A. I don't know that I was. Was I? I'm sorry.
18
19 Q. I'm asking you.
20 A. I know you are, sorry. No, I don't recall.
21
22 Q. To your knowledge, were you a beneficiary under his
23 will?
24 A. No, we never discussed it.
25
26 Q. You can take it from me that the documents establish
27 that [CKC] was initially interviewed about these
28 allegations in February 2000. You were a close friend of
29 [CKC]'s. Did you have conversations with him, at about the
30 time of his interview, about the allegations?
31 A. No.
32
33 Q. You can take it from me that the documents establish
34 that [CKC] was charged in relation to these allegations in
35 August 2000. Prior to that time, did you, as a close
36 friend of [CKC], have conversations with him about the
37 allegations?
38 A. No. In that period of time he had been away from the
39 diocese for about five years, so our telephone
40 conversations had reduced.
41
42 Q. But you did keep in contact?
43 A. We kept in contact but we did not discuss - the first
44 time I knew about it was when I received, I think, a
45 subpoena, or received a document - anyway, yes, sorry.
46
47 Q. You were aware of the allegations against [CKC] prior

1 to him being formally charged, weren't you?
2 A. No, I'd have to go to the documents. I'm sorry,
3 I don't think I was.
4
5 Q. Had you discussed the matter with Keith Allen?
6 A. No.
7
8 Q. Are you sure about that?
9 A. Yes, quite.
10
11 Q. Are you aware that Keith Allen acted as [CKC]'s lawyer
12 in relation to this matter?
13 A. Yes, I am.
14
15 Q. When did you become aware of that?
16 A. I don't have the document in front of me, but I think
17 we got a letter from his firm of solicitors asking for
18 certain information.
19
20 Q. I want to ask you a bit about your position as the
21 registrar. Is it fair to say that it is an extraordinary
22 rather than an ordinary matter when the registrar's office
23 is contacted by police looking for information about a
24 priest who had served in the diocese?
25 A. Yes.
26
27 Q. So that was something unusual and out of the ordinary?
28 A. Yes.
29
30 Q. At that time, as the registrar of the diocese, did you
31 consider that you had a role to assist the police in their
32 investigations into a priest formerly licensed in the
33 Newcastle Diocese?
34 A. Yes.
35
36 Q. You are quite certain you considered that you had an
37 obligation to assist the police?
38 A. Yes.
39
40 Q. Can I take you, please, sir, to a document at tab 58.
41 Firstly, can I draw your attention to the signature on the
42 bottom right-hand side. That's yours, isn't it?
43 A. It is.
44
45 Q. It says it was received on 14 February 2000. May
46 I take it that you received this file note that date?
47 A. Yes.

1
2 Q. I draw your attention to the date. First of all, you
3 will see it is 14 February?
4 A. Yes.
5
6 Q. The file note itself is dated 9 February. Do you see
7 that?
8 A. Yes, I can see that.
9
10 Q. It is signed by "W Brown"?
11 A. Yes.
12
13 Q. Could you tell me who that is, please?
14 A. Yes. W Brown was a receptionist in the office at the
15 time.
16
17 Q. Sorry, a receptionist where exactly?
18 A. In the Diocesan office.
19
20 Q. You mean the Registrar's office?
21 A. The Registrar's office, yes.
22
23 Q. W Brown worked for you?
24 A. Yes.
25
26 Q. Can I draw your attention to the top paragraph where
27 the file note recounts receiving a telephone call from
28 Lyn Douglas?
29 A. Yes.
30
31 Q. Lyn Douglas was the Chair of the Committee for
32 Allegations Against Sexual Abuse at the time; is that
33 correct?
34 A. I don't know about dates, I'm sorry, but probably.
35
36 Q. But you know that she did hold that position?
37 A. Yes, I knew she held that position at some time, yes.
38
39 Q. In this file note, a record is made that Ms Douglas
40 has been contacted by a police officer?
41 A. Yes.
42
43 Q. If you look to the third paragraph, that attempts were
44 being made by the police to ascertain the whereabouts of a
45 priest?
46 A. Correct.
47

1 Q. All right. You will see towards the end of the
2 third paragraph the file note records:

3
4 *He asked if I could tell him if the priest*
5 *was still working or retired or deceased*
6 *and identified the priest as Father [CKC].*
7

8 A. Yes, I can see that.
9

10 Q. Based upon this file note which you received on
11 14 February 2000, will you accept that you were in fact
12 aware, as at that date, that police were making inquiries
13 about [CKC]?

14 A. Yes.
15

16 Q. Your close friend?

17 A. Yes.
18

19 Q. Did you make any attempt to contact [CKC] at that time
20 to find out what on earth this was about?

21 A. No, I did not.
22

23 Q. Did you make any attempt to contact anybody to find
24 out why on earth the police were trying to locate [CKC]?

25 A. No, I didn't.
26

27 Q. Why?

28 A. The file note says that the police had been referred
29 to Lyn Douglas to find out where he was, and I thought that
30 was as far as it needed to go. I didn't need to contact,
31 certainly not [CKC].
32

33 Q. I suggest to you that as at around this time,
34 14 February, you well knew that allegations were being made
35 that [CKC] had engaged in some kind of sexual abuse. Do
36 you agree?

37 A. I agree that the police were looking for him. I'm not
38 sure that I knew what the allegations were, the alleged
39 assault there.
40

41 Q. I'll be clear about that, Mr Mitchell. I suggest to
42 you that you were aware, as at about 14 February, that the
43 police were investigating [CKC] in relation to allegations
44 of sexual abuse. Do you agree?

45 A. I'll accept that, yes.
46

47 MR HALE: I object. There is no mention of sexual abuse in

1 that document, unless I can't see.

2

3 MS SHARP: I am not relying on this document to ask that
4 question.

5

6 THE CHAIR: Go ahead.

7

8 MS SHARP: Q. I suggest to you that as at around
9 14 February 2000, you were well aware that police were
10 looking for [CKC] in relation to allegations of sexual
11 abuse?

12 A. It says "alleged assault" there, but the fact that the
13 telephone call was directed to Lyn Douglas would lead me to
14 conclude that it was about a sexual abuse.

15

16 Q. That would lead you to conclude that, wouldn't it --

17 A. It would, believe me.

18

19 Q. -- because she was the Chair of CASM?

20 A. Correct, yes.

21

22 Q. So you agree you were aware at that time that the
23 police were making inquiries into allegations of sexual
24 abuse against [CKC]?

25 A. Yes.

26

27 Q. Could I show you the document at tab 59, please,
28 Mr Mitchell. You will see this is a letter from
29 Dean Graeme Lawrence to yourself, dated 15 February 2000?

30 A. Yes, it is.

31

32 Q. You will see it is a very short letter:

33

34 *Further to our conversation today, I attach*
35 *a statement regarding the most recent*
36 *telephone call in the sexual abuse matter.*

37

38 A. Correct.

39

40 Q. That was a telephone call about an allegation of
41 sexual abuse against [CKC], wasn't it?

42 A. Yes.

43

44 Q. You had previously been made aware by Dean Lawrence
45 that somebody had complained that they had been sexually
46 abused by [CKC], weren't you?

47 A. I'm sorry, can you repeat that?

1
2 Q. Yes. You had, prior to this letter, already been made
3 aware that somebody had complained to Dean Lawrence that
4 they had been sexually abused by [CKC]?
5 A. I'm not sure. Are you referring to that conversation
6 that day?
7
8 Q. I'm sorry, I will put the matter a little more
9 clearly. I suggest to you that you were well aware that in
10 around August 1999, Graeme Lawrence had received a
11 telephone call from [CKA] alleging that he had been
12 sexually abused by [CKC] as a child?
13 A. Not aware.
14
15 Q. Are you sure about that?
16 A. Yes.
17
18 Q. So I understand, by 15 February the Dean, that is one
19 of the most senior officials in the Diocese, was writing to
20 you about the sexual abuse matter?
21 A. Yes.
22
23 Q. You were well aware at that time that the sexual abuse
24 matter related to [CKC]?
25 A. Yes.
26
27 Q. And you were well aware at that time that the
28 allegation was in relation to child sexual abuse?
29 A. Yes.
30
31 Q. It seems from this letter that you and Graeme Lawrence
32 are keeping in fairly close contact about these
33 allegations. Do you agree with that?
34 A. No, I do not.
35
36 Q. Why is he writing a letter to you about it?
37 A. Because I think he was attaching a statement which
38 I think was a telephone call that his secretary had
39 received.
40
41 Q. So you say that you were provided with a file note of
42 a call that his secretary received?
43 A. Correct.
44
45 Q. Can you tell us about that telephone call?
46 A. It was in a similar - it was a similar file note, that
47 the police had first contacted the Dean's office looking

1 for information about [CKC]'s whereabouts. They were not
2 able to assist because they didn't know of his whereabouts
3 and they referred the caller to the registry.
4

5 Q. Of course, you well knew [CKC]'s whereabouts at that
6 time?

7 A. Oh, yes.
8

9 Q. You made no attempt to contact the police at this time
10 to make them aware of [CKC]'s whereabouts?

11 A. I understood that was directed through Lyn Douglas.
12

13 Q. I beg your pardon?

14 A. I understood that that inquiry was directed through
15 Lyn Douglas of the Sexual Harassment Monitoring Committee.
16

17 Q. You told us previously that in the position of
18 registrar, you felt that you had an obligation to assist
19 the police in their inquiries?

20 A. I wasn't given any contact details for the police.
21 What I was --
22

23 Q. I don't know about that.

24 A. What I was given --
25

26 Q. Let's have another look. Here we go. Let's go back
27 to tab 58, to the file note that you signed. This is the
28 file note you signed. Do you see in that first paragraph
29 it is recorded that contact had been made by a police
30 officer from Port Macquarie?

31 A. Yes.
32

33 Q. Do you see in that second-last paragraph it says the
34 policeman's name is [REDACTED]?

35 A. Okay. Yes.
36

37 Q. So you did have contact details for that police
38 officer, didn't you?

39 A. Okay, I accept that, yes.
40

41 Q. You have referred to a file note being provided to you
42 in February by Dean Graeme Lawrence. I want to take you to
43 a file note and have you confirm whether this is the one
44 you are referring to. Could we go to tab 57. You will see
45 that's submitted by Theresa Kerr, the secretary to the
46 Dean?

47 A. Yes.

1
2 Q. This is the file note you were referring to earlier,
3 was it?
4 A. It is, yes.
5
6 Q. That you say that Graeme Lawrence provided to you in
7 that letter of February 2000?
8 A. Yes.
9
10 Q. In this file note the secretary records that she, too,
11 had received an inquiry from a detective at the
12 Port Macquarie Police Station?
13 A. Yes.
14
15 Q. This note records that that officer wanted to
16 specifically speak to the Dean about a sexual abuse case?
17 A. Yes.
18
19 Q. You will see that note records that the officer asked
20 whether there was a priest named [CKC]?
21 A. Yes.
22
23 Q. You will see that the last part of that file note
24 refers to a procedure to follow and that staff at the
25 registry would be able to refer the police officer in the
26 right direction?
27 A. Yes.
28
29 Q. All these things were made known to you either during
30 your telephone call with Graeme Lawrence in February 2000
31 or in that letter that he subsequently provided to you;
32 correct?
33 A. Correct.
34
35 Q. Why are you and Graeme Lawrence sharing this
36 information at this point in time?
37 A. It would seem to me that the police had made contact
38 with the Dean's office and the Dean's office had provided
39 whatever information they could, and the Dean was telling
40 me that. It's obviously a serious matter. He wanted me to
41 know that the Dean's office had been contacted and then the
42 police obviously contacted the registry office. I notice
43 that they were told which diocese [CKC] was currently in
44 and that the matter was also referred to the Chair of the
45 Sexual Harassment Monitoring Committee.
46
47 Q. It was a serious matter, wasn't it?

1 A. Yes.
2
3 Q. Why were you and the Dean in contact about it?
4 A. He was simply informing me that he had received a
5 telephone call.
6
7 Q. You were in no doubt as at mid-February 2000 that,
8 firstly, there were sexual abuse allegations against [CKC]?
9 A. Yes.
10
11 Q. Secondly, that they were child sexual abuse
12 allegations?
13 A. Yes.
14
15 Q. Thirdly, that the police were looking for information
16 about [CKC]?
17 A. Yes.
18
19 Q. And, fourthly, that Graeme Lawrence was privy to that
20 information?
21 A. He was privy to the information that there was - an
22 investigation was starting, yes.
23
24 Q. Could I take you to a letter that you wrote appearing
25 at tab 60. I will have that enlarged so Mr Mitchell can
26 see it. You will see, Mr Mitchell, that is a letter from
27 you?
28 A. Yes.
29
30 Q. If we scroll up the page it is directed to Mr Allen at
31 his solicitor's firm?
32 A. That's correct, yes.
33
34 Q. And that it is dated 17 February 2000?
35 A. Yes, it is.
36
37 Q. This is after your correspondence with
38 Graeme Lawrence?
39 A. Yes, it is.
40
41 Q. Here the title of the letter specifically relates to
42 [CKC]?
43 A. Correct.
44
45 Q. It refers to "Your recent enquiry", that is, an
46 inquiry made by Keith Allen?
47 A. Yes.

1
2 Q. All right. We may take it that Keith Allen did, prior
3 to sending you this letter, have some kind of communication
4 with you about [CKC]?
5 A. Yes.
6
7 Q. That was a communication in relation to an allegation
8 that [CKC] had sexually abused a boy; correct?
9 A. Yes.
10
11 Q. Here, in this letter, you provide very precise details
12 about the times, to the day, that [CKC] was licensed in
13 particular parishes in the diocese; correct?
14 A. Correct.
15
16 Q. That information was very readily available to you in
17 the Registrar's office?
18 A. Yes.
19
20 Q. Is it your evidence that as at about this time, you
21 had had no conversations whatsoever with [CKC] about this
22 matter?
23 A. That is correct.
24
25 Q. Can I now take you to a document which out of fairness
26 to you, Mr Mitchell, is not your document but may I show
27 you a document at tab 61. I might have that rotated. Do
28 you see this is a NSW Police Duty Book?
29 A. Yes.
30
31 Q. You will see it says down there that it was completed
32 by a Port Macquarie police officer on 13 May 2001?
33 A. Yes, I can.
34
35 Q. Could I take you over the page, please, Mr Mitchell.
36 You will see this is an entry, if I can draw your attention
37 to the top, for Friday, 11 August 2000?
38 A. Yes.
39
40 Q. Let me just take you to the last four lines of this
41 note. Maybe I'll have that enlarged a little further. You
42 will see there's a reference to [CKC]?
43 A. Yes.
44
45 Q. I will read this out to you. It refers to:
46
47 *Re [CKC] and contact Dean of Newcastle*

1 Office re dates. Unable to assist. May be
2 1974.

3
4 A. Yes.

5
6 Q. Does that surprise you that the Dean's office was
7 unable to assist with dates in relation to [CKC] at the
8 time he was licensed in the diocese?

9 A. Only to the extent that they wouldn't necessarily have
10 the information, but my understanding of that earlier
11 file note was that they'd referred them to the registry
12 office.

13
14 Q. Sorry, where do you get that understanding in the
15 file note?

16 A. I don't get it from that file note. From the earlier
17 file note, in the telephone conversations the police were
18 asked to contact the registry office.

19
20 Q. Let's ask about this file note on 11 August 2000.

21 A. Yes.

22
23 Q. You will agree there's nothing in here about saying
24 "while the Dean was unable to assist, maybe registry can"?

25 A. No, not in that person's file note, no.

26
27 Q. Does it surprise you that the Dean's office was unable
28 to assist in providing information about where [CKC] was
29 licensed?

30 A. No. I think it was unable to assist in the sense that
31 it wouldn't have had the information. What it could do was
32 to refer them to the registry office, which it did.

33
34 Q. I don't know about that. On what basis are you
35 suggesting that the Dean's office referred it to registry
36 as at 11 August 2000?

37 A. From the telephone file notes that you've just shown
38 me.

39
40 Q. They're dated February 2000.

41 A. Right.

42
43 Q. Right? Based on your knowledge of how governance
44 arrangements work in the diocese, wouldn't it have been a
45 very simple matter for the Dean's office to say, "Well, we
46 don't hold those records, but the registry sure does"?

47 A. I think you are asking me to make suppositions about a

1 policeman's file note but I --

2

3 Q. Yes, I am.

4 A. I'm sorry, I can't make assumptions.

5

6 Q. Well, I suggest to you that it would be quite
7 unreasonable for the Dean's office to advise that it was
8 unable to assist, and neglect to mention that those records
9 were readily available within the Registrar's office?

10 A. Given that they had already said that back in
11 February, I assume they would have said it again here in
12 August, or whenever the date was, and maybe not recorded by
13 the policeman.

14

15 Q. Did you have any discussions with Dean Lawrence at
16 around August 2000 about the police looking for information
17 about when [CKC] was licensed?

18 A. Not to my recollection.

19

20 Q. Is it the case that you were adopting a deliberately
21 obstructive attitude towards police inquiries?

22 A. That's certainly untrue.

23

24 Q. Is it the case that to your knowledge Dean Lawrence
25 was adopting a deliberately obstructive approach to police
26 inquiries?

27 A. I can't speak for Dean Lawrence.

28

29 Q. The Dean's office, we may take it, would hold a copy
30 of the Diocesan Year Books?

31 A. Correct.

32

33 Q. Those year books indicate when priests are licensed at
34 various parishes, don't they?

35 A. They do.

36

37 Q. Doesn't it strike you as rather amazing that the
38 Dean's office could not assist on the question of when the
39 priest was licensed in the diocese?

40 A. You'd have to ask the Dean's office, I'm sorry.

41

42 Q. I am asking you, Mr Mitchell. You have accepted that
43 the Dean's office holds the year book; correct?

44 A. Yes, it does.

45

46 Q. All right. The year book indicates the dates upon
47 which priests are licensed in particular parishes in the

1 diocese?
2 A. Yes, it does.
3
4 Q. Doesn't it strike you as absolutely amazing that the
5 Dean's office apparently tells the police they are unable
6 to assist with this licensing inquiry?
7 A. It strikes me that it would have been very sensible
8 for them to have done so.
9
10 Q. It strikes you as absolutely amazing that they
11 reported they were unable to assist, doesn't it?
12 A. They are your words, not mine.
13
14 Q. I am asking whether you agree with those words.
15 A. I don't agree with those words.
16
17 Q. What words would you use?
18 A. I think it's surprising. I would have thought that
19 somebody would have had enough sense to have known that
20 they could have gone to a year book. On the other hand,
21 they may have felt it wasn't in their jurisdiction. If the
22 policeman was speaking to the Dean's secretary, for
23 example, she may not have felt that that was her role.
24
25 Q. I want to show you some more documents, if I can,
26 Mr Mitchell. I'll start at tab 65, if I may. You will see
27 that this is a letter from Nash Allen and Williams. That
28 of course is Mr Allen's law firm?
29 A. Yes.
30
31 Q. It is addressed to you and dated 18 April 2001?
32 A. Correct.
33
34 Q. You will see there is a notation at the bottom that
35 you have received this letter?
36 A. Yes.
37
38 Q. We may take it then that you did receive it at about
39 that time?
40 A. Yes.
41
42 Q. You will see that it encloses a subpoena for
43 production?
44 A. That's correct.
45
46 Q. This, of course, was for the purpose of [CKC]'s
47 criminal prosecution?

1 A. Yes.
2
3 Q. Did you have any conversations with Mr Allen about
4 documents held by the registry prior to receiving this
5 subpoena?
6 A. No, I don't recall so.
7
8 Q. I will ask you to search your memory. Did you or not?
9 A. I don't recall.
10
11 Q. Your close friend was [CKC]?
12 A. Correct.
13
14 Q. You and the Dean are keeping in close contact about
15 the allegations that are made against [CKC]?
16 A. I don't think there was close contact. There were two
17 contacts.
18
19 Q. You knew that Mr Allen was acting for your close
20 friend [CKC]?
21 A. I did.
22
23 Q. Isn't it most likely that you would have been updated
24 by Mr Allen from time to time about the prosecution of your
25 close friend?
26 A. No.
27
28 Q. You say that's unlikely?
29 A. It's unlikely.
30
31 Q. Isn't that implausible, Mr Mitchell?
32 A. It's unlikely.
33
34 Q. In any event, I will show you the subpoena. This is
35 at tab 66. Do you see this is a copy of a subpoena?
36 A. Yes.
37
38 Q. At the bottom it is dated April 2001?
39 A. Yes.
40
41 Q. You will see that there are two paragraphs to that
42 subpoena asking for particular documents?
43 A. Yes.
44
45 Q. You will see that first paragraph says:
46
47 *Membership Roll of the Diocesan Synods for*

1 sessions 1978 to 1984.

2 A. Yes.

3

4 Q. Could I ask that we have that enlarged, please. Could
5 it be enlarged a little bit more. Could I direct your
6 attention to the year 1978?

7 A. Yes.

8

9 Q. Do you agree that it looks like the "8" has been
10 amended by hand?

11 A. It's a possibility.

12

13 Q. Do you have any knowledge of that amendment being
14 made?

15 A. No.

16

17 Q. You were aware by this time that these were historical
18 child abuse allegations?

19 A. I assume so, yes.

20

21 Q. They hadn't occurred recently?

22 A. No, that's right, yes.

23

24 Q. They had occurred in the past?

25 A. Yes.

26

27 Q. You were aware that the period of interest was around
28 1974 to 1975; correct?

29 A. I'm not sure of the dates. I'm sorry, I'm just
30 looking at the record that's in front of me.

31

32 Q. I may assist you with that if I can. Could I take you
33 back to tab 60, please, Mr Mitchell.

34 A. Right.

35

36 Q. You will see that there you have provided advice to
37 Mr Allen about the licences that [CKC] held as at 1970,
38 1975 and 1980?

39 A. Yes.

40

41 Q. You were aware that the allegations related to conduct
42 sometime in the period 1970 to 1980?

43 A. Yes.

44

45 Q. Returning to that subpoena at tab 66, are you able to
46 assist in any way with understanding why the membership
47 roll for the Diocesan Synod is only sourced back to 1978?

1 A. No, I can't help you with that.
2
3 Q. You didn't have any conversations with Mr Allen about
4 that?
5 A. No.
6
7 Q. At paragraph 2, if I could ask you to look at that,
8 Mr Mitchell, you will see that it seeks records held by the
9 Bishop or the Diocese relating to any complaint of sexual
10 misconduct by any person against [CKA] and [CKB]?
11 A. Yes.
12
13 Q. Did you have any conversations at all about this
14 paragraph of the schedule with Mr Allen before this
15 schedule was issued?
16 A. No.
17
18 Q. After the subpoena was issued.
19 A. No.
20
21 Q. But you understood that records were sought relating
22 to any complaint of sexual misconduct by these two
23 complainants?
24 A. Yes.
25
26 Q. Your understanding at the time was that [CKC] was one
27 of the persons about whom complaint was made?
28 A. Correct.
29
30 Q. Let me take you back to the document at tab 60.
31 That's a letter dated 17 February 2000 that you wrote?
32 A. Right, yes.
33
34 Q. At the time you wrote this, you understood that
35 allegations were being made against [CKC]?
36 A. Yes.
37
38 Q. You understood that was the reason why you were
39 writing this letter to Mr Allen; correct?
40 A. Correct.
41
42 Q. Do you consider that this letter falls within that
43 second paragraph of the subpoena I have just taken you to?
44 A. I'm not sure. The subpoena I think was asking for
45 information about allegations that had been made.
46
47 Q. Yes, relating to allegations that had been made.

1 A. So I'm not sure that I see - would see that as being
2 part of the allegations.

3

4 Q. To be fair to you, let's return to that subpoena
5 schedule at tab 66. You will see the expression used in
6 paragraph 2 is records "relating to" --

7 A. "Any complaint of sexual" --

8

9 Q. "Any complaint"?

10 A. Yes.

11

12 Q. Did you consider at the time that the 17 February
13 letter was brought into existence because it related to a
14 complaint against [CKC] of sexual abuse?

15 A. No, I don't recall that I did.

16

17 Q. Was it your view that that 17 February letter did not
18 fall within the terms of this subpoena, or that you didn't
19 give any consideration to that matter at the time?

20 A. I don't recall.

21

22 Q. Could I show you, please, Mr Mitchell a document
23 appearing at tab 426 of the bundle. Could I just have that
24 enlarged for the benefit of Mr Mitchell. You will see it
25 says:

26

27 *Schedule A*

28

29 *Police v [CKC]*

30

31 *Documents from the files ...*

32

33 May we take it that this is an index of the documents which
34 were produced by you in answer to that subpoena I have just
35 taken you to?

