

**SPECIAL COMMISSION OF INQUIRY
INTO MATTERS RELATING TO THE POLICE INVESTIGATION OF
CERTAIN CHILD SEXUAL ABUSE ALLEGATIONS IN THE CATHOLIC
DIOCESE OF MAITLAND-NEWCASTLE**

At Newcastle Supreme Court
Court Room Number 1, Church Street, Newcastle NSW

On Tuesday, 7 May 2013 at 10.am
(Day 2)

Before Commissioner: Ms Margaret Cunneen SC

Counsel Assisting: Ms Julia Lonergan SC
Mr David Kell
Mr Warwick Hunt

Crown Solicitor's Office: Ms Emma Sullivan,
Ms Jessica Wardle

1 THE COMMISSIONER: Ms Lonergan.

2

3 MS LONERGAN: Thank you, Commissioner. I apologise to the
4 legal representatives and members of the public and press
5 who are present in court for the delayed start this
6 morning. As often occurs in matters of this size and
7 complexity, last minute and important items are raised for
8 attention, as best they can be dealt with at the time, so
9 I do apologise for the late start.

10

11 THE COMMISSIONER: Thank you, Ms Lonergan. Are we ready
12 for Detective Chief Inspector Fox?

13

14 MS LONERGAN: Yes.

15

16 <PETER RAYMOND FOX, resworn: [10.46am]

17

18 MS LONERGAN: Commissioner, there is a transcript
19 correction from yesterday, kindly pointed out to me by
20 Mr Cohen. It occurs at page 101, at line 39. The last
21 sentence in that entry should read, "I haven't read them
22 until now", as opposed to "I haven't read them now."

23

24 THE COMMISSIONER: That correction will be made. Thank
25 you, Ms Lonergan.

26

27 <EXAMINATION BY MS LONERGAN CONTINUING:

28

29 MS LONERGAN: Q. Detective Chief Inspector Fox, I want
30 to ask you some questions about when you met
31 Joanne McCarthy and the circumstances of it. Yesterday you
32 gave some evidence to the effect that you began an emailing
33 relationship with her in June 2010, when she sent you
34 material that had been provided to her?

35 A. That's correct.

36

37 Q. Prior to June 2010, had you had any dealings with
38 Ms McCarthy?

39 A. I'd like to say no, because as a police officer,
40 I suppose, and being a local media identity, we may have,
41 but it certainly doesn't come back to mind. In all
42 likelihood, I probably did have, but it certainly wasn't
43 anything significant. It was probably much less than most
44 other press.

45

46 Q. In terms of dealings with Ms McCarthy, would you,
47 judged by your usual practice prior to June 2010, not

1 disclose to a member of the media confidential police
2 investigations or information?

3 A. Yes, obviously that's assessed and it's - that's
4 correct.

5

6 Q. So you would limit your disclosure to any member of
7 the media prior to June 2010 to matters that were
8 appropriate to disclose consistent with police media
9 policy?

10 A. Yes.

11

12 Q. What was it that occurred in June 2010 or after that
13 made you change your approach in terms of the way you dealt
14 with the media?

15 A. Well, not really so much the media, but specifically
16 Joanne McCarthy. I suppose it's coming back to what we
17 were discussing yesterday, is that I acknowledge that she
18 is a journalist, but I was not viewing her predominantly in
19 that role; she was more of a complaint and an informant.
20 The police department had no holdings that I'm aware of
21 whatsoever in relation to all these allegations, and the
22 entirety of the investigation was the genesis of what
23 Ms McCarthy provided. So I was viewing her in a very
24 different role to just a member of the press approaching me
25 for a story.

26

27 Q. First of all, when you say the police had no holdings
28 about these matters, that's not quite correct, is it?

29 A. Well, I don't believe that they had any of the
30 documents. I could be wrong. But to my knowledge, I would
31 be surprised if the police department had any of the
32 documents she was providing to us.

33

34 Q. Didn't you consider part of your investigation in
35 relation to the Fletcher matter was part of relevant
36 holdings for the investigation you thought ought to be
37 conducted?

38 A. There were lots of peripheral areas it may have gone
39 to, but predominantly the central aspect that she was
40 reporting to us, no, and certainly from all the witnesses -
41 and I'm not just counting the ones here that I took
42 statements from, but there were a number of other potential
43 witnesses that I spoke to that Joanne McCarthy had contact
44 with and provided me with their names and telephone numbers
45 and had let them know that I'd be ringing. So to sort of
46 say that - you know, had somebody from another media outlet
47 contacted me midway through this, I would have viewed it

1 totally differently, but I was viewing her not so much as a
2 journalist but as a complainant.

3

4 Q. The term "complainant", is that usually confined to
5 the person who was the victim of a crime?

6 A. No. No.

7

8 Q. It can include a relative or friend or someone who
9 knows about a crime?

10 A. Of course.

11

12 Q. And in terms of informant, is there a particular
13 course that needs to be adopted when an informant comes
14 forward to the police?

15 A. There's an informant registration system that you go
16 through.

17

18 Q. You used that in relation to Ms McCarthy?

19 A. No.

20

21 Q. Why not?

22 A. Probably two reasons: number 1, I didn't view it
23 early on as - she was bringing information, and I think if
24 we start registering everybody who comes into the police
25 station saying, "Listen, I want to tell you about a crime"
26 as an informant," it would be going a little bit over the
27 top. Later on, of course, the second reason was that, had
28 I registered through that system, I obviously would have
29 been subjected to scrutiny by more senior police, and by
30 that stage, I had started to have concerns about that
31 aspect.

32

33 Q. You started to have concerns on 8 June, did you,
34 2010, which is the date certain documents were sent to you?

35 A. I had some - you know, they certainly weren't anywhere
36 near the scale that they were later, but I was entertaining
37 - from what Sean McLeod had told me I was entertaining some
38 concerns, yes.

39

40 Q. On and by 8 June?

41 A. Yes. I had spoken to Sean McLeod in April/May, so
42 I had those discussions with him prior to Joanne McCarthy
43 contacting me.

44

45 Q. Do you know whether Officer McLeod, Sergeant McLeod,
46 put his information that he obtained from Ms McCarthy on to
47 any sort of formal police system?

1 A. Sorry, it's Detective Senior Constable McLeod.

2

3 Q. Thank you.

4 A. Sorry, that's only a minor point. I believe he said
5 that he did. He actually told me that he was concerned
6 that the information might be lost, so he made sure that it
7 couldn't be, by entering them up as exhibits, such was his
8 concern.

9

10 Q. Do you recall the first time you spoke to
11 Joanne McCarthy about anything to do with Catholic priests
12 and your concerns about paedophile behaviour or the
13 covering up of paedophile behaviour?

14 A. To be honest, I don't. I may have spoken to
15 Joanne McCarthy, and I've never asked her, when I was
16 investigating Fletcher, as far back as 2002, I don't know,
17 I may have, but I can't recall. I genuinely can't recall
18 that. Like, if I spoke to Joanne McCarthy before June of
19 2010, it would be on less than a handful of occasions, and
20 I really don't recall them.

21

22 Q. If it was suggested that you spoke to Joanne McCarthy
23 about other police investigations going on to
24 church-related paedophilia, not ones that you were
25 investigating but others were investigating, would that be
26 an untrue statement?

27 A. Yes. She did ring me on one occasion - I don't recall
28 the year, it may have been 2008 - and asked if I was
29 investigating a particular member of the clergy. I told
30 her that I wasn't and that if she was after any
31 information, she should ring Lake Macquarie. But I was
32 unable to help her because I wasn't involved in it and knew
33 nothing about the matter.

34

35 Q. If Detective Senior Constable McLeod had registered
36 the documents that were given to him by Ms McCarthy as
37 documents significant to his investigation, why wouldn't
38 you do the same thing and record the material you obtained
39 related to the investigation that you were working on?

40 A. Probably for a couple of reasons. Number 1, I would
41 have been doubling up, because the police already had them
42 as holdings, so to duplicate that process, I saw no point
43 in that. And, secondly, I didn't get those on that early
44 date. They began to arrive from Ms McCarthy later, after
45 I - it may have been before, but certainly after
46 I contacted the witness [AJ]. Through that period,
47 I understood that the documents, in the way I interpret

1 them, they were to assist me with getting the statement
2 from [AJ], which they did enormously, and my view was that
3 the police department already had those other documents,
4 from what Detective McLeod had told me, on their system.
5

6 Q. So the documents you say were provided by Ms McCarthy,
7 you got after you had started to interview [AJ]?

8 A. No, I got them after I had spoken to her. I can't
9 remember the exact date now that I commenced her statement
10 and the exact date that I got the documents, but they would
11 have been around the same time. You know, I may have -
12 I can't recall whether I started the statement first or
13 some of the documents. I don't think I got all the
14 documents - I'm certain I didn't get all the documents at
15 once. They came in at various stages over a period of
16 time.
17

18 Q. When you say "all the documents," what documents are
19 you talking about?

20 A. I'm talking about statements made by [AK] and [AL] to
21 Archbishop Philip Wilson; also various correspondence
22 internally within the Maitland-Newcastle diocese, also
23 responses by Father Lucas to Joanne McCarthy in relation to
24 a number of questions. You know, all of those documents
25 I have, of course, already earlier provided to this
26 Commission. There is an array of them. But if there's one
27 specifically that I need to have my attention drawn to, I'm
28 happy to.
29

30 Q. You recall yesterday I showed you and asked you to
31 look at a series of emails at tabs 42 to 47 inclusive, in
32 volume 1 of the materials, and they were a series of emails
33 dated 8 June 2010. Just have a look at those, to remind
34 yourself.

35 A. Yes.
36

37 Q. You see, don't you, that those materials you've just
38 been leafing through are all part of the series of emails
39 on 8 June 2010?

40 A. Yes.
41

42 Q. And that was before you spoke to Ms [AJ], wasn't it?

43 A. It would have been around about the same time.

44 I can't remember the first date that I spoke to [AJ], but
45 we are talking about a matter of days, I would imagine. It
46 wouldn't be much between it.
47

1 Q. It wasn't after you completed the statement of [AJ]?
2 A. I don't know. It may not have been. It's around the
3 same time. That's the closest I can --
4
5 Q. You need to listen to my question. It wasn't after
6 you completed the statement of [AJ]?
7 A. Oh, sorry, no. No, you're correct.
8
9 Q. So I'm struggling with understanding why you didn't
10 log them into the system - this material you received on
11 8 June?
12 A. A number of them I felt related to what I was being
13 told by [AJ] and I intended to annex them to her statement.
14 I was aware that, I believe, most of those documents had
15 already been entered up by Sean McLeod on the police
16 system.
17
18 Q. Did you look and see if they had been entered into the
19 police system by Mr McLeod?
20 A. No, I didn't, no.
21
22 Q. Did you have a discussion to the effect in April or
23 May 2010 with Detective Senior Constable McLeod that he
24 would not be logging them into the system, that he was
25 going to keep them secret?
26 A. No, no, he told me specifically that he was entering
27 them on to the system because he feared that they would be
28 misplaced and not acted upon if he didn't make an official
29 record of them.
30
31 MS LONERGAN: Commissioner, could the witness be shown a
32 document which I am handing up.
33
34 Q. If you would look at that document and read it to
35 yourself, please. Let me know when you've finished looking
36 at it, Detective Chief Inspector Fox.
37 A. I've had a look through it. I'm aware of that
38 document. I created that document myself.
39
40 Q. Why did you create that document?
41 A. Well, it's titled "To do list", and that's effectively
42 what I intended to it as. You know, it was just a bit of a
43 personal checklist for me, over a period of time, to
44 address these tasks.
45
46 Q. When did you prepare it?
47 A. My recollection is I did it over a period of time. It

1 was obviously created after I had the phone call from
2 Ms McCarthy in June 2010, and it would have been, at the
3 latest, I would imagine, 2 December 2010. But my
4 recollection of it is I kept that as a document on the
5 computer and whenever I'd come across something in a
6 statement or something else just popped into my mind,
7 I would jump into the document again and insert another
8 task to do, just to make sure that I didn't forget any of
9 them and I got around to them at some stage. It was
10 probably a live document that was created between those
11 dates, and I can't recall when I started it, when
12 I finished it. It was just a rough notation that I kept.
13

14 Q. Was that kept on your computer at home or at work or
15 both?

16 A. I believe it was at home only.
17

18 Q. Did you find this document on your computer in soft
19 copy?

20 A. Yes, I found it. Yes, I did.
21

22 Q. So this is a print-out of what was on your computer?

23 A. Yes.
24

25 Q. And from looking at your --

26 A. Sorry, no, hang on. No, it wasn't. Sorry, I'm
27 confused there. No, it was a hard copy, I do apologise.
28 It was a hard copy and I had put it away with a newspaper
29 article and two notepad pages.
30

31 Q. When did you find it?

32 A. Only probably two months ago.
33

34 Q. You say that you considered it a document you kept on
35 your computer and added to when other matters occurred to
36 you; is that a correct understanding?

37 A. Yes.
38

39 Q. Are you able to assist with why the dates that are
40 inserted in there aren't chronological?

41 A. Yes. As I said, I was just - when something popped
42 into my mind, I was adding to whatever was there. I think
43 the dates - I'm not sure whether the dates actually are
44 acknowledging when I made those entries. I don't think
45 that's the case. I think that they relate more to -
46 because on 1 May '10, that may be related to something that
47 I picked up in a paper article that was printed on that

1 date, but I certainly wasn't investigating back on 1 May,
2 if that's the concern about this document. I think that
3 would relate perhaps to a newspaper article that may have
4 dated from then, and I've typed that in there.

5
6 Q. Typed it in there not on 1 May 2010?

7 A. Definitely not on that date because I wasn't looking
8 at this matter at all back then. Sorry, it may assist, but
9 what I think it was is there may have been a newspaper
10 article dated 1 May 2010 which contained the subject matter
11 of what I've got with those "to do" notes there, and that's
12 the relevancy of the date in relation to that entry, not
13 that that was the date that I made the entry.

14
15 Q. What about 2 June '10? Is that a step you took on
16 2 June 2010, or that somebody else took? What is it?

17 A. No, again the dates aren't - they weren't put on there
18 as dates that I was making the entries. The dates related
19 to the entry underneath them, for some reason.

20
21 Q. Why? What's the relationship?

22 A. If you look at the fourth one down, and I think that's
23 probably --

24
25 Q. No, I'm asking you to look at 2 June '10 only. What
26 are you writing about there?

27 A. "Clarify matters spoken about by nieces." I'm
28 guessing that it related to [AL] and [AK], but, in all
29 honesty now, that probably meant obviously something to me
30 back then, but three years later, I don't recall exactly.
31 I probably should have put more detail in, but it probably
32 twigged something at the time.

33
34 Q. Is that what you were doing in June 2010, clarifying
35 matters spoken about with those people?

36 A. No, I hadn't made contact with those people then.
37 I didn't know of them at that time.

38
39 Q. The fifth item of the page, "10 May '10 article"; is
40 that a reference to an article, a newspaper article, that
41 you found - or what is it?

42 A. I think that's - you know, although I haven't put it
43 in there, I think that's what all those dates relate to.
44 I think they are all articles relating to the date that is
45 typed - not when I've included them.

46
47 Q. I understand that, but what is it referring to?

