

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 Thursday, 25 July 2013 at 10.40am
(Day 16)

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 MS LONERGAN: Good morning, Commissioner. I apologise to
2 you, Father Lucas, the legal practitioners at the Bar table
3 and others at the back of the court. As often is the case
4 in these Commissions, matters arise and things happen that
5 need to be attended to that delay inevitably the starting
6 time. Special issues come up that need to be dealt with,
7 and I apologise for the late start this morning.

8
9 I recall Father Brian Lucas.

10
11 THE COMMISSIONER: Thank you, Ms Lonergan.

12
13 <BRIAN JOSEPH LUCAS, sworn: [10.40am]

14
15 <EXAMINATION BY MS LONERGAN CONTINUING:

16
17 MS LONERGAN: Q. Father, you received a summons last
18 week for the production of certain materials. One of the
19 matters sought were your diaries for the periods 1992 and
20 1993.

21 A. Yes.

22
23 Q. As well as some other papers regarding some matters to
24 do with meetings you had attended with clergy regarding
25 allegations of sexual abuse.

26 A. Yes.

27
28 Q. In particular focusing on the period 1992 to 1993.

29 A. Yes.

30
31 Q. I provide you and the Commissioner with a copy of an
32 affidavit completed by you in relation to that particular
33 summons dated 23 July 2013, and a copy of the summons is on
34 the back page of that affidavit. Father, in relation to
35 the first paragraph of the summons, you have produced for
36 the assistance of the Commission your 1992 and 1993
37 diaries?

38 A. Yes.

39
40 Q. As stated in your affidavit, the position is that your
41 1992 diary has various handwritten entries in it, none of
42 which relate to any involvement with Fathers McAlinden or
43 Fletcher?

44 A. Yes.

45
46 Q. And in relation to the 1993 diary, there are only very
47 sparse entries because you used an electronic organiser

1 that year?

2 A. Yes.

3

4 Q. And there is nothing in the 1993 diary that records
5 any activities or mention by you of any matters relating to
6 McAlinden or Fletcher; is that the position?

7 A. Yes.

8

9 Q. In addition to the special meeting that you had with
10 McAlinden that you've given evidence about yesterday, you
11 have also given evidence about having had meetings with
12 other priests who were accused of similar types of
13 offences?

14 A. Yes.

15

16 Q. One of those persons was someone who is referred to as
17 (suppressed)?

18 A. Yes.

19

20 Q. Documents were sought in relation to that particular
21 matter, and you produced various papers to the Commission?

22 A. Yes.

23

24 Q. In the third paragraph of the summons, copies of any
25 documents prepared by you in relation to any meetings
26 attended by you with clergy against whom allegations of
27 sexual abuse were made for the periods 1992 to 1993 were
28 sought, and it is the position, isn't it, that you have not
29 produced any documents in response to that paragraph of the
30 summons?

31 A. Yes.

32

33 Q. But that there may well be - and correct me if this
34 isn't a right summary of the position - documents that fit
35 that description that are somewhere in the archives or
36 materials held at the archdiocese of Sydney offices?

37 A. That may be the case. I'm not aware.

38

39 Q. I beg your pardon?

40 A. I'm not aware, but that may be the case.

41

42 Q. Why may that be the case, without going into the
43 machinations of who you spoke to and where pieces of paper
44 might be held? Why may that be the case, that is, did you
45 keep documents, correspondence, file notes or memoranda, in
46 relation to meetings you attended with clergy against whom
47 allegations of sexual abuse were made in 1992 and 1993?

1 A. If there are any papers, and there may well be some
2 letters that were written to bishops or other material,
3 I left that behind in the archdiocese of Sydney when
4 I packed up my office in 2003 - sorry, 2002 and relocated
5 to Canberra.

6
7 Q. You gave evidence yesterday to the effect that on
8 occasion a bishop may ask you to write a letter reporting
9 on your particular meeting with a particular clergy member?

10 A. Yes.

11
12 Q. Is it the position that on no occasion with any
13 meeting with any of these clergy persons who have been
14 accused of sexual abuse did you take any file note or
15 memoranda of your own at any such meeting?

16 A. My general practice was not in the presence of
17 a priest speaking about this to take notes. It may be in
18 some instances after that meeting a bishop asked me to
19 write a letter or summary or provide something in writing,
20 and I would have done that, and a copy of that would have
21 been retained in the files in Sydney.

22
23 Q. We're talking about different things, I suspect,
24 Father Lucas. A letter or notes prepared that were
25 forwarded to the bishop would be in the form of
26 a typewritten document in a formal way on formal
27 letterhead; is that the position?