36 A. Yes.

37

38 Q. You will agree that no reference is made to that
39 17 February 2000 letter from you to Mr Allen?

40 A. Yes, I agree.

41

42 Q. You will see that there are a number of file notes
43 produced and also some letters from the Dean to you and the
44 Dean to the Bishop?

45 A. Yes, I see that.

46

47 Q. It is right that what you produced are records of

1 file notes regarding conversations that Graeme Lawrence had
2 had on the Sexual Abuse Hotline when [CKC] contacted him?
3 A. Well, without looking at the letters behind that,
4 I assume you're right, yes.
5
6 Q. Can I return, please, Mr Mitchell, to take you to
7 tab 67. This is a letter from you to Mr Allen?
8 A. Yes.
9
10 Q. It is dated 25 April 2001, I think.
11 A. Yes.
12
13 Q. At point 3 the letter refers to enclosing schedule A
14 containing a list of documents.
15 A. Yes.
16
17 Q. We may take it that that's the schedule A I just
18 showed you?
19 A. Yes, I believe so.
20
21 Q. You also say:
22
23 *Since 1997 we have maintained a separate*
24 *file for complaints alleging sexual*
25 *misconduct by clergy.*
26
27 A. Yes.
28
29 Q. Is that the brown envelope system you are referring to
30 there?
31 A. That's not a term I've heard before, but yes, it
32 was --
33
34 Q. Are they complaints that were stored in envelopes?
35 A. Yes, in envelopes, yes.
36
37 Q. So they were stored in envelopes?
38 A. Yes.
39
40 Q. That was a system instituted in 1997?
41 A. Yes.
42
43 THE CHAIR: Q. While we are pausing, could we just look
44 at document 33. Do you see, Mr Mitchell, these are said to
45 be notes from a meeting held on 13 May at 1pm with
46 Bishop Roger Herft, Ms Deirdre Anderson and Messrs
47 Peter Mitchell and Paul Rosser. Do you see that?

1 A. Yes.

2

3 Q. Is that a reference to you?

4 A. Yes, it is.

5

6 Q. Did you make this note?

7 A. I believe so, yes.

8

9 Q. So then you have accurately recorded, I assume, what
10 was said at the meeting, have you?

11 A. I believe so.

12

13 Q. Can we go to the bottom of the first page. Do you see
14 down the bottom of the page, you have recorded:

15

16 *Mr Rosser advised the Bishop that, wherever*
17 *pastorally possible, he ought to decline to*
18 *accept information or to read any reports.*

19

20 Do you see that?

21 A. Yes, I do.

22

23 Q. That is a reference back to information about
24 sexual misconduct, isn't it?

25 A. Yes, it is.

26

27 Q.

28 *In declining, he should advise the person*
29 *making the complaint that if the matter is*
30 *one of a criminal offence, then he may be*
31 *obliged to do something under criminal law,*
32 *and equally if the matter is one of a*
33 *serious breach of professional standards*
34 *expected of clergy, then he may have to*
35 *weigh up the pastoral implications of*
36 *leaving a priest in a position where he may*
37 *do further harm as opposed to the pastoral*
38 *considerations of the person making the*
39 *allegations.*

40

41 Is that the advice that was given?

42 A. I believe so.

43

44 THE CHAIR: Yes, thank you.

45

46 MS SHARP: Q. You're aware, as you sit here today, that
47 a prosecution of [CKC] did occur?

1 A. Yes, I am aware.
2
3 Q. You are aware, as you sit here today, that during the
4 course of that prosecution a Register of Services was
5 produced?
6 A. Yes.
7
8 Q. Were you aware of that at the time of the prosecution?
9 A. Yes.
10
11 Q. How did you become aware of that?
12 A. I believe we received a subpoena to produce --
13
14 Q. Are you sure about that?
15 A. No, my memory, I'm sorry. I can only respond to
16 documents put in front of me. Sorry, I have spent 14 and a
17 half years trying to block the diocese and --
18
19 Q. I understand that --
20 A. You'll have to show me documents, I'm sorry.
21
22 Q. Yes. What I'm asking about now, because I can't find
23 the document, is whether a subpoena was issued for the
24 Register of Services. Do you have a clear recollection
25 that one was issued, or do you just not know either way?
26 A. I'm sorry, without reference to notes, I don't know.
27
28 Q. May we understand from that that you have no clear
29 recollection of whether a subpoena was ever issued for the
30 Register of Services?
31 A. It must have been.
32
33 Q. I am asking you not what might have happened but your
34 recollection.
35 A. My recollection - I thought I had seen a subpoena in
36 the documents but I can't remember without you showing it
37 to me.
38
39 Q. Just so I understand your evidence, it is that you
40 have no recollection one way or the other as to whether a
41 subpoena was ever issued for the Register of Services?
42 A. I'm sorry, I struggle without seeing a document. If
43 it is not - if you don't have a document then I don't
44 recall.
45
46 Q. I don't have a document, Mr Mitchell --
47 A. Right.

1
2 Q. -- so I am limited to asking about your memory.
3 A. Okay.
4
5 Q. Is it right that you don't have a memory?
6 A. No, that's right.
7
8 Q. All right. Is it right that you saw the Register of
9 Services before it was provided to the court in the [CKC]
10 prosecution?
11 A. No, I don't have a memory of that.
12
13 Q. So you don't remember either way?
14 A. No, I don't remember either way, no.
15
16 Q. Were you at court during the [CKC] prosecution?
17 A. Not actually at court, I was on the steps of the
18 court. There must have been some correspondence because
19 the DPP contacted me and spoke to me about the
20 service register and what it contained.
21
22 Q. Yes. I understand, just to be clear, Mr Mitchell, the
23 DPP contacted you after the register had been produced to
24 the court; correct?
25 A. Yes.
26
27 Q. I am asking you about a period prior to that and
28 I want to break this up, if I can. Firstly, you were at
29 the courthouse during [CKC]'s prosecution?
30 A. Yes. It was suggested to me that I might need to be
31 called to verify that the register was what it purported to
32 be, and so I made myself available and went to the
33 courthouse.
34
35 Q. The prosecution continued over three days. Were you
36 there for each of those days?
37 A. No.
38
39 Q. Were you there for only one of those days?
40 A. To my memory, yes.
41
42 Q. Is it the case that you were provided with the
43 Register of Services before the court was provided with the
44 Register of Services?
45 A. I don't recall how the Service register became
46 available to the court.
47

1 Q. I need to ask you about somebody with a pseudonym now.
2 A. Okay.
3
4 Q. If you could look down on your list, can you see a
5 reference to [COH]?
6 A. Yes.
7
8 Q. Did [COH] provide you with the Register of Services at
9 court?
10 A. I don't recall. I know that I phoned [COH] to ask
11 whether the register was available, but I don't have a
12 recollection of how and when it arrived at the court.
13
14 Q. Before this document arrived in court had you, at any
15 time, looked at it in relation to [CKC]?
16 A. No, I have no memory of it.
17
18 Q. At any time did you attend the home of [COH] to look
19 at that document?
20 A. No, I don't believe so. I recall a telephone call.
21
22 Q. What was that telephone call?
23 A. To ask whether the register would be available.
24
25 Q. Sorry, who was that call from?
26 A. It was from me. I telephoned [COH] to ask whether the
27 register was still in the parish, whether it was available,
28 because those registers cover a long period of time and
29 I wasn't sure whether it would still be extant.
30
31 Q. When did you make that telephone call?
32 A. As soon as I received what I assume was a subpoena to
33 produce it.
34
35 Q. You don't remember whether you had received a subpoena
36 either way so --
37 A. No.
38
39 Q. -- we'll leave that to one side. When did you make
40 that telephone call?
41 A. When I was asked to produce or obtain the Service
42 register.
43
44 Q. It was prior to the hearing of the prosecution of
45 [CKC]?
46 A. Yes.
47

1 Q. How long had you known that a Register of Services
2 existed at that time?
3 A. I would have known that a parish would - all parishes
4 had a Service register.
5
6 Q. That was your common understanding throughout 2000 and
7 2001; is that right?
8 A. Yes.
9
10 Q. I want to take you to a transcript of part of the
11 hearing of the prosecution of [CKC]. Could I ask that you
12 be shown the document at tab 83. May we start on the
13 second page of that document, please, at pinpoint reference
14 0097. Sir, may I ask you to have regard to line 39, if we
15 can scroll down. You can take it from me, Mr Mitchell,
16 this is a record of what Paul Rosser QC told the court?
17 A. Okay.
18
19 Q. At line 39:
20
21 *Now on Tuesday I obtained the original of*
22 *the register of services. I made that*
23 *available to the Crown Prosecutor ...*
24
25 This rather suggests that Mr Rosser had the document before
26 the court had the document?
27 A. Yes, it does.
28
29 Q. Are you able to provide any explanation as to how the
30 document may have been available to Mr Rosser before it was
31 available to the court?
32 A. No, I can't.
33
34 Q. Mr Mitchell, at any time prior to this document being
35 provided to the DPP, did you make any alterations to this
36 document?
37 A. Certainly not.
38
39 Q. Are you sure about that?
40 A. Quite positive.
41
42 Q. I need to ask you about a conversation that
43 Mr Tim Mawson alleges took place. Could you tell us who
44 Tim Mawson is?
45 A. He was the Diocesan Secretary while I was Registrar.
46
47 Q. Could I show you part of the statement that he has

1 given to the Royal Commission. This is appears at tab 33A.
2 It is exhibit 29 for the transcript. From time to time,
3 you would travel in the car with Tim Mawson and Mr Allen?
4 A. I've been asked that by the police. I don't recall
5 any occasion when the three of us would have been - it's a
6 possibility, but a highly unlikely probability.

7
8 Q. I need to just take you to what Mr Mawson has said and
9 obtain your response.

10 A. Sure.

11
12 Q. Could I take you to paragraph 16. I will show you
13 exactly what Mr Mawson has given evidence of. He says he
14 was seated in the back of the car while you were driving
15 and Mr Allen was in the passenger seat and you said:

16
17 *"Yeah, it's funny how those documents went*
18 *missing".*
19

20 And you and Mr Allen appeared to snigger.

21
22 MR WATTS: Could I ask my learned friend to read out what
23 the next line was? That is, "Allen did not say anything in
24 response but murmured in agreement".

25
26 MS SHARP: I think it has now been read out.

27
28 Q. Did that conversation occur?

29 A. I don't believe so.

30
31 Q. Did you and Mr Allen have any agreement or arrangement
32 about documents going missing in relation to the [CKC]
33 matter?

34 A. Certainly not.

35
36 Q. Can I take you now to a document appearing at tab 99.
37 Just to be clear, it is dated 16 October 2001?

38 A. Yes, it is.

39
40 Q. It is addressed to [CKA] who was one of the
41 complainants in the [CKC] prosecution. If you scroll to
42 the bottom, you will see it is from you?

43 A. Correct.

44
45 Q. There seems to be a very faint signature here. Is it
46 right that you did send a letter to [CKA] after the
47 prosecution of [CKC] because he had complained to the

1 Diocese?

2 A. Yes, that document says so.

3

4 Q. Do you see that in the second paragraph, if I can take
5 you up there, it states that the Diocese and the Dean were
6 subpoenaed to produce records at the trial?

7 A. Yes.

8

9 Q. In the next paragraph, you state:

10

11 *The Church did not in any direct way*
12 *provide records to the Reverend [CKC]'s*
13 *defence except through compulsory Court*
14 *processes.*

15

16 A. Yes.

17

18 Q. That is not true, is it?

19 A. I believe it was true. You're questioning whether
20 there was a subpoena for the Service register, which
21 I don't recall. That was written much closer to the time.
22 I believe it would have been true.

23

24 Q. Let me show you one document that we know for certain
25 was not produced under subpoena. This is the letter that
26 you wrote to Mr Allen on 17 February 2000 at tab 60. This
27 is that very helpful letter you wrote to Mr Allen which
28 gave precise dates in respect of which [CKC] had been
29 licensed.

30 A. Yes.

31

32 Q. There was no subpoena for that document, was there?

33 A. No, probably not.

34

35 Q. No compulsory court process for that document, was
36 there?

37 A. No.

38

39 Q. In fact, when you received the subpoena, that document
40 was not produced, was it?

41 A. True.

42

43 Q. What you say to [CKA] in your 16 October 2001 letter
44 that "The Church did not in any direct way provide records
45 to the Reverend [CKC]'s defence except through compulsory
46 Court processes" is simply not true?

47 A. I believed it at the time.

1
2 Q. You wrote the letter back on 17 February 2000.
3 A. We took legal advice. The letter is basically the
4 letter of Rankin & Nathan and I didn't change it, so --
5
6 Q. It is a serious --
7 A. Yes, it is my letter, it is.
8
9 Q. Let me just go back to --
10
11 MR HALE: Your Honour, perhaps the witness could be shown
12 the complaint letter that was written by [CKA] first, where
13 it talks about - I will sum up his complaint. He talks
14 about, "How did my confidential communications" - to put
15 some perspective on this cross-examination.
16
17 MS SHARP: I am happy to go to that document, if you'll
18 pardon me a moment, and then we'll come back to the truth
19 or otherwise of this letter.
20
21 Q. Could you please have a look at the document at
22 tab 93. You will see that that is a letter to Bishop Herft
23 from [CKA]; correct?
24 A. Correct.
25
26 Q. In the first paragraph it is stated:
27
28 *My main concern is the fact that*
29 *confidential conversations I had with*
30 *Dean Lawrence, were transcribed ... and*
31 *provided to [CKA]'s defence counsel.*
32
33 A. Correct.
34
35 Q. It is the case that you produced those conversations
36 under the subpoena that I took you to earlier today;
37 correct?
38 A. That's correct.
39
40 Q. Then [CKA] goes on to say:
41
42 *I was given to believe that the Anglican*
43 *Diocese of Newcastle had a protocol which*
44 *involved confidential support and*
45 *counselling for affected persons.*
46
47 A. Yes.

1
2 Q. Is it right that you took advice at the time of
3 receiving the subpoena as to whether you could produce
4 those file notes that Lawrence prepared?
5 A. Yes.
6
7 Q. And you received advice that you could produce those
8 file notes?
9 A. Correct.
10
11 Q. You will see further down, the second-last paragraph,
12 that there's a reference by [CKA] to:
13
14 *The breach of confidentiality completed the*
15 *betrayal and abandonment of myself by the*
16 *church.*
17
18 A. Yes, I see that.
19
20 Q. You were asked by Bishop Herft to assist in preparing
21 a response to this letter?
22 A. Yes.
23
24 Q. That made sense because you were the person who
25 produced the documents?
26 A. Yes.
27
28 Q. So nobody in the Diocese was in a better position than
29 you to provide information about what was and wasn't
30 produced?
31 A. Yes.
32
33 Q. And then you took advice from Robert Caddies about a
34 letter to go back to [CKA]. Can I show you a document at
35 tab 97. Do you see that letter is dated 16 October?
36 A. Yes.
37
38 Q. It encloses a draft letter. Can I take you to that
39 draft letter at tab 98. You will see the third paragraph
40 says:
41
42 *The Church did not in any direct way*
43 *provide records ...*
44
45 A. Yes.
46
47 Q. You would accept of course that a solicitor is only as

1 good as the instructions he or she is given?
2 A. Yes.
3
4 Q. The responsibility remained entirely with you to check
5 the factual accuracy of what was asserted?
6 A. Yes.
7
8 Q. All right. Let's go back to the letter that was sent
9 at tab 99. I have suggested to you that it is simply not
10 true to say that the Church did not in any direct way
11 provide records to [CKC]'s defence except through
12 compulsory court processes?
13 A. Yes.
14
15 Q. That's simply not true, right?
16 A. Right.
17
18 Q. All right. It was also not true because the defence
19 team had access to the Register of Services way before the
20 court did. Do you agree with that?
21 A. I'm not sure that it was way before. I'm not sure
22 that it was. I've only got that note of Paul Rosser's that
23 you've shown me.
24
25 Q. You are aware, aren't you, that Mr Allen went out and
26 reviewed the Register of Services?
27 A. No, I was not aware of that.
28
29 Q. Well, you have given evidence that you had a telephone
30 conversation with [COH] asking if she had the register?
31 A. Yes.
32
33 Q. Why did you have that conversation with [COH]?
34 A. Because I was asked to produce that Service register.
35
36 Q. Who asked you to produce that register?
37 A. Well, I thought it was a subpoena.
38
39 Q. Did you have conversations with Mr Allen about
40 accessing that register?
41 A. I don't recall directly, no.
42
43 Q. I suggest to you that what you've said here in this
44 letter:
45
46 *The Church did not in any direct way*
47 *provide records to the Reverend [CKC]'s*

1 *defence ...*

2

3 Is also quite untrue, because [CKC]'s defence got a preview
4 by going to [COH]'s rectory to inspect the register?

5 A. I'm sorry, can you repeat that?

6

7 Q. I suggest to you that the proposition you have set out
8 in that letter to [CKC] is also untrue because, in fact,
9 [CKC]'s defence got to have a look at that register before
10 it was provided to the court?

11 A. I'm not sure that that's right. I don't know how the
12 register got to the court or when it got to the court.

13

14 Q. Is it right, Mr Mitchell, that in your dealings with
15 the police and the DPP in relation to the [CKC]
16 prosecution, you adopted a deliberately obstructive
17 approach?

18 A. Certainly not.

19

20 Q. And you adopted an approach of not dealing with the
21 DPP and the police with full candour in making available to
22 them, in the course of their inquiries, information you
23 knew was held by the Diocese in relation to [CKC]?

24 A. No. We responded to their requests fully.

25

26 Q. Is it right that you understood that the Dean's office
27 had adopted a similarly obstructive attitude --

28 A. Certainly not. I would not accept that.

29

30 Q. -- in dealing with the DPP and the police?

31 A. I have no knowledge of what the Dean's office's role
32 was, but I would not expect that.

33

34 Q. Is that the truth, Mr Mitchell?

35 A. Yes.

36

37 Q. Are you aware that the police are now reinvestigating
38 the [CKC] matter?

39 A. I am aware of that.

40

41 Q. Have you had conversations with Mr Allen about that
42 investigation?

43 A. No. The last time I spoke with Keith Allen was in
44 January 2002.

45

46 MS SHARP: Your Honour, is this a convenient time for the
47 adjournment?

1
2 THE CHAIR: Yes. Very well. We will take the morning
3 adjournment.
4

5 **SHORT ADJOURNMENT**
6

7 MS SHARP: Q. Mr Mitchell, may we take it that as
8 register of the Diocese, you worked closely with
9 Bishop Herft?

10 A. Yes.
11

12 Q. Was Bishop Herft, to your knowledge, kept in the loop
13 about the [CKC] prosecution?

14 A. Yes.
15

16 Q. How are you aware of that?

17 A. We had weekly meetings and [CKC]'s matter was on the
18 agenda every week. Most of the time there was nothing to
19 report but when there was, I would have made a brief
20 report.
21

22 Q. During your time with the Diocese, there was a
23 committee and it changed its name. It was the Committee
24 for Allegations of Sexual Misconduct and it has changed its
25 name a few times. I think people knew it as CASM. You are
26 familiar with that Committee?

27 A. No, that's not a term I'm familiar with, but I am
28 familiar with - I thought of it in terms of the Committee
29 for Monitoring Sexual Harassment or complaints, or
30 something like that, yes.
31

32 Q. What were the names of the Committee while you were at
33 the Diocese?

34 A. Oh, I would have thought Sexual Harassment Monitoring
35 Committee, or words to that effect, and it did not change
36 names while I was the registrar.
37

38 Q. While you were the registrar, Ms Douglas was firstly
39 the Chair and later Ms Jean Sanders was the Chair?

40 A. No. The first Chair I recall was Ms Deirdre Anderson.
41

42 Q. Then was it Ms Douglas?

43 A. I believe that was the sequence, yes.
44

45 Q. And then it was Ms Sanders?

46 A. I don't recall her name, sorry. She may have been
47 after my time.

1
2 Q. You were never a member of that Committee?
3 A. No, I was not.
4
5 Q. You had no involvement in that Committee?
6 A. No.
7
8 Q. You didn't attend that Committee's meetings?
9 A. No.
10
11 Q. Mr Mitchell, you say at around paragraph 58 of your
12 first statement that you had a meeting with
13 Michael Elliott, the Professional Standards Director, on
14 25 July 2012.
15 A. Yes, I did.
16
17 Q. You say that you felt bullied and intimidated at that
18 meeting?
19 A. Yes, I did.
20
21 Q. Why was that?
22 A. I hadn't spoken to anybody from the Diocese for
23 something like 10 years at that time and I just find, still
24 find, anything to do with the Diocese just deeply, deeply
25 distressing and - sorry --
26
27 Q. Take your time.
28 A. Mmm. And I kept saying to him on the telephone that
29 I didn't think that I had any knowledge that he couldn't
30 have gained anywhere else, I didn't really want to meet
31 with him, and he kept pressing the point that he - my name
32 kept coming up, was I think his expression, and he kept
33 pressing the point that he thought I could assist. So
34 I agreed, reluctantly, given the material that he wanted to
35 talk to me about was important, I reluctantly agreed to
36 have coffee with him and we met. So I was feeling very
37 vulnerable when I met with him and his opening points just
38 reinforced my feelings. He referred to my criminality,
39 which is fine, that's a fact of life, I live with that, but
40 I felt that he was raising it to make me feel more
41 vulnerable. I think his first point was that he thought
42 that I could assist him and that if I assisted him, that he
43 could arrange an indemnity for me.
44
45 Now, I had really no idea, I protested and said
46 I didn't understand how he could do that because I thought
47 - and I said to him, "If I have something to answer then

1 I'll answer it, but I'll answer it to the police". So that
2 was - we got off to a good start.

3
4 The next point, I think, that concerned me was that
5 he, again referring to my criminality, said that they had
6 dumped me in it, that I owed them nothing, that I could get
7 back at "them" by cooperating and that sounded to me like a
8 revenge tragedy, frankly, and I started to stop listening.
9 I could go on.

10
11 One of the things he said to me at one point was - he
12 described some covert operation that he had been involved
13 with. I queried that and he said, "The end justifies the
14 means".

15
16 Q. Mr Mitchell, is it right that in the event you did not
17 provide any assistance to Mr Elliott?

18 A. No, I refused to have anything to do with him.

19
20 Q. So you didn't provide any information to him in
21 relation to his inquiries?

22 A. No, none whatsoever.

23
24 Q. Have you been here or watching the evidence before the
25 Royal Commission over the last few days?

26 A. I've been sitting in the outside room. I have not
27 been inside. I just could not, it just doesn't -
28 I couldn't cope with that, sorry.

29
30 Q. You are aware there has been some evidence about some
31 file notes that Mr John Cleary has kept in relation to
32 conversations he has had with Mr Keith Allen?

33 A. I have been shown that.

34
35 Q. I appreciate it is not your document but you're
36 mentioned in the document so I just wanted to run a few
37 things by you. Could I start with tab 393, please. I will
38 have that shown to you, Mr Mitchell.

39 A. Yes.

40
41 Q. Sir, you will see that purports to be a file note of
42 18 February 2015 --

43 A. Yes.

44
45 Q. -- of a conversation between Mr Allen, Bishop Thompson
46 and Mr Cleary?

47 A. Yes, I can see that.

1
2 Q. I just wanted to take your attention to the second
3 page, the third dot point from the bottom. I will need to
4 have that enlarged for you, Mr Mitchell. What this
5 file note records is that: Mr Allen had a concern about
6 the management of "brown envelopes", essentially child
7 sexual abuse files, and that Mr Allen advised that a panel
8 comprising Bishop Herft, Mr Allen, Mr Helman,
9 Graeme Lawrence, Robert Caddies and yourself were on this
10 committee.

11 A. Yes, I can see that.

12
13 Q. Was there such a committee or group that reviewed
14 envelopes?

15 A. No. No, never in my time.

16
17 Q. You are aware that certain allegations against priests
18 were kept in large envelopes?

19 A. Yes, they were.

20
21 Q. They were kept separate from the Diocese's other
22 files?

23 A. They were kept in those envelopes in the safe, yes.

24
25 Q. To your knowledge were two separate sets of records
26 kept, one for the envelopes and one for the records of
27 Bishop Herft?

28 A. You mean general filing records - yes.

29
30 Q. Is it right that meetings would occur from time to
31 time in relation to the contents of the envelopes?

32 A. My understanding is that Bishop Herft would have met
33 with the Chair of the committee, yes.

34
35 Q. When you say the Chair of the committee, are you
36 referring to CASM?

37 A. Yes.

38
39 Q. I want to be quite clear, I am not asking you about
40 CASM because you were never a member of that group, were
41 you?