1 A. "Interview" - I can say that fellow's name, I think.
2
3 Q. Yes.
4 A. "Interview Stanwell re report in 1985." I'm guessing
5 again that there was a newspaper article that I've, whilst
6 scrolling through the internet, picked up with Mr Stanwell
7 allegedly reporting some sort of misconduct within the
8 church in 1985, and I've made a notation there that if and
9 when I got the opportunity to speak to Mr Stanwell, I would
10 canvass that with him to try to find more detail out about
11 that.
12
13 Q. These are, in effect, matters in the nature of a
14 police investigation, aren't they, these plans that you
15 noted here, up to that one we've just looked at?
16 A. Yes.
17
18 Q. And it was your intention to pursue them as a police
19 officer?
20 A. Yes.
21
22 Q. And to hold yourself out to the person that you
23 interviewed as investigating these as part of a police
24 investigation?
25 A. Yes.
26
27 Q. But you didn't log any of this material on to the
28 systems of the police force?
29 A. I think police do these sorts of lists all the time
30 and don't log them on. They may have been just totally
31 dead ends or - they are just random inquiries. I think
32 I would have been asked, "Why are you logging that on to
33 the system?", somehow, if I had put them on the system.
34 They're not - there's nothing there that would really
35 require putting on to the system at that stage because
36 I hadn't - they were questions in my mind that I wanted to
37 clarify. That's simply all they are.
38
39 Q. But you did go and interview Mr Stanwell, and that
40 material was in a document I showed you yesterday?
41 A. Yes.
42
43 Q. And you didn't log the fact that you had interviewed
44 Mr Stanwell into the police system?
45 A. No, I did not.
46
47 Q. That is part of that material that you wanted to keep

1 confidential to yourself?
2 A. At that stage, yes.
3
4 Q. Because of concerns that you had?
5 A. Yes.
6
7 MS LONERGAN: If the witness could be shown another single
8 sheet of handwritten notations.
9
10 THE WITNESS: Yes.
11
12 MS LONERGAN: I have just been handed a document that I'm
13 told is the original of that document. Can I take a minute
14 to read it?
15
16 THE COMMISSIONER: Yes, Ms Lonergan.
17
18 MS LONERGAN: Q. Detective Chief Inspector Fox, the
19 handwritten document that you have in front of you, did you
20 locate that together with the to do list that we've just
21 been looking at?
22 A. Yes, I did.
23
24 Q. First of all, is that your handwriting?
25 A. Yes, it is.
26
27 Q. What was the purpose of you constructing this
28 document?
29 A. I was obviously interrogating the NSW Police computer
30 COPS system for information that I could put together
31 concerning Father Denis McAlinden. What it basically
32 indicates is that I've got a series of what we refer to as
33 intelligence numbers. Intelligence reports are something,
34 I suppose, for a lay person, similar to the COPS event
35 where we report crime, but intelligence reports are simply
36 that; that is, bits of loose information or unconfirmed
37 information that may not be proved, that doesn't amount to
38 a crime.
39
40 Q. Do you recall when you prepared that document?
41 A. No, I don't. Again, I could put that time frame on
42 it. I would suggest it would be later in 2010, but - you
43 know, I'm probably only taking a bit of a stab here, but
44 maybe November and maybe October 2010. But I don't recall.
45 I haven't written a date on it. But that's probably the
46 best I could take a stab at.
47

1 MS LONERGAN: Commissioner, I've just been handed a two-
2 page notebook extract, which I have been told by Mr Cohen
3 is the original of the photocopy document we are looking
4 at. Could this original be shown to the witness. The
5 bottom line on the copy is not evident in the copy we have.
6

7 THE COMMISSIONER: Yes.
8

9 MS LONERGAN: Commissioner, I note that document has not
10 been redacted for victims' names and other information of
11 that nature, and I note the witness will no doubt refer to
12 the pseudonym list, if I have to ask any questions
13 regarding its content.
14

15 THE COMMISSIONER: Yes. I can't see any names.
16

17 MS LONERGAN: They are not on the photocopy that you
18 have, Commissioner, it has been redacted, but the original
19 I have just handed to the witness has the names still on
20 it.
21

22 THE COMMISSIONER: Thank you.
23

24 MS LONERGAN: Q. Detective Chief Inspector Fox, in terms
25 of the reason you constructed this document, were these all
26 victims of McAlinden?

27 A. Yes, Father Denis McAlinden, that's correct.
28

29 Q. Can you read the bottom line on each of those page,
30 please? Read it out loud on to the record?

31 A. It says on the bottom of one page, "None say when
32 church knew." The bottom line on the other page says,
33 "Touched penis - numerous" and it's got a dash and the word
34 "maybe" with it crossed out.
35

36 Q. Why did you assemble all these intelligence reports
37 together in that way?

38 A. [AJ] had told me the names of other victims that she
39 was aware of were abused by Father McAlinden. She also
40 told me the Christian names of a number of others, where
41 she didn't know their surnames, or in some cases did know
42 their surnames, but obviously they had grown up and were
43 now married and she no longer knew which surnames to
44 attribute to them. The purpose of me going through and
45 interrogating the police system is to see if I could find
46 any of those on the police records as a crime that was
47 reported, to see if I was able to match any of those up.

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Q. Can you explain to those in the court what a record on the COPS system is?

A. Yes. The COPS system is just a general term referring to the computerised operational policing system. It's the general system that police use right across the state, that is all centralised, and there's a number of functions that you can perform on it. The predominant one is creating an event to record a crime. There's various fields that you fill out, such as the name, the victim, property stolen, or whatever it may be.

From that, I mentioned yesterday that you can also attach a case to it, which is basically a running investigation narrative that can be updated from time to time, and the third primary function is to create intelligence reports; that is, loose-end bits of information - it might be that a particular motorcycle gang is now congregating around a particular hotel - just so that police obviously have holdings so they can check on those sorts of goings on. But most of the time - you know, it may include untoward home sexual activity at a public toilet - all of those sorts of things are recorded on the intel system.

Q. On one of those pages, you have noted this phrase, "Why not events?" What did you mean by that?

A. When I started to read through those intelligence reports, I became alarmed because the narratives of them, in many cases, were very explicit about particular sexual abuse of children, saying where, when, how, what types of abuse were perpetrated on those children. I was concerned because that information came to the police department via a file from the Catholic Church, yet the police department wasn't recording them as crimes. It was putting them down as intel. And that alarmed me because no one would be aware of these crimes, generally speaking, because it is an intel report, it's intelligence, it's not reported as a crime.

Q. You were able to become aware of them by simply looking at the system, weren't you?

A. In this case I was, only for the reason - and I suppose I'm coupling it with the media report that I saw some time later, in that McAlinden's name was provided, but bearing in mind, these were recorded after he died. But what concerned me more greatly is that this process was

1 occurring with other members of clergy and those clergy
2 weren't being recorded with their names, as I picked up on
3 a television program on another process, there could
4 potentially be hundreds, maybe even thousands of paedophile
5 crimes reported by the Catholic Church to the police
6 department that the Bureau of Statistics, Don Weatherburn,
7 and all there departments would have no record of and they
8 wouldn't be flagged on the police system. If someone said,
9 "Listen, can we do a dump of the amount of child
10 paedophilia perpetrated by the Catholic Church," they're
11 intel reports and it's not going to spit it out because
12 it's not going to record the names of the victims and --
13

14 Q. But it will spit it out if they look at the
15 intelligence system and look at --

16 A. If it --

17

18 Q. Let me finish the question. And look at the
19 intelligence report associated with the matter?

20 A. Yes, I typed in Denis McAlinden's name to search this
21 one and it was coming up in relation to his name, because
22 I put his name in and did individual searches on him. But
23 none of the victims were named and it was quite clear that
24 the Catholic Church knew who those victims were.
25

26 MR ROSER: I object to this, Commissioner
27

28 MR SKINNER: I object as well, Commissioner.
29

30 MS LONERGAN: Q. I will ask you to stop there.
31

32 THE COMMISSIONER: Yes, I think it will be sorted out.
33

34 MS LONERGAN: Q. In terms of the nature of intelligence
35 reports, it's the position, isn't it, Detective Chief
36 Inspector Fox, that they are not crimes because they
37 haven't been associated with convictions; they are on the
38 system as intelligence about allegations?

39 A. No, the conviction aspect doesn't matter. Like, if
40 someone comes in --
41

42 Q. No, you need to listen to my question.
43

44 A. Sorry.
45

46 Q. It's about the way they are recorded on the police
47 system. If they have been crimes, they can be recorded on
the police system as convictions, but if it's intelligence

1 where there hasn't been a trial and conviction, they remain
2 as intelligence reports, don't they?
3 A. No, I would hope not.
4
5 Q. Let me look at it this way. An intelligence report
6 means that there are limits to the information available.
7 That's correct, isn't it?
8 A. Sometimes, yes.
9
10 MS LONERGAN: I will move to another topic, Commissioner.
11
12 Q. On 1 December you were asked to bring documents to the
13 meeting that was to take place at Waratah, weren't you?
14 A. Yes.
15
16 Q. Before the meeting happened?
17 A. Yes.
18
19 Q. Who asked you to do that?
20 A. Superintendent Haggett.
21
22 Q. You gave evidence yesterday that you thought the
23 reason the meeting was taking place was to discuss future
24 conduct of the investigation you wanted to proceed?
25 A. Yes.
26
27 Q. So you had no reason not to bring that material with
28 you to the meeting, because you wanted to share it with
29 those present?
30 A. Yes.
31
32 Q. And it would be better to bring it so that you could
33 share it and discuss it in a specific way from the
34 documents you had gathered?
35 A. Yes.
36
37 Q. The evidence you gave yesterday was to the effect that
38 you just forgot to take them?
39 A. Yes.
40
41 Q. And you told those present at the meeting that you had
42 just forgotten to take them?
43 A. That's what I told them, yes.
44
45 Q. Was that true, that you just forgot them?
46 A. No, I left them intentionally.
47

1 Q. Why did you lie yesterday and say that you had
2 forgotten to take them?
3 A. Sorry, if I have said that, I may have misheard what
4 was asked, but I never - the instructions to my counsel
5 all the way along - and I've been very clear on in my own
6 mind - I may have misheard, and I do apologise if that's
7 happened, but I certainly didn't lie. I intentionally left
8 them on my desk. I did say to the police down in Newcastle
9 that I had forgotten them, no argument about that, but
10 I was hoping that I actually wouldn't have to actually
11 surrender them. I knew full well what was contained in
12 them and I was suspicious of the nature of the meeting.
13
14 Q. So you lied to the police at the meeting?
15 A. Oh, absolutely, yes.
16
17 Q. But didn't you say you thought the purpose of the
18 meeting was to discuss your report and how the
19 investigations would be gone forward?
20 A. Well --
21
22 Q. I just want you to answer that question.
23 A. That's what I was told.
24
25 Q. That's what you were told and that's what you thought,
26 wasn't it? That's what you said yesterday. You thought
27 before you went to the meeting on 2 December that it was to
28 discuss your report and how the investigation would be
29 furthered?
30 A. Partly, yes.
31
32 Q. Which is it - partly or yes?
33 A. Yes and partly, because I - I was hoping - and that's
34 what I was told, and I was hoping that's what the meeting
35 was. But I certainly was holding some concerns in the back
36 of my mind, with everything else that had gone on, that it
37 may be intended to do something else, and as it turned out,
38 and sadly, the latter was correct.
39
40 Q. Do you have volume 1 of the materials in front of you?
41 A. Yes.
42
43 Q. Before that, let me ask you this: yesterday you said
44 that you understood the request made by Superintendent
45 Haggett of you, that was forwarded by Humphrey, that you
46 were to only hand over the material had been sent to you on
47 16 September? That's right, isn't it?

1 A. Yes.
2
3 Q. And you did not, you say, understand that they wanted
4 any of your other material, because they couldn't have
5 known that you had it? Is that --
6 A. No, no, I don't think I said that. They must have
7 known that I had it, because my email to Kirren Steel said
8 that I had it, and I had cc-ed a copy of that to three
9 other police.
10
11 Q. You said yesterday you didn't understand them to want
12 the material that you had to be handed over at that point?
13 A. Yes.
14
15 Q. And what was your basis for that understanding?
16 A. If I looked at the document again - you know,
17 I literally interpreted the email from Inspector Humphrey,
18 and when I read through that, the emphasis was around the
19 ministerial file titled "Conspiracy", centred around that
20 word, and that's what I was asked for and that's what
21 I provided.
22
23 Q. Can you turn to tab 69, please. Just to put the email
24 back in context, you said yesterday that you had been given
25 a copy of this email by Superintendent Haggett?
26 A. Yes.
27
28 Q. And in a context where he asked that you comply with
29 what was requested by the email?
30 A. Mr Haggett, I recall, handed me a hard copy of the
31 email. Obviously at some stage, and I don't recall, I've
32 got an electronic copy from either he or Mr Humphrey. But
33 when Mr Haggett spoke to me and said, "Have you got a
34 ministerial file?" and I acknowledged, "Yes, I have that,
35 boss." He would have known that, of course, through the
36 TRIM system. And that's when he explained to me that that
37 and all associated material had to be forwarded to
38 Wayne Humphrey at Newcastle. We had a --
39
40 Q. I'm going to stop you there. That's all we need for
41 the moment. You interpreted "all associated material" as
42 what?
43 A. What he said in relation to the ministerial file, and
44 that's what I interpreted this report as.
45
46 Q. We've got the ministerial file, and what's the
47 associated material, as you saw it at the time you were

1 given this email in October 2010?
2 A. All the papers and everything that's attached to it.
3
4 Q. The ministerial file is all the papers, isn't it?
5 A. Yes.
6
7 Q. If you look at paragraph 2 of the email, it refers to
8 you having initiated contact with Detective Sergeant Steel?
9 A. Yes.
10
11 Q. That was the September email that you sent to her?
12 A. Yes.
13
14 Q. In that, you told her that you had gathered some
15 statements?
16 A. Yes.
17
18 Q. So this is a reference to those statements, isn't it,
19 where it says "and other documents and anecdotal evidence"?
20 A. Yes.
21
22 Q. So that email is clearly requesting the documents,
23 that is the statements, that you had, isn't it?
24 A. It talks about that early in that paragraph, but
25 I think there's a clear differentiation within that
26 paragraph, because it then has another sentence or two, and
27 it finishes up with the line:
28
29 *That file and any associated documentation*
30 *should be collected and hand delivered*
31 *to ...*
32
33 And that's what I read and that's what I did.
34
35 Q. But the associated documentation is what's referred to
36 in the second and third lines, isn't it.
37
38 *... he has possession of a file in regards*
39 *to this matter and other documentary and*
40 *anecdotal evidence.*
41
42 A. No, I disagree, and again I disagree for a number of
43 reasons. I don't interpret it that way. That is not what
44 Mr Haggett said to me. And Mr Haggett and others knew
45 I had the statements and no one asked me for the statements
46 for six weeks. If I said, "I've got those statements
47 there," and I was meant to attach them, surely in a couple

1 of days, or a week at the most, someone would have said,
2 "Hang on, where's those statements?" No one did. So
3 clearly that's what that email was for. It was only in
4 relation to the ministerial file. I gave them that in its
5 entirety with a covering reporting and that's all I was
6 ever asked for.

7

8 Q. Is it fair to say that you deliberately kept,
9 continued to keep, the statements that you had gathered at
10 that point to yourself? You made a decision not to hand
11 them over at that point?

12 A. I deliberately kept them to myself, but I there was now
13 knowledge by a number of other police that I had them, yes.

14

15 Q. Yes, because you had sent the email on 16 September?

16 A. Of course.

17

18 Q. If you look at tab 71, that's an email by you to
19 Joanne McCarthy on 18 October?

20 A. Yes.

21

22 Q. In the second paragraph you say:

23

24 *As soon as I arrived Superintendent Haggett*
25 *asked me to hand over to him all*
26 *documentation I had gathered on any Church*
27 *Conspiracy matter.*

28

29 Do you see that?

30 A. Yes.

31

32 Q. That's a document you wrote on the day it happened?

33 A. Yes.

34

35 Q. And that's absolutely crystal clear, isn't it, that
36 what you were asked to do was hand over all your documents?

37 A. No.

38

39 Q. Why not?

40 A. It says "the church conspiracy matter"; that was the
41 title of the ministerial file.

42

43 Q. It does not say "the church conspiracy matter", does
44 it?

45 A. Well, we are fighting over a single word there, but --

46

47 Q. No, but it's a very important --

1 A. I know I wrote that and I know what I meant when
2 I wrote that, and that's clearly what I meant - "church
3 conspiracy", whether I put "the" in front of it or didn't
4 put "the" in front of it, it doesn't change what I meant.
5 That's clearly what I meant. I've got no doubt in my mind
6 about that, it related to the ministerial file.

7
8 Q. But you don't say that. You say "on any church
9 conspiracy matter"?

10 A. That's what I say.

11
12 Q. Yes.

13 A. That's the exact words of it. But that, in
14 conjunction with everything else I've just said, I was
15 never in any doubt about what I was told to do and
16 I complied with it. As I said, a lot of other police
17 at this stage, including Mr Humphrey, Mr Haggett,
18 Tony Townsend, were aware I had the statements. They had
19 the file the next day. If they meant otherwise - like,
20 I don't think they are that blind as to say, "Hang on,
21 there's no statements here." Surely someone would have
22 said, "Where are they?" Had they arrived down that week
23 and said, "Hand them over," I would have had no option
24 other than to do that, even albeit reluctantly, but the
25 fact is that didn't happen and that's not what the file
26 asked me to do and that's not what I'm talking about in
27 that email.