28 A. Generally speaking, yes.

29
30 Q. Did you, on occasion, send handwritten notes about
31 what happened in meetings with priests in relation to
32 allegations of sexual abuse?

33 A. I don't recall that I did.

34
35 Q. Was it your practice to formalise any such reports
36 into a typewritten document?

37 A. That would be my general practice, yes.

38
39 Q. As I understand your evidence yesterday, it was your
40 stated position that you did not take notes in the presence
41 of priests, because it was your view they wouldn't tell you
42 anything if you did so?

43 A. That's correct.

44
45 Q. Do I understand your answer given this morning to one
46 of my questions that, on occasion, you took notes after
47 meetings with such priests, handwritten notes?

1 A. I don't recall that I did, but there may be, for some
2 reason, some instance when I did.
3
4 Q. Did you have any particular practice as to meetings
5 where you would make notes after the meeting and those
6 which you wouldn't?
7 A. I don't recall now, no.
8
9 Q. You don't recall whether you had any such practice?
10 A. I don't recall that there was a practice.
11
12 Q. Is it the position that until the archdiocese of
13 Sydney coffers are further searched, you don't know whether
14 there are any notes, correspondence, file notes or
15 memoranda prepared by you in relation to your meeting with
16 McAlinden?
17 A. I don't know that there is, and I have no recollection
18 that there was ever any material relating to the meeting
19 with McAlinden.
20
21 Q. But there may be because you don't recollect; is that
22 the position?
23 A. Well, there may be, and I can stand corrected if
24 something is found that's there, but I don't recall it.
25
26 Q. Was it the position that you deliberately made no note
27 because McAlinden admitted to you that he had committed
28 certain offences of sexual abuse?
29 A. No.
30
31 Q. As you don't recollect your meeting with McAlinden at
32 all and you don't recollect McAlinden himself, is it fair
33 to say you are unable to state categorically that you did
34 not make a note at or after that particular meeting?
35 A. No, I can't say categorically anything that I don't
36 remember.
37
38 Q. Do you remember your conversations with Bishop Clarke
39 after the meeting with McAlinden?
40 A. I don't.
41
42 Q. There would have been some, though?
43 A. Either with Bishop Clarke or Monsignor Hart.
44
45 Q. Do you recall whether you prepared any formal letter
46 for either Bishop Clarke or Monsignor Hart regarding your
47 conversations with McAlinden?

1 A. I don't.

2

3 Q. You don't recall?

4 A. I don't recall.

5

6 Q. So you would be unable to say whether you have in fact
7 prepared any such letter, if you had?

8 A. I think it's unlikely, but I don't recall.

9

10 MS LONERGAN: I tender the affidavit of Father Lucas dated
11 23 July 2013, Commissioner.

12

13 THE COMMISSIONER: The affidavit of Father Lucas of
14 23 July 2013 will be exhibit 149.

15

16 **EXHIBIT #149 AFFIDAVIT OF FATHER LUCAS DATED 23/07/2013**

17

18 MS LONERGAN: Commissioner, I seek a non-publication order
19 over the term (suppressed). He should be referred to as
20 [NP2].

21

22 HIS HONOUR: That order is made. Thank you, Ms Lonergan.

23

24 MS LONERGAN: Q. Father, you received a further summons
25 last week, which sought any notes referring to or relating
26 to any telephone conversation in 1993 between you and [AJ]?

27 A. Yes.

28

29 Q. And any notes referring to or relating to any
30 conversation in 1993 between you and [AI]?

31 A. Yes.

32

33 Q. Are there any records to produce in response to that
34 summons?

35 A. No.

36

37 Q. You say "no" very confidently. Is it because you're
38 confident you didn't make any notes of either of those
39 conversations?

40 A. I'm reasonably confident. Again, I don't recall, so
41 I can't be absolutely certain.

42

43 Q. Can you outline what searches were made by you in
44 relation to any material that would be in response to those
45 paragraphs of that summons?

46 A. That would be included in the searches I made with
47 respect to the first summons.

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MS LONERGAN: I tender a summons, Commissioner, dated 19 July 2013, and it's directed to Father Lucas, summons 9c. I will hand that up to the Commissioner.

Q. You don't need to see another copy of it, do you, father?

A. No.

THE COMMISSIONER: The summons to Father Lucas, summons 9c of 19 July 2013, will be exhibit 150.

EXHIBIT #150 SUMMONS 9c TO FATHER LUCAS DATED 19/07/2013

MS LONERGAN: Q. Father, in your evidence yesterday, at page 1580, you answered some questions from me regarding the issue of whether it would be a fair thing or an appropriate thing to take notes during an interview with a perpetrator and/or do notes afterwards and show the notes to the alleged perpetrator. Do you recall those questions?