42 A. No.

43
44 Q. And you were never involved in its meetings?

45 A. No.

46
47 Q. I am asking you about a separate set of meetings that

1 discussed the contents of envelopes. Were you ever
2 involved in those?

3 A. No.

4
5 Q. Can I take you to a document at tab 33, please.
6 His Honour asked you some questions about this document
7 previously. I think you agreed that this was a file note
8 you prepared on about 13 May 1998?

9 A. Yes, that's right.

10
11 Q. Can I take you to the second page of that file note.
12 You will see there is a heading "Record Keeping".

13 A. Yes.

14
15 Q. Can I direct your attention to the second paragraph
16 under that file note. It says:

17
18 *The Chair and the Registrar should be the*
19 *only two people who have access to the*
20 *codes and the reports should be filed in a*
21 *sealed container in a safe within the*
22 *Registry ...*

23
24 A. Yes, I see that.

25
26 Q. You, of course, were the registrar and you wrote this
27 file note. Is this a reference to the envelopes?

28 A. Yes, it is.

29
30 Q. You have written here that you should be permitted
31 access to these envelopes?

32 A. Yes.

33
34 Q. And you did in fact have access to these envelopes?

35 A. I would have had access to them, yes.

36
37 Q. Well, you did, didn't you?

38 A. Yes.

39
40 Q. You will see that this file note goes on to record
41 that:

42
43 *... the Chair and the Registrar should*
44 *liaise at regular intervals to determine*
45 *whether there are any patterns of behaviour*
46 *or involvement emerging from the names of*
47 *claimants and respondents ...*

1
2 A. Yes.
3
4 Q. Does that mean that you and the Chair were to liaise
5 about the contents of the envelopes?
6 A. Yes. I think if she was aware - well, if she was
7 aware that there was a pattern of names appearing, we
8 needed to take action.
9
10 Q. Does that mean that you did in fact look inside to the
11 contents of the envelopes?
12 A. No, I haven't looked inside.
13
14 THE CHAIR: Q. Mr Mitchell, the words don't quite say
15 what you just said.
16 A. Yes.
17
18 Q. The words say:
19
20 *... and the Chair and the Registrar should*
21 *liaise at regular intervals to determine*
22 *whether there are any patterns ...*
23
24 That says to me that you and the Chair are to do this and
25 to make that decision?
26 A. Yes, that's right, but I don't recall actually
27 reviewing them with the Chair.
28
29 Q. So you didn't do what this note said you should do?
30 A. I don't recall it, no.
31
32 Q. That's extraordinary.
33 A. Mmm.
34
35 Q. Isn't it?
36 A. Yes, in hindsight it is. Yes. Well, I don't recall
37 it, I'm sorry.
38
39 Q. You don't recall it?
40 A. Mmm.
41
42 Q. But here you are writing a note effectively recording
43 your obligations and you tell the Commission you never met
44 those obligations?
45 A. I don't recall it, no.
46
47 Q. You don't recall it?

1 A. No.
2
3 Q. Are you being entirely frank when you say that?
4 A. Absolutely.
5
6 Q. You see, information on these files would be, to say
7 the least, unusual, wouldn't it?
8 A. Yes.
9
10 Q. Allegations of sexual impropriety, in whatever form,
11 don't come along every day, do they?
12 A. No, they don't.
13
14 Q. Knowledge of them, I suggest to you, would be likely
15 to stand out in your memory, would that not be right?
16 A. I would think so.
17
18 Q. And accessing the file would be likely to stand out in
19 your memory too?
20 A. Yes.
21
22 Q. You just say you don't recall?
23 A. Well, I don't - I don't recall because I don't think
24 it actually happened.
25
26 Q. So here we are, you have an obligation which you never
27 ever carry out?
28 A. That's possible. Probable.
29
30 Q. Did you fail in other ways in your job as registrar?
31 A. Oh, constantly.
32
33 Q. Sorry?
34 A. Constantly. I'm sorry, that was with reference to my
35 defrauding.
36
37 MS SHARP: Q. This is a file note of a meeting in
38 May 1998 and you did not leave the Diocese until
39 January 2002.
40 A. Yes.
41
42 Q. Are you saying in that four-year or so period between
43 your meeting with Bishop Herft, the Chair of the
44 CASM Committee and the Deputy Chancellor of the Diocese,
45 that you did not at any stage review the contents of the
46 envelopes?
47 A. No, I don't think I did.

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Q. You say you have no recollection of that?
A. That's correct.

Q. Even though there had been a discussion amongst those very senior officials within the Diocese to the effect that the contents should be regularly reviewed to determine whether there were any patterns of behaviour emerging?
A. Yes.

Q. Are you able to indicate why, after this high level meeting that determined it was necessary to determine whether there were patterns of conduct, no steps were taken by you to actually do that?
A. No.

Q. Are you telling the truth?
A. I swore an oath that I would tell the truth. I'm telling the truth.

Q. You will see that this file note that you've written under the heading "Record Keeping" talks about patterns of behaviour or involvement emerging from the names of claimants and respondents.
A. Yes.

Q. Do you agree that the Diocese did collect information regarding the names of claimants and respondents?
A. Yes, the Committee would have.

Q. Do you agree that that information was contained in the envelopes?
A. Yes.

Q. How do you know that if you never looked inside the envelopes?
A. The envelopes were basically made up by the members of the Committee themselves, I think, and the Chair, I would have trusted the Chair.

THE CHAIR: Q. Sorry, what do you mean when you say the envelopes were basically made up by members of the Committee?
A. I think if a member of a committee saw somebody, that member of the committee would make a note and put it into an envelope.

1 Q. Apart from the note from a member of the Committee,
2 what else was in the envelope?

3 A. I don't know. I would have thought file notes from
4 that member of the Committee.

5

6 Q. When you say you don't know, are you saying that
7 because you say you never saw inside an envelope?

8 A. Yes.

9

10 Q. Or no-one ever told you what was there?

11 A. Well, probably both.

12

13 Q. Here we are, you're charged with a regular review and
14 you don't even know what's in the envelope?

15 A. No, no, they were kept confidential.

16

17 MS SHARP: Q. These envelopes were stored in your
18 office, weren't they?

19 A. In a safe in the office, yes.

20

21 Q. So you had access to them at all times?

22 A. Yes.

23

24 Q. It is right that they were stored in an unlocked
25 cabinet in your office?

26 A. No.

27

28 Q. What do you say?

29 A. I say they were stored in a safe in the office.

30

31 Q. It was a safe to which you had access?

32 A. Yes.

33

34 Q. It was a safe to which Bishop Herft had access?

35 A. Not unless he asked for it.

36

37 Q. Did anyone else have access to that safe?

38 A. The Diocesan Secretary had keys.

39

40 Q. I just want to return to that file note I showed you
41 that Mr Cleary made.

42 A. Yes.

43

44 Q. We've heard evidence that you were never a member of
45 the committee on sexual harassment allegations?

46 A. Yes.

47

1 Q. Back to page 2 of this file note at tab 393 - I'll
2 just wait for it to be shown. Assuming for the moment that
3 that file note correctly records what Mr Allen said, he
4 advised that there was a panel comprising the Bishop,
5 Mr Allen, Mr Helman, Graeme Lawrence, Robert Caddies and
6 yourself who would review the brown envelopes. Do you deny
7 on your oath that you were part of a group within the
8 Diocese who reviewed these brown envelopes from time to
9 time?

10 A. Yes, I deny that.

11
12 Q. Could I take you, Mr Mitchell, to a document appearing
13 at tab 400 which is another file note prepared by
14 Mr Cleary. Could I draw your attention to the first page.
15 You will see that that is a file note of 26 March 2015.

16 A. Yes.

17
18 Q. It is of a meeting of Mr Allen, Bishop Thompson and
19 Mr Cleary?

20 A. Yes.

21
22 Q. Can I draw your attention to point 6 on the first
23 page. This records, assuming it be correct, that Mr Allen
24 again advised that Graeme Lawrence, Jim Helman,
25 Bishop Herft, Robert Caddies, yourself, Mr Rosser and
26 Mr Allen were part of an advisory committee about the brown
27 envelopes.

28 A. Yes.

29
30 Q. Do you see that?

31 A. I see paragraph 6, yes.

32
33 Q. Were you a member of this advisory committee?

34 A. No, I'm not aware of any advisory committee.

35
36 Q. Can I now show you a document appearing at tab 399.
37 This is a report that Mr Elliott prepared entitled
38 "The Yellow Envelopes Report". Can I take you to pinpoint
39 reference 2405_R. This depicts, of course, an image of an
40 envelope. Is this the same kind of envelope as was stored
41 in your office?

42 A. The same kind of envelope but I don't recall the
43 various stickers and labels on it.

44
45 Q. But this was the kind of envelope in which that
46 information was stored?

47 A. Yes.

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Q. Just so I understand your evidence, it is that you never looked inside the contents of the envelope?

A. No.

Q. And you were never consulted by anybody in relation to the contents of the envelope?

A. No.

Q. Leaving aside the [CKC] matter, during your time as the Diocesan Registrar, were you ever made aware of any allegations that priests or laypeople associated with the Diocese had engaged in child sexual abuse?

A. There was the matter that I've been asked about otherwise. In terms of Ian Barrack?

Q. I want you to leave that matter aside and I want you to leave aside [CK] --

A. [CKC]?

Q. Anyone else?

A. No.

Q. Is what you're saying the truth, Mr Mitchell?

A. Yes, there was also another one the Royal Commission asked me about, to do - I'm not sure whether it's a pseudonym. May I?

Q. Do you want to look on your list?

A. Thank you. Yes, [CKM].

Q. Thank you.

MS SHARP: I have no further questions.

THE CHAIR: Does anyone else have any questions?

<EXAMINATION BY MR ALEXIS:

MR ALEXIS: Q. Mr Mitchell, Alexis is my name. As you may know, I appear for the Director of Professional Standards and the Business Manager of the Diocese, if you follow.

Sir, could I start with the file note to which his Honour, the Presiding Member, took you initially this morning at exhibit 42-001 at tab 33. There are some

1 aspects to which I don't believe attention has been drawn.
2 Thank you. We know, from your evidence this morning, that
3 this was a typed file note of the meeting that you prepared
4 at which Bishop Herft was in attendance; is that so?

5 A. Yes, that's so.

6
7 Q. If you come down - and if we could scroll on the
8 screen down to the fourth paragraph, commencing with the
9 reference to "Ms Anderson", do you have that?

10 A. Yes, I do.

11
12 Q. You will see in the second or last sentence of that
13 paragraph that you have recorded the following:

14
15 *At the moment, if a complaint is not*
16 *reduced to writing then no further action*
17 *is taken and this may mean that*
18 *inappropriate behaviour goes undetected*
19 *until such times as someone is willing to*
20 *lodge a formal written complaint.*

21
22 Do you see that?

23 A. Yes, I do.

24
25 Q. Should we all understand, Mr Mitchell, that that
26 sentence reflects the position on these issues and the
27 practice of the Diocese of Newcastle under Bishop Herft at
28 the time, namely, May 1998?

29 A. Yes, I think that the way the committee operated was
30 to record written complaints.

31
32 Q. As the author of this file note, what should we
33 understand you intended to record when you referred, as we
34 see at the end of the sentence I've just quoted to you, the
35 reference to the lodgment of a "formal written complaint"?

36 A. That was the practice at the time and I think that's
37 basically saying that that was a potential issue if people
38 weren't willing to reduce their complaints to a written
39 complaint, or in the course of an interview with a
40 counsellor, to reduce it to a written complaint.

41
42 Q. Do we mean by that and should we understand by your
43 explanation that nothing would be done unless a complainant
44 lodged a formal written complaint, that is to say, a
45 complaint in a written form, perhaps by letter or other
46 written means, and received by the Diocese?

47 A. I think we expected it to be, there to be some sort of

1 interview process with counsellors and so forth.

2

3 Q. Can I just get clear with you - should we understand
4 that at the time, May 1998, if a victim of abuse had
5 telephoned and made an oral complaint down the telephone
6 line, that would not be taken further because it wasn't a
7 formal written complaint?

8 A. I think it would depend on the circumstances. If
9 somebody telephoned, they would be given the information of
10 a contact person to speak to and every opportunity given
11 for them to talk to that person. In that context then
12 I would think that that person would write a file note
13 about it.

14

15 Q. And the file note, presumably, would then be placed in
16 one of the yellow envelopes, assuming there existed then a
17 yellow envelope, concerning the person the subject of the
18 complaint; is that right?

19 A. Yes.

20

21 THE CHAIR: Just a minute, Mr Mitchell.

22

23 Q. It doesn't quite say that. The second sentence:

24

25 *At the moment if a complaint is not reduced*
26 *to writing then no further action is taken.*
27 *This may mean that inappropriate behaviour*
28 *goes undetected until such time as someone*
29 *is willing to lodge a formal written*
30 *complaint.*

31

32 A. Yes.

33

34 Q. That's not a note being prepared by someone from the
35 Diocese; that's a complainant lodging their own written
36 complaint, isn't it?

37 A. I think it's making some sort of written complaint,
38 either by the complainant or by a person that they've been
39 speaking to, but sometimes I would --

40

41 Q. That's not what it says.

42 A. Yes, true, that's not what it says.

43

44 Q. Shouldn't we take what it says as being an accurate
45 record of the meeting? It is your note.

46 A. Yes.

47

1 Q. What we should understand correctly is that unless the
2 complainant lodges a written document, the Diocese would
3 take no action; is that right?
4 A. Or one of the counsellors had lodged a written
5 complaint, I think that would also have been - that
6 something had to be reduced to writing, yes, you're right.
7
8 Q. The complainant had to lodge their own complaint in
9 writing, that's what you wrote; correct?
10 A. That's what I've written.
11
12 Q. Isn't that what you wrote?
13 A. Yes.
14
15 Q. And that's the correct position, as you recorded it,
16 I assume?
17 A. Mmm.
18
19 MR HALE: Your Honour, with respect, if I'm reading the
20 right paragraph, it says there:
21
22 *At the moment, if a complaint is not*
23 *reduced to writing ...*
24
25 It doesn't say by the complainant.
26
27 THE CHAIR: Read on. Read on. Read the whole sentence to
28 yourself.
29
30 MR HALE: I've done that.
31
32 THE CHAIR: The last part of the sentence makes plain that
33 inappropriate behaviour may go undetected until such times
34 as someone is willing to lodge a formal written complaint.
35 That's the complainant and he has accepted that.
36
37 MR HALE: There could be another view of that,
38 your Honour.
39
40 THE CHAIR: He has accepted that's what it says.
41
42 Q. That's right, Mr Mitchell, isn't it?
43 A. I think the someone I was trying to articulate was the
44 complainant or a member of the monitoring committee. If
45 that person had talked to --
46
47 Q. You didn't say that.

1 A. I'm sorry, infelicitous words.
2
3 Q. I am sorry?
4 A. I'm sorry, I apologise.
5
6 Q. I am sorry?
7 A. I said I apologise. I'm sorry.
8
9 Q. It is not a question of apology, you didn't say it.
10 You recorded, as you told me, accurately, what was said at
11 this meeting?
12 A. Yes, but I'm also trying to explain that I think that
13 someone refers to either a complainant or a person from the
14 Sexual Harassment Monitoring Committee. I don't think it
15 was intended that a complainant must reduce it into
16 writing. If they'd talked to a Sexual Harassment
17 Monitoring Committee member, that person may have been
18 obliged to write a complaint.
19
20 Q. It doesn't say that, does it?
21 A. I think it does. It says a "complaint" and then
22 "someone".
23
24 Q. There's no question of obligation on a member of the
25 committee to reduce something to writing, is there?
26 A. I think if they've received a complaint, I would have
27 thought they would make a file note about it, yes.
28
29 THE CHAIR: We have exhausted the subject, I think.
30
31 MR ALEXIS: Not quite, if your Honour please.
32
33 Q. Mr Mitchell, assume that a complaint is made by
34 someone subjected to child sex abuse via the telephone and
35 the receiver of that complaint reduces what has been said
36 to writing by way of a file note, I think we reached the
37 point a little while ago that that file note would be
38 placed in the yellow envelope if there was an envelope
39 existing with respect to the person the subject of the
40 complaint; is that right?
41 A. Yes.
42
43 Q. If the person, the subject of the complaint, did not
44 already have a yellow envelope then presumably one would
45 then be created?
46 A. Presumably.
47

1 Q. Having regard to the nature of the allegation?

2 A. Yes.

3

4 Q. And the file note would then be placed into that newly
5 created envelope; is that right?

6 A. Yes.

7

8 Q. The envelope was put in the safe which was in your
9 office?

10 A. Yes.

11

12 Q. By the way, who had the key or combination to the
13 safe?

14 A. I did and the Diocesan Secretary did.

15

16 Q. And who else?

17 A. There was only the two sets of keys.

18

19 THE CHAIR: Mr Alexis, I am sorry but I'll have to put
20 this because what you put doesn't accord with my sense of
21 that paragraph at all. Ms Anderson is recorded as saying
22 that she believes she'll be faced with similar scenarios,
23 particularly as she receives information orally and asks
24 complainants to put their complaints in writing but that
25 there is sometimes a reluctance to do so. That suggests
26 that everything is going back to the complainant.

27

28 MR ALEXIS: I don't disagree with your Honour's
29 construction of that paragraph, that's the way I opened
30 this line of questioning. I am actually dealing with
31 something different, which is what the witness has said
32 about the practice of taking a file note of an oral
33 complaint and putting it in the file and I'm going then to
34 the question of, in effect, what happens next.

35

36 THE CHAIR: Where do you draw the reference to a note of
37 an oral complaint?

38

39 MR ALEXIS: From Mr Mitchell's evidence.

40

41 Q. Mr Mitchell, can we come to the point then? The
42 file note of the complaint having been created and placed
43 into either an existing yellow envelope or a newly created
44 yellow envelope, what would then happen in relation to that
45 complaint?

46 A. Those complaints came from the Sexual Harassment
47 Monitoring Committee personnel. If there was a matter that

1 needed to be followed up then they would advise the Chair
2 and presumably the Chair would advise me if it was required
3 to be followed up through a legal channel, through the
4 police report.

5
6 Q. All right. Can I then come to the next paragraph and
7 you've already confirmed in your evidence this morning,
8 Mr Mitchell, that Mr Rosser, as your note records, provided
9 the advice that we see in the first sentence of that
10 paragraph. You see the reference there to his advice that
11 the Bishop, where possible, ought to decline to accept
12 information or to read any reports. Do you see that?

13 A. I see that.

14
15 Q. You may have already affirmed this, Mr Mitchell, but
16 I gather we should understand that after that advice was
17 tendered to the Bishop by Mr Rosser, from what you could
18 see of the Bishop's practice in relation to these matters,
19 he followed that advice?

20 A. I believe so.

21
22 Q. You will see, towards the bottom of that paragraph,
23 please take time to read the whole paragraph if you wish,
24 the reference in the third last line to the placement of
25 "the Bishop in an invidious position". Do you see that?

26 A. Yes.

27
28 Q. Should we understand that the invidious position being
29 referred to is the position of the Bishop being burdened by
30 information, in the sense that if he received information,
31 that might trigger an obligation, a legal obligation to
32 report?

33 A. I think it comes back more to the pastoral issue, of
34 the Bishop needing to offer pastoral support to people
35 involved and --

36
37 Q. Perhaps you should take time to read the paragraph to
38 yourself, Mr Mitchell. In particular, you'll see in the
39 second sentence there's a reference to Mr Rosser advising
40 that in declining, he should advise the person making the
41 complaint that if the matter is one of criminal offence
42 then he may be obliged to do something under criminal law,
43 et cetera. Do you see that?

44 A. Yes.

45
46 Q. You would agree, wouldn't you, that the invidious
47 position being referred to and the subject of this advice

1 was the Bishop prospectively becoming burdened with
2 information, because it is the receipt of that information
3 that might oblige him to report if it was information
4 concerning a criminal offence?

5 A. Yes, the invidious position is that if the Bishop is
6 put in that position then obviously he has to make a report
7 to the police, which mitigates the way in which he can
8 pastorally responds.

9
10 Q. Yes. The essence of this advice, as you understood
11 it, and it's perhaps plain from your file note, is that the
12 Bishop was advised by Mr Rosser that if he is not receiving
13 information because he declines the opportunity to accept
14 it, then he would not become obliged to do anything with
15 that information?

16 A. I think it was establishing a channel where somebody
17 else would receive the information first and if it was
18 necessary, then refer it to the Bishop.

19
20 Q. Do you see, about three or four lines from the bottom,
21 you've recorded these words:

22
23 *In terms of an interview, it would be*
24 *prudent for the Bishop to make such an*
25 *explanation as early as possible in the*
26 *conversation ...*

27
28 Do you I see that?

29 A. Yes, I do.

30
31 Q. And I gather the point of that advice was to enable
32 the Bishop, if potentially placed in this invidious
33 position, to avoid it at the earliest opportunity?

34 A. Yes, I think it was to say to somebody if you -
35 probably to suggest to somebody that they make the
36 complaint to one of the Sexual Harassment Monitoring
37 Committee contact persons.

38
39 Q. Come over the page, if you would, to the subject of
40 confession. You will see that you have made reference here
41 to Mr Caddies who I think at the time, in May 1998, was a
42 solicitor who from time to time provided advice to the
43 Bishop; is that right?

44 A. That's correct.

45
46 Q. You will see that he apparently, according to your
47 note, had provided some notes to the Bishop on the extent

1 of confession and Mr Rosser was asked to review the notes
2 and to provide, if necessary, further advice on the extent
3 of confessions, particularly whether the definition was
4 wide enough to include an interview rather than a formal
5 confession. Can you assist us with how we should
6 understand that reference in your note, in particular, what
7 do you mean by, "The extent of confession"?

8 A. Without having seen the note, "the extent of
9 confession" I think there refers to the sacrament of
10 confession within the Anglican Church in which someone may
11 wish to confess a sin and seek absolution without
12 necessarily going to the next step of redressing what they
13 had done. Some people I think probably see confession as a
14 way of unburdening themselves and without further
15 consequence and I think some people perhaps from time to
16 time have used the confessional as a way of avoiding that.
17 And so I think part of what that's saying is what forms a
18 formal confession and what forms an interview and where is
19 that line drawn. Yes.

20
21 Q. Can you recall to mind what the object was of seeking
22 to understand at the time whether or not information
23 provided by way of interview might be covered by what
24 I assume was then well understood as the sanctity of
25 confession?

26 A. Sorry, could you repeat that?

27
28 Q. I am seeking to understand from you why it was thought
29 necessary at the time, in May 1998, for this question of
30 whether or not confessions would include an interview, in
31 the context of, of course, what this file note is
32 addressing, namely, information provided of complaints
33 during interview?

34 A. I think if somebody had said, "I've told you something
35 but it's a formal confession, I don't want you to take it
36 any further", then I think the question is well, was that a
37 formal confession or was it just an interview and if it was
38 a formal confession then the bishop or a priest would, if
39 there was something that was illegally confessed, then they
40 would need to say to the confessor that they needed to
41 make - not retribution, they needed to make - they needed
42 to follow that up. In other words, a confession - it is a
43 question about the sanctity of the confessional and whether
44 or not if somebody hears something in the confessional that
45 requires legal action, then they need to be able to
46 actually, at the very least, encourage the person to do
47 that.

1
2 THE CHAIR: Q. Mr Mitchell, the clear reason for this
3 was because if a statement was made in a confession then it
4 would be protected from disclosure.
5 A. Yes.
6
7 Q. That's why this issue was on the agenda and the
8 question was whether or not when someone is given
9 information in an interview, it would be protected?
10 A. Yes.
11
12 Q. That's what was going on, wasn't it?
13 A. Yes.
14
15 MR ALEXIS: Q. Mr Mitchell, can I move to another
16 subject and take you to another file note of yours in
17 exhibit 42-001 at tab 38A. Could we have that on the
18 screen, please. It is plain, isn't it, Mr Mitchell, that
19 at the time of this meeting, which is recorded as having
20 occurred on 3 December 1998, at 12 noon, between
21 Bishop Herft, Mr Hansen and yourself in relation to
22 Mr Rushton's pornography collection, there was uncertainty
23 about whether that collection involved children; is that
24 right?
25 A. Yes.
26
27 Q. That's plain, isn't it, from the fourth paragraph of
28 your file note?
29 A. Yes.
30
31 Q. And so the question that that uncertainty raised was
32 whether or not the Bishop had in addition to, clearly
33 enough, a pastoral issue with Father Rushton, whether he
34 also had a legal issue; correct?
35 A. That was the potential, yes.
36
37 Q. And if the pornography collection included
38 child pornography then it was plain, not just to you but to
39 the Bishop, as far as you could see, that there was a legal
40 reporting issue; correct?
41 A. Correct.
42
43 Q. That uncertainty had to be resolved?
44 A. Yes.
45
46 Q. How was it resolved?
47 A. In the first instance, the first I heard of it was

1 I had a phone call from Farraghers, I think from a manager
2 of Farraghers, who told me that his men had found
3 pornographic material in Rushton's house when they were
4 moving him and we had a discussion about that. Somewhere
5 in that discussion the issue of child pornography arose and
6 I was assured by the manager of Farraghers that it did not
7 include child pornography. Later that pornography was
8 delivered to my office and, as I've said earlier, I looked
9 at the covers of the videos and the spines to see that the
10 labels on the videos corresponded with the covers. Those
11 covers were clearly of homosexual pornography but it was
12 also clear that it was mature men, it was not children or
13 adolescents.