28
29 MS LONERGAN: Commissioner, before we adjourn for the
30 morning break, could I tender the to do list about which
31 Detective Chief Inspector Fox has been questioned, together
32 with the handwritten document.

33
34 THE COMMISSIONER: Yes, Ms Lonergan. The to do list will
35 be admitted and marked - how are we going to do the
36 exhibits? Exhibit 1?

37
38 MS LONERGAN: Exhibit 1.

39
40 **EXHIBIT #1 TO DO LIST OF DETECTIVE CHIEF INSPECTOR FOX**

41
42 THE COMMISSIONER: The handwritten document, the document
43 of the witness, will be admitted and marked exhibit 2.

44
45 **EXHIBIT #2 ONE-PAGE PHOTOCOPY OF HANDWRITTEN NOTE PAGES BY**
46 **DETECTIVE INSPECTOR FOX LISTING INTEL REPORTS**

47

1 MS LONERGAN: In relation to the original handwritten
2 extracts from the notepad that are with the witness in the
3 witness box, could that document be marked MFI1 and subject
4 to suitable redaction.

5
6 THE COMMISSIONER: Yes, the original document will be
7 marked MFI1.

8

9 **MFI #1 ORIGINAL HANDWRITTEN NOTE PAGES BY DETECTIVE CHIEF**
10 **INSPECTOR FOX LISTING INTEL REPORTS**

11

12 MS LONERGAN: Due to matters that came up this morning,
13 that have been discussed with counsel for Detective Chief
14 Inspector Fox, it is requested that there be a half-hour
15 adjournment this morning, to arrange for certain matters to
16 be attended to.

17

18 THE COMMISSIONER: Yes. I will adjourn for half an hour.

19

20 **SHORT ADJOURNMENT**

21

22 MS LONERGAN: Q. I just want to have another look at an
23 answer that you gave yesterday, Detective Chief Inspector
24 Fox, and just understand it. It's about taking the
25 materials to the meeting on 2 December.

26

27

28 Q. Yesterday I asked you:

29

30 *Did you deliberately fail to take that*
31 *material to the meeting because you did not*
32 *want to share that information with those*
33 *present?*

34

35 You answered "No" --

36

37

38 Q. No, I'm not asking you the question yet. Just bear
39 with me. When you gave that answer yesterday, was that the
40 true position or not?

41

42 A. The position was I was more than happy, and I did
43 share the information with them. But, yes, I was being -
44 intentionally forgetful, in that I was reluctant to hand
45 them over, because I was concerned as to what - that they
46 may not have been acted upon properly and in the right way.

46

47 Q. Again, just a point of clarification. You understood

1 what Superintendent Mitchell said to you on 2 December to
2 be a direction to stop investigating matters to do with
3 church paedophilia; is that a fair summary?

4 A. Yes.

5

6 Q. That was the first time you had been ordered or
7 directed to stop investigating church paedophilia, as you
8 saw it?

9 A. Yes.

10

11 Q. No other senior officer asked you to stop
12 investigating church paedophilia before 2 December?

13 A. No.

14

15 Q. And you're sure about that?

16 A. Absolutely positive.

17

18 Q. What about colleagues of a similar rank to you, did
19 any of your colleagues say, "You should stop looking at
20 that church paedophilia matter, it's not good for you," or
21 anything to that effect?

22 A. No.

23

24 Q. When you were asked to hand over the ministerial file,
25 as you saw it, by Superintendent Haggett when you returned
26 from leave in October 2010, did you perceive that to be a
27 formal order or a formal direction by him?

28 A. Yes.

29

30 Q. So he was your boss?

31 A. Yes.

32

33 Q. Is there a difference between an order and a direction
34 in police parlance, or not?

35 A. Yes, there is. Generally you use the term, "I'm
36 giving you a direction," or, you know, most of the time
37 it's usually in writing, but it's usually made fairly clear
38 between something you are just being asked and a direction.

39

40 Q. Does an order have any sort of formal mandate within
41 the police force?

42 A. No, I suppose an order is anything you are really
43 asked to do. It's a bit of a blurred line, I suppose. Are
44 you being ordered or asked to do something depends on your
45 interpretation.

46

47 Q. For a direction to be formally registered or carried

1 out, does it have to be in writing?

2 A. No.

3

4 Q. So a senior officer could say to you, "I direct you to
5 hand over XYZ papers," and if you breached it, that could
6 still lead to disciplinary action?

7 A. Yes.

8

9 Q. And it is that magic word "direction", is it, that
10 brings with it that consequence, or is it more complicated
11 than that?

12 A. Well, it may be. That's my understanding. I don't
13 now whether I'm right or wrong there, but that's my
14 understanding. But I've seen a large degree of flexibility
15 with it over my time in the police force.

16

17 Q. I just want to understand some evidence that you gave
18 yesterday. I asked you yesterday whether, when you were
19 asked by Superintendent Haggett to hand over the
20 ministerial brief, as you read the request, you read that
21 as a direction to cease investigating church paedophilia
22 matters. Do you remember I asked you about that yesterday?

23 A. I remember you asking some questions. I don't
24 remember it all specifically, but I do recall the subject,
25 yes.

26

27 Q. And you answered, no, you hadn't read it that way?

28 A. That's right.

29

30 Q. What's the reason for not reading it that way at that
31 time?

32 A. No, it was nothing - I didn't have any thoughts in the
33 back of my mind or disobeying anything; it was just simply,
34 "You're to hand the file over." He certainly didn't tell
35 me to stop investigating or stop doing something; it was to
36 surrender that file and that file would be addressed down
37 at Newcastle.

38

39 Q. Did you have an understanding, that the basis on which
40 you had that exchange with Haggett was that Haggett had
41 been asked by - I am terribly sorry, it's Superintendent
42 Haggett. No disrespect intended. I have trouble getting
43 the ranks right, so I apologise to any police officers
44 present in court if I get it wrong. You were asked by
45 Superintendent Haggett, as you saw it, as a result of an
46 order by his senior officer, Inspector Humphrey?

47 A. Well, he was vague on it. The response he gave me is,

1 "The decision has already been made at region at
2 Newcastle." He didn't actually give me a name; he just
3 said, "The decision has been made at region at Newcastle."
4 Because I remember that, I actually pressed him for who,
5 and he said - I said, "Who made the decision?" That's when
6 he said, "The decision has already been made at region at
7 Newcastle," and, you know, basically that's the end of the
8 subject. I wasn't given an - which is what really
9 frustrated me. I couldn't understand the logic behind that
10 decision.

11
12 Q. The decision that was made was that the ministerial
13 file that had been given to you had to go to the Newcastle
14 region?

15 A. Yes.

16
17 Q. Was it the position that Superintendent Haggett didn't
18 identify on whose orders or at whose decision he was asking
19 you to provide that material to him?

20 A. Mr Humphrey's name was mentioned in amongst it,
21 but I wasn't given a name as to who made the decision,
22 because - you know, that's why I was perplexed, because
23 I saw that a superintendent at State Crime had sent it to
24 me specifically, and someone else was now overriding his
25 decision, and obviously I was curious as to who would have
26 done that.

27
28 Q. The fact that they asked for, as you saw it, the
29 ministerial file to be returned so it could go to the
30 Newcastle Local Area Command didn't mean, did it, that you
31 were not allowed to investigate any allegations of
32 concealment of paedophilia on the part of Catholic priests?

33 A. Yes. I just interpreted - "Okay, here's the file, the
34 file is now being taken from you and sent down to
35 Newcastle." Obviously I interpreted that, that I can't do
36 anything about that file or make any of the inquiries or
37 speak to people involved in that file, which I didn't. But
38 there was nothing raised by Mr Haggett, he said nothing
39 about the statements, he absolutely definitely said nothing
40 about them, or that I was to cease any other activity.
41 That was never ever - it didn't - the subject never came
42 up.

43
44 Q. Have a look at the documents behind tab 111 in
45 volume 2 of the tender bundle, and the pagination is 537.
46 That is part of a document that commences on page 537, it
47 appears, and you will probably be able to assist with that.

1 Is that a document you prepared for a certain police
2 process? We don't need to go into the details of the
3 police process just at the moment.
4 A. I'm trying to make sense of it. Yes, I believe it is,
5 yes.
6
7 Q. A document you prepared?
8 A. Yes.
9
10 Q. If you turn over to page 538, there's a signature and
11 what appears to be an date.
12 A. Yes.
13
14 Q. Is that 12 or 17 May 2011?
15 A. It looks like the 12th.
16
17 Q. I want you to look at the last paragraph on page 537.
18 A. Sorry, it may be the 17th. I see what you mean.
19 There's another line over the top. It's one or the other.
20
21 Q. May 2011, though?
22 A. Yes.
23
24 Q. The last paragraph on page 537, could you have a look
25 at that for me and read it to yourself, please.
26 A. Yes.
27
28 Q. You see that paragraph states:
29
30 *Shortly thereafter I took a month's leave*
31 *and the day I returned I was directed by*
32 *Superintendent Haggett on behalf of*
33 *Inspector Humphrey to provide him with the*
34 *later mentioned file and not undertake any*
35 *further investigation on this matter.*
36
37 Then you go on to expand about your "upset" about it, if
38 I can use that term --
39 A. Yes.
40
41 Q. -- that you had a working knowledge of the matter and
42 a rapport with persons involved, and you were not given any
43 explanation for that direction.
44 A. True.
45
46 Q. I'm just trying to clarify what it is that we are
47 talking about there.

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First of all, because you had only got the ministerial file on the date you went on leave on 16 September - that's the position, isn't it?

A. Yes.

Q. You must, therefore, be talking there about your own investigation, mustn't you? Is that the way we should read it, that you were asked to cease --

A. No. No, it --

Q. Let me finish the question. You were asked not to undertake any further investigation on this matter. The reason I ask it in that way is you use the term "further investigation", and you agree with me that the ministerial brief only got to you on 16 September, so you hadn't been able to do any investigation of that yet, had you?

A. No.

Q. So what are you referring to there when you make that assertion that you had been told not to undertake any further investigation on this matter?

A. That's the file. It says that.

Q. So we should read that as: although you hadn't done any investigation on the ministerial file yet, you weren't to do any more investigation on that file? Is that how we read it?

A. Well, I - you know --

Q. I don't want to argue about semantics; I just want to understand.

A. But, yes, obviously I had it. I got the file out and I read the material in there. I realised that I may - well, I did know some of the people that were mentioned in it. But, you know, having received it on the day I was about to take leave, I wasn't able to progress that any further.

Q. You didn't make any phone calls about that matter to any of the persons mentioned in the ministerial file?

A. I don't believe so, no.

Q. I'm trying to understand the next part. We need your help with this. You go on to say.

Although I had a working knowledge of

1 *the matter and a rapport with persons*
2 *involved ...*

3
4 A. Yes.

5
6 Q. Why did you have a rapport with persons involved at
7 that stage?

8 A. Because of the one of the authors of that letter is
9 the sister of one of the victims of Father Fletcher.

10

11 Q. You had already met that lady?

12 A. I had actually got a statement off her, as I did with
13 all of her family, many years earlier.

14

15 Q. You also go on to say in that extract of this
16 document:

17

18 *I have also attached a copy of another file*
19 *I forwarded earlier to the region office*
20 *concerning the [AJ] allegations. I believe*
21 *these two files will adequately convey the*
22 *existing situation at that time.*

23

24 You sent something in addition to the ministerial file, did
25 you?

26 A. Yes, the report of 25 November, which I imagine - you
27 know, it's a report but at some stage it becomes a file
28 when you attach other papers, of course.

29

30 Q. Aren't you talking about in that paragraph the actions
31 you took on 17 October, where you sent the ministerial
32 file, or gave the ministerial file to Superintendent
33 Haggett, as requested? So that's a month before you
34 prepared your longer report, your 25 November report, or
35 are you talking about the short report of 18 October there?
36 I don't want to --

37 A. Sorry, I'm just pulling lines out here and there.
38 I'll just read the whole paragraph again in its entirety
39 and get my head around it.

40

41 Q. That's why I asked you to read the document earlier.

42

43 What I'll do, Detective Chief Inspector Fox, is I'll
44 ask you to look at tab 72 and the report behind that tab,
45 which may assist in clarifying what the other material was
46 that you sent. Did you send up the report behind tab 72?

47 A. Yes.

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Q. Does that assist you, Detective Chief Inspector Fox, with what it is you are referring to there on page 537 as a copy of a report that was forwarded with the file?

A. Yes.

Q. When you say, "I believe these two files will adequately convey the existing situation at that time," were you talking about what you knew as at 18 October 2010 or something else?

A. No, I think what it was: when I've been asked for this particular report, that is what we're discussing on page 537, you're right in that up until the point of - where it says "file" there on the third last line or fourth last line, that is the report and file that is attached under tab 72.

The next comment:

I have also attached a copy of another file.

What I'm talking about there is the file of 25 November to this, to this document here mentioned on page 537, not the original file.

Q. I'm with you.

A. Okay.

Q. So you attached this for the purposes of this report you had prepared at page 537?

A. Yes.

Q. Okay, I understand.

On the next page, page 538, again there you are trying to give a narrative of what happened at the meeting on 2 December? You say:

A few weeks later I was asked by Mr Haggett to attend a meeting at Waratah Police Station which we thought was to involve a briefing of the state crime command.

"We" is you and Superintendent Haggett, is it?

A. Yes.

1 Q. Then:

2

3 *I was taken aback when I discovered the*
4 *purpose of the meeting was to provide me*
5 *with a direction to cease any further*
6 *contact with Joanne McCarthy.*

7

8 A. Yes.

9

10 Q. That statement suggests that you didn't suspect before
11 you went to the meeting that you were going to be asked or
12 directed to cease any further contact with Joanne McCarthy
13 or cease investigating, doesn't it?

14 A. I didn't know what - you know, obviously the meeting
15 was for a discussion, yes.

16

17 Q. But what I'm asking you about is your statement there,
18 made in May 2011, that you were taken aback when you
19 arrived at the meeting?

20 A. Yes.

21

22 Q. So is it fair to say then that you didn't suspect what
23 was going to happen at that 2 December meeting before you
24 arrived?

25 A. Oh, I had suspicions and I was very wary of the
26 purpose of that meeting, but I certainly didn't know what
27 was going to - the specifics. I hadn't anticipated that
28 that particular type of direction would be given to me and,
29 as I said it to them at the meeting, I was quite dismayed
30 and couldn't understand the logic.

31

32 Q. To understand there your statement there, made in May
33 2011, you were taken aback about the direction that you
34 were to cease any further direction with Joanne McCarthy?

35 A. Yes.

36

37 Q. You didn't expect that direction to be given?

38 A. I hadn't anticipated that one, no.

39

40 Q. But you had some suspicions about what the meeting
41 might be directed to before you went?

42 A. I had suspicions, yes.

43

44 Q. Did you have suspicions that you would be directed to
45 cease investigating the matters that you were looking at?

46 A. I had suspicions for a lot of things. I suppose you
47 could include most things there. But, yes, that would have

1 been one.
2
3 Q. I just want you to answer the questions I ask
4 directly, if you don't mind. So you were worried that you
5 would be asked to cease investigating?
6 A. Yes.
7
8 Q. Do you think that suspicion shaped the way you
9 interpreted what happened in the meeting?
10 A. Oh, no. The meeting was quite hostile. I didn't
11 mistake what was going on there.
12
13 Q. Just one follow-on question from your last answer:
14 did you have a discussion with Inspector Haggett after the
15 meeting about what had happened at the meeting?
16 A. Mr Haggett --
17
18 Q. Just answer that question "Yes" or "No"?
19 A. No.
20
21 Q. Did you form an opinion as to whether Superintendent
22 Haggett knew what was going to happen at the meeting before
23 you arrived? Don't tell me why you formed the view, but
24 did you?
25 A. Yes.
26
27 Q. And why didn't you discuss the matter further with
28 Superintendent Haggett after the meeting?
29 A. I saw no purpose in doing so. I didn't feel that
30 anything would be achieved by that. I had already had a
31 discussion with him about the ministerial file, six weeks
32 or so earlier, and I didn't feel that a similar discussion
33 on this occasion would achieve anything different to that
34 one.
35
36 Q. The discussion a few weeks earlier, what was it about
37 that discussion with Superintendent Haggett that made you
38 feel nothing would be able to be achieved?
39 A. It's my assessment of Mr Haggett - Mr Haggett is a
40 nice bloke, I think that --
41
42 Q. I'm going to stop you there.
43 A. But - but, yes --
44
45 Q. Just what he said that led you to that suspicion or
46 concern?
47 A. It wasn't just what he said; it's also knowing his

1 nature and having worked with him for some time.

