

## STATUTORY DECLARATION

### OATHS ACT (NSW)

I, Hamish Berkeley Fitzhardinge, solicitor, of Level 1, 51-55 Bolton Street, Newcastle.

Do solemnly and sincerely declare that:

- 1) I am a solicitor in the employ of the Office of the Director of Public Prosecutions.
- 2) On the 14<sup>th</sup> of May 2003 the offender James FLETCHER was charged with various sexual offences relating to the victim AM
- 3) On 19 November 2003 the matter was before the Newcastle Local Court and the victim AM was directed to attend a committal hearing on the 17<sup>th</sup> of February 2004 to be cross examined.
- 4) On 24 November 2003 the matter was allocated to me. At no time did I have carriage of a file relating to advice being sought from the NSW Police as to whether Bishop MALONE or others from the church should be charged with any offence.
- 5) In January 2004 I started to read and prepare the matter for the committal hearing.
- 6) On 15 January 2004 I sent an email to Sgt Peter FOX indicating that I now had carriage of the matter and enquired of some requisitions that had been raised with him by the previous solicitor.
- 7) On 16 January 2004 I had a telephone conversation with Sgt Peter FOX. My note of that conversation, a copy of which is attached, indicates that we discussed the following
  - a) A forensic procedure application to be conducted on the accused
  - b) Sgt FOX informed me that Harrigan had been found with male pornography
  - c) Sgt FOX informed me that there was an Ombudsman's Complaint relating to the handling of the allegations by the Church.
- 8) My recollection of that conversation is that Sgt FOX expressed his disgust at the way in which the Church handled the allegations and that he had considered charging some members of the Church. This was the only discussion I recall dealing with charging anyone from the church. I cannot recall giving any advice about the handling of the matter by the Church. In deed at the time of that conversation I had not read the full brief and told Sgt FOX so.
- 9) I have no recollection of being a party to discussions as to whether Bishop MALONE and or others were better kept as witnesses than being charged. I never provided any advice as to whether Bishop MALONE or others from the Church should be charged, or not, with any offence.
- 10) Bishop Michael MALONE had given a statement to police on 21 May 2003.

Signed

Signed

- 11) On 17 February 2004 the matter proceeded to Committal at the Newcastle Local Court. That committal was conducted as a paper committal as the defence withdrew their application to cross examine the victim. At that committal I did not tender a number of statements that had been served on our office by the Police as I did not consider them relevant to the charges before the Court. The statement of Bishop Michael MALONE dated 21 May 2003 was one of the statements that I did not tender.
- 12) On 29 October and 8 November 2004 I sent a letter to the defence indicating those witnesses who were likely to be called by the Crown during the trial and those who were unlikely to be called. Bishop Michael MALONE was listed in those unlikely to be called. A copy of that list was sent to Sgt FOX.
- 13) On 18 November 2004 I did requested Sgt FOX to obtain a statement from Bishop Michael MALONE touching upon the role of a priest in providing pastoral care to church members. This was to cover whether the victim was 'under the authority' of the accused. A letter was then sent to the defence indicating that Bishop MALONE might now be called during the trial.
- 14) Bishop MALONE was not called during the trial as the indictment was amended thereby alleviating the need to prove the victim was under the authority of the offender.

AND I make this solemn declaration, as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statements in any such declaration.

Signed

Hamish Beckley-Fitzhardinge

Declared at Newcastle

This 17<sup>th</sup> day of July 2013

Before Me

Signed

NICOLE STEPHENS  
Solicitor

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T/T AM Left message that file is to be allocated to Thomas Fitzhardinge & that he can call him any time to have a talk.

Signed

T/T Stewart Austin. He to IX copy of Agreement under SAE to me (I handed up my only copy to Richard Wakeley & he didn't give me a copy back for our file).

Signed

16/1/4.

T/T Peter Fox

- discussed forensic procedure
- informed that Harrigan had been fed with male pornography
- Ombudsman's Complaint relates to the handling of the allegations by the Church.

T/T Greg Murray

16/1/4

discussed forensic procedure - photo to be done by medical practitioners - he to get instructions concerning this. he to let me know what Stuart Hills about. Reading entire Stuart from victim.

Signed

Signed