14
15 Q. When you tell us that that issue was clear, you're
16 basing that on what you received in the canvas bag and the
17 plastic bag and we've got the short inventory of videos at
18 38B that you were taken to by Counsel Assisting earlier
19 today?

20 A. Correct.

21
22 Q. Are you telling us that having looked through each of
23 the videos in those two bags, you satisfied yourself that
24 the uncertainty that existed about whether it included
25 child pornography had been resolved?

26 A. There was also, I have been shown since, a letter from
27 Sparke Helmore to Rankin & Nathan which confirms that the
28 material did not, in their view, contain child pornography.

29
30 Q. I will have shown to you, please, Reverend Colvin
31 Ford's letter to the Bishop at tab 37 and --

32
33 THE CHAIR: Is it tab 37 or 34?

34
35 MR ALEXIS: I am sorry, it is tab 37, I do apologise.

36
37 THE CHAIR: Do you want 37 or 34?

38
39 MR ALEXIS: Tab 37.

40
41 THE CHAIR: There is an earlier letter at 34 which is
42 dated 27 November.

43
44 MR ALEXIS: Yes, I appreciate that, your Honour.

45
46 Q. If you look at this letter, you will see that it is
47 dated 2 December 1998 and may I remind you that your

1 file note, to which I've just made reference on the subject
2 of uncertainty, is a file note dated 3 December at 12 noon.
3 Reverend Ford's letter obviously precedes your file note by
4 about a day. Do you see that connection?

5 A. Yes, I see that, yes.

6
7 Q. You will see in the opening paragraph, if you read it
8 to yourself, that by the date of Reverend Ford's letter,
9 written statements had been received concerning the
10 material that had been seen. Do you see that?

11 A. Yes, I see that.

12
13 Q. Between the apparent production of those written
14 statements concerning the subject of what had been seen and
15 the uncertainty that was adverted to in your file note the
16 following day and your subsequent receipt of the two bags
17 of videos the next day that you tell us you looked at, did
18 you ever receive and read the statements to which
19 Father Ford refers to in his letter?

20 A. No.

21
22 Q. We have heard evidence, indeed this morning, from one
23 of the gentlemen that was involved in removing
24 Father Rushton's possessions from his residence and he told
25 us that he was one of the three removalists that signed a
26 statement. He confirmed in his evidence this morning that
27 what he saw included child pornography. Were you either
28 present in the hearing room or in the adjacent room and did
29 you hear that this morning?

30 A. No, I did not hear that.

31
32 Q. Are you able to tell us whether or not, as the
33 Registrar of the day and the one that was involved in at
34 least one meeting with Bishop Herft in connection with this
35 matter, whether the written statements were received?

36 A. I'm not aware that they were received. We received a
37 letter from Sparke Helmore.

38
39 Q. That's the letter - if we could have that up, please -
40 behind tab 39 of exhibit 42-001. Is that the letter you're
41 referring to which reference was made earlier?

42 A. Yes.

43
44 Q. You will see that Mr Deegan at Sparke Helmore, who was
45 representing the interests of the removalists, was writing
46 to Mr Caddies at Rankin & Nathan. Do you see that detail
47 at the top of the letter?

1 A. Yes.

2

3 Q. Should we understand that Mr Caddies was involved or
4 engaged on behalf of the Diocese to intervene and try and
5 assist and resolve this matter?

6 A. Yes.

7

8 Q. Were you the one who provided instructions to
9 Mr Caddies about the situation?

10 A. I would have been.

11

12 Q. Were you involved in discussions with him and
13 Bishop Herft about the subject of defamation?

14 A. I don't have a clear memory of that, but I think I've
15 seen reference to that in some documents I have been
16 provided.

17

18 Q. Could I just raise this for your consideration. Do
19 you recall at the time any discussion, involving
20 Mr Caddies, on the subject matter of what was found at
21 Rushton's residence and the idea that if Farragher Removals
22 said or did anything about it, there might be a defamation
23 action brought?

24 A. My only memory is that the legal advice we got was it
25 was more to do with if the Bishop decided to dismiss
26 Rushton, that the Diocese would possibly face an action
27 against - sorry, for wrongful dismissal.

28

29 Q. That's not what I'm asking you though.

30 A. I know it's not what you're asking me, but that is the
31 only memory I have. I don't actually recall defamation
32 being discussed.

33

34 Q. You will see that there is a reference to that subject
35 matter in the bottom paragraph of the first page of the
36 Sparke Helmore letter that's up on the screen. Could it be
37 scrolled down, please. You will see in that paragraph,
38 just picking up the second sentence, it is said on behalf
39 of John Farragher Removals:

40

41 *Our client wishes to co-operate with your*
42 *client in its enquiries into the matter and*
43 *we note your suggestion that our client may*
44 *be able to rely on the principles of*
45 *qualified privilege ...*

46

47 Do you see that?

1 A. Yes, I see that.

2

3 Q. You may or may not what that is.

4 A. No.

5

6 Q. But you can take it from me that qualified privilege
7 would potentially afford a defence to John Farragher
8 Removals if a defamation action was brought against them.
9 Do you follow?

10 A. I see what you mean.

11

12 Q. I want to come to this point - are you aware who it
13 was that made the suggestion that if Farragher Removals did
14 or said anything about what had been found at Rushton's
15 residence, there might be a defamation action brought
16 against the removalists?

17 A. No, I'm not aware of anybody discussing that.

18

19 THE CHAIR: Ms Sharp, do we have these statements from
20 Sparke Helmore?

21

22 MS SHARP: No, your Honour. In fact, I am seeking to have
23 made available to the Commission the reply that Mr Caddies
24 wrote to that letter on 10 December 1998. We just have to
25 track it down. There might be an error with the document
26 reference.

27

28 I am in a position to advise the Commission that that
29 letter advised that while the statements, if provided,
30 would be kept confidential, no indemnity would be provided.

31

32 THE CHAIR: That may be, but have we asked Sparke Helmore
33 to produce these statements?

34

35 MS SHARP: I will have to make an inquiry about that.
36 I am told that an inquiry has been made of Sparke Helmore
37 and we were advised that no file was available.

38

39 THE CHAIR: Have we served a notice for it?

40

41 MS SHARP: Yes.

42

43 THE CHAIR: We have?

44

45 MS SHARP: Yes.

46

47 THE CHAIR: We should get Sparke Helmore to come and

1 respond to that notice.

2

3 MS SHARP: Yes, I will make some inquiries over the
4 luncheon adjournment, your Honour.

5

6 MR ALEXIS: Q. Mr Mitchell, you will see just after the
7 reference I took you to at the bottom of that letter, to
8 qualified privilege, Mr Deegan at Sparke Helmore goes on to
9 say "However" and then over the page, if you could just
10 follow this with me:

11

12 *... our client [that's Farragher Removals]*
13 *will be prepared to hand over copies of the*
14 *said statements only upon the following*
15 *conditions:*

16

17 Just read those two conditions to yourself, if you would,
18 and then I'll ask you a question about it when you have.

19 A. Yes, I've read it.

20

21 Q. Thank you. You will see in the second paragraph that
22 it was one of the conditions of the handing over of the
23 statements that the Diocese agrees to provide an indemnity
24 in relation to the subject matter there referred to. Do
25 you see that?

26 A. Yes.

27

28 Q. That rather suggests, doesn't it, that at this point
29 in time Sparke Helmore Solicitors had been given to
30 understand that if anything had been said or done about
31 what was seen at Father Rushton's residence, there would
32 have been a defamation action prospectively brought which
33 explains why, as one of the conditions, the removalists
34 were seeking an indemnity from the Diocese. Do you agree
35 with that?

36 A. Yes, I can see that.

37

38 Q. Yes. What can you tell us about that? What
39 instructions were provided by you to Mr Caddies in relation
40 to the way in which this matter, the uncertainty to which
41 we made reference earlier, was resolved?

42 A. I think my - I think the instructions to
43 Rankin & Nathan would have been along the lines of what the
44 Bishop might need to do, depending on whether there was
45 child pornography or not, and the advice that came back was
46 that the pornography was not illegal and it focused on
47 the - it focused on the employment of Father Rushton and

1 what the consequences might be if the Bishop dismissed
2 Rushton on the basis that he owned material that was
3 actually legally available to the general public. I don't
4 recall any detail about defamation being discussed.

5
6 Q. Can you assist us with this - why do you think
7 Farragher Removals, according to Mr Deegan's letter, would
8 want the handing over of the written statements conditioned
9 upon them being kept strictly confidential to the Bishop
10 and his adviser and upon the provision of an indemnity
11 against any action?

12 A. As I say, it wasn't discussed.

13
14 Q. Surely there must have been something in these
15 statements that gave rise to those conditions, don't you
16 think?

17 A. I think we were relying on the general, the overall
18 general note that there was no child pornography there. It
19 seems to me that it's probably a lawyer's response.

20
21 Q. All right. Let me explore a slightly related subject
22 with you. I am taking you, Mr Mitchell, to the statement
23 of Mr Farragher that has been tendered during this public
24 hearing as exhibit 42-022 and if we could have that up on
25 the screen, please. It was a statement given on 2 August
26 2016 and I wish to take you to paragraph 7. Just to
27 explain, Mr Mitchell, Mr Farragher tells us in this
28 statement that he was then and remains the principal of
29 John Farragher Removals Pty Limited; do you follow?

30 A. Yes.

31
32 Q. You'll see in paragraph 7 Mr Farragher tells us that
33 he left things with Jim, that's a reference to a Mr Jim
34 Jackson, his HR manager, to sort out and then he says this:

35
36 *I believe there was an agreement reached*
37 *that the Church would remove the child*
38 *pornography before the move continued.*
39 *This was done and my employees returned the*
40 *next day to complete the move although it*
41 *was a different moving crew.*

42
43 Do you see that?

44 A. I see that.

45
46 Q. What can you tell us about the agreement to which
47 Mr Farragher refers, that is, the agreement reached to

1 remove the child pornography?

2 A. That's the first time I've heard of it.

3

4 Q. Can I move to another matter, Mr Mitchell. You have
5 told us about the occasion when you met Mr Michael Elliott
6 on 25 July 2012?

7 A. Yes.

8

9 Q. That followed a phone call during which Mr Elliott
10 made it plain to you that he was the Professional Standards
11 Director of the Diocese?

12 A. Yes, he did.

13

14 Q. And as I think you've told us in your statement, that
15 was the first contact that you had received from anyone at
16 the Diocese for about a decade or so?

17 A. That's correct.

18

19 Q. It was an unwelcome inquiry - is that how we should
20 understand your response?

21 A. Yes, that's a good word.

22

23 Q. Earlier, when learned Counsel Assisting was asking you
24 about this occasion - and I'm not being in any way critical
25 of you - you became a little emotional about it and should
26 we understand that your experience and recollection of your
27 time at the Diocese was not a happy one?

28 A. That's correct.

29

30 Q. And so naturally I suppose we should understand when
31 you were contacted by someone who is connected with the
32 Diocese, as I've said, it was an unwelcome communication?

33 A. It was an unwelcome communication.

34

35 Q. Nonetheless, you met with Mr Elliott face to face,
36 didn't you?

37 A. Yes, I did.

38

39 Q. And that was at a coffee shop, wasn't it?

40 A. Yes, it was.

41

42 Q. It was a coffee shop where you and he shared a coffee
43 and sat at a small table in company with other people
44 similarly enjoying a coffee and having a conversation?

45 A. Correct.

46

47 Q. When Mr Elliott spoke to you, he spoke to you in a

1 soft voice and with discretion?

2 A. Yes, I would have thought so.

3

4 Q. Having regard to what he was asking you?

5 A. Yes.

6

7 Q. It is clear, isn't it, that when you agreed to meet
8 and indeed did meet with him, you understood that he was
9 there doing his job, asking you questions, to see if you
10 were able to assist him in his inquiries?

11 A. Yes.

12

13 Q. Critically, he was trying to understand what the
14 practice or procedures were (if any) during the time that
15 you were the Registrar to relation to the conduct of
16 complaints in relation to child sex abuse?

17 A. No, I would not characterise it that way.

18

19 Q. All right. You have said in your statement - and
20 indeed, learned Counsel Assisting drew attention to it this
21 morning - at paragraph 58, we don't need to go to it, but
22 you've referred there to the occasion being one where you
23 thought Mr Elliott was, to use your words, quite bullying
24 and intimidatory?

25 A. Correct.

26

27 Q. Do you think that in describing the meeting in that
28 way your view of it might be slightly coloured by your
29 emotional response to being contacted by someone from the
30 Diocese in the way that we've already discussed?

31 A. Very slightly. In my view, it was a most
32 unprofessional meeting.

33

34 Q. I gather your sense of it being unprofessional was a
35 sense that you got quite early in the discussion?

36 A. Yes, it was.

37

38 Q. So I gather you could have stood up and said, "Nice to
39 meet you, Mr Elliott, but I'm out of here pretty quickly",
40 if you wanted to?

41 A. I was enjoying the coffee.

42

43 Q. In any event, should we understand that as a result of
44 this meeting with Mr Elliott, that you felt that you were
45 somewhat emotionally bruised by the experience?

46 A. Yes, I was.

47

1 Q. So emotionally bruised that you thought it was
2 necessary to send Mr Elliott a letter the following day?

3 A. Correct.
4

5 Q. And the letter that you sent was quite a detailed
6 letter, indeed, it ran over some 2 and a half, nearly three
7 pages, which I gather you commenced to write shortly after
8 the meeting concluded?

9 A. Shortly after, yes. I wanted to write while it was
10 still fresh in my memory. I'm very conscious my memory is
11 not great. I felt that I should write my reactions,
12 especially after I phoned him after lunch, we had agreed to
13 meet once more, and after lunch I phoned him because I was
14 just absolutely gutted, to use a vulgar term, about the
15 conversation, and he kept saying, you know, "They have
16 dobbed you in", "They are doing this", "They are",
17 whatever. And I rang him to say, "Who are we talking
18 about? What are you actually specific about?" And when he
19 said, "I can't tell you that", or something like, "I can't
20 tell you that", or, "I won't tell you that now; read
21 between the lines", I'm afraid I decided to read between
22 the lines. I felt that I needed to refute, because he
23 didn't actually ask about procedures and practices, as you
24 said. What he did was download an awful lot of information
25 about people, most of whom I didn't know, and about events
26 that I wasn't aware of and I felt that in the few instances
27 where I did have some memory, that I needed to refute that.
28

29 Q. Have you read your letter which has been reproduced in
30 exhibit 42-001 at tab 306?

31 A. Yes.
32

33 Q. Have you read that letter recently?

34 A. I've read it in the last few days, yes.
35

36 Q. You would be well aware, therefore, that
37 notwithstanding the detail that you've set out in the
38 letter about the conversation that you had with him, there
39 is nothing in the letter that suggests that during this
40 conversation Mr Elliott was a bully?

41 A. I felt bullied.
42

43 Q. Thank you, but could you answer my question? There's
44 nothing in the letter, is there, which suggests in any way
45 that during the course of this meeting Mr Elliott was a
46 bully?

47 A. I may not have used those words in the letter, no.

1
2 Q. There's nothing in the letter at all, is there,
3 Mr Mitchell, to suggest that during this meeting Mr Elliott
4 intimidated you or that you felt in any way intimidated by
5 the discussion with him?
6 A. One of the phrases he used was, "If you're not part of
7 the solution, you're part of the problem." I took that to
8 be intimidatory.
9
10 Q. Thank you, but could you answer my question? There is
11 nothing in the letter, is there, which suggests in any way
12 that Mr Elliott intimidated you or that you felt
13 intimidated during the course of this meeting?
14 A. I don't have the letter in front of me, but if you're
15 telling me that it's not articulated in the letter then
16 it's not articulated in the letter.
17
18 Q. Would you like the opportunity to look at it?
19 A. No, it's fine, I believe you.
20
21 Q. I have looked at it fairly closely, Mr Mitchell.
22 A. I'm sure you have.
23
24 Q. There's just one other aspect I want to take up with
25 you about this. You suggested in your evidence earlier
26 this morning - and indeed, it is also referenced in your
27 letter in paragraph 2 at the foot of the first page - that
28 he, Mr Elliott, said that he would arrange an indemnity for
29 you?
30 A. Yes.
31
32 Q. It is not apparent from your letter and it is
33 certainly not apparent from your evidence this morning
34 whether you meant by that an indemnity from the DPP against
35 criminal prosecution, or an indemnity from the Diocese in
36 relation to any civil claim.
37 A. I think I understood it to be an indemnity from
38 appearing at the Royal Commission.
39
40 Q. I see. Is it your evidence that Mr Elliott used words
41 that conveyed that impression to you?
42 A. Yes.
43
44 Q. You thought that Mr Elliott was in some way able to
45 provide or facilitate an indemnity in relation to this
46 Royal Commission?
47 A. That's the proposition he put. I did not believe it,

1 but that's the proposition he put.

2

3 Q. Can I suggest to you for your consideration,
4 Mr Mitchell, that Mr Elliott suggested to you during this
5 meeting that you might like to consider your position and
6 that he would be happy to make contact with investigating
7 police and he'd be happy to accompany you to the police
8 station so that you could go and talk to them about what
9 you know?

10 A. No, he certainly made no such suggestion.

11

12 Q. And he suggested to you that it was in the result of
13 that that there might be an opportunity to explore some
14 options and if there was an issue concerning criminal
15 liability, there may then be an opportunity to discuss an
16 indemnity?

17 A. No, we didn't - no.

18

19 Q. You reject what I suggest to you?

20 A. I reject that, yes.

21

22 MR ALEXIS: Thank you, Mr Mitchell.

23

24 THE CHAIR: Does anyone else have any questions?

25

26 MR HEALY: Yes, I have a question.

27

28 <EXAMINATION BY MR HEALY:

29

30 MR HEALY: Q. My name is Healy and I appear on behalf of
31 Bishop Herft. In relation to the production of these
32 documents in relation to [CKC]'s trial, is that something
33 you attended to by yourself?

34 A. Yes, I think so.

35

36 Q. It is not something that you involved Bishop Herft
37 with in relation to preparing documents to respond to that
38 subpoena?

39 A. No, not beyond probably telling him that we had
40 received a subpoena and we needed to produce these
41 documents; he would have had no involvement.

42

43 Q. At any time during the period 1992 through to 2005,
44 did you attend any meeting with Keith Allen and
45 Bishop Herft in relation to which sexual abuse of a child
46 was discussed in relation to a member of the clergy?

47 A. I don't recall such, no.

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Q. You said you had weekly meetings with Bishop Herft in relation to the [CKC] matter?

A. Just weekly meetings and [CKC] was on the agenda of those meetings.

Q. Are you able to say when those meetings in relation to the [CKC] matter first started?

A. Oh, soon after we first were aware that [CKC] had been charged and so at the weekly meeting I would either say, "There have been no further developments", or, "This week we've received a subpoena", or, "This week I've taken some legal advice", or something like that. It was on an ad hoc basis but it was on the agenda.

Q. You were asked a question by Mr Alexis just a moment ago in relation to the advice provided by Paul Rosser QC at that meeting in 1998?

A. Yes.

Q. You were asked a question: Did Bishop Herft follow that advice in relation to how you were supposed to control the information that he was receiving in relation to complaints being made. Do you recall that question was put to you?

A. Yes.

Q. Then you were asked a question: Did Bishop Herft follow that advice? Do you recall that?

A. Yes.

Q. And you answered "Yes" in relation to that?

A. Yes.

Q. Do I also understand that it's your evidence that at no time did you actually sit in on any meetings with Bishop Herft in relation to where sexual misconduct or abuse matters against children or adults was discussed?

A. Sorry, could you ask that again?

Q. Do I also understand your evidence to be that at no time during 1992 through to 2005, that you attended any meetings with Bishop Herft in relation to where sexual misconduct or abuse by members of clergy of children or adults was discussed?

A. No, I don't recall.

1 Q. So you wouldn't know what Bishop Herft's attitude was
2 in relation to how he dealt with matters of complaints
3 being made against clergy?

4 A. In a general sense, yes, certainly. I think
5 Bishop Herft took matters very, very seriously. In my
6 experience with Bishop Herft, he did not resile from making
7 difficult decisions.
8

9 Q. Could the witness please be shown document
10 ING.0482.001.0026.
11

12 MS SHARP: Your Honour, if I may interrupt my friend at
13 this stage. It was requested that that document be
14 tendered and I will do so now. It is a copy of "Safety and
15 Care. Guidelines for Care in Working with Children and
16 Youth in the Anglican Diocese of Newcastle". I will hand
17 up these copies now.
18

19 THE CHAIR: I will mark that document exhibit 42-046.
20

21 **EXHIBIT #42-046 COPY OF DOCUMENT TITLED SAFETY AND CARE.**
22 **GUIDELINES FOR CARE IN WORKING WITH CHILDREN AND YOUTH IN**
23 **THE ANGLICAN DIOCESE OF NEWCASTLE**
24

25 MR HEALY: Q. Could you please go to page 2 of that
26 document. Do you see that is headed "Safety in Care.
27 Guidelines for Care and Working with Children and Youth in
28 the Anglican Diocese of Newcastle"?

29 A. Yes, I can see the title, yes.
30

31 Q. Could you go through to page reference 2-9, the fourth
32 page. Could you scroll in in relation to the copyright
33 information there at the top of the page:
34 "Anglican Diocese of Newcastle 1995. First Edition
35 June 1995"?

36 A. Yes, I see that.
37

38 Q. Was this a document prepared by the Diocese of
39 Newcastle in relation to safety and care in dealing with
40 youth within the Diocese?

41 A. Yes, it would appear so.
42

43 Q. You were aware of that publication being produced
44 within the Diocese at that time?

45 A. I've only just seen it again, but yes, I think that is
46 true.
47

1 Q. That was a policy document that Bishop Herft had
2 introduced into the Diocese to provide guidelines in
3 relation to working with children and youth within the
4 Diocese?
5 A. Yes.
6
7 Q. Would you go through to page 6-4. Would you scroll to
8 the top of that page. You will see that that's a Child
9 Sexual Abuse Report Form?
10 A. Yes, I can see that.
11
12 Q. That report form is an attachment to this guideline
13 and you see that there it has "Responsible Body", "Person
14 Completing the Form" and "Name of the Child"?
15 A. Yes.
16
17 Q. Anybody could complete this form to report an
18 allegation in relation to abuse that had been reported to
19 them, in relation to a complaint being made by a child?
20 A. Yes, that would be right.
21
22 Q. It didn't just have to be completed by a complainant?
23 A. Yes.
24
25 Q. Or by the child? The purpose of this document was for
26 anyone who had that information to report it and this is
27 the documentation that was in existence as at 1998 when you
28 had the meeting with Paul Rosser and Bishop Herft --
29 A. Yes, it would have been.
30
31 Q. -- in relation to dealing with complaints?
32 A. Yes.
33
34 Q. At that time, although Paul Rosser gave advice in
35 relation to how Bishop Herft should handle information
36 being provided to him, there was already a policy within
37 the Diocese in relation to how complaints were to be
38 managed?
39 A. Yes, okay.
40
41 Q. Do you accept that that policy was for the complaints
42 to be recorded in writing on a document such as this and
43 then reported through the Diocese?
44 A. Yes, that's right.
45
46 MR HEALY: I have no further questions.
47

1
2
3 <EXAMINATION BY MR O'BRIEN:
4

5 MR O'BRIEN: Q. O'Brien is my name and I represent
6 [CKA], Paul Gray and [CKG]. While that is on the screen,
7 I want to ask you about it in reference to the meeting that
8 you had and about which you were asked at tab 33. That's a
9 meeting on 13 May 1998 between yourself, Herft, Anderson
10 and Rosser. Do you remember being asked about that
11 meeting?