2

3 Q. So you are not able to identify anything in particular
4 that he said in that conversation that made you concerned
5 about what would happen?

6 A. No, just the fact that he was distancing himself from
7 him and saying like Sergeant Schultz, "I know nothing.
8 I don't know anything about it. It's nothing to do with
9 me." I knew I would get that next time around and - you
10 know.

11

12 Q. Did Superintendent Haggett make any comment to you,
13 critical or otherwise, of you starting an investigation
14 where you hadn't logged it and treated it in the normal
15 police fashion?

16 A. No, he never.

17

18 Q. You know, though, didn't you, that that might prompt
19 some criticism or was likely to prompt some criticism?

20 A. I think it would be fair to say that Mr Haggett knew
21 that I knew what was going on, and that's the
22 interpretation I had of the situation, and, no, he never
23 raised the subject again with me. He didn't discuss it in
24 any way, shape or form.

25

26 Q. Although he had been present at the meeting?

27 A. Yes. You won't find a report or an email or anything,
28 because it didn't happen. You know, if he felt that
29 strongly about it and he needed to give me something in
30 writing, I'm sure that would have occurred, but he didn't
31 raise it in any way, shape or form.

32

33 Q. Did you search the police system to see if there
34 were any formally logged reports regarding the meeting on
35 2 December 2010?

36 A. Search, how?

37

38 Q. You just said, you won't find any reports about what
39 had happened.

40 A. No, anything, you know, in regard to him giving me a
41 direction or sending me something or explaining that to me
42 in any formal sense, or just to reiterate the fact that he
43 never spoke to me about the subject whatsoever. Neither of
44 us discussed it again. As I said, I had a pretty good idea
45 what had - what was going on that day, and he knew that
46 I knew that, and the subject wasn't discussed.

47

1 MR ROSER: I object, Commissioner.
2
3 MS LONERGAN: Q. You can't give evidence about what you
4 think Superintendent Haggett knew.
5 A. Sorry. I apologise and withdraw that.
6
7 Q. Just to clarify, you never had another discussion with
8 him about it after 2 December?
9 A. No.
10
11 Q. You didn't travel back to the station together after
12 the meeting?
13 A. No.
14
15 Q. What did you understand to be the directions that were
16 given to you by Superintendent Mitchell on 2 December at
17 the meeting?
18 A. In short, that I was to hand over every statement and
19 related document that I had, that I had been working on,
20 that I was to cease --
21
22 Q. I'm going to break that down. That's direction 1?
23 A. Yes.
24
25 Q. To hand over everything you've been working on?
26 A. Yes.
27
28 Q. And to stop investigating?
29 A. Yes.
30
31 Q. Did he use those terms, "stop investigating", "cease
32 investigating"?
33 A. He used the term, "This is Newcastle's investigation."
34 And there were things said before at the meeting as well
35 that added to my view of what was being said. But he made
36 it very clear. I left in doubt that what he was saying to
37 me was, "You will have no role, no function, whether it be
38 a leader or in any way, shape or form in this investigation
39 from here."
40
41 Q. So it was to cease having an active role in the
42 investigation that was to become or had become Strike Force
43 Lantle?
44 A. Yes.
45
46 Q. Did Superintendent Mitchell say to you that you were
47 to not investigate anything to do with church paedophilia?

1 A. No.
2
3 Q. He didn't say, "You are not to talk to any other
4 officers in the police force about church paedophilia"?
5 A. No.
6
7 Q. Did he say to you you weren't allowed to talk to the
8 officers working on the matter about church paedophilia,
9 working on the Strike Force Lantle matter?
10 A. I don't recall.
11
12 Q. The officers who were going to be working on Strike
13 Force Lantle were identified to you in that meeting?
14 A. Yes.
15
16 Q. Were you told that you weren't to speak to them?
17 A. No.
18
19 Q. There was a further direction given about speaking to
20 Ms McCarthy, as you understood it?
21 A. Yes.
22
23 Q. Can you assist with your best recollection of how that
24 direction - whether the term "direction" was used or
25 "order" or "request" and how it was phrased?
26 A. Yes. If I'm able to put it into context --
27
28 Q. I just want you to answer my question for the moment,
29 then we'll come back to context in a moment, if you don't
30 mind.
31 A. It emanated from something that I said.
32
33 Q. So it was part of an exchange?
34 A. Yes.
35
36 Q. Leave your part of the exchange out of it, and just
37 say what Superintendent Mitchell said?
38 A. "I am directing you to have no further contact with
39 Joanne McCarthy. The only person that will be talking to
40 her will be me. She is to be cut out of this. Any contact
41 you have with her is to be documented and forwarded to me
42 in an investigator's note."
43
44 Q. "Any contact you have", given that Superintendent
45 Mitchell told you to have no contact, "any contact you
46 have" must be directed to other persons in the room,
47 mustn't it?

1 A. No, as I said, you have to put it in context like
2 I said before.
3
4 Q. I am just examining the statement you made.
5 Superintendent Mitchell said, "You are not to have any
6 contact with Joanne McCarthy but if you are to have contact
7 with her, you have to document it." Is that the way the
8 conversation went?
9 A. Yes.
10
11 Q. Did you make a note of that direction at the time
12 within the meeting?
13 A. No. He made a comment that it would be noted in the
14 minutes.
15
16 Q. So it wasn't you who was going to note it?
17 A. No.
18
19 Q. Did you observe who was making this notation?
20 A. No, Mr Mitchell and I were --
21
22 Q. Looking at each other?
23 A. Yes.
24
25 Q. You gave evidence that you observed an officer taking
26 notes, but you didn't know who that officer was.
27 A. Yes.
28
29 Q. Was it a male person?
30 A. Yes.
31
32 Q. You observed him writing things at different stages of
33 the meeting, or you are unable to say?
34 A. I'm unable to say. I know that's what the officer's
35 purpose is. Whether he did or didn't, I don't know.
36
37 Q. I'm not asking you about that?
38 A. I didn't see.
39
40 Q. Was there any other matter stated to you by
41 Superintendent Mitchell that you saw or interpreted as a
42 direction? So we have got the "Hand the papers over"?
43 A. Yes.
44
45 Q. We've got the "Don't talk to Joanne McCarthy." What's
46 the other?
47 A. The third one was that I was not to contact any of the

1 witnesses. There followed an exchange between he and I.
2 Q. Can we have the context of that exchange, please?
3 A. I said, "These people have been through hell. They've
4 trusted me and I've promised them that I would follow this
5 through." I said, "I've sat with them, one woman for
6 28 hours getting her statement. You can't just treat her
7 like garbage or a number, she is a victim." And I said -
8 he said, "You're not to contact those." And I said, "Well,
9 I've at least got to let them know that I'm being ordered
10 off the case," and he gave me that concession that I could
11 contact them to let them know.
12
13 Q. The context of that direction was not to speak to any
14 persons you had already interviewed; is that a reasonable
15 summary of it?
16 A. It was quite clear from that that I was to talk to no
17 one associated with it, yes; that was my interpretation of
18 what he was saying.
19
20 Q. Did Superintendent Mitchell say, "You are to talk to
21 no one associated with it"?
22 A. He said, "You are not to talk to with any witnesses."
23 I suppose if you're not a witness, I don't know where you
24 fit into the equation.
25
26 Q. Superintendent Mitchell was directing you in relation
27 to persons you had already interviewed not to speak to
28 them?
29 A. They would have - I would imagine obviously they are
30 included in that comment by him, yes.
31
32 Q. Did Superintendent Mitchell say to you, "You are not
33 to speak to any victim of church paedophilia"?
34 A. Outside of that inquiry, I didn't interpret it that
35 way, no.
36
37 Q. It was clear to you, was it, that the directions were
38 focused on the investigation of the matters that had
39 already been forwarded to Newcastle Local Area Command?
40 A. Yes.
41
42 Q. And you knew what those matters were at the time of
43 the meeting on 2 December?
44 A. I knew that they incorporated - well, I believed at
45 least that they incorporated, obviously, the matters that
46 I had taken the statements for. But I was never told what
47 Lantle was, the ambit of it was. There was more discussion

1 between us on that aspect. But I was never actually
2 specifically told what Lantle would be doing, because what
3 I was trying to explain is that --
4 Q. No, I don't want to go there at the moment, if you
5 don't mind.
6 A. Okay.
7
8 Q. Did you make notes about the meeting some time after?
9 A. Yes, as soon as I got back to Raymond Terrace, I wrote
10 a number of pages in my diary.
11
12 Q. You don't have your diary any more?
13 A. No.
14
15 Q. You've had a look for it?
16 A. Oh, yes.
17
18 Q. And it's missing? And that's a "yes" or "no" answer.
19 Is it missing or not?
20 A. Yes, it is missing.
21
22 Q. If you were able to locate your diary, you would be
23 assisted by the notes you made in it?
24 A. Yes.
25
26 Q. The direction not to speak to Joanne McCarthy, were
27 there directions made, to your recollection, to other staff
28 present that they were not to speak to Joanne McCarthy, or
29 was it only you who was asked not to?
30 A. It was quite evident, it was more than apparent that
31 there was a specific direction to me not to talk to
32 Joanne McCarthy. There's no doubt in my mind about that,
33 and I don't think anyone there should have had any doubt.
34 If they are suggesting otherwise, they weren't there. But
35 there was a general direction --
36
37 MR ROSER: I object to these asides all the time.
38
39 THE COMMISSIONER: Yes.
40
41 MS LONERGAN: Q. Detective Chief Inspector Fox, it's
42 very helpful if you just stick on the facts of what you saw
43 and heard.
44 A. I heard him direct - well, say to everyone there that
45 no one was to talk to the media but --
46
47 Q. I'm going to stop you there, because that's an

1 important point. Why didn't you mention earlier that
2 direction as being one of the directions that was made in
3 the meeting?

4 A. Well, I thought I had mentioned that yesterday, did
5 I not?
6

7 Q. I asked you for clarification, what you saw the
8 directions that were made by Superintendent Mitchell to
9 have been.

10 A. Sorry, I thought that it was already on record from
11 yesterday. But, yes, I do remember something along those
12 lines being said about no one there, but it was definitely
13 two distinctions between that general direction to
14 everybody there and the latter one to me with respect to
15 Joanne McCarthy.
16

17 Q. I understand, but that's an important distinction,
18 isn't it?

19 A. Sorry; my error if that was the case. That was in
20 full.
21

22 Q. The fourth direction was that nobody present was
23 allowed to speak to the media, except Superintendent
24 Mitchell, or with his knowledge. Is that the way the
25 direction was stated, to your recollection?

26 A. The first one, to my recollection, it was just a
27 general one to everybody in that room that they are not to
28 talk to the media. It wasn't said, from my recollection of
29 that particular direction, that he would be the only one to
30 do so. It was just a general comment. And then it got
31 down to more specifics after I had a discussion.
32

33 Q. In relation to the general comment, it's usual
34 procedure, isn't it, in sensitive or confidential
35 investigations, for there to be some control exercised over
36 which police officers are permitted to speak to the media?

37 A. Yes.
38

39 Q. That's because police, the NSW Police Force
40 occasionally use the media to assist them in investigations
41 by careful, tempered interrelationships with chosen media
42 outlets?

43 A. Yes.
44

45 Q. And you were very aware of that in December 2010?

46 A. Yes.
47

1 Q. And you are aware too, aren't you, that leaking bits
2 of information about an investigation can sabotage
3 investigative steps that are being undertaken?

4 A. It can. I think there's a controversy in Victoria at
5 the moment.

6

7 Q. With the notes you made when you got back to your
8 office, what was your intention in relation to using those
9 notes, if at all?

10 A. By this stage I was left in no doubt in my mind that
11 what was going on was quite sinister, in my belief. I was
12 never given a logical explanation as to why I was being
13 removed, and I thought a lot of what was done at that
14 meeting was against general police policy and the way most
15 police would have handled it.

16

17 Q. Can I examine those last two statements. First of
18 all, you were unhappy about the way in which you were
19 removed?

20 A. Yes.

21

22 Q. And you weren't given an explanation?

23 A. Yes.

24

25 Q. Did you not accept the explanation that Newcastle
26 Local Area Command officers had been assigned that
27 investigation?

28 A. You know, that's - to my mind, that's not an
29 explanation; that's a statement of a fact but it's not
30 actually an explanation.

31

32 Q. What's the problem with that as a statement of fact,
33 just so we can understand your concerns?

34 A. Well, generally when a decision is made for something,
35 there's generally a rationale that is put together behind
36 that decision, and that's what I was actually seeking and
37 looking for. But I put up a number of arguments, which
38 I think are articulated in a number of the reports that
39 have been tendered here, and again I put those forward at
40 that meeting.

41

42 Q. Putting your arguments to one side and just consider
43 this position: is it not reasonable, in relation to an
44 investigation of concealing offences of allegations of
45 church paedophilia, that Newcastle Local Area Command
46 conduct the investigation, if the offences occurred in
47 Newcastle? Is that not reasonable?

1 A. The offences occurred all over the cook shop,
2 including Raymond Terrace.

3

4 Q. I'm not talking about the paedophile offences; I'm
5 talking about the concealing activity, which is what was
6 being investigated.

7 A. Again, they were in various areas as well. You know,
8 a lot of it was in Newcastle, but there were also parts of
9 it in other surrounding areas.

10

11 Q. And a lot of it was in areas where you are not the
12 crime manager? Is that a reasonable statement? I withdraw
13 that, that's unhelpful.

14

15 Let's go about it this way. You did not accept - I'm
16 just trying to understand your response to what happened in
17 the meeting, we are all trying to understand the context.
18 You did not accept it as reasonable that the Newcastle
19 Local Area Command should conduct that investigation?

20 A. There are a lot of aspects that weren't reasonable,
21 yes.

22

23 Q. Can you direct your mind to my question. You
24 therefore are saying, are you, that it was unreasonable?
25 It was unreasonable for Newcastle Local Area Command to be
26 allocated and to conduct that investigation?

27 A. On that statement itself, I don't think that's
28 unreasonable.

29

30 Q. Was the problem that you had that you felt you should
31 be doing the investigation because of your background
32 knowledge?

33 A. I felt someone with experience - because this was a
34 fairly significant and large brief and it was being given
35 to an officer that had only just been pulled back from
36 uniform and handed it, and hadn't been in plainclothes for
37 an extended period of time. And I thought, "Why is it
38 going to somebody with such a" - even though she may have
39 been a detective at one time, she was out of that work area
40 for a lot of years.

41

42 Q. So is the answer to my question that you thought you
43 would be a more appropriate person to conduct that
44 investigation than her?

45 A. Amongst others, yes, yes.

46

47 Q. What do you mean by "amongst others"?

1 A. I thought it should have gone to an officer with some
2 degree of experience and expertise in that area, not --

3

4 Q. And that was you?

5 A. It could have included me, yes.

6

7 Q. It could have included you?

8 A. Yes.

9

10 Q. So you don't agree with the proposition that you
11 wanted to do the investigation and that's why you were
12 unhappy about what happened at the meeting on 2 December?

13 A. I would have liked to have been included. Had I felt
14 that, walking away from there, it was going to be given to
15 somebody experienced and competent and done properly,
16 I would have been satisfied with that. Yes, I would have
17 been disappointed that I wasn't being placed in charge of
18 it, but I would have felt, yes, because I was passionate
19 about the matter and I wanted to ensure that it was going
20 to be handled properly, and I'd have thought that there's
21 no way in the world I would have given it to a uniform
22 officer that I've pulled back in from a police truck and
23 said, "Here is this church investigation."

24

25 MR ROSER: I object to this.

26

27 MR McILWAIN: I object to this too, Commissioner.

28

29 MR ROSER: That is factually incorrect, as this witness
30 knows. He smiles when that objection is taken.

31

32 MR COHEN: I object to this commentary that is running all
33 the time.

34

35 MS LONERGAN: While I am on my feet, may I deal with the
36 matter. The question I asked was examining the response of
37 Detective Chief Inspector Fox to what happened. It is
38 important to have that information on the record, so that
39 it can be appropriately assessed. I can move on to other
40 more specific matters and I'll do so now.

