STATUTORY DECLARATION

OATHS ACT (NSW)

I Jillian Ann Kelton

Of The New South Wales Office of Director of Public Prosecutions, Newcastle Regional Office

do solemnly and sincerely declare that:

1. The accused James Fletcher was charged on 14 May 2003 with historical child sexual assault matters. The matter was referred to the Director of Public Prosecutions. At that time I was employed by the Newcastle Regional Office of the DPP as a Senior Solicitor.
2. I was the solicitor listed to mention the matter at Newcastle Local Court on Friday 23 May 2003 as part of the Newcastle DPP list.
3. Detective Peter Fox telephoned me on Thursday 22 May 2003 seeking a meeting with me. He indicated the matter was complex with a great deal by way of background details that needed to be discussed. We arranged for a meeting on Tuesday 27 May 2003.
4. At that meeting, Detective Fox made broad comment about his dissatisfaction at how he felt the allegations had been handled by the Church. He stated he regarded that the priests involved had "gotten their heads together" to try to deny the offences. Detective Fox spoke about this at great length, and the conference ran for about two hours.
5. The very strong theme was one of Detective Fox making allegations of cover up and protection by the Church of the accused. He used phrases such as "someone got to" a witness to make him change his statement.
6. I made very detailed notes during this meeting. This is in accordance with my usual practice. Later that same afternoon I typed up those notes and added them to the file, again in accordance with my normal practice. I attach that file note dated 27 May 2003, labelled "Annexure A".
7. I do not have a very clear recollection of that meeting independent of the notes I made.
8. I am not familiar with the Catholic Church hierarchy or the Newcastle Diocese, and do not know any of the people involved. For that reason as well I was very careful to make detailed notes as to names, roles, and relationships of members of the Church as described to me by Detective Fox.
9. While it was abundantly clear that Detective Fox thought negatively and strongly about what he regarded to be the poor conduct by the Church, and a conspiracy to cover up the truth, I formed no view about that. It was all provided by way of background. My concern was the preparation of the prosecution of the accused for the sexual abuse of the complainant.

Signed

Signed

10. The matter was formally added to my practice on 1 July 2003, after I had met with the complainant. In the time between 14 May 2003 and 1 July 2003 I had been the solicitor looking after the matter.
11. At no time did Detective Fox discuss with me a desire to charge Bishop Michael Malone.
12. At no time while I had carriage of the matter did Detective Fox file an Advising with the Office or me seeking advice as to whether criminal charges should be laid against Bishop Malone.
13. At no time did I speak with Detective Fox, or did he speak with me, about making a decision to not charge Bishop Malone for the reason of keeping the Bishop on side as a witness.
14. Such a determination suggests immunity was considered, which would have involved a file being created for Bishop Malone, detailed reports being prepared within this Office, and a referral of that report to the Director of Public Prosecutions, and from there to the Attorney General.
15. Any mention of such a consideration to me would have been clearly noted in my file notes, and considered in accordance with the Office protocols. At no time while I had carriage of the matter did this occur.
16. Carriage of the matter was transferred to Mr Hamish Fitzhardinge, another Senior Solicitor within the Newcastle Regional Office of the Director of Public Prosecutions, on 24 November 2003 while the matter was still in the Local Court. That was well before any consideration as to who to call as a witness at the trial would have been made. Those considerations would have been made by the Crown Prosecutor and instructing solicitor, Mr Fitzhardinge.
17. The matter was committed for trial on 17 February 2004, and the trial commenced on 22 November 2004, a year after the matter had left my practice.

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 .....
(Signature of Declarant)

Declared at Newcastle.....

This 22nd day of July 2013

Before me.... Signed NICOLE STEPHENS

~~Justice of the Peace in and for the State of New South Wales~~/Solicitor.

"Annexure A"

Conference 27 May 2003
Detective Sergeant Peter Fox, OIC
At Newcastle DPP office

Peter Fox phoned me on Thursday, 22 May to briefly discuss the matter with me, as I was to mention the matter in Court on Friday 23 May. At that time, he indicated that the matter was very complex, and there were background details that needed to be discussed with the solicitor with carriage of the matter sooner rather than later. As yet, no-one had been assigned. I invited him to the office during the following week – we both agreed on Tuesday, 27 May, as a convenient day.