12 A. Yes.

13
14 Q. And your notes from that meeting?

15 A. Yes.

16
17 Q. It is clear that that meeting was, to quote you:

18
19 *... to discuss an appropriate response when*
20 *individuals provide information to the*
21 *Bishop regarding allegations of sexual*
22 *misconduct ...*

23
24 A. Yes.

25
26 Q. Do you see that?

27 A. Mmm-hmm.

28
29 Q. There's nowhere in the narrative of that document any
30 reference to that form or indeed that policy, is there?

31 A. No, there's not.

32
33 Q. Have you any reason for that?

34 A. That wasn't the purpose of the meeting, I think. If
35 you read the first line:

36
37 *The purpose of the meeting was to discuss*
38 *an appropriate response when individuals*
39 *provide information to the Bishop regarding*
40 *allegations of sexual misconduct and then*
41 *insist that they do not wish the matter to*
42 *go any further.*

43
44 That was the focus of the meeting, what happens if people
45 say, "This has happened but I don't want anything else to
46 happen. I don't want anything else to go further."
47

1 Q. There was no discussion at that meeting about this
2 particular policy?
3 A. No.
4
5 Q. And this particular form?
6 A. No, not at that meeting.
7
8 Q. And so when you were asked by Mr Alexis, earlier on
9 this afternoon, about the need for a person to lodge a
10 written complaint were you referring to that form?
11 A. Not necessarily.
12
13 Q. Whilst we've got that up I want to just follow on from
14 some of the questions that Mr Alexis asked you. Tab 42
15 contains a file note of a telephone conversation between my
16 client, Mr [CKA], and Graeme Lawrence. Do you understand
17 that? You will see it shortly.
18 A. Yes, I see that.
19
20 Q. This is a telephone conversation, it seems
21 uncontroversial, which was taken when [CKA] called a
22 helpline run by the Church. Do you understand that?
23 A. Yes, I can understand that.
24
25 Q. The helpline was answered by Graeme Lawrence, it
26 appears, at a quarter to nine on a Friday evening, do you
27 see?
28 A. Yes.
29
30 Q. And in that file note, you can accept from me, rather
31 than having to read it all and taking the time to do so,
32 that [CKA] made an unequivocal complaint about having been
33 sexually abused as a child by [CKC]. Do you accept that?
34 A. Okay.
35
36 Q. On your evidence earlier, both in response to
37 his Honour's questions and Mr Alexis's questions, this is
38 the type of document which would go into a yellow file, is
39 it?
40 A. Yes.
41
42 Q. Do you know if it did?
43 A. No, I don't know.
44
45 Q. But you would expect that that's where Graeme Lawrence
46 would have put it?
47 A. Yes, I'd expect that.

1
2 Q. I want to change to a slightly different topic now and
3 ask you about your evidence that you only learnt of the
4 charges against [CKC] after you had been charged. Do you
5 remember saying that earlier today?
6 A. Yes, I do.
7
8 Q. I want you to accept the following. It is in evidence
9 and undisputed that, obviously, as early as January 1999,
10 Graeme Lawrence - you've seen the file note there - knew of
11 the allegations against [CKC] involving child sexual abuse;
12 right?
13 A. Okay.
14
15 Q. There is an assertion also that he knew about it as
16 early as 1996. Do you understand that?
17 A. I understand you're making that assertion, yes.
18
19 Q. That's in the evidence, do you understand that?
20 A. Okay.
21
22 Q. We know that, in addition to that, Roger Herft knew
23 about the allegations in January of 1999. Do you
24 understand that?
25 A. I understand that.
26
27 Q. Indeed, Paul Rosser, as the Chancellor knew about the
28 allegations against [CKC] in 1999, in January of 1999. Do
29 you understand that?
30 A. Okay.
31
32 Q. In addition, Richard Appleby has given evidence that
33 he knew about the allegations in the middle part of 1999.
34 Do you understand that?
35 A. I understand that.
36
37 Q. He says he was contacted by Keith Allen, so, based on
38 Mr Appleby's evidence, Mr Allen knew about the allegations
39 in the middle of 1999. Do you understand that?
40 A. I understand that, yes.
41
42 Q. You, however, say that you didn't know about the
43 allegations until February 2000. Do you maintain that?
44 A. Yes.
45
46 Q. Your very close friend and confidant, a warden of his
47 parish, I believe--

1 A. Yes.

2

3 Q. -- was facing at that stage very serious and grave
4 allegations?

5 A. Yes.

6

7 Q. Known, it appears, by people working close to you and
8 surrounding you, including Lawrence, Herft, Rosser and
9 Appleby and possibly also Allen. Do you see that?

10 A. I see that.

11

12 Q. Did they shield you from this information that your
13 friend was facing serious child assault actions, did they?

14 A. They must have, because my memory is that I didn't
15 know until I saw those file notes of the telephone calls.

16

17 Q. Are you seriously suggesting that all of those people
18 knew about it and you, working with them closely, meeting
19 them frequently, were not told about what was going on in
20 your good friend's life?

21 A. Yes, no-one said anything to me about that before
22 those file notes were produced.

23

24 Q. I suggest, sir, that you knew in 1999 and you have
25 been untruthful in relation to your evidence as to your
26 knowledge of the allegations against [CKC]?

27 A. No, I don't believe so.

28

29 THE CHAIR: Mr O'Brien, we might stop there for lunch.
30 We will adjourn.

31

32 **LUNCHEON ADJOURNMENT**

33

34 MR O'BRIEN: Q. Mr Mitchell, do you recall writing
35 a letter to the Director of Public Prosecutions in October
36 of 2001, after the completion of the [CKC] trial?

37 A. No, but I've seen that document, yes.

38

39 Q. That is tab 92, so I would ask that you be shown it on
40 the video screen. There we have a letter to the then
41 Director of Public Prosecutions, Mr Nicholas Cowdery QC.

42 A. Yes.

43

44 Q. It is dated 3 October 2001. Do you see that?

45 A. Yes, I do.

46

47 Q. This was after the matter had finished within the

1 District Court, Newcastle; is that so?

2 A. That's so, yes.

3

4 Q. You were then complaining in this letter, if I can
5 just take the tenor of it and suggest it to you, about the
6 manner of the prosecution; correct?

7 A. Correct.

8

9 Q. I want to take you down through to the third
10 paragraph. I would ask that you be shown it on the
11 television screen. It has helpfully been marked up there,
12 the very paragraph that I am interested in asking you
13 about, because it says in your correspondence to the
14 Director:

15

16 *This office provided evidence in response*
17 *to a subpoena issued by the defence.*

18

19 Pausing there, that is a reference to the subpoena you have
20 been asked about by Counsel Assisting; correct?

21 A. Correct?

22

23 Q.

24 *We also obtained information at the request*
25 *of the DPP (which was not collected as*
26 *arranged) ...*

27

28 And I think that that is a reference to the Register of
29 Services; is that the case?

30 A. Either that or the Year Books, I'm not sure.

31

32 Q. Very well. And then you have said:

33

34 *We were therefore surprised that the DPP*
35 *was quoted in a television report as saying*
36 *"the Dean's Office was unwilling to*
37 *assist".*

38

39 And you go on to say:

40

41 *This comment is quite untrue, as the Dean's*
42 *office was not contacted.*

43

44 Do you see that?

45 A. Yes, I do.

46

47 Q. That's not the case, is it?

1 A. No, it's not the case.
2
3 Q. That is an untrue assertion to the Director of Public
4 Prosecutions of this State, isn't it?
5 A. It is.
6
7 Q. You have been shown earlier on, when Counsel Assisting
8 was asking you questions, the police officer's notebook
9 which demonstrates that during the course of their
10 investigation they contacted, it appears, Graeme Lawrence,
11 the Dean of the registry; correct?
12 A. The Dean of the Cathedral.
13
14 Q. Of the Diocese, yes.
15 A. Yes.
16
17 Q. He was asked about dates, it appears from that
18 file note; correct?
19 A. From that police file note, yes, but I wasn't aware --
20
21 Q. Where did you get the information from that the Dean's
22 office was not contacted? Is that something that Lawrence
23 told you, is it?
24 A. No, it is not.
25
26 Q. Is that something you just made up?
27 A. It's something that I've written which I now know is
28 not true.
29
30 Q. Well, it's a lie, isn't it?
31 A. Mmm.
32
33 Q. It is, isn't it?
34 A. It's not true, Mmm. The Dean's office was contacted.
35
36 Q. And it's something you knew was not true at the time
37 you wrote the letter to the Director of Public
38 Prosecutions?
39 A. No, I don't believe so.
40
41 Q. Moving then to this subpoena that you have been asked
42 questions about, I want to take you to tab 99 and you can
43 be shown it so it is clear to you. It is also some
44 correspondence but this time to Mr [CKA] in relation to the
45 outcome of the trial. Do you remember writing to him in
46 October of 2001 in relation to his concerns as to the
47 outcome of the trial?

1 A. Only after I have been shown these documents, yes.
2
3 Q. You were shown these documents earlier today, weren't
4 you?
5 A. Yes.
6
7 Q. You will see that you have recorded in the second
8 paragraph there that you sought some legal advice as to
9 whether such records could be withheld from communication
10 to constitute a confession, et cetera?
11 A. On the grounds of privilege, yes.
12
13 Q. Where did you get that from?
14 A. I see, yes, the line above:
15
16 *The advice given was that unless*
17 *communication constituted a confession ...*
18
19 Yes.
20
21 Q. What you understood to be a complaint made by [CKA] in
22 early correspondence was that he was concerned, amongst
23 other things, that, in particular, the file note which was
24 recorded by Graeme Lawrence had been provided to the
25 defence via the subpoena; that's right?
26 A. Yes, I believe so, yes.
27
28 Q. You have said in this correspondence to him, in reply,
29 you got legal advice about whether you could release that?
30 A. Yes, that's right.
31
32 Q. You got that legal advice, yourself, did you?
33 A. On behalf of the Diocese, yes.
34
35 Q. Who suggested you might get legal advice?
36 A. I'm not sure whether it was myself or the Bishop and
37 myself talking about it.
38
39 Q. It obviously caused you some pause for thought that
40 you were dealing with what was purportedly a confidential
41 conversation over a hotline which had been transcribed in
42 a file note; correct?
43 A. Correct.
44
45 Q. In that conversation there was obviously a thought, at
46 least in the person who is ringing the hotline, that the
47 conversation would be confidential; correct?

1 A. Correct.
2
3 Q. And so it concerned you that at the time when the
4 subpoena had been issued, that there might be some
5 privilege attached to that conversation and the file note
6 attributable to it; correct?
7 A. Correct.
8
9 Q. You got some legal advice from whom?
10 A. From Rankin & Nathan.
11
12 Q. Say that again?
13 A. From Rankin & Nathan.
14
15 Q. Was that Mr Caddies who provided that advice, was it?
16 A. I believe so, yes.
17
18 Q. Written advice?
19 A. Yes.
20
21 Q. Have you any idea where that advice went?
22 A. Where it went?
23
24 Q. Yes.
25 A. The advice?
26
27 Q. The advice.
28 A. The advice: it's basically the letter that you see in
29 front of us.
30
31 Q. This is a letter to Mr [CKA].
32 A. Yes.
33
34 Q. Let me be more clear about it because it wasn't
35 a clear question, I apologise. The letter of advice from
36 Mr Caddies in relation to the privilege issue attached to
37 the confidential conversation between [CKA] and Lawrence,
38 where is that letter, do you know?
39 A. I don't know where the letter is.
40
41 Q. Where would it have gone once you had received it?
42 A. I'm not sure which file it would have gone into.
43
44 Q. Would it have gone into the [CKC] file?
45 A. It's possible.
46
47 Q. If you had received that, it would have gone into the

1 [CKC] file which has been produced by the Diocese to this
2 Royal Commission, it appears?

3 A. The [CKC] file?
4

5 Q. Yes, but there is no written advice in that material,
6 it appears.

7 A. There is a letter, I'm sure, from Rankin & Nathan in
8 the documents that have been provided to me.
9

10 Q. In relation to the advice you got on the privilege
11 issue associated with this January 1999 conversation, you
12 say it's there, do you?

13 A. I believe so. Sorry, where - this is - what date is
14 this? I can't see the date. October, wasn't it, yes. So
15 we got advice from Rankin & Nathan --
16

17 Q. In writing?

18 A. In writing - on how to respond to [CKA]'s letter about
19 what he thought was a break down in the confidentiality of
20 those documents and the Rankin & Nathan advice is basically
21 the letter that I've written; I've basically cut and pasted
22 their letter.
23

24 Q. Let me go back a step and break this down a bit. When
25 you received the subpoena and you had concerns about the
26 documents related to the conversation, did you get advice
27 at that time?

28 A. I believe so, yes.
29

30 Q. Was that written advice?

31 A. Yes, it would have been.
32

33 Q. From Caddies?

34 A. Well, from Rankin & Nathan.
35

36 Q. What happened to the written advice you got in
37 relation to the subpoena and the question of the privilege
38 over that conversation?

39 A. Well, it's either in [CKC]'s file or it might be in
40 a legal advice file.
41

42 Q. You see, I suggest to you you never got advice at all
43 about the privilege attached to that material and what you
44 have said to [CKA] here is an outright lie?

45 A. No, I believe we did.
46

47 Q. You got retrospective advice at best from Caddies

1 about the production of that material on subpoena?
2 A. No, I don't believe so.
3
4 Q. The fact is, sir, I suggest to you, you were more than
5 happy - more than happy - to hand over to Mr Allen --
6
7 MR HALE: Your Honour, could my friend show this witness
8 tab 97 and possibly tab 98, please?
9
10 THE CHAIR: You can do that in due course.
11
12 MR HALE: Thank you, your Honour.
13
14 THE CHAIR: Mr O'Brien can take the course he wishes to
15 take.
16
17 MR O'BRIEN: Q. I will show you that tab that your
18 counsel has referred us to because it might be that we are
19 at cross-purposes. Tab 97. You see this is a letter from
20 Rankin & Nathan, the lawyers that you were being advised
21 by?
22 A. Correct.
23
24 Q. You will see it is dated 16 October 2001?
25 A. Yes.
26
27 Q. This was after the trial has run its course?
28 A. Yes.
29
30 Q. You see that the letter says:
31
32 *We enclose a letter to form the basis for*
33 *a reply by the Bishop.*
34
35 A. Correct.
36
37 Q. Let's have a look at the attachment to that letter,
38 please. It is the next document. You will see that there
39 is an attachment which says very similar to the words that
40 you have put in your letter, you see?
41 A. Correct, yes.
42
43 Q. I am asking you where is the letter of advice that you
44 received when dealing with this issue when the subpoena had
45 been produced?
46 A. I don't have access to any records. I can only go by
47 what I have been provided with. But that was - the

1 subpoena that I received was the first subpoena I have ever
2 received and I'm quite sure that we took advice as to what
3 we could provide under that subpoena, whether there were
4 things that needed to be held back because of
5 confidentiality or privilege purposes.
6

7 Q. You specifically recall receiving written advice from
8 Caddies, or from this law firm, as to the privilege
9 attached to that conversation with Lawrence in January of
10 1999, do you?

11 A. I don't recall anything without seeing documents.
12 What I do know is that I'm quite convinced that I asked for
13 that advice and when I look at the way in which I responded
14 to the subpoena, it seems to me that that includes a form
15 that would have been suggested by legal advice.
16

17 Q. I am suggesting to you that there is no written form
18 of advice in relation to that subpoena privilege issue. Do
19 you understand what I'm saying now?

20 A. I understand what you're saying now.
21

22 Q. That seems, it appears, at odds with your evidence; do
23 you understand?

24 A. That we had advice?
25

26 Q. You were provided with the subpoena by letter from
27 Mr Allen on 18 April 2001. Do you understand that?

28 A. Yes.
29

30 Q. You produced the material in accordance with the
31 subpoena on 26 April 2001. Do you understand that?

32 A. Okay. Yes.
33

34 Q. You say that you received written advice from the law
35 firm between 18 April and 26 April 2001?

36 A. Yes, I believe so.
37

38 Q. I am here to tell you there is nothing in the material
39 that has been uncovered by the Royal Commission suggesting
40 that any written advice was received by Caddies, or any
41 other law firm, in relation to the privilege issue. Do you
42 see that?

43 A. I see that; it doesn't change my view.
44

45 MR HALE: Perhaps it's a misunderstanding, I can raise
46 this when I get my turn, but at tab 6 there is a statement
47 from Mr Caddies that discusses a response to a subpoena.

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THE CHAIR: You can raise that when you have your turn.

MR HALE: Thank you, your Honour.

MR O'BRIEN: Q. Let's assume that you got the advice and let's assume that the reason you got the advice was because you were concerned that producing this material might be unfair; is that the case?

A. Yes.

Q. You certainly saw producing a confidential file note about a conversation with a caller claiming child sexual abuse had occurred to them at the hands of a clergy, would be a very delicate thing to be dealt with in accordance with a subpoena?

A. Correct.

Q. And it would potentially be very unfair to the person who was making the complaint to release it on a defence subpoena; correct?

A. Yes.

Q. Once you'd received this subpoena in April of 2001, it was then incumbent on you, as the Registrar, to then find all the material which was producible under the terms of the schedule of the subpoena; correct?

A. That's right, yes.

Q. You needed to do that, obviously, with reference to finding out where this material might be?

A. Mmm-hmm.

Q. Is that right?

A. Yes.

Q. You said to me earlier on that you expected that the Lawrence document that had been described as a file note from the telephone conversation with Mr [CKA], had gone, you would expect, into a yellow file; correct?

A. Yes, I would expect so.

Q. You would have had to use your key to the safe, open the yellow file and retrieve the documentation; is that right?

A. That would be right.

1 Q. And is that what you did?
2 A. I would - that would be right. I don't recall but
3 I must have.
4
5 Q. It must have been what you did?
6 A. It must have been, yes.
7
8 Q. You must have gone into the safe and picked up the
9 yellow file referable to [CKC]; correct?
10 A. It must have been, yes.
11
12 Q. And then you would have gone through, leafed through
13 the material; correct?
14 A. Yes.
15
16 Q. And found all of the material producible under the
17 subpoena?
18 A. Yes.
19
20 Q. And according to your legal advice you say you had,
21 produced that within a week or so to the court?
22 A. Yes.
23
24 Q. So you did access the yellow folder, at least it
25 appears?
26 A. I must have done. I must have done, yes.
27
28 Q. So your evidence in relation to not looking in yellow
29 envelopes, that you gave to Counsel Assisting, is obviously
30 wrong, isn't it?
31 A. In that instance.
32
33 Q. Just in that one instance?
34 A. Well, as far as I recall, yes.
35
36 Q. You see, I am going to suggest to you bluntly that you
37 are being totally and completely untruthful when you say
38 that you didn't have access to these yellow folders,
39 aren't you?
40 A. I said I had access.
41
42 Q. You had access and you utilised your access, you
43 opened them and you inspected them from time to time,
44 didn't you?
45 A. I think I have already said that I was supposed to do
46 that but I failed to do that.
47

1 Q. You said you never looked in the yellow envelope and
2 it appears quite obviously you did; is that so?

3 A. I had to have done.
4

5 Q. Your evidence in that regard was hopelessly wrong,
6 wasn't it?

7 A. No. I think I've tried to explain that, that I've
8 obviously had to look in those, one of those envelopes in
9 relation to the matter of [CKC]. I have no memory of any
10 other.
11

12 Q. Well, come on, sir --
13

14 THE CHAIR: Q. How did you know which was the envelope
15 relevant to [CKC]?

16 A. I presume it had a name on it.
17

18 Q. On the outside?

19 A. Yes.
20

21 MR O'BRIEN: Q. Mr Allen --

22 A. No, I'm not Mr Allen, I'm sorry.
23

24 Q. I am sorry, I don't know how I could confuse you.
25 Mr Mitchell, you knew, when you came to this
26 Royal Commission, and you knew in the months and even the
27 years leading up to this Royal Commission, that the
28 existence of the yellow envelopes was an important feature
29 of what this Commission would be inquiring about,
30 didn't you?

31 A. I frankly didn't really think a lot about, with due
32 respect, what the Royal Commission would be asking about.
33 In my administrative life, the yellow envelopes were not
34 a major part of my job so, no, I didn't come here to lie,
35 I came here to tell the truth.
36

37 Q. That wasn't the question that I was asking you,
38 whether you came here to tell lies.

39 A. I'm sorry, I forgot the - I lost the question.
40

41 Q. I am suggesting to you that you knew you would be
42 asked about the existence of these yellow envelopes?

43 A. Yeah, I probably did.
44

45 Q. And so you obviously turned your mind and did all the
46 mental thought and consideration that you could have
47 brought to bear on this particular topic; correct?

1 A. Yes.

2

3 Q. But you have obviously not got it right in relation to
4 at least one envelope, is that the case?

5 A. That's the case, yes. I can only go from a very, very
6 fragmented memory at my time of the Diocese. Basically,
7 what I have been doing is responding to documents in front
8 of me.

9

10 Q. Unless the document is in front of you, you don't have
11 any idea what happened?

12 A. Not very often.

13

14 Q. That is totally implausible?

15 A. Well, I'm sorry to tell you but that's the way my mind
16 has worked over the last 14 years. I have spent so much
17 time trying to suppress what I did, which was, I know -
18 I mean, obviously, it was a criminal act, but it was more
19 than that. It was a deeply traumatic act for me as well as
20 it was for the rest of the Diocese. I have absolutely
21 shamed myself in what I have done to the people I worked
22 with and I find it really traumatic and I do not recall
23 very much about my time at the Diocese.

24

25 Q. I suggest to you this concept, this approach, this
26 mechanism of only responding and recalling when documents
27 are put in front of you, is an act of recalcitrance; you
28 are just not prepared to accept evidence unless it's in
29 front of you on a document?

30 A. I'm sorry, that's not true. I want to help. I think
31 what the Royal Commission is doing is a very good cause and
32 I would like to be able to help, but I do not recall.

33

34 Q. I want to show you a newspaper article.

35 A. Yes.

36

37 Q. It is at tab 91. Do you remember after the trial had
38 run its course in the Newcastle District Court, that you
39 had cause to write in an article titled, "Confusion over
40 false action" in the Anglican Encounter?

41 A. Again, my memory is only because I have seen the
42 article. I didn't recall it until I had seen the article,
43 but yes, there is an article.

44

45 Q. You don't remember writing this article for the
46 newspaper?

47 A. No, I don't.

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Q. How often do you write articles for the Anglican Encounter?

A. Not terribly often.

Q. But you've got no memory of writing this particular one?

A. Not until I've seen it.

MR HALE: The answer was he didn't have a memory up until he saw it recently.

MR O'BRIEN: Q. I asked him: You don't remember writing the article?

A. I don't have a memory of it until I saw it.

Q. So you now remember writing it?

A. Yes.

Q. Without going through it in detail, I want to take you to some parts of it, it was an article which in general tenor attacked the prosecution of [CKC], didn't it?

A. That was not the intent. The intent was to refute claims that the Church had not been cooperative and it sought, in a very brief way, to say something of the process and the outcome.

Q. It was a response, as Registrar of the Church, on behalf of the Church; is that right?

A. Yes.

Q. You said in the first column, towards the top:

Rumours and fears that the matter has not been fairly dealt with are unfounded.

Is that right?

A. Correct.

Q. You wouldn't say that now though, would you?

A. No, I certainly would not.

Q. No. Even with your evidence earlier on when I was asking you some questions that one of the unfairness parts of it was a confidential conversation over a helpline telephone call that was provided to the defence; that's not fair, is it?

1 A. I think - in response to a subpoena I think we were
2 obliged to provide --
3
4 Q. You had concerns as to the fairness of that.
5 A. I had concerns but the legal advice was that we had
6 to - there was no reason for us to withhold.
7
8 Q. So you say that was legally fair but morally unfair?
9 A. I think the unfairness is that the matter was not
10 tested in court. In hindsight, when I read that article,
11 I can see that the points that I was trying to make were
12 that the matter - something about the process and the
13 outcome. The fact that clergy - that the sexual harassment
14 committee's work was important and that there is
15 a paragraph there, which I'm not sure I wrote, to do with
16 the way clergy are trained currently.
17
18 THE CHAIR: Q. Who helped you to write this article?
19 A. I'm not sure, but I know that I sent a memo around to
20 all of the senior staff asking them for their comments and
21 I noticed in a memo that I refer to the fact that this is
22 draft 3; so I'm sure there was other input into it.
23
24 Q. Did you write the words in the second column, the top
25 of the second column:
26
27 *It was only after the trial had started*
28 *that the Crown began to ask specific*
29 *questions of the Registry.*
30
31 A. Yes, I probably did.
32
33 Q. And:
34
35 *In response to our advice, particularly*
36 *about the information contained in*
37 *Service Registers ...*
38
39 A. Yes, I probably wrote that.
40
41 Q. Was that a true statement, your advice?
42 A. I believe so, yes. I had a telephone call from the
43 DPP asking what a service register was and asking me to
44 explain the sorts of information that might be in a service
45 register.
46
47 MR O'BRIEN: Q. We will go back to the first - sorry,

1 your Honour.