41

42 MR McILWAIN: Commissioner, I have an application. I act
43 for former officers Quinn and Tayler. I don't act for
44 Officer Steel, but my application is the witness' evidence
45 about Officer Steel be suppressed. She is not here, she is
46 not represented. This witness is making assertions about
47 her capacities and experience, which, from the knowledge

1 and instructions I have, is not necessarily correct and
2 I think counsel for the police service would know more
3 about that.

4

5 THE COMMISSIONER: Mr McIlwaine, I think your application
6 is reasonable and I will suppress the answer given in
7 relation to former Detective Steel.

8

9 MR McILWAINE: Thank you, Commissioner.

10

11 MS LONERGAN: Can I make one submission in response to
12 that.

13

14 One of the matters that we need to examine is
15 Detective Chief Inspector Fox's impressions, be they
16 mistaken or correct. It may well be that Detective Chief
17 Inspector Fox's impression of the officer's experience is
18 wrong, and that's an important matter, because it may
19 underpin other things that he does. I take my learned
20 friend's point about Officer Steel not being present and
21 not being at this moment legally represented, however, it
22 is part of a larger picture which is relevant, in my
23 respectful submission.

24

25 In my respectful submission, Commissioner, it would
26 not be appropriate to suppress that piece of information
27 because it may well be evidence of an erroneous belief by
28 Detective Chief Inspector Fox.

29

30 MR COHEN: Commissioner, if I may be permitted to make a
31 submission.

32

33 THE COMMISSIONER: Yes, Mr Cohen.

34

35 MR COHEN: This is an inquiry; it is not adversarial
36 litigation that is intended to determine whether or not a
37 claim is proved. It is about inquiring into matters that
38 are profoundly important to the community. I respectfully
39 adopt and agree with much of what my learned friend says,
40 and the potential for embarrassment should not be a matter
41 that is given any credence. If people are embarrassed,
42 then so be it.

43

44 THE COMMISSIONER: Mr McIlwaine, do you wish to say
45 anything further? It is a matter of importance, isn't it,
46 what Detective Chief Inspector Fox considers was the
47 expertise of the officer who was given this brief?

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MR McILWAIN: It will be my clients' position that that conception is misconceived. That will be the evidence of my clients, and they will be here to give that evidence at the appropriate time.

Commissioner, as I understand it, under the Special Commissions Act, you, Commissioner, have to have regard to the rules of evidence as to what would be admissible in civil proceedings. This evidence, in my respectful submission, would not be. The witness can lay some concrete basis for this view, some factual basis, and that's the problem --

THE COMMISSIONER: Mr McIlwaine, it's not admissible as evidence of the fact of the experience and expertise of former Detective Steel. Can it not come before me as evidence of what this witness thought was former Detective Steel's experience?

MR McILWAIN: Yes, it can, Commissioner. But contrary to what my friend says, it's not a question of embarrassment. Any commission of inquiry has to have regard to the protection of the reputation of other individuals. In my respectful submission, allowing that material to be published could do irreparable damage to the reputation of Detective Steel, without her being here to challenge it or take any course about it.

THE COMMISSIONER: How far does it go, Mr McIlwaine? As I understand it, Detective Chief Inspector Fox has said it was his belief that Detective Steel had very recently been a uniformed officer rather than a detective.

MR McILWAIN: It goes a bit beyond that. He raises questions about the extent of her investigative experience as a detective. My understanding is that's simply not a factual fact.

THE COMMISSIONER: That may well be the case, Mr McIlwaine, but as I understand it, I think Ms Lonergan proposes to explore the witness's assumptions or state of knowledge in relation to former Detective Steel. Perhaps she ought to be permitted to do that at this stage, and maybe before 1 o'clock, just to clarify the situation.

MR McILWAIN: As you please, Commissioner.

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THE COMMISSIONER: Thank you.

MS LONERGAN: Thank you, Commissioner. If I can raise one matter as a point of clarity. is Mr McIlwaine instructed to act for Detective Sergeant Steel?

MR McILWAINE: No.

MS LONERGAN: May I raise another matter, Commissioner. A comment emanated from behind me, I think from the Bar table - I didn't see who made it - may I suggest that no persons in court ought to interject negative or personal comments about a witness while they are in the witness box, and if it emanated from counsel, the proper way to deal with matters is, as Mr McIlwaine has just done, to stand and object so that matters can be formally dealt with.

Commissioner, I will just continue with a couple more questions to see if I can test this.

THE COMMISSIONER: Ms Lonergan, I didn't hear the interjection, but I endorse your comments.

MS LONERGAN: Thank you, Commissioner.

Q. Detective Chief Inspector Fox, did you know for a fact what Detective Sergeant Steel's background, qualifications and experience were in relation to criminal investigations?

A. I had worked with Detective Steel on and off over a period of time. I worked with her when I was at Newcastle and --

Q. I'm just going to interrupt you there. How long was that before 2010?

A. 2008.

Q. She had performed duties as an acting inspector, had she not?

A. Yes, she had.

Q. She was a qualified detective; that's correct, isn't it?

A. Yes. I understand so. I believe so.

Q. She had performed duties in the past as a detective?

A. Yes.

1
2 Q. Just a couple more questions about Detective Sergeant
3 Steel's selection. Does it make sense to give a detective
4 who has no pre-existing caseload an investigation and a job
5 that is complex and may take some time?
6 A. That's one of the considerations.
7
8 Q. It's an important consideration, isn't it
9 A. Yes.
10
11 Q. Because that means, doesn't it, that that detective
12 can start working on that matter without being
13 distracted --
14 A. Yes, of course.
15
16 Q. -- by any existing distractions and other matters that
17 need to be attended to?
18 A. Yes. Or if they have got a workload on, it's not
19 unusual that you may actually allocate an individual's
20 cases to somebody else, to free them up to allow them to
21 come on board to that investigation.
22
23 Q. That's another way of approaching it?
24 A. Yes.
25
26 Q. It makes sense, doesn't it, to centralise
27 investigations so that only one command has got the overall
28 responsibility for it?
29 A. It makes it easier.
30
31 Q. Did you consider, as at 2 December, that Port Stephens
32 command should have the investigation, with yourself as
33 commander?
34 A. I felt that I didn't perceive that there would be any
35 difficulty if that occurred. I would have welcomed that,
36 of course, as having had a great deal of involvement. And
37 that was a - you know, that certainly could have been
38 considered, and I was hoping that it would have been.
39
40 Q. Whose decision would that have been?
41 A. That would have been the region commander's at the end
42 of the day, I believe.
43
44 Q. The region commander was Ma'am York?
45 A. Assistant Commissioner York.
46
47 Q. Assistant Commissioner York would be briefed

1 relevantly by officers who assist her as to levels of
2 resourcing and workloads of the different local area
3 commands, would she not?
4 A. Yes.
5
6 Q. She, therefore, would be placed in the normal course
7 in a good position to work out where matters should go?
8 A. If she was being told all the truth, yes.
9
10 Q. Now, you would not be in a position to know what all
11 the other local area commands were doing, would you?
12 A. No.
13
14 Q. Let me ask you this about the level of resourcing at
15 Port Stephens at the time: what officer availability would
16 there have been to complete an investigation of this
17 nature?
18 A. I had some very experienced detectives, quite a number
19 that were extremely competent. I had a detective sergeant
20 that had been a detective sergeant at Raymond Terrace for,
21 by then, a number of years.
22
23 Q. In relation to those officers, did they have a free
24 slate, nothing else on their books that they were working
25 on?
26 A. I would suggest that you would virtually not find a
27 police officer - of there should never be a police officer,
28 I would be asking questions if they've got a clean slate.
29
30 Q. Did you discuss this kind of resourcing issue with
31 Acting Inspector David Matthews in November 2010 when you
32 prepared your report?
33 A. I don't know.
34
35 Q. In relation to the recommendation you made that
36 Inspector David Matthews signed off on, saying, "Yes, that
37 all seems reasonable to investigate," which we looked at
38 yesterday, you recall, don't you, that the recommendation
39 he made was that it ought to be managed by referral to
40 region rather than by management at Port Stephens?
41 A. Yes.
42
43 Q. Would you agree with me that that's because, at the
44 time, Port Stephens Local Area Command was severely
45 stretched in terms of available resources?
46 A. No.
47

1 Q. So did you consider yourself to be in a better
2 position than Inspector David Matthews to know what the
3 resource level was and how stretched they were as at
4 November 2010?

5 A. No, we both worked in the same command, and
6 Mr Matthews and I had been colleagues for quite some years.
7 He was obviously acting up in the role of superintendent at
8 the time, and I think we were both totally around - we'd
9 attend the same meetings and I think we were both equally
10 au fait with the staffing situation.

11
12 Q. So you don't agree with the proposition that Inspector
13 David Matthews would have known more about those issues or
14 problems than you?

15 A. Well, no, not necessarily.

16
17 THE COMMISSIONER: Q. He was an acting superintendent at
18 the time, was he not?

19 A. He was, Commissioner.

20
21 MS LONERGAN: Commissioner, that's a convenient time in
22 terms of my examination.

23
24 THE COMMISSIONER: Thank you, Ms Lonergan.

25
26 Mr McIlwaine, I have taken the view that the evidence
27 in relation to former Detective Sergeant Steel has now been
28 clarified to the extent that I will lift any suppression on
29 the questions in relation to her.

30
31 MR McILWAIN: As you please, Commissioner.

32
33 THE COMMISSIONER: I will adjourn until 2 o'clock.

34
35 **LUNCHEON ADJOURNMENT**

36
37 **UPON RESUMPTION**

38
39 MS LONERGAN: Q. Detective Chief Inspector Fox, before
40 the luncheon adjournment I was asking you some questions
41 regarding the situation in terms of resourcing at the Port
42 Stephens Local Area Command. The question I now want to
43 pursue with you is how you envisaged the investigation of
44 those matters that you say were removed from you would have
45 been conducted if allocated to the Port Stephens Local Area
46 Command?

47 A. There's a lot of alternatives. I had - you know, I'll

1 stand by this - the resources. Even though Port Stephens
2 is a smaller command than Newcastle, quite understandably,
3 our resourcing situation wasn't as desperate as Newcastle.
4

5 Q. I'm not asking you about that. What I'm asking about
6 is a very specific thing and that's how you envisaged -
7 I don't want to talk about any other local area command -
8 how you envisaged the investigation would operate if it was
9 to be conducted by the Port Stephens Local Area Command?

10 A. I'd have probably placed my detective sergeant and
11 possibly one or two detectives on that investigation
12 initially and--
13

14 Q. How many years experience had your detective sergeant
15 had at the time?

16 A. Quite a bit. He had been a detective sergeant there
17 since, I think, about 2007.
18

19 Q. So three years experience as a detective sergeant?

20 A. No, no, that's since he was promoted.
21

22 Q. Three years experience as a detective sergeant?

23 A. But he had been a detective at Newcastle - I'm not
24 sure of the amount of years - but prior to that he had been
25 a detective also up at Taree, so he had been in
26 plainclothes continuously by that stage for quite a
27 substantive period.
28

29 Q. Twenty years experienced officer, something like that;
30 is that what we're looking at?

31 A. No, Scott's pre '88, so he'd be probably up around the
32 25 mark.
33

34 Q. The other two detectives, in terms of experience as
35 police officers, what are we talking about in 2010?

36 A. I was very fortunate that we had quite a substantive
37 number there that had been around for a while, Ray Cook, or
38 a number of the others. But Ray had been one of my
39 detectives over at - and a very competent investigator over
40 at Maitland, before I left, when he came over to -
41 I couldn't tell you off the top of my head but I know that
42 he's been a detective, again, for - without me looking at
43 his file, but quite a number of years, you know, certainly
44 more than five.
45

46 Q. More than five?

47 A. But maybe a lot more five. I'm not going to say 15

1 and --

2

3 Q. No, that's all right; roughly is fine. The other
4 detective you mentioned that you had in mind, who was that?

5 A. Sorry, I probably would have also thought about Col
6 Dawn. Col Dawn has been a detective, I'm guessing, 15 or
7 20 years.

8

9 Q. As at November/December 2010, did these officers have
10 ongoing workloads?

11 A. Oh, they would have had some jobs on. As I said,
12 I wouldn't have been doing my job if I had a detective with
13 no work.

14

15 Q. Exactly. So none of those persons you've mentioned
16 had just come back onto the job and therefore had no
17 ongoing investigations?

18 A. No.

19

20 Q. You would have needed the approval of Superintendent
21 Matthews to make any decisions as crime manager about who
22 would --

23 A. Yes, the senior manager.

24

25 Q. You have to let me finish. You would have needed the
26 approval of Superintendent Matthews to make any decision or
27 recommendations as to the Port Stephens Local Area Command
28 being the one to conduct these investigations; correct?

29 A. Yes.

30

31 Q. The person who would make the ultimate decision about
32 which local area command should run the investigation was
33 Assistant Commissioner York?

34 A. Yes.

35

36 Q. Did you prepare, for the purposes of your submission
37 at the end of September 2010, some sort of plan that
38 indicated who would investigate and what your role would be
39 and how it could be facilitated through the Port Stephens
40 Local Area Command?

41 A. No.

42

43 Q. Had you thought through how it could be managed at the
44 Port Stephens Local Area Command at that point in time?

45 A. Yes.

46

47 Q. You had, but you hadn't documented it anywhere or

1 prepared a submission in a formal way to cover those
2 matters?

3 A. No.

4
5 Q. Had you discussed with these officers whose names you
6 have just mentioned their capability or resource or time
7 capability to complete these investigations?

8 A. When I'm throwing those officers' names up, I should
9 make it clear, I wouldn't dare charge into that with a
10 preconceived idea that I'm definitely going to use those
11 specific officers. I've got a number of others who have
12 also had quite extensive time in criminal investigation.

13
14 Q. So is your answer to my question that you hadn't
15 discussed it with any officers at Port Stephens Local Area
16 Command that you wanted this investigation to be run
17 through that local area command, other than Acting
18 Inspector David Matthews?

19 A. Acting Superintendent Dave Matthews. No, I hadn't,
20 that's correct.

21
22 Q. You would agree with me, wouldn't you, that resourcing
23 an investigation like that is a very critical and important
24 matter?

25 A. Yes.

26
27 Q. It's important, isn't it, to have an officer in charge
28 of an investigation of this nature who will not be
29 distracted by constant interruptions regarding other
30 investigations?

31 A. That's one consideration, yes.

32
33 Q. It's an important consideration?

34 A. Yes.

35
36 Q. In terms of you at that time being the crime manager
37 at Port Stephens Local Area Command, how did you envisage
38 your role would fit into any investigation, if it was
39 conducted through Port Stephens Local Area Command?

40 A. I saw it as an opportunity that I would be able to
41 have a lot more closer input. Obviously, having built up a
42 rapport with some of the witnesses and also a lot of
43 sources and knowledge, I would certainly have used
44 predominantly my investigators to do the vast majority of
45 the work.