The meeting went for some 2 hours. He is right – there is a lot going on in this one.

The Ombudsman is apparently involved in relation to 2 issues:

1. That the Catholic Church did not follow proper procedure in dealing with the defendant in this matter following disclosure, including a notification by CCER.
2. REDACTED

Also note at this time that it was a solicitor in the Newcastle DPP office that spoke first to the victim – it seems they are friends. That solicitor contacted Peter Fox, and asked that he look into the matter. There is certainly NO allegation or even appearance of impropriety about this AT ALL. It is what anyone would have done. I do not know the name of that solicitor. I only raise it as an aspect that may need to be considered in determining if the matter should remain in this office.

REDACTED

Peter Fox spoke to John Daveron, in the Child Protection Unit within the Catholic Church. He has now resigned, and his replacement is Michael McDonald.

Signed

Signed

OIC has also been liaising with Kylie Symons in the Ombudsman's Office. It seems there was an obligation on the Church to have disclosed to the Ombudsman within 30 days of the disclosure of the allegation. It appears this was not done.

The father of the complainant is REDACTED

On 2 June 2002, "60 Minutes" ran a program on Father George (?) Bell, a Catholic priest convicted of child sexual assault. (OIC has obtained this tape). The complainant watched this program and became extremely distressed. He phoned his father, and disclosed. The complainant's father spoke to the Bishop the next day, Monday 3 June 2002. He did not know where the matter was going, and thought his son would keep the matter "in house". The Bishop went to see the defendant, and told him about the allegations (as told by the complainant's father), and who the complainant was.

During the evening of 2 June 2002, the complainant also phoned the defendant and was verbally abusive. He did not identify himself. The defendant then phoned Father Des Harrigan, very distressed. Harrigan went to see the defendant and they talked. Harrigan now tells police he cannot recall any details of the conversation. Harrigan also phoned Vicar-General Jim Saunders (Vicar-General is the 2IC to the Bishop). Harrigan told Saunders that someone had phoned the defendant making allegations of child sexual assault. It seems Saunders says that he did not pass this message on to the Bishop, and the Bishop says he was not informed of the call.

Harrigan phoned Father Bill Burston at about this time. Burston spoke to the complainant's father, and said that he (Burston) had spoken to the defendant, who said that he never had the complainant stay alone with him at the defendant's presbytery (this is one of the allegations, that the defendant had sexual intercourse with the complainant when he was staying the night). The complainant's father told Burston that he drove the complainant there, and picked him up the next day.

The OIC went to the Bishop in June 2002 and discussed that an allegation had been made, and to express his displeasure at the Bishop having told the defendant about the allegations. He urged the Bishop to find somewhere else for the defendant to work that did not involve teaching and contact with children. It seems that the defendant was actually given an increase in pastoral care role, and was asked to also take on the Lochinvar region as well. The OIC also asked whether there were other disclosures about the defendant – and was told "no".

OIC was phoned recently by Mr Pat Roohan, now living in QLD.

REDACTED

Signed

Signed

REDACTED

REDACTED

The OIC spoke as well to Father Searle. Fr Searle knew the complainant, and saw him outside the Nelson Bay church (I think). The complainant was very drunk, and screaming abuse at Fr Searle about paedophiles, and abuse of children. Fr Searle said he told the complainant he would phone the police unless the complainant calmed down, and contacted the complainant's family. Fr Searle discussed this with the OIC over the phone late in a week.

REDACTED -

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The OIC also said that he now understands that the victim has slight previous knowledge of the OIC. Apparently, the complainant played cricket at some time with the OICs eldest son. The OIC does not remember the complainant at all.

Apparently the complainant had a stay in a psych ward in Qld a couple of years ago after a second sort of suicide attempt – he walked in front of a car, and he was very intoxicated. It seems he made some disclosures while in hospital too. OIC getting those details.

OIC is going to contact Kylie Symons and Michael McDonald to tell them that I am going to be calling about the matter to discuss.

Will do the same with the family once I discuss with Managing Lawyer about whether matter should stay in this office, so that that care process can begin.

Complainant now doing counselling.

Signed

Signed

These notes made from contemporaneous notes taken during conference.

Signed

Jillian Kelton
27.5.03

Signed

Signed