2

3 THE CHAIR: Q. You go on to say - did you say this or did
4 someone tell you - that:

5

6 *... the Judge discharged the jury, as there*
7 *were no facts for them to consider.*

8

9 A. I think that sounds like it may have been input from
10 Keith Allen.

11

12 Q. That's not correct, is it?

13 A. Well, there were facts to be considered, yes, I guess.

14

15 Q. There were.

16 A. There were facts, yes, and they were not tested.

17

18 Q. That's right.

19 A. Yes.

20

21 Q. You go on to say that the facts show the Crown did not
22 have evidence to bring any action against [CKC]; that's not
23 correct either, is it?

24 A. Mmm.

25

26 Q. It's not correct, is it?

27 A. I'm not sure what the - at this point in time, I'm not
28 sure what the Crown had.

29

30 Q. They had people who would give evidence saying they
31 had been abused.

32 A. Yes.

33

34 Q. That's --

35 A. Yes, and I think --

36

37 Q. What you wrote there is false, isn't it?

38 A. In those - in that context, yes.

39

40 Q. And you knew it to be false when you wrote it,
41 didn't you?

42 A. No, I didn't. No. No. That was my understanding,
43 was that they withdrew the charges because - well, I think
44 the facts were that the facts didn't match with the time.

45

46 Q. That is a totally different proposition to what you've
47 put in this article, isn't it?

1 A. Yes. It was an article designed simply to give a view
2 of what I thought the outcome was. It was obviously not
3 legally correct.
4

5 Q. It's not factually correct. What you put here
6 misrepresented the situation, didn't it?

7 A. I did not consider that at the time to be a
8 misrepresentation.
9

10 Q. That is what has happened, hasn't it, you have
11 misrepresented the situation?

12 A. That was not a deliberate attempt.
13

14 Q. No, but it's what you did, isn't it?

15 A. Yes.
16

17 MR O'BRIEN: Q. I want to go back to that first part of
18 the set of questions his Honour was asking you about. You
19 said, from the top of the second column, it was only after
20 the trial had started the Crown began asking specific
21 questions of the Registry.

22 A. Yes.
23

24 Q. That's not correct, is it?

25 A. We didn't have much contact with the Crown. My memory
26 is that the main - what I'm talking about there is the
27 provision of the Service Registers which happened quite
28 late.
29

30 Q. The Service Registers were held by the defence team.
31

32 MR BOOTH: I object, your Honour.
33

34 MR O'BRIEN: Weren't they.
35

36 MR BOOTH: I object, your Honour, that's not my
37 recollection of the evidence, "held by the defence team"?
38

39 THE CHAIR: Perhaps you'd better clarify what you are
40 asking, Mr O'Brien.
41

42 MR O'BRIEN: Very well.
43

44 Q. It was known by Mr Allen that there was a service
45 register, wasn't it?

46 A. Yes, it would have been.
47

1 Q. For up to two weeks prior to the trial
2 commencing, September 2001?
3 A. He would have known that service registers existed,
4 yes.
5
6 Q. And did you know the register existed around that
7 time?
8 A. Service registers always existed.
9
10 Q. So you knew there was 1975, a service register for the
11 particular parish which [CKC] was licensed?
12 A. There would have been, yes.
13
14 Q. Did you know that Mr Allen had it?
15 A. No, I didn't.
16
17 Q. Or had looked at it?
18 A. No, I did not know that.
19
20 Q. You know that the defence had organised for the
21 service register to be brought to the court immediately
22 before the start of the trial; correct?
23 A. Yes.
24
25 MR BOOTH: I object to that.
26
27 MR WATTS: We probably have the same objection. The
28 evidence is pretty clear on this, if I might say so, that
29 it was brought to the court on the second day of the trial,
30 11 September; that is Mr Allen's evidence on the matter.
31 There is a document I have referred to signed by [COH] to
32 that effect and more, and, I am reminded, and the DPP.
33
34 MR O'BRIEN: The DPP were provided on the second day.
35 [COH] says that she brought it to the court, although she
36 is not 100 per cent sure, on the Friday prior.
37
38 MR WATTS: If you read her earlier statement, the one she
39 made at the time, which Counsel Assisting has --
40
41 MR O'BRIEN: I don't have that.
42
43 MR WATTS: Maybe you should ask to have a look at. It is
44 dated 11 September 2001. She says, "I produced the records
45 to the court."
46
47 THE CHAIR: I am sorry, did she say anything more than

1 that?

2

3 MR WATTS: What Mr O'Brien is putting is on the basis of
4 [COH] now, about 15 years later, saying, "It may have been
5 Friday", and no higher than that, the register went to the
6 court. If it may assist him, there is a document,
7 which I am sure he could obtain a copy of from
8 Counsel Assisting, from [COH] at the time, highly
9 contemporaneous, dated 11 September 2001, the second day of
10 the trial, consistent with Mr Allen's evidence that that's
11 the day she produced the register.

12

13 MR O'BRIEN: I don't want to engage in this any more,
14 I will just come at it a different way.

15

16 Q. You see, whether it was produced on the first day, the
17 second day or two days earlier, the defence had ostensible
18 possession of the Register of Services and didn't provide
19 it to the DPP until after both complainants had given
20 evidence. You knew that, didn't you?

21

22

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1 A. Yes, I am referring there to the service register.
2 The telephone call I had was somewhere fairly close to the
3 time of the trial and I'm - I know it was a woman and
4 I think it was a telephone call and she rang and said that
5 the defence had subpoenaed the service register and she
6 asked me to go through and explain what a service register
7 was, where it was kept, who had access to it, and what
8 information was recorded in it.

9
10 Q. I want to come back to that. Just looking at what you
11 have said there in your article to the Anglican Encounter,
12 it is said there:

13
14 *... the Crown began to ask specific*
15 *questions of the Registry.*
16

17 That's not the case, is it? We know that the officer in
18 charge had asked questions of the Dean as to dates;
19 correct?

20 A. The officer in charge of the police investigation?

21
22 Q. Yes.

23 A. Yes. I wasn't aware of that.
24

25 Q. The Dean was aware of that.

26 A. The Dean might be aware of that, but that doesn't make
27 me aware of that.
28

29 Q. You are purporting to write here about a prosecution
30 and you are broadcasting to the world that it was an unfair
31 prosecution and that they, the prosecutors, didn't do their
32 homework and it seems that you went off half-cocked because
33 you didn't have information from the Dean that he had been
34 spoken to by the prosecutors, in fact, by the investigative
35 police?

36 A. I'm referring to --
37

38 MR HARPER: I object to that. As I understand it, it was
39 actually the Dean's office. I think my friend is
40 suggesting that it was the actual Dean that was spoken to.
41 I don't think there is any evidence that he was spoken to.
42

43 MR O'BRIEN: Q. The Dean's office is the Registry,
44 isn't it?

45 A. No, it is not.
46

47 THE CHAIR: Mr O'Brien, I think we have a fairly good

1 understanding now of what the position is.

2

3 MR O'BRIEN: All right. I am going to move on.

4

5 Q. You said in the last portion of the second column
6 that:

7

8 *[CKC] is a free man; with no criminal*
9 *record and many years of dedicated service*
10 *to the church and the community behind him.*

11

12 You said that. Do you see that?

13 A. Yes, I see that now.

14

15 Q. You said:

16

17 *While he cannot comprehend the actions of*
18 *the complainants, he bears them no*
19 *ill will.*

20

21 Do you see that?

22 A. I see that.

23

24 Q. Can you understand that the overall tenor of this
25 article and, in particular, that portion of it, would have
26 very serious resonance for those reading it who had accused
27 [CKC] of child sexual abuse?

28 A. Yes, absolutely. As I was saying earlier, I think the
29 article was trying to put a view about the process and the
30 outcome and on rereading this in the last few days or the
31 last few weeks, the very, very clear thing is that it takes
32 absolutely no account of the distress and the pain that
33 [CKA] and others go through in making such - having to make
34 such allegations and --

35

36 Q. You can understand that when [CKA] read this, he was
37 very angry?

38 A. I can understand that. I can see that that is
39 an absolutely appalling omission.

40

41 Q. It is compassionless, isn't it?

42 A. Yes, it is, and, sorry, we shouldn't talk in hindsight
43 but yes, I would wish that at the time there'd been more
44 grace and care and compassion in what I have written there
45 and I apologise to your client for that.

46

47 Q. You understand that as a result of this article, [CKA]

1 was so incensed, he brought about further complaints to the
2 Church?

3 A. There was another letter later.

4
5 Q. Yes.

6 A. Yes, yes, and again, the opportunity was not taken to
7 recognise his pain.

8
9 Q. You again did not deal with it in a compassionate way,
10 did you?

11 A. No. I dealt with it in a legal way.

12
13 Q. You dealt with it in a manner which was all about
14 protecting the Church, the priest, and the reputation of
15 the Church, didn't you?

16 A. I wouldn't say it was about protection. I would say
17 that it was taken - it was a legal response, not
18 a compassionate response.

19
20 Q. And now, looking back on it, you can see that it would
21 be a completely unreasonable response?

22 A. Yes, it was totally lacking in compassion.

23
24 Q. Mr Mitchell, you have given evidence to this
25 Royal Commission that your memory doesn't appear to be of
26 aid to you unless assisted by documentation; correct?

27 A. Correct.

28
29 Q. Regrettably, we don't have a subpoena which you say,
30 and Mr Allen said, caused the production of the service
31 register, do we?

32 A. I am told so, yes.

33
34 Q. You have said earlier on that the subpoena you
35 received in relation to the [CKC] trial was the first
36 subpoena you had ever received?

37 A. Yes.

38
39 Q. I would imagine if you were served another subpoena in
40 relation to the service register, if you were, that you
41 would have remembered that, were you ever served with such
42 a subpoena?

43 A. I believe so.

44
45 Q. A little while ago, in your evidence, you said that
46 you had been informed by [COH] that she had received
47 a subpoena. Are you suggesting you both received it?

1 A. No, I didn't suggest that. I said I think
2 that - I contacted - I telephoned [COH] in response to the
3 subpoena that I'd received.
4
5 Q. I suggest that there was never a subpoena in relation
6 to the service register.
7 A. And I believe there was. I don't believe it would
8 have been produced without a subpoena.
9
10 Q. Your memory is defective because there is no document
11 to support your assertion; correct?
12 A. That's correct.
13
14 Q. Also, it appears there's no documentation as to who
15 was at court, apart from those representing the parties and
16 appearing on the transcript, in September of 2001 when the
17 trial ran its course; correct?
18 A. I presume so.
19
20 Q. I imagine that you can't be sure as to whether you
21 attended or not?
22 A. I didn't attend as such. I was present at the
23 courthouse because in the conversation with the DPP it was
24 suggested that I perhaps should be available so that I - in
25 case I was asked to provide evidence that said what the
26 service register was and what it contained.
27
28 Q. In other words, it was anticipated by at least
29 Mr Allen, and perhaps Mr Rosser, that you might give
30 evidence and produce the service register; correct?
31
32 MR WATTS: I object to that question. I thought his last
33 answer was that it was the DPP who asked him to be there.
34
35 THE WITNESS: Yes, that's correct, I believe it was the
36 DPP.
37
38 MR O'BRIEN: Yes, sorry, I accept that.
39
40 Q. You thought that the DPP had asked that you might
41 actually --
42 A. Yes, be available, I think was the --
43
44 Q. Be available to produce the register and explain its
45 contents; is that right?
46 A. Not so much to produce. I don't recall having the
47 book, but the question was she had gone through what it

1 represented and the suggestion was it would be useful,
2 perhaps, to be at the courthouse in case it was required of
3 me to explain to the court what that register represented.
4

5 Q. I want to take you to tab 102. This is a letter to
6 you from the Director of Public Prosecutions NSW.

7 A. Yes, I see that.
8

9 Q. It is in response to the earlier letter that I showed
10 you dated 3 October 2001.

11 A. That is correct.
12

13 Q. If we go down to the fourth paragraph then, starting,
14 "I understand", you can see the words:

15 *Those documents confirmed information*
16 *already provided to Mr Allen, the defence*
17 *solicitor. Mr Allen ...*
18

19
20 That is a reference to the service register, you understand
21 that?

22 A. No, it's not.
23

24 MR WATTS: No, it's not. I object. It's as plain as day
25 it is not a reference to the service register. It is the
26 register which contained the licences issued to [CKC].
27

28 THE WITNESS: Correct.
29

30 MR O'BRIEN: Yes, Mr Watts is right. I withdraw that.
31

32 MR WATTS: Thank you.
33

34 MR O'BRIEN: Q. Was there any discussion with you by
35 Mr Allen, Mr Rosser, that you might present in court the
36 service register?

37 A. No. No, the suggestion came from the DPP.
38

39 Q. You say you can't recall ever having possession of the
40 service register; is that right?

41 A. No, I can't recall that, no.
42

43 Q. But again, because we are not assisted with any
44 documentation as to it, it might be the case that you did?

45 A. It's a possibility. I know that I spoke to the Rector
46 of the parish and I don't recall what the arrangements were
47 about how it should come in.

1
2 Q. If it were to come in in the days prior to the trial,
3 assuming that were the case --
4 A. Hypothetically, yes.
5
6 Q. -- then it would be kept in your possession, would it
7 not?
8 A. Yes, it would have been kept in the safe.
9
10 Q. You would have taken it and, using your key to the
11 safe, placed it in the safe; correct?
12 A. In that hypothesis, yes.
13
14 Q. That would mean, obviously, if that would have
15 happened, that you would have had possession of the
16 register at some stage and indeed almost exclusive
17 possession; correct?
18 A. In that hypothesis, yes.
19
20 Q. You have heard, I hope, me, in discussions with
21 Mr Allen, raising the apparent irregularities of the
22 service register?
23 A. I've been present for the last two days but I have not
24 listened to any of the trial.
25
26 Q. Can you accept from me that there are purported
27 irregularities with the service register?
28 A. The police raised that with me in one of the
29 interviews.
30
31 Q. That is in recent times, is it?
32 A. Oh, probably two years ago.
33
34 Q. Okay. Thank you. You, sir, are a convicted
35 fraudster?
36 A. Correct.
37
38 Q. You stole money from those who employed you?
39 A. Correct.
40
41 Q. Those were offences of serious dishonesty?
42 A. That's correct.
43
44 Q. And they involved doctoring financial records to your
45 own benefit; correct?
46 A. No.
47

1 Q. What did it involve then?
2 A. It involved me using my signature and my authority as
3 Registrar, unfortunately. It did not involve me doctoring
4 documents; I did not alter documents.
5
6 Q. You used your own signature over documents which were
7 not yours to sign?
8 A. Basically, withdrawal forms.
9
10 Q. You purported to have an authority that you did not
11 possess; correct?
12 A. Yes. No, I had the authority. I misused the
13 authority.
14
15 Q. You used the money to your own benefit?
16 A. Correct.
17
18 Q. It was obviously an egregious breach of trust?
19 A. Absolutely appalling and awful and I live with it
20 every day. Thank you for reminding me.
21
22 Q. Designed to benefit yourself?
23 A. Yes.
24
25 Q. I want to suggest that you, sir, would be the mould of
26 person who might fraudulently record material in a register
27 to protect your friend?
28 A. Absolutely untrue.
29
30 Q. Because when we look at your conduct through the
31 course of these proceedings, all the way up to the writing
32 of the newspaper article informing the public at large that
33 the prosecution was an unfair one, you have been all the
34 way aimed at one thing: protecting your friend, the priest?
35 A. Absolutely not.
36
37 Q. And that you would have gone to any lengths,
38 I suggest, including being involved in the forgery of
39 a document?
40 A. My view --
41
42 Q. To protect him.
43 A. My view at the time, as it is now, is if [CKC] has to
44 answer questions then he has to answer questions. My view
45 now, and it was probably not long after I wrote that
46 article, was that the withdrawal of the charges was
47 absolutely a travesty. My opinion then and now is that if

1 [CKC] has to answer questions at trial then he should do so
2 and to have not done so has not benefited your client, my
3 friend or anybody else.

4
5 Q. Those, sir, are hollow words, hollow words.

6 A. Well, I'm afraid, if I can't convince you then I can't
7 convince you.

8
9 MR O'BRIEN: I have nothing further, thanks.

10
11 THE CHAIR: Q. Mr Mitchell, just a couple of matters.
12 Your attention was drawn to the newspaper article behind
13 tab 91. Am I right in thinking that you settled the
14 contents of that article with Mr Allen?

15 A. He was one of the people I sent it to, yes.

16
17 Q. He suggested --

18 A. And he made some suggestions, yes.

19
20 Q. -- some amendments to it which you made?

21 A. Yes, I did. I think in my statement that I said that
22 I didn't incorporate - I don't know whether that's a typo
23 or what it was, but when I re-read it, yes, I think
24 I incorporated most of his, if not all of his amendments.

25
26 Q. You know you did, don't you?

27 A. Well, yes, I did, yes.

28
29 Q. Secondly, your attention was drawn to the letter you
30 wrote to the Director of Public Prosecutions. He replied
31 to your letter, didn't he?

32 A. Yes, he did.

33
34 Q. That reply, for those who may be interested, is behind
35 tab 102. He makes, the Director makes plain, amongst other
36 things, that Mr Rosser told the court that the Register of
37 Services, which the defence produced, was obtained because
38 Mr Allen "had some connection with the Church"?

39 A. Okay.

40
41 Q. You are aware of that, aren't you?

42 A. Yes. It's in the document, yes, mmm.

43
44 Q. And "he knew precisely what to look for and where to
45 look"?

46 A. Yes, the DPP said that, yes.

47

1 Q. You are aware, aren't you, that the Director goes on
2 to confirm the view of those in the prosecution team as to
3 the integrity of the evidence given by the complainants?
4 A. Yes, I do - I do understand that. Yes.

5
6 Q. Can I take you then to tab 38A, just so you can help
7 me with this. I think we should bring it up on the screen.
8 This is a note of a meeting.
9 A. Yes.

10
11 Q. And I again assume correctly that you made that note?
12 A. Yes, I believe so. Yes.

13
14 Q. It is a reference to Farragher's, in the first
15 paragraph, and a priest's possession of sexually explicit
16 material identified as "N", but that is Rushton, isn't it?
17 A. Yes, it is Rushton, yes.

18
19 Q. In the fourth paragraph:

20
21 *[Bishop] Roger spoke of the offence caused*
22 *to the removalists, the uncertainty of*
23 *whether the material involved children, was*
24 *classified or unclassified material.*

25
26 How do I understand that sentence?
27 A. Yes. Well, the removalists, obviously, were offended,
28 but I don't know about the uncertainty of whether the
29 material involved children. I mean, obviously, there was
30 a question of whether it did or it didn't, and the first
31 call that I had was from somebody from Farraghers and, in
32 that conversation, I suggested, asked whether or not they
33 should be taking action if it involved child pornography
34 and the very clear answer I got back was that it did not,
35 but there must have been still some uncertainty about that
36 to have included that in the file note, that that
37 uncertainty needed to be resolved in terms of --

38
39 Q. That uncertainty was present because the original
40 report from Farraghers to - I have forgotten the name of
41 the priest, was that there was child pornography.

42
43 MS SHARP: It was Colvin Ford, your Honour.

44
45 THE CHAIR: Q. That's right, Colvin Ford - was that there
46 was child pornography.

47 A. I wasn't aware of that, I'm sorry. What I was aware

1 of was a telephone call and later information from
2 Farraghers' solicitors that it did not involve child
3 pornography.
4

5 Q. You are at this meeting and this meeting comes about
6 because of Colvin Ford's report of what he had been told by
7 the removalists, doesn't it?

8 A. I thought it came about because of the report of the
9 removalists, not what Colvin Ford had said.
10

11 Q. The first the Church hears about this is from the
12 priest Colvin Ford who has spoken to the removalists;
13 correct?

14 A. Okay. Well, I thought I was the one that they called
15 first, but apparently there were meetings before the
16 meetings.
17

18 Q. No, there was a phone call.

19 A. Or a phone call, mmm.
20

21 Q. What I am suggesting to you is --

22 A. Well, if that's where the uncertainty comes from then
23 that's perhaps why it's raised in this file note.
24

25 Q. You see, you go on to report:

26
27 *The legal issue needed to be resolved so*
28 *that the Church knew whether it was dealing*
29 *with a legal matter or an*
30 *ecclesiastical/spiritual issue.*
31

32 A. Correct.
33

34 Q. And then you record that Rushton had refused to show
35 all the material to Bishop Robert Beal, thereby compounding
36 the uncertainty. Now, what is that all about?

37 A. Clearly, there must have been other material that was
38 not provided.
39

40 Q. Plainly so.

41 A. Mmm.
42

43 Q. And if he had provided adult pornography, a reasonable
44 assumption is that what he hadn't provided would be child
45 pornography, wouldn't it?

46 A. I think that's what we were trying to test and relied
47 on Sparke Helmore's advice and the removalist's advice

1 because the removalist - I pressed the point with the
2 removalist and he was quite adamant it did not involve
3 child pornography.
4

5 Q. Of course by that time everyone was very concerned
6 about their own legal positions, the Church and the
7 removalists, weren't they?

8 A. Yes, probably.
9

10 Q. Did it ever occur to you that given that the first
11 report was that there was child pornography and given
12 Rushton's refusal to show all the material to a Bishop,
13 that the true position may have been that there was child
14 pornography?

15 A. That may have been the position but I wasn't
16 aware that - I didn't have the evidence for that.
17

18 Q. No. And of course if there was child pornography,
19 someone has destroyed it?

20 A. Yes.
21

22 Q. At some point in time, haven't they?

23 A. They have.
24

25 Q. Were you party to that?

26 A. Certainly not, no.
27

28 Q. Now, "GH", Greg Hansen, who is he?

29 A. He was a former solicitor. He had been involved with
30 the Church but hadn't been very much involved during the
31 time that Bishop Herft and I were.
32

33 Q. He is a friend of Rushton's, isn't he?

34 A. I thought he was his lawyer.
35

36 Q. Is it correctly recorded here that this meeting was
37 party to Greg Hansen undertaking to visit Rushton and view
38 the material and to advise the Bishop in writing on the
39 nature of its classification and ownership. Is that what
40 this meeting agreed to?

41 A. I can't see that but I think that's --
42

43 Q. Perhaps we should go down the page a bit further. The
44 second-last paragraph:

45 *GH undertook to visit N and to view the*
46 *material and to advise the Bishop in*
47

1 *writing on the nature of its classification*
2 *and ownership.*

3
4 A. Yes.

5
6 Q. Did this meeting truly agree to Rushton's friend being
7 the person who would go, view the material and report back
8 on the contents?

9 A. I think we viewed it as Rushton's solicitor.

10

11 Q. Even then his solicitor - is that what this meeting
12 agreed to?

13 A. Yes.

14

15 Q. That is an extraordinary position, isn't it, when what
16 you are investigating is the possibility of a really
17 serious crime by one of the priests of the Diocese and you
18 hand over the investigation of the matter to his solicitor;
19 it is extraordinary, isn't it?

20 A. That was one aspect of it. The other was the other
21 aspects that I have mentioned.

22

23 Q. But this is extraordinary that you would do this,
24 isn't it?

25 A. I think we viewed it as a solicitor who would be
26 trustworthy to do that.

27

28 THE CHAIR: Yes. Does anyone else have any questions?

29

30 MR ALEXIS: Over the lunch break my attention was drawn to
31 a couple of documents that I would seek leave to ask some
32 questions about. I won't be long.

33

34 THE CHAIR: Yes. Don't be long.

35

36 **<EXAMINATION BY MR ALEXIS:**

37

38 MR ALEXIS: Q. Mr Mitchell, could you look on the screen
39 at the document behind tab 25C of Exhibit 42-001. I am
40 just going to show you this and then ask you some questions
41 in a moment, just so that you understand the context. You
42 will see a letter from Dr Sandra Smith apparently dated
43 17 September, the date stamp received by the Bishop on
44 19 September, informing Bishop Herft of some information
45 concerning Mr [CKM] and an allegation of sexual abuse at
46 the hands of the alleged perpetrator [CKN] in 1982 when he,
47 [CKM], was aged 12. Do you see that?