46
47 Q. Did you see yourself acting as crime manager in

1 effect, overlooking investigation by other more junior
2 officers?
3 A. Predominantly, but that still wouldn't preclude me
4 from being involved, of course, in some aspects of it.
5
6 Q. You envisaged that you would go out and take
7 statements yourself from victims or people relevant to the
8 inquiry?
9 A. Some, I'm not saying all of them, yes, but certainly
10 some. You know, that's something I've done before and
11 haven't had a drama doing it.
12
13 Q. This may seem obvious, but it is a processed
14 investigation, isn't it, where you start investigating
15 certain allegations and information and that can expand as
16 more information is made known?
17 A. Yes.
18
19 Q. On occasion, an investigation may start about matters
20 A, B and C but, as further intelligence comes to light, the
21 investigation is expanded in matters D, E, F, G, H, I,
22 depending on time, resources and staff capability of
23 dealing with them?
24 A. Yes.
25
26 Q. The matters you were looking at in your report in
27 November 2010 were very wide ranging, weren't they, in
28 terms of content?
29 A. Yes.
30
31 Q. It is usual police practice, isn't it, to start
32 somewhere and keep building with the investigation?
33 A. Yes.
34
35 Q. That would be the type of process you had in mind in
36 relation to the way you would supervise an investigation of
37 this nature?
38 A. Yes.
39
40 Q. The circumstances in which an investigator would have
41 a detective, such as one of the gentlemen you talked about,
42 would have a clean slate is if they had just been deployed
43 as a detective from another area; would you agree with me?
44 A. No, they usually - that's probably the worst scenario,
45 in that they usually come with a lot of baggage and it's
46 always a headache organising them to go backwards and
47 forwards --

1
2 Q. But that's an assumption, "They come with a lot of
3 baggage," that's just a comment and an assumption?
4 A. No, that's my experience. I think nearly everyone
5 would agree, when somebody transfers into your command, you
6 know that they are going to be spending a lot of time
7 travelling backwards and forwards to wherever they have
8 come from before. That's always been my experience. They
9 have a lot of court matters and a lot of commitments back
10 at their previous command that you need to wean them off
11 over a period of time, but ultimately everyone has to
12 experience that and we all share that burden.
13
14 Q. You have given some evidence before the luncheon
15 adjournment regarding directions given to you by
16 Superintendent Max Mitchell.
17 A. Yes.
18
19 Q. Did you breach those directions?
20 A. Yes.
21
22 Q. Which one? Which one of the four did you breach?
23 A. Certainly, I - of course, I was in contact with
24 Joanne McCarthy. I remained in contact with her from that
25 time. I'm just working through them all. There are four
26 breaches, so I suppose that breaches number 1 as well,
27 because she's a member of the media; even though it's the
28 same thing, I breached that.
29
30 Q. You breached the contacting Joanne McCarthy?
31 A. Yes.
32
33 Q. You breached not talking to the media?
34 A. That will be a double jeopardy. You'll get me there,
35 though and --
36
37 Q. What's the other breach, if any?
38 A. Well, I've handed over all the documentation, and
39 that's not a drama, that certainly occurred. There was
40 nothing else that I retained. The fourth one - sorry, I'm
41 just thinking through them all - not to conduct further
42 investigations on the matter. It depends on how you want
43 to classify that, I suppose.
44
45 Q. Was it not to conduct further investigations or was it
46 not to contact the witnesses?
47 A. Sorry, you're right.

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Q. The latter?

A. Yes.

Q. So not to contact the witnesses. Did you contact the witnesses other than that allowance that Superintendent Mitchell gave for contacting them to say you weren't acting in the matter any more?

A. On one occasion I did contact [AK] - sorry, hang on, no, [AJ], and on a number of occasions a number of those witnesses continued to contact me. Despite - I had already explained to them that shouldn't occur, but at the end of the day, you pick the phone up and they're at the other end.

Q. In relation to picking up the phone and them being at the other end, who are we talking about here? Is it [AK] and [AL] only, or who was it that made contact with you where you were forced into the position --

A. [AL].

Q. Did you deal with that call, or was there more than one call?

A. Yes, there has been.

Q. Did you deal with that call by saying, "Look, [AL], I can't talk to you"?

A. No.

Q. You had a conversation with [AL]?

A. She was crying and, yes, I didn't feel I should hang up on her.

Q. How soon after the direction regarding not contacting Joanne McCarthy did you breach it?

A. That night.

Q. What, within eight or nine hours of the direction or what are we talking about?

A. I can't recall the time frame, but I know I contacted her that night.

Q. Why did you breach the direction and contact her that night?

A. Because by that stage I was firmly of the view that what was going on was sinister and that the task force was being set up to fail, in my belief.

1 Q. Why was your worry about there being sinister matters
2 at work an explanation for you contacting Joanne McCarthy?
3 A. Because she was also of a very similar view with a lot
4 of what she had seen going on, and also she had shared with
5 me a number of emails and conversations that she had had,
6 and, in short, I actually felt that we were in the same
7 bucket; we were both seeing the same sort of things, the
8 same conduct going on firmly, in my belief, to thwart this
9 investigation, to confine it certainly and to condense it
10 down even more, to ensure that it didn't become more wide
11 ranging.
12
13 Q. But she was a media person?
14 A. Yes.
15
16 Q. And you are a police officer, so you weren't in the
17 same bucket or boat really, were you?
18 A. No, but I think integrity-wise we certainly were.
19
20 Q. As you saw it, you were entitled to breach the
21 direction?
22 A. I thought the direction was motivated by other factors
23 that weren't honest and were corrupt and --
24
25 Q. What's the answer to my question? You felt entitled
26 to breach the direction?
27 A. Yes, on that basis, yes.
28
29 Q. Because you thought it was a corrupt direction?
30 A. Yes.
31
32 Q. And asking you not to speak to the media or
33 Joanne McCarthy about a confidential police investigation
34 was corrupt, was it?
35 A. I wouldn't have spoken to any other media so --
36
37 Q. No, you have to answer my question.
38 A. I thought that by cutting Joanne McCarthy out and not
39 having open access to the information she had was corrupt,
40 yes.
41
42 Q. Did you not see that direction as a way to protect the
43 integrity of the police investigation ongoing?
44 A. Normally it would be argued that way, but not in this
45 particular circumstance, I didn't - I would normally go
46 along with that, fine, but I saw what was happening with
47 this one and I don't believe that the reason for the

1 direction was to prevent a leak of information. In fact,
2 to that point of time --

3

4 Q. I'm going to stop you.

5 A. -- it had all been the other way.

6

7 Q. I'm going to examine that proposition a little
8 further. You have given evidence today to the effect that
9 it was not uncommon for there to be orders or directions
10 given that the media are not to be spoken to while an
11 investigation is underway?

12 A. Yes.

13

14 Q. The fact it was given in this case was consistent with
15 that not uncommon practice, wasn't it?

16 A. No.

17

18 Q. You don't accept that it was consistent with that not
19 uncommon practice?

20 A. No.

21

22 Q. Why not?

23 A. Because normally in an investigation of this nature,
24 generally if you decide to exclude media, I'm fine with
25 that, and it's quite understandable. At this point in
26 time - and I may be proven wrong - but when this particular
27 operation got up and running, it was up and running from
28 all the witness, all the documents and all the information
29 provided by Joanne McCarthy, and you're telling that
30 person, "Listen, go away and don't come back here with any
31 more information." To me that is - you don't do that, it
32 just doesn't make sense. You don't investigate something
33 by shutting down that source of information.

34

35 Q. The direction was that all contact with the media was
36 to take place through or with the permission of
37 Superintendent Mitchell. It wasn't that there was going to
38 be no contact with the media. That was the position,
39 wasn't it?

40 A. That's what he said.

41

42 Q. That is not unreasonable, is it, that Superintendent
43 Mitchell wanted to keep some control over what contact was
44 had with the media?

45 A. Normally, no.

46

47 Q. Are you aware that there was contact with

1 Joanne McCarthy by police officers other than you regarding
2 Strike Force Lantle operation?
3 A. Yes.
4
5 Q. What was the form of your first contact with
6 Joanne McCarthy after the meeting on 2 December? Did you
7 phone her or how was contact made?
8 A. No, my contact was via an email that I forwarded to
9 her that night, and I told her everything that had occurred
10 at that meeting, and basically saying that it has now
11 confirmed all my suspicions that they're trying to
12 effectively sabotage this investigation.
13
14 Q. We will come to your email in a minute. Did you
15 produce that email to the staff of the Commission?
16 A. I don't have it.
17
18 Q. You didn't have it any more at the time you were asked
19 to look for it?
20 A. That's correct.
21
22 Q. Was the email sent from your home or your work
23 computer?
24 A. My home.
25
26 Q. Did you delete a copy of the email?
27 A. Yes.
28
29 Q. When, are you able to say?
30 A. I think not long after that, the investigation matter
31 that you showed me earlier, I think that was - was it May
32 2011?
33
34 Q. Yes.
35 A. I know I deleted a lot of material around that time.
36
37 Q. Why?
38 A. Because I didn't want the police department to know
39 that I had remained in contact with Joanne McCarthy.
40
41 Q. Why not?
42 A. Because I realised I would face serious disciplinary
43 action if they became aware of that.
44
45 Q. Is it reasonable to say that you were prepared to tell
46 untruths about your contact with Joanne McCarthy?
47 A. No.

1
2 Q. You didn't tell any untruths about your contact with
3 Joanne McCarthy to police authorities?
4 A. Sorry, yes. Sorry, in that - I thought you meant to
5 this Commission. No, to the police department, yes.
6
7 Q. You have told some untruths to the police department,
8 but we should accept what you are telling the Commission in
9 your evidence today?
10 A. I realise that's a difficult one, and people would, of
11 course, question me, and I contemplated that before I went
12 public with this matter. But my motives in not telling the
13 police department have been very genuine, in that I am
14 still concerned and very deeply suspicious about their
15 conduct, but I have never attempted to mislead or lie to
16 this Commission.
17
18 Q. Could you look at the document behind tab 84, please.
19 That is an email dated 2 December 2010, timed at 23.19.
20 Detective Chief Inspector Fox, can you look at that and
21 read that to yourself. I'm going to ask you a number of
22 questions about it.
23 A. That appears to be the email that I've sent to
24 Joanne McCarthy the night of 2 December 2010.
25
26 Q. I don't want to be unfair to you, jumping around,
27 picking bits out of it. Could you read it to yourself
28 freshly now, so that it's in your mind.
29 A. It's quite lengthy.
30
31 Q. Detective Chief Inspector Fox, it's a four-page email.
32 Have you finished reading it?
33 A. No.
34
35 Q. Let me know when you get there.
36 A. I will.
37
38 Q. May I inquire, Detective Chief Inspector Fox, what
39 page or what part of the email you are up to?
40 A. I'm up to page 358, about halfway down. Sorry, do you
41 want me to continue reading this or would you rather that
42 me not --
43
44 Q. I do. I'm just standing for a bit of a stretch. Keep
45 going and let me know what you finish.
46 A. It's just that don't intend to delay, but I am trying
47 to absorb it because I haven't read or seen this document

1 since 2010 and I don't want to be unfair in my answers.
2
3 Q. Can I just ask you some question about your last
4 answer. You have seen a copy of this document before today
5 so when you say, "2010" --
6 A. Yes, but I have not had an opportunity to read through
7 it.
8
9 Q. You have not read this document before today --
10 A. I glanced through it on the previous occasion, but --
11
12 Q. I beg your pardon?
13 A. I've glanced through it, but I haven't had the chance
14 to read and absorb fully what's in it.
15
16 Q. All right.
17 A. I'm sorry, I realise it's taking up time, but --
18
19 Q. No, that's fine. Please continue reading. I just
20 didn't want there to be a misunderstanding that you've
21 finished and we're all waiting.
22 A. No, I wouldn't do that.
23
24 MS LONERGAN: Commissioner, I'm aware that reading a
25 document in the witness box with everybody sitting here is
26 quite a stressful event.
27
28 Q. Can I propose, Detective Chief Inspector --
29 A. I do not mean to cause anyone stress.
30
31 Q. I am talking about stress to you. I would be
32 stressed, doing it in that circumstance. Detective Chief
33 Inspector Fox, the offer I'm making is that we can adjourn
34 for five to 10 minutes to let you read that, without
35 everybody looking at you.
36
37 THE COMMISSIONER: I think the witness is on the last
38 page.
39
40 Q. Is that right, sir?
41 A. I am indeed. I've only got a couple of paragraphs to
42 go.
43
44 MS LONERGAN: Q. You are happy doing that?
45 A. Yes, that is fine. I am quite comfortable.
46
47 I'm finished, thank you.

1 Q. Detective Chief Inspector Fox, did you prepare that
2 email by using notes that you took on the day?
3 A. My understanding, reading that back, is my diary that
4 went mysteriously missing, the first two pages of that
5 appear to be a transcription directly out of my diary, that
6 I would have made, predominantly most of that, at Raymond
7 Terrace police station, when I went back that afternoon.
8 Q. Is that right down to page 2:
9
10 *He singled out Joanne McCarthy who he*
11 *stated his staff had met with.*
12
13 A. Sorry?
14
15 Q. Right down to the bottom of page 2? I'm just trying
16 to establish which bits you say came from your diary
17 record.
18 A. Sorry, my apologies. I see now. No. Yes, it is,
19 sorry, to --
20
21 Q. The bottom of the third page?
22 A. Yes, the bottom of the third page, to:
23
24 *I provided the documents in an envelope to*
25 *Scott Metcalfe to drop down.*
26
27 Q. Given that they were prepared from notes from your
28 diary, done on the day the events happened, it is far more
29 likely to be an accurate statement --
30 A. Yes.
31
32 Q. You had better let me finish. It is far more likely
33 to be an accurate statement of what occurred in the meeting
34 than evidence you give today?
35 A. Yes.
36
37 Q. You tried hard in the email, did you, to correctly
38 report to Joanne McCarthy what had happened in the meeting?
39 A. I tried hard in the email, but as I said, it's from my
40 diary, so I tried hard to record most of it in my diary,
41 and, of course, relayed that on from that point.
42
43 Q. First of all, the paragraph under the date 1/12/10
44 referred to having been contacted on that day by
45 Justin Quinn to provide him with any statements or
46 documentation you had concerning any church-related
47 investigations?

1 A. Yes.

2

3 Q. Would you agree with me that, in answer to some
4 questions I asked today, you stated that no officer had
5 asked you for statements or documents relating to
6 church-related investigations prior to the meeting, other
7 than the ones that we were talking about in terms of
8 Superintendent Haggett?

9 A. Yes.

10

11 Q. Had you forgotten about this one?

12

13 A. To be honest, yes, I had. But I incorporated that -
14 because he never came down, and of course I was - not long
15 after that phone call - that was at 11.30, 20 minutes later
16 Mr - sorry, it was only within an hour and a half that
17 Mr Haggett came in and explained that that wasn't going to
18 happen, and I was told to bring the documents down the next
19 day. So I incorporated that as, you know, part of the
20 instruction to bring them down. But, yes, I had forgotten
21 about Justin Quinn ringing, because the events from
22 Mr Haggett overtook that.

22

23 Q. You recollect that I asked you questions specifically
24 about any officer talking to you about handing over
25 documents?

26

27 A. Until I read this, I didn't recall speaking to
28 Justin Quinn, that's true.

28

29 Q. So you had just forgotten about Justin Quinn having
30 made this request?

31

32 A. Yes.

33

34 Q. You weren't trying to mislead the Commission or
35 anything of that nature in not revealing that Justin Quinn
36 had asked you the day before to give him the documentation
37 you had concerning any church-related investigation?

38

39 A. No, because he actually says that --

40

41 Q. No, it's not about what's in the document; I'm asking
42 you a question about what you are doing here today. Can
43 the Commissioner be confident that you are not trying to
44 mislead her here today by not mentioning that you had
45 already been asked by Justin Quinn to provide statements or
46 documents concerning any church-related investigation
47 before that meeting on 2 December?

46

47 A. I'm not trying to mislead.

1 Q. All right. You just forgot?
2 A. I just forgot. And he was coming the next day, which
3 turned out to be the day I handed them in.
4
5 Q. That's what the document says. But I was just asking
6 questions about what you are doing today. You forgot?
7 A. I totally forgot that I got a phone call off Justin
8 Quinn asking me to do that.
9
10 Q. In that first paragraph about the contact with
11 Justin Quinn on 1 December, in the second sentence you say:
12
13 *The conversation was amicable and*
14 *I explained a lot of additional material*
15 *I could provide from sources and contacts*
16 *I had acquired over more than a decade of*
17 *investigating Catholic Church paedophilia.*
18
19 A. Yes.
20
21 Q. The comment "more than a decade", what decade are you
22 talking about there?
23 A. I'm talking about really from about the time of
24 McAlinden, which is in 1999, to 2010.
25
26 Q. You gave evidence yesterday outlining your role in
27 investigations regarding those matters. Would you agree
28 with me that, first of all, in relation to McAlinden, it
29 was some involvement as an officer supervising Detective
30 Sergeant Watters from late 1999 until the time McAlinden
31 died at the end of 2005? You don't need to look at any
32 documents for that.
33 A. I know we're cutting it fine by a date. It was the --
34
35 Q. No, just address my question.
36 A. It was 10 years since --
37
38 Q. No, please answer my question, if you can.
39 A. Yes.
40
41 Q. The evidence you gave yesterday was to the effect that
42 you had involvement in dealing with McAlinden, or
43 allegations about McAlinden, from late 1999?
44 A. Yes.
45
46 Q. Until his death in 2005, at the end of 2005?
47 A. Yes.

1
2 Q. We are talking about six years there?
3 A. Yes.
4
5 Q. And you outlined your involvement in that
6 investigation as being supervising - you don't need to look
7 at the documents for this. It's probably better if you
8 don't. I'm asking you about your evidence.
9 A. No, I'm hearing, I'm hearing.
10
11 Q. I don't want you to be distracted. You gave evidence
12 that you did a bit of supervision of Detective Sergeant
13 Watters?
14 A. Yes.
15
16 Q. And a bit of contact with the victims' families?
17 A. Yes.
18
19 Q. And you were probably instrumental in closing it after
20 his death in 2005?
21 A. Yes.
22
23 Q. You added some information to the record in late 2005
24 when you found out certain information about his location?
25 A. Yes.
26
27 Q. That was really the size of it, wasn't it, in terms of
28 investigation of McAlinden prior to 2010?
29 A. Yes.
30
31 Q. Now, in relation to Jim Fletcher, you carried out
32 intensive investigations from mid-2002 to the end of 2004
33 in terms of assisting with the prosecution?
34 A. Yes.
35
36 Q. You had some presence in relation to the appeal the
37 following year?
38 A. Yes.
39
40 Q. But you did not carry out further investigation after
41 the convictions at the end of 2004 into Fletcher? I'm not
42 suggesting you should have, but there were no further
43 investigations into Fletcher, once you got the conviction,
44 were there?
45 A. I'm not certain about that. I'm not sure about that
46 aspect. There were some other things that have transpired
47 over the years. But generally speaking, no, but I'm not -

1 don't want to say emphatically definitely no.
2
3 Q. Would you accept it's an exaggeration to say that you
4 had been working over more than a decade investigating
5 Catholic Church paedophilia?
6 A. We're playing on words there. No --
7
8 Q. No, you can accept it or reject it?
9 A. -- I disagree with - I disagree what you're saying
10 there. The comment was just straight out - and bearing in
11 mind, this is my own notes for my own record and I --
12
13 Q. Well, I'm going to stop you there. It's not your own
14 notes for your own record, is it, because you are sending
15 it to somebody --
16 A. Well, it was then, when I first made it.
17
18 Q. Wait, let me finish. You are sending it to a member
19 of the press as an accurate record of what happened to you,
20 aren't you?
21 A. Later on, yes.
22
23 Q. Not later on?
24 A. That wasn't what I was intending. I thought about it
25 after I - but at the time I wrote those notes, obviously
26 I'm making a record from my diary, which was for my own
27 reference. But later on, yes, I have conveyed them and, of
28 course, they are now here before this Commission.
29
30 Q. Detective chief inspector, what we are looking at is
31 not your diary notes; we are looking at an email that you
32 sent to a member of the press, aren't we?
33 A. That consisted of a transcript from my diary.
34
35 Q. Yes, but you chose what to put into the email you sent
36 to Ms McCarthy, didn't you?
37 A. I transcribed it out of my diary, yes.
38
39 Q. Yes.
40 A. Yes, that part of it is transcribed directly out of my
41 diary. I didn't leave anything out or add anything to it.
42
43 Q. But you are conveying to Ms McCarthy that you had a
44 conversation with Justin Quinn, including that you told him
45 or explained to him that you'd got a lot of information,
46 et cetera, that you had acquired over more than a decade of
47 investigating Catholic Church paedophilia?

1 A. That's true.
2
3 Q. It's true that you had that conversation with
4 Justin Quinn?
5 A. Yes.
6
7 Q. And you wanted Ms McCarthy to understand that?
8 A. To be aware of that, yes.
9
10 Q. You don't agree with me that that's an exaggeration of
11 your position in relation to investigating Catholic Church
12 paedophilia as at December 2010?
13 A. From December 2010 to October 1999 is more than a
14 decade.
15
16 Q. Yes, but you told this Commission that from late 2004,
17 bar assisting with the appeal in relation to Jim Fletcher,
18 that you weren't carrying out any active investigative
19 steps regarding Fletcher? That's a simple one - "yes" or
20 "no"?
21 A. Yes.
22
23 Q. Was that your evidence?
24 A. Yes.
25
26 Q. And the McAlinden investigation, you finished at the
27 end of 2005?
28 A. Yes.
29
30 Q. Is there any reason why you are smirking?
31 A. Yes.
32
33 Q. Okay. You consider that investigating for five to six
34 years is the same as saying "more than a decade"?
35
36 MR COHEN: I object to that question. My objection is
37 that that was not a fair statement of the question having
38 regard to this document.
39
40 THE COMMISSIONER: Mr Cohen, I understood that Ms Lonergan
41 was asking a question, so the witness can give his
42 response.
43
44 MS LONERGAN: Q. I was just trying to understand,
45 Detective Chief Inspector Fox. I don't want to be unfair
46 to you, but it just seems to me from the evidence that you
47 have given - and I want you to correct me if this is wrong,

1 so I do understand - that you had been investigating
2 between late 19989 than and, at the latest, the end of
3 2005, but nothing after that time. That seems to me to be
4 six years, not more than 10? So the proposition I want to
5 put to you is that's an exaggeration, isn't it?

6 A. How long have I known about the new millennium? I've
7 known about it for more than 10 years.

8
9 Q. No, you are not answering my question. You must
10 answer my question. That's the way it works. Is that an
11 exaggeration, given --

12 A. No.

13
14 Q. It's not?

15 A. No.

16
17 Q. Okay. We'll move on.

18
19 If you turn to page 357, which is the second page of
20 the email, in the first long paragraph under that page,
21 under the heading "2/12/10", in the second and third lines
22 you make this statement:

23

24 *A young male, not introduced and not known*
25 *to me, took minutes of the meeting.*

26
27 Do you see that?

28 A. Yes.

29
30 Q. That's an accurate statement, as you made it at the
31 time?

32 A. Yes.

33
34 Q. Were you given a copy of the minutes of the meeting at
35 the end of the meeting?

36 A. No.

37
38 Q. Or at any time?

39 A. No, I've never seen them.

40
41 Q. Toward the end of that paragraph you make this
42 statement:

43

44 *I was 'told' that I was to hand over to*
45 *Justin Quinn any statement and other*
46 *documentation I held on these matters.*

47

1 So that was a telling or a direction?
2 A. I've got "told" in inverted commas, so I'm assuming
3 that's a direction.
4
5 Q. In the next paragraph you make this statement:
6
7 *Mitchell then explained that Newcastle City*
8 *Command were to conduct the sole*
9 *investigation and that had been agreed by*
10 *the region commander.*
11
12 A. Yes.
13
14 Q. Then you say:
15
16 *He did not wish for any other inquiry or*
17 *persons to speak to witnesses and they were*
18 *to retain sole autonomy.*
19
20 A. Yes.
21
22 Q. Do you agree with me that what you have recorded there
23 isn't an order to cease investigating?
24 A. No.
25
26 Q. Do you agree with me?
27 A. No, that's true.
28
29 Q. It's an order not to speak to witnesses that were
30 involved in the current investigation?
31 A. Yes.
32
33 Q. At the bottom of the page, the last paragraph:
34
35 *I was then told by Mitchell that the matter*
36 *would be investigated by Newcastle 'only'*
37 *and that I was not to speak to any media on*
38 *the matter.*
39
40 A. Yes.
41
42 Q. So that was one of the four directions we have been
43 talking about today?
44 A. Yes.
45
46 Q. Then:
47

1 *He singled out Joanne McCarthy who he*
2 *stated his staff had met with.*

3
4 Do you see that?

5 A. Yes.

6
7 Q. If you turn over the page, in the third paragraph you
8 make this statement:

9
10 *I asked, "What exactly are you*
11 *investigating?" He appeared annoyed at*
12 *having given me this question and said the*
13 *matters involving [AK], [AL] and Peter*
14 *Gogarty. (I didn't mention my knowledge of*
15 *Gogarty - nor do I know if he already*
16 *knew.)*

17
18 Is there any reason why you didn't mention what you knew
19 about that gentleman?

20 A. No, it wasn't a case of me withholding it. What I'm
21 saying there is I don't know if Mr Mitchell knew that
22 I knew Mr Gogarty or not.

23
24 Q. In the next paragraph you talk about having explained
25 that you had numerous contact throughout the church
26 throughout the region and you were prepared to assist. Did
27 you provide the names of those contacts to the meeting?

28 A. Certainly not all. I think I did mention Helen
29 Keepers. I may have mentioned others, but I don't recall,
30 but I don't think I did. I think that it was probably the
31 extent of it at that stage. It was basically to let them
32 know, "If you want to know some more, I have got a lot of
33 people that would be able to assist you with this."

34
35 Q. Was it the position that you were deliberately keeping
36 the names of victims to yourself because you did not want
37 to assist the investigation?

38 A. Absolutely not, no. I was more than happy - which is
39 why I made that statement is that, "I have these. If you
40 feel that you can take this investigation a lot further,
41 I'm more than happy to put you in contact with as many of
42 these people that may be able to assist you as I can."

43
44 Q. But is the real position that you wanted to be the one
45 running the show in terms of the investigation?

46 A. I would have preferred to, but I wasn't going to throw
47 it off if they were genuinely interested. As it turned

1 out, they weren't.
2
3 Q. Well, that's an assumption - as it appeared to you?
4 A. Well, they never came back and asked me for any of
5 those names, and the one witness I did give them, they
6 never, ever finished her statement.
7
8 Q. If you look at the next paragraph, I am going to ask
9 you a question about the last sentence regarding then
10 Bishop Clarke. You say that you had interviewed Clarke.
11 Do you see that?
12 A. Which paragraph?
13
14 Q. The next large paragraph, beginning with "I then spoke
15 about"; it's the last sentence?
16 A. Yes.
17
18 Q. You say you had interviewed Clarke. Do you see that?
19 A. Yes.
20
21 Q. That's a reference to Bishop Clarke, isn't it?
22 A. Yes, it is.
23
24 Q. Is it a correct statement or an accurate statement
25 that you had interviewed Clarke?
26 A. Spoken to, interviewed, had a conversation with.
27
28 Q. Which of those three is it?
29 A. Again, it's very fine lines.
30
31 Q. Well, let's --
32 A. I've termed it there "interviewed"; I think that is
33 one fair description of what transpired, yes.
34
35 Q. "Interview", generally in police parlance, has an
36 aspect to it, doesn't it, of a formal interview where
37 documentation is made?
38 A. I think there's lots of interpretations of
39 "interview". That is one, yes.
40
41 Q. Did you take notes of the interview with then
42 Bishop Clarke?
43 A. I don't know.
44
45 Q. You don't know?
46 A. I probably did not. Sorry, at the time I did not.
47 No. No, not at that time.

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Q. No notes at the time?

A. No.

Q. You had another officer with you when you did that interview?

A. Yes.

Q. And that officer didn't take a note either, do you know?

A. I don't know. I don't believe so, but I'm not certain.

Q. Did you caution Bishop Clarke along the lines that you were investigating him for a criminal offence or anything of that nature?

A. I wasn't, no. That wasn't what my purpose of being there was, and I definitely didn't caution him.

Q. On the last paragraph on that page, you state that you provided the documents in an envelope to Officer Scott Metcalfe?

A. Yes.

Q. To deliver to - who was he going to deliver it to?

A. The instruction I was given is that it had to be delivered to Senior Sergeant Justin Quinn.

Q. You provided all the documents that you had that were relevant to the request in that envelope?

A. Everything. It was already in the envelope. As I said, I had left it on my desk, accidentally intentionally, yes. But when I handed it to Detective Sergeant Scott Metcalfe that afternoon, it contained the three statements that we've already spoken about, all the documentation that Joanne McCarthy had sent me.

Q. Did you keep copies of those yourself?

A. I already had electronic versions of all those documents.

Q. If you turn to the next page, in the first paragraph you make this statement:

Joanne I have no doubt they will periodically check my work mobile, desk phone for numbers in & out and look for

1 yours.

2

3 Who is "they"?

4 A. No one specifically, but --

5

6 Q. Other officers?

7 A. -- I would imagine someone that - but, yes.

8

9 Q. "Also my work email."

10 A. Yes.

11

12 Q. You make this statement:

13

14 *If you do call her --*

15

16 That is your wife, Penny ?

17 A. Yes.

18

19 Q. --

20

21 *keep it very short and I will endeavour to*
22 *get back to you.*

23

24 A. Yes.

25

26 Q. So you were planning to continue breaching the
27 direction with Ms McCarthy?

28 A. Yes.

29

30 Q. Then:

31

32 *Sorry this has turned to 007 stuff but*
33 *I have a hell of a lot to lose and Max*
34 *would love to see me out of the job,*
35 *because that is what would happen - disobey*
36 *direction, breach of code of conduct, etc.*

37

38 A. Yes, I'm sure it would have.

39 Q. In the third paragraph on that page, you make a
40 suggestion to Ms McCarthy:

41

42 *If my calls to you over the past 6 weeks*
43 *are picked up I'll just have to I explain*
44 *we were chasing up the Abernethy fires*
45 *re --*

46

47 And then you give a name. Detective Chief Inspector Fox,

1 that was, in effect, asking Ms McCarthy to tell lies for
2 you, was it?

3 A. No, I'm saying there that I will explain that that's
4 what it says.

5

6 Q. Then two paragraphs down, you make this statement
7 before we get to that, I should read it in context so that
8 it can be understood:

9

10 *In concluding I should keep my head down*
11 *but this is all bullshit. I won't give up*
12 *that easy but have to be very careful of*
13 *any traps.*

14

15 What traps are you talking about there?

16 A. I'm sure that some of those individuals, knowing their
17 background, would have liked to have caught me out.

18

19 Q. Caught you out breaching a direction that you were
20 blatantly breaching?

21 A. Yes, that's right.

22

23 Q. And then in the next paragraph:

24

25 *Why is this happening - not sure? None of*
26 *it makes sense. If this was any form of*
27 *genuine inquiry I would have been welcomed*
28 *as an asset.*

29

30 What I want to suggest to you is that you were miffed that
31 you weren't allowed to be the officer running the
32 investigation?

33 A. Predominantly, I just could not understand why any of
34 this information or sources or any of this material, they
35 were totally disinterested in it. What that means is,
36 I walked away from that meeting with a very clear idea in
37 my head that they had no intention to thoroughly
38 investigate this matter, to narrow its parameters and to
39 ensure that it didn't become a larger inquiry. And I saw
40 it that they now had a difficulty, in that they had a
41 number of statements that they couldn't get around, that
42 I had already taken, but I knew that - you know, my belief
43 was they did not intend to take this matter outside of
44 those and explore a much greater concern that I was looking
45 at.

46

47 Q. You say that they were disinterested. That's not

1 quite correct, is it, because they did request you provide
2 the statements to them, didn't they?

3 A. Oh, yes, yes.
4

5 Q. But if they were disinterested, they would have done
6 the opposite, wouldn't they: "We don't want your
7 statements; they're not relevant"?

8 A. Well, they didn't have a choice, I had already got
9 them. I often wonder whether that would have had happened
10 had I not obtained them, but, yes, they at least showed
11 that degree of interest to get them from me.
12

13 Q. No one said to you, "We're not going to investigate
14 this," did they?

15 A. I wouldn't imagine they would. No. They didn't.
16

17 Q. No one said that to you?

18 A. No.
19

20 Q. You go on to say in the second-last paragraph:

21
22 *I really cannot speak to you at all*
23 *tomorrow and your appearance will be seen*
24 *by them and reported to region as me*
25 *thumbing my nose at what I was directed*
26 *today.*
27

28 Do you see that?

29 A. Yes. I've read it, yes.
30

31 Q. So you still did that, despite the fact that it may
32 well be seen as thumbing your nose at the directions?

33 A. I didn't want them to know that I was still going to
34 remain in contact with Joanne McCarthy, but that was my
35 intention and I make no apology for it.
36

37 Q. Then you go on to say:

38
39 *The pricks can shove it.*
40

41 Who are you referring to there by "the pricks"?

42 A. Some fit that description more than others, but
43 certainly Chief Inspector Wayne Humphrey.
44

45 Q. Let's just examine that. Wayne Humphrey wasn't at the
46 meeting, was he?

47 A. No.

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Q. He didn't direct you to hand the material over, did he, in the meeting? The direction was from Mitchell?

A. Not in the meeting, no.

Q. In terms of involvement in the directions that you have given evidence about today, it was Superintendent Mitchell who actually vocalised the directions?

A. Yes.

Q. Who else do you perceive was part of that process of directing you to cease investigating?

A. Chief Inspector Wayne Humphrey, I think, was a major contributor to it, yes.

Q. Anyone else?

A. They're the predominant two I saw. Obviously - I don't know fully what was going on behind the scenes, but I was fairly confident that those particular individuals were driving forces.

* Q. [Question suppressed].

* A. [Answer suppressed].

MR ROSER: I object to this, Commissioner.