1 A. Yes, I see that.

2

3 Q. If you could then be shown the letter behind tab 25E,
4 you will see how that information from Dr Smith connects to
5 you. Do you have that letter?

6 A. Yes, I see that letter.

7

8 Q. You will see, a couple of days later, Bishop Herft is
9 writing to you and says:

10

11 *I formally inform you that I have received*
12 *a letter from Dr Sandra Smith ...*

13

14 Et cetera. I will get you just to read to yourself the
15 rest of that letter and let me know when you have done so.

16 A. Yes.

17

18 Q. The writer, if I may put this to you, appears to think
19 that you know what to do with this letter. He is certainly
20 not suggesting expressly that you do something with this
21 information. What do you think his expectation was? He is
22 formally informing you of it.

23 A. Yes.

24

25 Q. He doesn't say what he wants you to do with it, so
26 that rather suggests that you knew what to do with it; is
27 that right?

28 A. Yes.

29

30 Q. Well, what was it that you knew you had to do with it?

31 A. It should have been reported to the police but in
32 relation to that, the matter had already been reported to
33 police in my view.

34

35 Q. Apart from reporting to the police, did you understand
36 as a matter of practice in 1996 that you had to do anything
37 else with it?

38 A. Yes, I think I contacted - because it had relationship
39 to the CEBS group, that I contacted - I went
40 through - I don't know if we had a list of CEBS' leaders,
41 but I contacted CEBS leadership both in New South Wales and
42 throughout Australia to see whether or not [CKN] still had
43 any relationship to that organisation.

44

45 Q. And anything else?

46 A. I don't recall anything else, no.

47

1 Q. If you can be shown the document behind tab 25D, you
2 will see on the same day as the letter to you, that I have
3 just taken you to, Bishop Herft is writing to Dr Smith
4 informing her, after acknowledging receipt of her letter,
5 that the information was forwarded to you as per required
6 procedure in terms of diocesan regulations.

7 A. Yes.
8

9 Q. To what is Bishop Herft referring to there, as you
10 would have understood it, back in September 1996? What's
11 the procedure?

12 A. Well, the procedure would have been to take action if
13 necessary and to make sure that the file note went into the
14 appropriate file.
15

16 Q. I want to come to the question of what's the
17 appropriate file.

18 A. Mmm.
19

20 Q. Could we go to the yellow envelopes behind tab 399
21 and, if this is the correct expression, could we go to
22 document pointer number ending 2384. Thank you. I have
23 taken you to this, Mr Mitchell, because you will see that
24 the complainant and respondent are recorded respectively as
25 [CKM] and [CKN].

26 A. Yes, I see that.
27

28 Q. Is this the file to which the correspondence that we
29 have just been through would have been filed?

30 A. I presume so, yes.
31

32 Q. All right. Do you see the date of lodgement in the
33 top left-hand corner of the left-hand sticker as we are
34 looking at it on the screen?

35 A. Yes.
36

37 Q. 30 March 2003?

38 A. Yes.
39

40 Q. Does the date of lodgement indicate the date the
41 envelope or file was opened?

42 A. No.
43

44 Q. What should we understand the date of lodgement to be?

45 A. Well, it's the date somebody has put it in that
46 envelope.
47

1 Q. I see. Where was the correspondence filed following
2 its receipt in 1996, before the envelope was created,
3 either on or before March 2003?

4 A. I can only assume it was perhaps in
5 a different - another envelope, in an earlier version.
6

7 Q. Can I just explore this then with you. As part of
8 tab 399, could we have up on the screen document pointer
9 ending 2418. Mr Mitchell, you will see that this is the
10 first of a number of pages. What has been redacted is
11 an alphabetical listing of names. You will see halfway
12 down the reference to [CKN] and the reader is then
13 corrected to "See Brown envelope number 25", which was the
14 envelope I just took you to. Do you follow?

15 A. Yes, I follow, yes.
16

17 Q. If we just go back to the top of that page, you will
18 see it is headed:
19

20 *S11 - Sexual Harassment - Sensitive*
21 *Information*
22

23 Can you tell us what S11 is a reference to?

24 A. No, I can't.
25

26 Q. You then see in the first line of the material beneath
27 the heading, in capitals, the words:
28

29 *IN SMALL ENVELOPES IN FRONT OF THIS BLACK*
30 *BOOK*
31

32 A. I see those words.
33

34 Q. Do you know what the "black book" is that is being
35 referred to at the top of this document?

36 A. No, I don't.
37

38 Q. Was it a type of old form of address book where
39 information was either recorded or filed alphabetically in
40 relation to persons of concern?

41 A. I don't know what the reference to "black book" means.
42

43 Q. Just coming back to [CKN], could we finally go to the
44 document within tab 399 with the pointer 2446_R.

45 Thank you. Mr Mitchell, you will see on this particular
46 page the respondent is identified as [CKN], "Date of
47 Alleged Incident: 1982", and that seems to be consistent

1 with what Dr Smith informed Bishop Herft back in 1996? You
2 will see:

3
4 *Date Incident Reported: 1996*

5
6 That is similarly consistent with that earlier
7 correspondence?

8 A. Yes, I see that.

9
10 Q. Before I come to the further detail in the document,
11 can you assist us by indicating when this form of
12 information sheet was created in connection with the
13 lodgement of reports of incidents?

14 A. No, I can't help you with that.

15
16 Q. Can you assist us with the relationship, if any,
17 between this S11 Information Form and the yellow envelopes
18 to which we have referred?

19 A. I'm not - I don't recall - I don't know what S11
20 means, so I don't know what the relationship is.

21
22 Q. Was the Information Form, an example of which
23 concerning [CKN] we have before us, kept with the yellow
24 envelopes in your safe?

25 A. I don't - I don't recall seeing that form before. S11
26 doesn't mean anything, I'm sorry.

27
28 Q. You will see that someone has inserted some
29 information adjacent to the column entitled "Process
30 followed", do you see that?

31 A. Yes.

32
33 Q. The information is:

34
35 *Met with [CKM] at the request of*
36 *Dr S Smith, psychiatrist & +Roger.*

37
38 [CKM] is the victim. Do you see that?

39 A. I see that.

40
41 Q. Can you assist us who it was that was recording this
42 information, information concerning a meeting, in the
43 Information Form concerning [CKN]?

44 A. No, I don't know who is doing that.

45
46 Q. You've got no idea?

47 A. No.

1
2 MR ALEXIS: Thank you, Mr Mitchell.
3

4 MR TEMBY: May it please the Commission. I do not think
5 that I need prolong the cross-examination, but I think
6 I should point something out before the witness's counsel
7 questions him, if he wants to take this up.
8

9 In the article written for the Church newspaper, which
10 we saw at tab 91, it was said that:
11

12 *It was only after the trial had started*
13 *that the Crown began to ask specific*
14 *questions of the Registry.*
15

16 But in fact the document at tab 74 is a letter written to
17 the Registrar seeking information about five weeks before
18 the trial commenced and it was responded to the following
19 day. I don't need to take it up with the witness, I don't
20 think, having made that point.
21

22 THE CHAIR: The document is there.
23

24 MR TEMBY: That's right.
25

26 THE CHAIR: Who else is there then?
27

28 MR BOOTH: I would like to ask some questions, if
29 your Honour pleases. Would that be convenient?
30

31 **<EXAMINATION BY MR BOOTH:**
32

33 MR BOOTH: Q. Sir, my name is Booth and I appear for
34 Mr Rosser.
35

36 A. Thank you.
37

38 Q. You were registrar between 1993 and 2002; correct?
39

40 A. Correct.
41

42 Q. Do you remember before lunch Mr O'Brien asked you
43 a number of questions about people you closely worked with
44 in that period?
45

46 A. Yes.
47

48 Q. He was putting to you that it was incredulous that you
49 hadn't heard too much detail about the [CKC] matter.
50

51 A. Yes.

1
2 Q. He included my client Mr Rosser in that list, did he
3 not?
4 A. Yes, I believe he did.
5
6 Q. Isn't it the case, however, when he put to you that
7 you worked closely with a number of people, that really
8 didn't include Mr Rosser, did it?
9 A. Not very closely with Mr Rosser. He was the least
10 close, yes.
11
12 Q. Mr Rosser was only the Deputy Chancellor in that
13 period?
14 A. Correct.
15
16 Q. I think it was Judge Lincoln who was the Chancellor?
17 A. He was the Chancellor at the time, yes.
18
19 Q. Mr Rosser was not a member of the Diocesan Council?
20 A. No, he wasn't.
21
22 Q. You would only actually see him annually at Synod;
23 correct?
24 A. At Synod and maybe on an ad hoc basis.
25
26 Q. That ad hoc basis related to when the Bishop sought
27 his advice about a particular matter?
28 A. Yes, that would be right.
29
30 Q. One of those particular matters was the May 1998
31 meeting?
32 A. Yes, it would have been.
33
34 Q. Is it fair to say that "ad hoc" meant it was
35 occasional and in respect of specific issues?
36 A. Correct.
37
38 Q. And by appointment?
39 A. Yes, I would imagine so.
40
41 Q. And so it was not that you had anything of a close
42 relationship with Mr Rosser?
43 A. No, apart from the Annual Synod. As I say, ad hoc may
44 have been once a year, it may have been twice a year.
45
46 Q. He was not on any committees, as far as you are aware?
47 A. As far as I'm aware, no, he was not on any committees.

1
2 Q. His ongoing responsibility was to assist the
3 Chancellor, Judge Lincoln, but principally to provide some
4 legal advice to Bishop Herft?
5 A. Correct.
6
7 Q. You mentioned also to, I think, Mr O'Brien about
8 weekly meetings that you had with the Bishop and to quote
9 him, if I'm correct, to keep him up to speed about matters?
10 A. Yes, we basically had that sort of meeting.
11
12 Q. In the last paragraph of your statement, you refer to
13 keeping Bishop Herft up to date on the fact that Mr Allen -
14 Mr Keith Allen - had been engaged by [CKC]; correct?
15 A. Yes.
16
17 Q. And that the Bishop knew about that?
18 A. Yes, he would have.
19
20 Q. The Bishop also knew that Mr Rosser had been engaged
21 as barrister, didn't he, to your knowledge?
22 A. Not to my knowledge.
23
24 Q. Wouldn't it have been discussed by you that
25 Mr Allen --
26 A. It may have been but I don't recall that.
27
28 Q. You don't recall. Thank you. Can I turn, please, to
29 document 33; if that may be brought up. It is the notes
30 from a meeting held on Wednesday, 13 May 1998, at 1pm with
31 Bishop Roger Herft, Ms Deirdre Anderson, Messrs Peter
32 Mitchell and Paul Rosser. It is your document; correct?
33 A. Correct.
34
35 Q. I note that Mr O'Brien read this to you, the
36 first paragraph:
37
38 *The purpose of the meeting was to discuss*
39 *an appropriate response when individuals*
40 *provided information to the Bishop*
41 *regarding allegations of sexual*
42 *misconduct ...*
43
44 That is what he read to you?
45 A. I think he did. Yes, I can't remember, sorry.
46
47 Q. Take it from me that's exactly what he read.

1 A. Okay.

2

3 Q. He didn't include:

4

5 *... and then insists that they do not wish*
6 *the matter to go any further.*

7

8 A. That's quite right, yes.

9

10 Q. You, I think, said the latter part was the focus of
11 the meeting?

12 A. That was my impression, yes.

13

14 Q. Would it be fair to say that in 1998, 16 years ago or
15 thereabouts, there was a very significant agitation in the
16 minds of your Bishop Herft and perhaps all bishops, between
17 their civil duty to the law and to the State and their
18 pastoral duty to, perhaps, complainants?

19 A. It was a significant dilemma, yes.

20

21 Q. The Bishop in that meeting rose two examples of where
22 there was that agitation of the balancing act: which duty
23 came first?

24 A. Yes.

25

26 Q. And Ms Deirdre Anderson put forward one example of
27 some similar situation?

28 A. Yes.

29

30 Q. Would you accept from me we have heard from a person
31 who goes by the pseudonym [CKH]. He refers to
32 a subparagraph under the heading "Formal Complaint made to
33 Anglican Church", paragraph 53 and following - this is
34 behind tab 35 - and he says at paragraph 58:

35

36 *Even though I didn't want to go to the*
37 *police, I accepted the possibility that the*
38 *Church may be required to report the matter*
39 *to the police, being aware that different*
40 *dioceses had different protocols for this.*

41

42 He told the Commission that he had a problem in his own
43 mind about being frank and open about what had happened to
44 him and how that may go further. Would you accept that
45 from me?

46 A. I'm sorry, I haven't seen the document yet.

47

1 Q. It is tab 35. He read, I would ask you to accept,
2 from paragraph 52 on page 11, if that could be brought up,
3 please. This is tab 35 of the statements' bundle.

4 Thank you, I am obliged to my friend, it is exhibit
5 42-040. Thank you. Sorry for that.

6 A. That's okay.

7
8 Q. On page 11, he begins with the subheading:

9
10 *Formal complaint made to Anglican Church*

11
12 Do you see that?

13 Sorry, this is [CKH]?

14
15 Q. [CKH], yes.

16 A. He is saying in paragraph 52 --

17
18 Q. He is talking about how he made a complaint to the
19 Church and how he agitates in his own mind what the Church
20 will do with that. In paragraph 58:

21
22 *Even though I didn't want to go to the*
23 *Church, I accepted the possibility that the*
24 *Church may be required to report the*
25 *matter.*

26
27 A. Okay. I don't have --

28
29 Q. You said it wasn't, would you agree, not only in the
30 mind of Bishops, but clearly in the mind of complainants?

31 A. Oh, definitely. That's what that meeting was saying,
32 yes.

33
34 Q. And that meeting had dealt with a number of such
35 examples?

36 A. I believe so, yes.

37
38 Q. Even though this agitation, in the minds of
39 individuals involved in these matters, continued from 1998
40 right through to 2009?

41 A. Mmm.

42
43 Q. It was a live issue?

44 A. Yes, it was.

45
46 Q. Mr Rosser, at the bottom of the page of document 33,
47 really, perhaps, you would agree with me, was just giving

1 the Bishop some idea of what would be possibly the best
2 thing to do?

3 A. Yes.

4

5 Q. It was the Bishop's concern, was it not, that if he
6 was told something, a complaint of sexual misconduct, but
7 that that person also didn't want anything done about it,
8 the Bishop may not be able to fulfil the wishes of that
9 individual?

10 A. That is correct.

11

12 Q. He wasn't burdened with knowledge, he was burdened
13 with a problem?

14 A. Yes.

15

16 Q. If he's told something, he's got a duty?

17 A. That's correct.

18

19 Q. It wasn't in his mind that this knowledge was
20 a burden?

21

22 MS SHARP: I haven't objected before now but we have moved
23 quite a way from the document to propositions, not squarely
24 within the document, about what was in Bishop Herft's mind.
25 This witness cannot answer those questions.

26

27 MR BOOTH: Q. You were at the meeting --

28

29 THE CHAIR: Mr Booth, I am not sure what you are doing is
30 profitable. The document does speak for itself.

31

32 MR BOOTH: Yes, it does, your Honour. It appears to have
33 been manipulated, in my respectful submission. It appears
34 to not be put forward appropriately and properly, and this
35 person was --

36

37 THE CHAIR: You would have to account for the last two
38 paragraphs on that page, but --

39

40 MR BOOTH: Yes, and that --

41

42 THE CHAIR: Maybe Bishop Herft can tell us what he was
43 thinking.

44

45 MR BOOTH: Perhaps I could just ask this question.

46

47 Q. In that meeting did Bishop Herft articulate his

1 concerns in the manner in which I described?
2 A. Probably in that meeting and certainly in other
3 meetings it was a dilemma to him. From my view and my
4 memory, it was a dilemma to him that there were points in
5 which he was - he may have to take action that
6 a complainant or somebody else didn't want to take action.
7
8 Q. And let the complainant down?
9 A. And I come back to the "Confession" and, I'm sorry, it
10 probably was a little confusing about that before, but in
11 relation to the confession, and without going into any
12 great detail because it doesn't really concern the
13 Royal Commission, with respect, there was an issue where
14 a priest used a private interview to tell the Bishop
15 something about his own unfaithfulness and then, when
16 Bishop Herft said, "You have to do something about this",
17 that priest said, "No, that was the confessional." So
18 I think it was very - I can't remember the dates, but it
19 was very alive in Bishop Herft's mind that there were
20 these, if you like, ethical dilemmas that needed to be
21 resolved.
22
23 THE CHAIR: Q. Mr Mitchell, I shouldn't let that make
24 comment you make pass.
25 A. Okay.
26
27 Q. The confessional and its role is very much an issue
28 for the Commission both in relation to the Anglican Church
29 and the Roman Catholic Church.
30 A. Sure.
31
32 MR BOOTH: Q. Would you agree that Mr Rosser's advice
33 was aimed directly at Bishop Herft's concerns?
34 A. Correct.
35
36 Q. Can I take you, please, to your statement. The
37 statement is behind tab 36 of the statements bundle. You
38 talked at paragraph 52, if that could be brought up, in
39 terms of your contact with Professional Standards in 2012.
40 A. Yes.
41
42 Q. We have seen two documents, I think it was 305 and 306
43 - they don't need to be brought up - which was your
44 reaction to the coffee meeting, I think, if we can describe
45 it as that in 2012 with Mr Elliott.
46 A. Yes.
47

1 Q. Is it correct that you received these communications
2 from Mr Elliott: "The end justifies the means"?
3 A. That is a direct quote of what he said.
4
5 Q. That you should: "Read between the lines"?
6 A. That is a direct quote.
7
8 Q. He refers to your previous criminality?
9 A. Yes, he did.
10
11 Q. And that, as you have explained to his Honour, was
12 deeply traumatic for you?
13 A. It was.
14
15 Q. He also said: "That others had dropped you in it"?
16 A. Correct.
17
18 Q. That you owed them "no favours"?
19 A. Yes.
20
21 Q. I think you added something, most of which you put in
22 to one of those documents, I think document 306?
23 A. I did, yes.
24
25 Q. He also added:
26
27 *"That if you're not part of the solution*
28 *you're part of the problem".*
29
30 A. Yes, he said that.
31
32 Q. And he alluded to an indemnity which you took as being
33 not an indemnity from police prosecution but an indemnity
34 in respect of these proceedings; correct?
35 A. That's correct, yes.
36
37 Q. My friend Mr Alexis SC referred to this being
38 an unwelcome visit or an unwelcome meeting?
39 A. Yes.
40
41 Q. Did you consider yourself in the same position of
42 power as Mr Elliott?
43 A. In the sense that I felt bullied and intimidated, no,
44 I did not feel that we were on equal levels of power.
45
46 Q. Was it unwelcome simply because of your unhappy past
47 with the Diocese or was it the way in which he treated you?

1 A. It was both, and can I just say, I should clarify,
2 that my past with the Diocese was actually happy during the
3 years. It was the way I left it.
4
5 Q. Yes.
6 A. I didn't want to give the impression that I was deeply
7 unhappy during my time there. It's an unhappiness about
8 the relationships that I destroyed. Sorry, what was the
9 point of your question, I'm sorry?
10
11 Q. I think I was asking you whether it was unwelcome
12 because of the unhappy past with the Diocese --
13 A. Yes.
14
15 Q. -- or because of the way in which you were treated
16 during that meeting I think in July.
17 A. Well, I think it was mainly the unhappiness about the
18 unwelcome intrusion of the past, which I find deeply
19 traumatic, and the conduct of the meeting I just felt was
20 unprofessional and --
21
22 Q. What about these cliches that were --
23 A. Well, the cliches, I think, were what really sort of
24 triggered it. As soon as somebody says to me that it's for
25 the greater good, or words of that effect or, "The end
26 justifies the means", it's a catchphrase --
27
28 Q. Did you feel threatened?
29 A. I don't know that I felt threatened. I felt
30 intimidated. By the utterance of those sort of phrases,
31 I just thought that if that's way he conducts his
32 interviews, and so forth, that it was not - I didn't
33 - I didn't want to be part of that. If I needed to answer
34 questions, then I'm happy to do so in the context of
35 a formal thing, but I had no faith in an internal meeting,
36 internal inquiry.
37
38 Q. Which prompted the email at tab 305?
39 A. Correct.
40
41 Q. Do you remember the email? It doesn't have to be
42 brought up.
43 A. Oh, yes, I remember the email. I wrote it very soon
44 after the meeting because after my phone call with him,
45 I was very depressed. I felt that I really needed to get
46 it down before I forgot and it was cathartic, so I wrote
47 it.

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MR BOOTH: Thank you.

MR WATTS: Your Honour, if it is appropriate, unless your Honour has some questions, I have only two or three minutes.

THE CHAIR: Does anyone else have any questions?

MR HALE: I do, your Honour.

THE CHAIR: Mr Watts.

<EXAMINATION BY MR WATTS:

MR WATTS: Q. Mr Mitchell, my name is Watts. I appear on behalf of Keith Allen. I just want to ask you about one subject and that is in relation to what have been described as brown or yellow envelopes. To put this into some chronological aspect, I think you left the Diocese in January 2002?

A. Correct.

Q. You have been taken to a document which is at tab 399 today during your evidence. It is a report prepared by Michael Elliott in March of last year which is titled "The Yellow Envelopes Report". Are you familiar with some aspects of that that you were taken to?

A. Well, I've seen it here, yes.

Q. I think your evidence is you don't recall seeing envelopes with stickers on such as were shown as what is an annexure to Mr Elliott's report; correct?

A. Yes, I wasn't expecting that, yes.

Q. If you just assume for the moment that from Mr Elliott's report it appears as though that system of those envelopes, in the way they appear, commenced in 2002. To your knowledge, however, prior to those envelopes in the way they appear in Mr Elliott's report, was there a system of keeping confidential information, complaints about clergy of any sort, in a safe that you had access to while you were Registrar?

A. Yes, there were.

Q. Were they in fact put into envelopes of some sort?

A. Yes, those gold envelopes from memory. They were

1 similar sort of envelopes.

2

3 Q. Okay. Do you recall what, if anything, was written
4 upon them? I am talking about the outside.

5 A. Yes, I don't recall but clearly there must have been
6 the names of either people making accusations or the clergy
7 themselves.

8

9 Q. If I was to suggest to you there may have been, for
10 example, a numbering system, what --

11 A. There may have been, it's a possibility.

12

13 Q. What I am putting to you is there may have been
14 a numbering system without any names being on the outside
15 of the envelope, is that possible?

16 A. That's a possibility.

17

18 Q. Do you have a recollection one way or the other?

19 A. I don't have a recollection, I'm sorry.

20

21 Q. Just one final matter. Are you aware from evidence
22 given by Mr Allen that his recollection is that he was part
23 of what he described, I think, as an ad hoc group of people
24 who gave advice to Bishop Herft in relation to the contents
25 of those envelopes from time to time and that you were part
26 and parcel of those ad hoc meetings? Do you understand
27 that's his evidence?

28 A. I understood - I think I saw something today which
29 mentioned a number of names, including mine. I am not
30 aware of any such ad hoc committee.

31

32 Q. You say he is wrong about that, that you didn't
33 attend --

34 A. Well, I think he may be mistaken or he's got the
35 chronology wrong, but I don't recall it.

36

37 Q. There is a document which is a file note, taken by
38 Mr Cleary, of a meeting that he had with Mr Allen and
39 Bishop Greg Thompson on 18 February last year in which
40 Mr Cleary has recorded something to the effect that
41 Keith Allen had advised there was a panel comprising
42 various people, including your name. Are you aware of
43 that?

44 A. Yes, I've seen that document.

45

46 Q. There appears to be written next to your
47 name - and I am making an assumption here, but it appears

1 to be written by Bishop Thompson - the name "Richard
2 Appleby", with a line going to where your name is
3 mentioned. Does that in any way assist you? Can you say
4 one way or the other whether you ever heard whether
5 Richard Appleby attended ad hoc meetings with those others,
6 including Mr Allen, to advise Bishop Herft in relation to
7 these sorts of matters?

8 A. I don't know that I can comment on a document that
9 I have not seen before and was produced 15 years after
10 I was there. I don't know whether that "Richard Appleby"
11 means it is to be in my place, or whether or not - because
12 I don't honestly believe, or I don't know that there was
13 ever a committee as Mr Allen outlines it there.

14
15 Q. If such a group was meeting on an occasional basis you
16 say, well, that's news to you?

17 A. It's news to me, and the possibility is that my name
18 is there in error and it should have been Richard Appleby's
19 name but you would need to ask Richard Appleby that.

20
21 MR WATTS: Thank you.

22
23 MR SKINNER: Your Honour, if I can ask a question?
24 Thank you.