MS LONERGAN: Let me ask a more directed question. I take my learned friend's objection.

Q. Detective Chief Inspector Fox, you are required to focus on the basis for which you entertained the suspicion that Detective Chief Inspector Humphrey was instrumental or involved in the direction being given.

A. Yes, that's what I was doing.

Q. Did you see any document from Detective Chief Inspector Humphrey to Superintendent Mitchell saying that you were to be taken from the investigation?

A. No.

Q. You go on to say:

The whole thing stinks and they can bit me.

What do you mean by that?

1 A. "They can bite me." Sorry, it's a typo.
2
3 Q. What does that mean?
4 A. Go to buggery, basically. Again, probably just a
5 colloquialism. I think it's used quite regularly. But
6 really, at that stage, I just thought, "To hell with all
7 this. If that's the way they're running this then they're
8 going to basically just rack it off without really
9 investigating and do a minimal of effort, just to appease
10 some media scrutiny, they are not what I call police with
11 integrity or commitment or professionalism."
12
13 Q. If you turn to tab 86, this is another email from you,
14 dated 9 December, to Ms McCarthy?
15 A. Yes.
16
17 Q. You commence with:
18
19 *Nothing major but just keeping you*
20 *informed.*
21
22 A. Yes.
23
24 Q. Why were you keeping her informed?
25 A. At that stage I really felt it was a situation of
26 Joanne McCarthy and myself knowing what was really going on
27 with all these documents and witnesses, and I had taken on
28 a mindset - right or wrong, which obviously this Commission
29 will make a decision upon - that a certain faction within
30 the police force was very determined not to explore and
31 examine.
32
33 Q. Was or is it your position that Strike Force Lantle
34 was a sham?
35 A. Absolutely.
36
37 Q. You still maintain that position?
38 A. I believe that it was being set up to fail. The
39 officers allocated - and again, the next detective that was
40 given it after Kirren Steel went off sick had been a
41 uniformed officer at Raymond Terrace, who had come to me
42 and asked to be put back into the detectives' office to get
43 some training as a detective because he had applied for a
44 detective sergeant's job at Newcastle. The first day he
45 arrives, he's given this church investigation. I'm
46 thinking, "How much experience do you need?" Like, this is
47 a major, major - or should have been - and we are giving it

1 to somebody. Don't get me wrong, both the investigators
2 are wonderful people, terrific police, but it's so damn
3 unfair to give it to these junior police and setting them
4 up as bunnies --

5
6 MR ROSER: I object to this, Commissioner. It's totally
7 unfair. On what basis is this given?

8
9 THE COMMISSIONER: Perhaps Ms Lonergan proposes to explore
10 it.

11
12 MR ROSER: Just one aspect. As, Commissioner, you raised
13 originally about this particular matter, it is pending
14 before the DPP in relation to the outcome of it and there
15 should be a non-publication order in relation to this
16 witness's opinion.

17
18 THE COMMISSIONER: Of the quality of the investigation?

19
20 MR ROSER: Of the quality of the investigation and other
21 aspects of it.

22
23 THE COMMISSIONER: What do you say, Ms Lonergan?

24
25 MS LONERGAN: Commissioner --

26
27 MR SKINNER: Commissioner, as this concerns my client,
28 I support that objection, he being possibly the subject of
29 that investigation, one of them.

30
31 MS LONERGAN: Commissioner, those who instruct me would be
32 assisted by Mr Roser articulating in more detail the
33 reasons why he is seeking a non-publication order in
34 relation to that aspect of the evidence.

35
36 MR COHEN: If I may address you on this point,
37 Commissioner, as I indicated before the adjournment, this
38 is a matter of utmost public importance. There is a fine
39 line between what my learned friend Mr Roser says, as
40 I apprehend what he means, about the capacity of the
41 administration of justice and merely avoiding embarrassment
42 to the police force. In my respectful submission, this
43 Commission has a difficult line to tread, but it must err
44 on the side of open justice, open investigation and deep
45 scrutiny. If the Commission pleases.

46
47 THE COMMISSIONER: Thank you, Mr Cohen. There is force

1 in what you say.

2

3 Ms Lonergan, I think that you have something to say
4 about Ms Roser's application. You asked that Mr Roser
5 expand upon it.

6

7 MS LONERGAN: Yes.

8

9 MR ROSER: This witness has said it was a sham, which goes
10 to the investigation itself which is pending. We ask for a
11 non-publication order in relation to that. Also this
12 witness said it was set up to fail. Again, it goes to the
13 merits of the investigation which is pending, as to whether
14 charges will be laid subsequently.

15

16 THE COMMISSIONER: Mr Roser, you, of course, are cognisant
17 of the fact that there will be some evidence in general
18 terms about the quality of the investigation.

19

20 MR ROSER: That's correct.

21

22 THE COMMISSIONER: Is it not premature to shut down any
23 publication of this witness's views, in that we do expect
24 to have some evidence about it, one way or another?

25

26 MR ROSER: My concern is that that particular
27 investigation and what flows from that investigation should
28 not be inhibited by this particular witness's opinion.
29 I adhere to what you say and I know the evidence which is
30 coming in relation to the quality of the brief, but I just
31 make the objection in relation to that application.

32

33 MR SKINNER: May I be heard on that, Commissioner?

34

35 THE COMMISSIONER: Yes, Mr Skinner.

36

37 MR SKINNER: It actually more directly affects my client,
38 who is awaiting a decision through the proper processes of
39 the Director of Public Prosecutions. To have this comment
40 now in the public domain will, at the very least, cause him
41 hurt and anguish. He is perfectly entitled, in my
42 submission, like anyone who has been told there is an
43 investigation pending and who is awaiting the outcome, to
44 sit and await the outcome without people publishing
45 comments in advance. Whether or not someone, later on,
46 publishes a comment to the contrary - and I don't know what
47 the evidence of the expert is going to be - is not

1 something that would take away from him the embarrassment
2 and hurt that might be caused by this being published now.

3
4 The publication or non-publication of this doesn't go
5 in any way to your inquiry. The in-depth inquiry that my
6 learned friend Mr Cohen speaks to has been conducted in
7 depth without this going out into the public domain.

8
9 MS LONERGAN: Commissioner, before you rule on the
10 objection, it is a step-by-step process taking evidence.
11 Can I suggest that I ask some further questions of
12 Detective Chief Inspector Fox in terms of his actual
13 knowledge of the investigation and his access to material
14 about it. I have an expectation as to what his answers
15 will be, and that may assist in dealing with at least some
16 of the objections.

17
18 THE COMMISSIONER: Thank you, Ms Lonergan. Does that suit
19 you, Mr Roser and Mr Skinner?

20
21 MR ROSER: Yes.

22
23 MR SKINNER: Thank you, Commissioner. That would go
24 directly to what you, Commissioner, has to think about in
25 relation to section 9 of the Special Commissions of Inquiry
26 Act.

27
28 MS LONERGAN: I will ask the question first and I will
29 make more submissions, should I need to do so.

30
31 Q. Detective Chief Inspector Fox, you have never seen the
32 Strike Force Lantle brief, have you?

33 A. No.

34
35 Q. You have no idea what is contained in it, do you? No
36 real idea?

37 A. I have some, from some comments that were made to me.
38 I don't know anywhere near its entirety but I have got an
39 idea of some methodologies that were used and the conduct
40 of police during it, yes.

41
42 Q. Comments made to you by whom? Use the pseudonyms if
43 you need to.

44 A. Comments made by [AL] and [AJ] and Helen Keevers.

45
46 Q. Those people, to your knowledge, have not been given a
47 full copy of the Lantle brief, have they?

1 A. All I know, they have shown me nothing. It's only
2 what they have told me.
3
4 Q. All those people you have just referred to have not
5 been given a copy of the Lantle brief, have they?
6 A. I don't know.
7
8 Q. Well, it's most unlikely they would have been, isn't
9 it?
10 A. I normally give everybody a copy of their statement,
11 every victim, that's normal procedure, but I never asked
12 them and I've never seen it.
13
14 Q. It would be most unusual for victims to be given a
15 full copy of a brief?
16 A. Sorry, they wouldn't have been given a full copy of
17 the brief. Certainly of their own statement, but I'm not
18 suggesting they would have been given a copy of the brief.
19
20 Q. In relation to your position that Lantle is a sham, by
21 that do you mean that there has been no investigation
22 undertaken?
23 A. No.
24
25 Q. By that do you mean there's been no genuine
26 investigation undertaken?
27 A. No.
28
29 Q. By that do you mean that you would like a more
30 extensive investigation to have been undertaken?
31 A. Partly, yes.
32
33 Q. You don't know what, in effect, Lantle investigated
34 because you have not seen the brief?
35 A. No, I've got a pretty good idea of what they've
36 investigated without seeing the brief. I have been told
37 that --
38
39 Q. Don't worry about what you have been told, not the
40 content of what you've been told.
41 A. All right, without anything I've been told, I know
42 nothing. I only know what I've been told.
43
44 Q. And you know nothing because you haven't seen the
45 Lantle brief in a final form?
46 A. No, of course not.
47

1 Q. So you are just guessing that the investigation was a
2 sham, aren't you?
3 A. No.
4
5 Q. You're suspicious that the investigation was a sham?
6 A. No.
7
8 Q. You're not suspicious the investigation was a sham?
9 A. Yes.
10
11 Q. You have been told the investigation was a sham?
12 A. No, that word wasn't used to me, no.
13
14 Q. The only thing you have been told about the Lantle
15 investigation process came from civilians, not police; is
16 that the position?
17 A. It came from witness, yes.
18
19 Q. "Witnesses" being lay people, not police?
20 A. Yes.
21
22 Q. The witnesses you spoke to?
23 A. Yes.
24
25 MS LONERGAN: Commissioner, can we have a short
26 adjournment, please?
27
28 THE COMMISSIONER: Yes, Ms Lonergan, I will adjourn until
29 you let me know.
30
31 MS LONERGAN: Five minutes.
32
33 THE COMMISSIONER: All right, five minutes.
34
35 **SHORT ADJOURNMENT**
36
37 MS LONERGAN: Commissioner, there are, in effect, two
38 applications for non-publication. I will deal with the
39 first one, which, in my respectful submission, is not
40 contentious and ought to be given without any further
41 debate.
42
43 An answer fell from this witness as follows:
44
45 *[Answer suppressed]*.
46
47

1 That was said in relation to a particular police officer,
2 and a non-publication order should be made in relation to
3 that statement.

4
5 THE COMMISSIONER: Yes, I make that order, Ms Lonergan, in
6 relation to that answer which was non-responsive to the
7 question.

8
9 MS LONERGAN: In relation to the answer given by the
10 witness to the effect that Strike Force Lantle was, in his
11 opinion, a sham, I make the following submission.

12
13 First, Commissioner, the opinion of this witness,
14 based on information available to him, which may well be
15 and appears to be, from his answers, very limited and on
16 some interpretations non-existent, is a matter about which
17 the inquiry must be concerned. The first term of
18 reference, if I may remind you and those present,
19 Commissioner - namely, the circumstances in which Detective
20 Chief Inspector Fox was asked to cease investigating
21 relevant matters and whether it was appropriate to do so -
22 is something about which this Commission must inquire, and
23 the circumstances in this case, including the opinion of
24 this particular witness, this central witness, is that
25 first the investigation was set up to fail, in his opinion;
26 and, second, that it was, in his opinion, based on what he
27 knew, a sham.

28
29 Commissioner, the principles of open justice apply to
30 this Commission. It has been set up to investigate these
31 matters of important public importance, affecting integrity
32 of important public institutions, the NSW Police Force and
33 the Catholic Church, and that overriding principle of open
34 justice should be upset only if there is a competing public
35 interest that outweighs that matter. It falls to the
36 moving party to identify any such countervailing public
37 interest.

38
39 One example of an appropriate countervailing public
40 interest would be to use pseudonyms for victims, as we have
41 proceeded with in this inquiry. The second would be the
42 protection relating to any private hearings which are part
43 of the investigative phase of the inquiry. The third one
44 would be one such as that identified by Mr Skinner, which
45 was an identification of his client's right to a fair trial
46 if the case proceeds.

47

1 Here, what we have is a situation where a witness has
2 expressed an opinion based on hearsay and an either
3 incomplete or absent true understanding of the material in
4 the brief and what it in fact includes. In my respectful
5 submission, any prejudice is very unlikely to crystallise,
6 so there is not any countervailing argument that would
7 upset the usual open justice principle.
8

9 I should also state, Commissioner, that the Commission
10 of inquiry is now in a position to serve on relevant
11 parties an opinion that has been obtained from an expert
12 regarding the sufficiency and thoroughness of the
13 investigation that is Strike Force Lantle. The author of
14 that report has had full access to the materials. When
15 that report forms part of the evidence of this Special
16 Commission, I would expect, and one is entitled to expect,
17 that it would be the subject of continued responsible
18 reporting of that matter, as has occurred to date.
19

20 Commissioner, those are my submissions.

21
22 THE COMMISSIONER: Thank you, Ms Lonergan.
23

24 In the circumstances where Detective Chief Inspector
25 Fox has proffered an opinion which he acknowledges is based
26 on very little information, certainly nothing coming to him
27 from any source within the police force, and his opinion
28 has not been formed after any appraisal of any brief, I am
29 not persuaded that the principle of open justice is
30 displaced in the circumstances. I do not propose to make
31 an order preventing publication of Detective Chief
32 Inspector Fox's opinion, based as it is on the limited
33 sources which he has named.
34

35 Thank you, Ms Lonergan.
36

37 MS LONERGAN: Commissioner, would it be appropriate for me
38 to continue for another 20 minutes to half an hour?
39

40 THE COMMISSIONER: Yes. Unless there is any vehement
41 objection from any party?
42

43 MR COHEN: Might I indicate to the Commission, the one
44 thing that Detective Chief Inspector Fox said to me during
45 the adjournment is that he is quite tired. So that is a
46 consideration against continuing.
47

1 THE COMMISSIONER: Q. Detective Chief Inspector Fox, how
2 are you placed to continue for 20 minutes or so?
3 A. Commissioner, I would prefer to have a break. It's
4 just that I am driving down and it takes an hour and a half
5 of the morning and, of course, the same way back. I think
6 everyone would appreciate they are fairly draining days
7 sitting here I realise the time is precious, but I want to
8 give my full attention to what's being asked.

9

10 THE COMMISSIONER: Thank you for being frank. In those
11 circumstance, Ms Lonergan, we won't continue.

12

13 MR ROSER: Commissioner, there is just one aspect. Could
14 you explain to the press what a non-publication order is -
15 you have made a number of rulings in relation to a
16 non-publication order - what that encompasses.

17

18 THE COMMISSIONER: The only thing that it is relevant for
19 the press to bear in mind in relation to the orders I have
20 made is that there will be no publication of the answer by
21 Detective Chief Inspector Fox in relation to a question
22 asked concerning Detective Chief Inspector Wayne Humphrey.

23

24 MS LONERGAN: Commissioner, can I add, perhaps for a
25 point of clarity, it is the answer that was the problem,
26 and that answer that I read on to the record that ought not
27 be published in any way, including Twitter or any other
28 media, or that it be alluded to in any way.

29

30 THE COMMISSIONER: Are you able to give that answer again,
31 so there is no doubt in the minds of anyone who may be
32 interested in reporting the evidence today?

33

34 MS LONERGAN: Yes. Commissioner, it might be best, if
35 the court reporter would not mind reading that answer onto
36 the record.

37

38 (Question and answer marked * on page 184 read)

39

40 MS LONERGAN: The question and answer ought to be subject
41 to the non-publication order.

42

43 THE COMMISSIONER: That question and answer may not be
44 published. Does that satisfy the explanation, Mr Roser?

45

46 MR ROSER: Yes, I think my learned friend has covered that
47 it is not only in relation to the media and the profession,

1 but to everyone - that encompasses everyone.

2

3 MS LONERGAN: Yes, Commissioner, and that includes any
4 witnesses or lay people in court.

5

6 THE COMMISSIONER: I make a direction pursuant to section
7 8 of the Special Commissions of Inquiry Act 1983 preventing
8 publication by any person of that question and answer. It
9 is a criminal offence if my direction is countermanded.

10

11 MR ROSER: Thank you.

12

13 THE COMMISSIONER: I will adjourn until 10 o'clock
14 tomorrow.

15

16 **AT 4.00 PM THE COMMISSION WAS ADJOURNED TO**
17 **WEDNESDAY, 8 MAY 2013 AT 10AM**

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