25
26 **<EXAMINATION BY MR SKINNER:**

27
28 MR SKINNER: Q. Mr Mitchell, my name is Skinner and
29 I appear for former Bishop Richard Appleby. Just in
30 relation to that very last piece of evidence you gave to
31 Mr Watts, to the effect that it's possible Richard Appleby
32 replaced you or something, you didn't start at the Diocese
33 until 1993, did you?

34 A. No, I started in 1979. I became registrar in 1993.

35
36 Q. Registrar in 1993.

37 A. Yes.

38
39 Q. Sorry. Bishop Appleby left in 1992, didn't he?

40 A. If you say so, yes.

41
42 Q. Your role as registrar never overlapped with his role
43 as Assistant Bishop, did it?

44 A. No, that's probably - that's - I'd accept that, yes.
45 You're probably right.

46
47 MR SKINNER: Thank you. That is all I wished to ask.

1 Thank you, Commissioner.

2

3 <EXAMINATION BY MR HALE:

4

5 MR HALE: Q. Mr Mitchell, as you know, my name is Hale
6 and I represent you.

7 A. Correct.

8

9 Q. Mr Mitchell, we will go to the register we have heard
10 a lot of evidence about in the last few days and I want to
11 make it clear: did you alter that register?

12 A. I did not alter the register.

13

14 Q. Were you involved in any attempt to alter that
15 register?

16 A. Never.

17

18 Q. When was the first time you had heard the suggestion
19 that the Service Register had been altered?

20 A. At one of the police interviews, somewhere in the last
21 couple of years.

22

23 Q. It's true, isn't it, that on two occasions the police
24 came to visit you at your home?

25 A. That's correct.

26

27 Q. They stayed for about 45 minutes on each occasion?

28 A. 45 minutes to an hour on each occasion, yes.

29

30 Q. They asked you some questions about the register?

31 A. About the register, yes.

32

33 Q. And also some questions about this conversation
34 Mr Mawson alleges happens in a car?

35 A. Yes. At the second interview they asked that.

36

37 Q. Sometime after that, you went to the Newcastle Police
38 Station?

39 A. Correct.

40

41 Q. And you provided a statement to a detective in
42 relation to [CKC] and other matters?

43 A. I think just the [CKC] matter.

44

45 Q. And you assisted police to the best of your knowledge;
46 is that right?

47 A. I did, that's correct.

1
2 Q. You knew Peter Rushton?
3 A. I knew him, yes.
4
5 Q. Did you like him?
6 A. No. He was a difficult man to like.
7
8 Q. You never sought to protect him?
9 A. Certainly not.
10
11 Q. You never discussed protecting him with anyone?
12 A. Certainly not.
13
14 Q. Did you ever take steps to protect Rushton in relation
15 to allegations of paedophilia?
16 A. No, certainly not.
17
18 Q. Did you take any action to protect Rushton regarding
19 allegations of him keeping child pornography?
20 A. No, certainly not.
21
22 Q. It's true, isn't it, that when this issue arose, you
23 got some legal advice in relation to the material that was
24 found?
25 A. Yes.
26
27 Q. As far as you are aware the legal advice was it wasn't
28 child porn; is that right?
29 A. The legal advice was that it was not child
30 pornography, that it was legally available to adults.
31
32 THE CHAIR: Q. Sorry, I don't understand that. You got
33 legal advice that it wasn't child pornography?
34 A. We got legal advice that the material was not
35 child pornography, it was legal homosexual pornography.
36
37 Q. That is just a question of fact, isn't it?
38 A. Yes, it is a fact. Well, the advice, I think, went on
39 in relation to had it been child pornography then the
40 Bishop had only one course available; if it wasn't then the
41 question in the legal advice was that - it was to do with
42 his terms of employment, if I can use that word.
43
44 Q. I understand that apart from protecting, if that be
45 the case - I am not suggesting it is - Mr Rushton, the
46 consequence of it not being child pornography, was that
47 there would not be a necessity to go to the police, with

1 a prosecution of a priest for possessing child pornography,
2 wouldn't it?
3 A. Mmm.
4
5 Q. And such a prosecution would be of course damaging to
6 the reputation of the Diocese, wouldn't it?
7 A. That wasn't a consideration.
8
9 Q. But it would be, wouldn't it?
10 A. It would be, yes, absolutely.
11
12 THE CHAIR: Yes, Mr Hale.
13
14 MR HALE: Q. Earlier today you were taken to the
15 statement of Mr Mawson.
16 A. Yes.
17
18 Q. And the conversation that was supposed to have been
19 had between you and Mr Allen in a car where Mawson was
20 present?
21 A. Yes.
22
23 Q. And you have answered those questions. In
24 paragraph 12 of Mr Mawson's statement, he makes some
25 commentary about the destruction of financial documents?
26 A. Yes, he does.
27
28 Q. Can you tell his Honour what the process was for
29 destroying financial documents in the Diocese when you were
30 there?
31 A. Yes. Thank you. The process was even though the
32 Diocese is not a taxpaying organisation, that we kept
33 records, accounting records, source documents for seven
34 years. The office wasn't particularly large, the storage
35 space was minimal, so we kept seven years only. At the end
36 of each audit period, once the auditors had given their
37 signed audit certificates, we removed year eight. Again,
38 it was a small office. I assisted. There was nothing
39 sinister about it. It was a job that needed to be done and
40 done fairly quickly because in some cases current year
41 records hadn't been filed adequately because there simply
42 wasn't any space. So the destruction of records, in my
43 view, was simply a procedural one to get rid of records
44 that were more than seven years old.
45
46 Q. Couldn't you have stored those records, say, at the
47 university?

1 A. The university wasn't interested in accounting records
2 at all.
3
4 Q. You were the registrar, why would you get involved in
5 helping --
6 A. Yes, it was a small office. In terms of accounting
7 staff, I think only about one and a half people. I still
8 did a few things from an accounting perspective because
9 there simply wasn't anybody else to do them. It was
10 a matter of - the audit certificates usually came at around
11 the time of intense preparation for the Synod. They were
12 usually the last thing that was obtained for the production
13 of the Synod business papers. All of the office was very
14 busy, so it was simply a matter of basically all pitching
15 in.
16
17 Q. Can I take you to [CKC] now and the character
18 reference.
19 A. Yes.
20
21 Q. You have said in evidence that he was a close friend?
22 A. Correct.
23
24 Q. The godfather of one of your daughters?
25 A. My only daughter, yes.
26
27 Q. As far as you are aware you weren't a beneficiary or
28 an executor of his Will?
29 A. As far as I am aware, no.
30
31 Q. It is true, isn't it, that Mr Allen had drafted that
32 character reference on your behalf?
33 A. Yes, he did.
34
35 Q. Is that because you had never had to do one before for
36 a court matter?
37 A. I don't know. I think he probably asked whether
38 I would and he put it together and sent it to me.
39
40 Q. Knowing the allegations against [CKC] and how serious
41 they were, how did you feel when you were asked by Mr Allen
42 to provide a character reference that you knew would be
43 used in court?
44 A. Yes, I was very conflicted. Throughout the process we
45 tried very hard to respond to the requests that were made
46 of us fairly quickly, requests made by subpoena, and so
47 forth. Apart from that, I'd had very little contact

1 with - well, we had reduced contact ever since he left the
2 Diocese but, during that period, I tried not to have
3 contact with him so there was, on one hand, trying to keep
4 a distance and you know - but on a personal level,
5 I accepted his plea of innocence and that somebody should
6 be given the right to be innocent until proven guilty and
7 so in that context I thought I could write, or I could sign
8 a confidential - sorry, not a confidential, a reference for
9 him as a private individual. In hindsight, it was
10 extremely unwise. I really can't or couldn't, shouldn't,
11 have seen that there was any difference between my personal
12 view and my professional view.

13
14 Q. Would you agree the reference wasn't worded that well?

15 A. I would agree that it's not worded particularly well.

16
17 Q. We will turn to Mr Elliott and the meeting you had
18 with him in 2012.

19 A. Yes.

20
21 Q. He contacted you to organise a meeting?

22 A. Yes, he did.

23
24 Q. You turned up at the meeting.

25 A. Yes.

26
27 Q. It went for about 30 minutes, would that be about
28 right?

29 A. I would have thought it was a bit longer than that.

30
31 Q. You may not know, did he make some notes at the time
32 when he was talking to you?

33 A. I don't recall any notebook on the table, no.

34
35 Q. Certainly after that meeting, you went home and made
36 some contemporaneous notes?

37 A. Correct.

38
39 Q. Mr Elliott has provided a statement and I think you
40 have read it and it is at tab 15, paragraph 97, if that
41 could be brought up. I will read from a statement of
42 Mr Elliott, paragraph 97, and it refers to the meeting he
43 had with you on 25 July. Okay?

44 A. Yes.

45
46 Q. I think that might be up now.

47 A. Thank you, yes.

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Q. Towards the bottom of paragraph 97, Mr Elliott said:

I told Mr Mitchell that I believed he had information about the conduct of some individuals (who I named) and their involvement in covering up child sexual abuse within the Church.

Do you remember the gist of that conversation?

A. Yes.

Q. Then he went on to say:

I suggested to Mr Mitchell that he take one week to consider his position and get back to me.

A. That's right.

Q. What did you take that to mean?

A. Well he, as I said before, downloaded an awful lot of information. I think what he was suggesting there was that obviously it was too much to respond to right then and in that public position. He basically said that I should take a week to consider the position and get back to him.

Q. Did you see it as a threat?

A. No, I didn't see it as a threat.

Q. You made some contemporaneous notes that night of that meeting and you sent them to Mr Elliott via an email the next day?

A. I did.

Q. My friend has covered some of those areas, but you have recorded, for example, that Mr Elliott said to you:

If you help me, I can help you. I can give you an indemnity. There is a Royal Commission coming and I can give you an indemnity.

A. Yes.

Q. Do you understand what an indemnity is?

A. Well, I understood it to mean that he could give me

1 an indemnity perhaps not to appear.

2

3 Q. Did you know if he had the power or was in the
4 position to offer that indemnity?

5 A. I knew he did not have the power.

6

7 Q. We will go to the Encounter article. You have been
8 cross-examined about that today.

9 A. Yes.

10

11 Q. Ultimately that was your document?

12 A. Ultimately it was my document.

13

14 Q. You got some assistance from Mr Allen?

15 A. Yes.

16

17 Q. I think you sent that document to some other people?

18 A. I sent it to all the members of senior staff and to
19 the two - the Rectors of the two parishes where [CKC] had
20 been. So I invited - I don't know that I invited the
21 Rectors of the parishes to make comment, so much. The
22 others I certainly asked to make comment or changes, if
23 they wished, and I sent it to the Rectors of the parishes
24 on the basis that if it was published in that form that
25 they may be asked questions about it.

26

27 Q. You are not a lawyer, are you?

28 A. No, I'm not.

29

30 Q. During the [CKC] trial when the register was produced,
31 et cetera, were you in court much?

32 A. I wasn't in court at all.

33

34 Q. So you didn't hear discussions between the Crown,
35 defence submissions and, for example, what his Honour was
36 saying in court?

37 A. No.

38

39 Q. It is true, isn't it, that one of the reasons why you
40 spoke to Keith Allen about this particular article was you
41 needed to understand what happened on that day in terms of
42 the legal process; is that right?

43 A. That's right. After the trial had concluded it seemed
44 to me that it was - I was able then to talk to Keith Allen
45 about it. He seemed to be the one best able to explain
46 what had happened as he had been present.

47

1 Q. Because for this article, in particular, you wanted to
2 know what the Judge and Crown, et cetera, had said during
3 the trial?

4 A. Yes.

5

6 Q. In relation to the title of that article, did you
7 write that title?

8 A. I don't think so. I think that was probably
9 an editorial decision.

10

11 Q. But ultimately you take responsibility for that
12 article?

13 A. Ultimately I take responsibility for it and
14 particularly over the fact that it does not - as I said it
15 has a couple of focal points which perhaps could have been
16 expressed more legally correctly, but the glaring, glaring
17 issue with it is that it does not take into account the
18 difficulty that people who make allegations have in doing
19 so, whether it is through a counselling system or whether
20 it is through the legal system.

21

22 Q. I think Mr O'Brien my friend took you to that.

23 A. Yes.

24

25 Q. You can imagine what pain that caused --

26 A. Yes.

27

28 Q. -- [CKA] and family members?

29 A. Yes. I'm deeply sorry that it wasn't written with
30 more grace.

31

32 Q. We will go to the issues of responding to subpoenas.
33 Again, when a subpoena was served on you in the [CKC]
34 matter, was that the first time you had seen a subpoena?

35 A. It was.

36

37 Q. You sought legal advice, I believe, from Mr Caddies?

38 A. I'm not sure whether it was Mr Caddies or Mr Helman
39 but it was Rankin & Nathan.

40

41 Q. But you certainly sought legal advice as to, "Well,
42 what do I do?"

43 A. Yes.

44

45 Q. You were concerned, or someone in the Diocese was
46 concerned, about the confidential information [CKA] had
47 provided to Mr Lawrence on the phone?

1 A. Yes, that's right.

2

3 Q. And you wanted to be sure if you could release those
4 notes or not; is that right?

5 A. Yes.

6

7 Q. Ultimately you were told, or someone was told by
8 a lawyer, "They're not privileged, they've got to go to the
9 court"?

10 A. Yes.

11

12 Q. [CKA], quite rightly, after the trial was all over,
13 was very angry and upset about the way he had been treated?

14 A. Yes, quite right.

15

16 Q. He made a complaint to the Diocese about, in
17 particular, how were those confidential notes of his
18 conversation with Lawrence released to the defence or to
19 the courts, is that a fair summary of his complaint?

20 A. A fair summary, yes.

21

22 Q. And you also, not being a lawyer, thought, "Well, we
23 better get some legal advice about this"?

24 A. Yes.

25

26 Q. The legal advice was they had to be produced under
27 subpoena; is that correct?

28 A. Yes.

29

30 Q. We will go back to tab 33, Mr Mitchell, if that could
31 be brought up. That is the notes that you prepared at
32 a meeting with Bishop Herft, Ms Anderson, yourself and
33 Paul Rosser.

34 A. Yes.

35

36 Q. That related to, among other things:

37

38 *How does the Church respond to allegations*
39 *of sexual misconduct. The complainants who*
40 *insist they do not wish the matter to go*
41 *any further.*

42

43 A. Yes.

44

45 Q. You said before you were present at the meeting. In
46 fact you typed, or you think you typed, this document?

47 A. Yes, I think they're my file notes, yes.

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Q. On page 2 of that document, down the bottom under the heading "Confession" --

A. Yes.

Q. -- it is recorded that:

Mr Robert Caddies had provided the Bishop with some notes on the extent of confession ...

Do you see that?

A. I see that.

Q.

... and the Bishop asked Mr Rosser to review the notes and if necessary provide further advice on the extent of confessions ...

A. Yes, I see that.

Q.

... particularly whether the definition was wide enough to include an interview ...

Et cetera.

A. Yes.

Q. Firstly, do you know if that advice was given?

A. No, I don't know whether --

Q. Have you ever seen an advice in relation to that?

A. Not to my knowledge, no.

Q. Just back to the first page there of that same document, the fourth paragraph down:

Ms Deirdre Anderson, as Chair of the Diocesan Sexual Harassment Monitoring Committee believed that she will be faced with similar scenarios, particularly as she receives information orally and asks complainants to put their complaints in writing, but there is sometimes a reluctance to do so. At the moment, if a complaint is not reduced to writing then

1 *no further action is taken and this may*
2 *mean that inappropriate behaviour goes*
3 *undetected until such times as someone is*
4 *willing to lodge a formal written*
5 *complaint.*

6
7 A. Yes.

8
9 Q. There was some discussions about that before.

10 A. There were.

11
12 Q. Your understanding of that paragraph, was it the case
13 that a complainant had to write a formal complaint or could
14 it be, for example, one of the lay employees of the
15 Committee that received a complaint, to put that formal
16 complaint in writing?

17 A. Yes, it could have been either, yes.

18
19 MR HALE: Thank you, your Honour.

20
21 THE CHAIR: Ms Sharp?

22
23 MS SHARP: Only a few very minor matters, your Honour.

24
25 <EXAMINATION BY MS SHARP:

26
27 MS SHARP: Q. You gave some answers, Mr Mitchell, in
28 relation to questions from your own counsel that you had
29 been provided with some legal advice, that the material
30 obtained from Peter Rushton's home was not child
31 pornography?

32 A. Yes.

33
34 Q. Who was that legal advice from?

35 A. There were two aspects, I think. One was the letter
36 from Sparke Helmore. The other was the Diocesan
37 Solicitors, Rankin & Nathan.

38
39 Q. You say they provided you with some advice?

40 A. Yes, they provided advice that the pornography was not
41 illegal. It did not include child pornography, in other
42 words, that it was not illegal, so the advice they gave was
43 that it wasn't illegal and the Bishop couldn't, for
44 example --

45
46 THE CHAIR: Q. I am troubled by this.

47 A. I think we've covered --

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Q. Sparke Helmore say they have some statements.
A. Yes.

Q. On the basis of those statements there is no child pornography and they write to Rankin & Nathan. That is not legal advice in the sense of a lawyer expressing an opinion. It is just a statement as to what they say the facts were. Do you understand?
A. Okay, yes.

Q. Do you understand that?
A. Yes.

Q. The consequences that might flow from those facts, yes, that's legal advice.
A. Okay.

Q. But did you not see that it was incumbent upon the Diocese to satisfy itself as to the true facts?
A. I think the Diocese did satisfy itself in terms of the material that was provided.

Q. Well, no material was provided. You never got the statements, did you?
A. No, we didn't get the statements.

Q. No.
A. We got advice from Sparke Helmore in that case. We got a letter from Sparke Helmore.

Q. All you got was a letter from Sparke Helmore?
A. Yes.

MS SHARP: Q. Are you saying that you did not receive advice from Rankin, that is Mr Caddies' firm, advising that the material was not child pornography?
A. I think from memory their letter says that it is not child --

THE CHAIR: Q. He passed on the view of Sparke Helmore?
A. Mmm.

MS SHARP: Q. Can I take you to one document at tab 38. I just wanted to inquire as to whether this might have been part of that legal advice you say you received. Do you see that is a letter from Greg Hansen dated 3 December 1998 to

1 Bishop Herft?

2 A. Yes.

3

4 Q. He advises that he has examined certain material in
5 the possession of Peter Rushton?

6 A. Yes.

7

8 Q. In the third paragraph:

9

10 *So far as I am aware such material does not*
11 *contravene any legislation ...*

12

13 A. I see that, yes.

14

15 Q. But in the second paragraph, he says:

16

17 *... I do not purport to give legal advice.*

18

19 A. True.

20

21 Q. Is this the advice you were referring to?

22

23 THE CHAIR: No, no, we have been over this. This is
24 Mr Hansen who apparently was a solicitor who was
25 Mr Rushton's friend. We have been over this.

26

27 MS SHARP: I won't press that question in that case. That
28 is all I sought to ask of this witness.

29

30 THE CHAIR: Yes, thank you.

31

32 MR HALE: There was a statement of Mr Caddies. I will
33 find the tab.

34

35 MR KERKYASHARIAN: Just while that is happening,
36 Commissioner, I appear for Caddies, can I just ask
37 a question that perhaps will settle this?

38

39 THE CHAIR: I hope so.

40

41 MR KERKYASHARIAN: So do I.

42

43

44

45

46

47

1 <EXAMINATION BY MR KERKYASHARIAN:

2
3 MR KERKYASHARIAN: Q. When you say that you received
4 legal advice from Rankin & Nathan about this, you're not
5 suggesting that Rankin & Nathan viewed the material and
6 provided advice on it, are you?

7 A. No.

8
9 MR KERKYASHARIAN: No.

10
11 THE CHAIR: That's what I thought.

12
13 MR KERKYASHARIAN: Thank you, Commissioner.

14
15 THE CHAIR: Is there anything else you want to say,
16 Mr Hale?

17
18 MR HALE: I do, your Honour, I'm sorry, I know it has been
19 a long day. It is a statement of Mr Caddies. I will try
20 and find what tab it is at. It is statement number
21 STAT.1070.001.0001, page 13. It is a statement dated
22 21 July 2016, tab 6. On page 13 of that statement,
23 your Honour, at (iii), Mr Caddies states:

24
25 *I became aware of a complaint against*
26 *Peter Rushton for possessing gay*
27 *pornographic magazines, from Bishop Herft*
28 *in my capacity as Solicitor for the*
29 *Diocese. Both Bishop Herft and I were*
30 *subsequently satisfied that whilst it was*
31 *gay pornography it did not relate to*
32 *children. Whilst I do not have a clear*
33 *recollection, the letter from Sparke*
34 *Helmore Lawyers ...*

35
36 Et cetera.

37
38 THE CHAIR: That is what I have been saying for the last
39 couple of hours, I think.

40
41 MR HALE: I understand that, your Honour, but it is my
42 submission that Mr Caddies has given legal advice after
43 viewing the material and he says it wasn't child porn.

44
45 THE CHAIR: I don't understand him to be saying he viewed
46 the material. He got the advice from Sparke Helmore,
47 didn't he?

1
2 MR HALE: Your Honour, he did say he satisfied himself.
3

4 THE CHAIR: I know. He has done that on the basis of
5 Sparke Helmore's letter as I understand it at the moment
6 and I think Mr Caddies' counsel was putting that position.
7

8 MR KERKYASHARIAN: Can I say, your Honour, he is up next
9 so we can just ask him.
10

11 THE CHAIR: Have I got that right?
12

13 MR KERKYASHARIAN: I think that's right. I can check with
14 him just now, but I think that's right.
15

16 THE CHAIR: Very well.
17

18 MS SHARP: Your Honour, may this witness be excused?
19

20 THE CHAIR: Yes. Mr Mitchell, you are excused.
21

22 <THE WITNESS WITHDREW
23

24 MS SHARP: Can I deal with some housekeeping matters.
25

26 Your Honour asked whether Sparke Helmore had been
27 served with a summons to produce documents. The answer is,
28 yes, Sparke Helmore was. I will tender the summons as well
29 as the response. The response indicates that "The file has
30 been destroyed in accordance with our usual policies". The
31 only document produced was a file closure document. I will
32 tender that summons and the reply.
33

34 THE CHAIR: We will mark them together exhibit 42-047.
35

36 **EXHIBIT #42-047 SUMMONS TO PRODUCE DOCUMENTS ADDRESSED TO**
37 **SPARKE HELMORE AND REPLY**
38

39 MS SHARP: In preparation for the next witness, may
40 I tender a memorandum dated 30 April 2014 from Scott Puxty
41 to John Cleary.
42

43 THE CHAIR: That will be exhibit 42-048.
44

45 **EXHIBIT #42-048 MEMORANDUM FROM SCOTT PUXTY TO JOHN CLEARY,**
46 **DATED 30/04/2014**
47

1 MS SHARP: May I tender an email from Malcolm Campbell to
2 Robert Caddies dated 9 August 2005.

3
4 THE CHAIR: That email will be exhibit 42-049.

5
6 **EXHIBIT #42-049 EMAIL FROM MALCOLM CAMPBELL TO**
7 **ROBERT CADDIES, DATED 9/08/2005**
8

9 MS SHARP: Your Honour, I see the time. I was going to
10 call Robert Caddies now. I don't know whether your Honour
11 and Commissioners wish to get a start on him or wait until
12 tomorrow?

13
14 THE CHAIR: I think given that everyone started at 9.30,
15 we might cease there for the day. What time do you want to
16 start in the morning?

17
18 MS SHARP: Is it possible to start at 9.30 tomorrow
19 morning?

20
21 THE CHAIR: We can do that.

22
23 MR KERKYASHARIAN: I am sorry, Commissioner, Mr Caddies
24 has the sole care of his wife who is quite ill and he can't
25 make arrangements, as I understand it, before 10 o'clock,
26 or it is very difficult and he may not be able to.
27 I understand the Commission doesn't sit for his convenience
28 but --
29

30 THE CHAIR: He is here now, is he?

31
32 MR KERKYASHARIAN: He is here now and is prepared to begin
33 now.

34
35 THE CHAIR: How long is his evidence going to take? Can
36 anyone tell me? I know it is very hard to estimate here.

37
38 MS SHARP: If anything today is to go by, my examination
39 will take about the same time as Mr Mitchell's did and
40 then I am in the hands of the other parties.

41
42 THE CHAIR: In that event, we won't start today, we are
43 not going to get very far anyway. We will adjourn until
44 10 in the morning.

45
46 **THE COMMISSION WAS ADJOURNED TO THURSDAY, 11 AUGUST 2016**
47 **AT 10AM**

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