A. Yes.

Q. I put to you that one solution would have been to take a note and show it to the perpetrator so he could ensure it was accurate?

A. Yes.

Q. Then I asked you did you do that, and you said no. I said:

Q. Never did that?

A. No.

I suggested to you:

Q. That would have been a fairer process, wouldn't it, because then that would have been a memo of your discussion with the priest, your conversation, and his acknowledgment that it was accurate.

You answered:

And probably create significant disturbance in his mind about the consequences of that from his perspective.

1 Following on from that, you would agree with me, wouldn't
2 you, that one way to go about the process and secure
3 a cooperation with your processes from the perpetrator or
4 alleged perpetrator would have been to make a note and then
5 call the alleged perpetrator back in on another occasion
6 and show him the note and give him an opportunity to
7 consider his position and adopt or reject the note as
8 accurate? Do you agree with me that that would have been
9 a proper process?

10 A. It wouldn't have been a practical process, with due
11 respect.

12
13 Q. You say "practical process" because you have certain
14 beliefs as to what the priest would then do or not do in
15 terms of cooperation with the process you wanted to pursue
16 or you were asked to pursue?

17 A. That's correct.

18
19 Q. But you don't know because you never tried that
20 particular process with any individual priest, did you?

21 A. I think, knowing priests as I did and having
22 experience of these conversations, I was confident in that
23 judgment.

24
25 Q. I need to direct your mind to my question. You didn't
26 do that with any priest, did you?

27 A. No.

28
29 Q. And you didn't try it, so you don't know if it would
30 have worked, because you never actually attempted that
31 process yourself?

32 A. True.

33
34 Q. You answered some questions put to you by the
35 Commissioner. At page 1590 the Commissioner raised with
36 you this question, and I'll read the question to you:

37
38 *Q. Father Lucas, you mentioned one of the*
39 *reasons that you didn't take notes of your*
40 *interviews with these errant priests as*
41 *being that priests have a right to silence*
42 *and right to be cautioned, and so on. But*
43 *that right exists, doesn't it, just in*
44 *order to protect people from the*
45 *possibility of oppression by the state? In*
46 *other words, that's when you're being*
47 *spoken to by police officers. That's your*

1 *understanding, isn't it?*
2 *A. Yes, but it also applies in canon law.*

3
4 *Q. I see. And you thought that this was*
5 *a procedure that, in some way, had*
6 *canon law applicable to it?*

7 *A. I think the general principle is*
8 *relevant, while this was not a formal*
9 *canonical process.*

10
11 *As I understand your evidence yesterday, in particular when*
12 *I took you to the April 1992 plenary session protocol*
13 *document - you recall that, don't you?*

14 *A. Yes.*

15
16 *Q. You stated that the task you were fulfilling had no*
17 *obligation to comply with that particular protocol?*

18 *A. No, I think I said - and I may not have expressed it*
19 *properly - my understanding is that our process was within*
20 *the spirit of that protocol and tried to achieve the*
21 *outcome that that protocol was trying to achieve.*

22
23 *Q. But your evidence yesterday was to the effect that*
24 *your process was not required to comply to the letter with*
25 *that particular protocol?*

26 *A. That's true.*

27
28 *Q. Because you know, don't you, that protocol required*
29 *certain things be written down - don't you?*

30 *A. Yes.*

31
32 *Q. You know that your process could never have complied*
33 *with that protocol in terms, in particular, of keeping*
34 *notes of your processes?*

35 *A. Yes.*

36
37 *Q. So it's the position, isn't it, that you didn't say to*
38 *priests that you interviewed in these special sessions that*
39 *they have a right to silence, did you?*

40 *A. I wouldn't have - that would have been simply taken*
41 *for granted. I would not have put it formally in those*
42 *terms. The nature and context of these conversations was*
43 *that there had been a complaint and we had to deal with*
44 *this complaint.*

45
46 *Q. I understand that, but taken for granted by who?*

47 *A. I think it was taken for granted by those who were*

1 present - John Usher, myself and the priests involved.

2

3 Q. Why would the priest involved assume he had a right to
4 silence when he had been called there to a formal meeting
5 by two people who had been charged with the responsibility
6 to have a very serious conversation with him about his
7 future in the priesthood?

8 A. Because the nature of that confidential conversation
9 would preserve his right to silence.

10

11 Q. Why would it preserve his right to silence when you're
12 asking him questions and asking him to acknowledge matters?

13 A. He's in a position he may not wish to cooperate, but
14 if we're able to find a solution to this problem and he is
15 willing then to resign, that's a good outcome.

16

17 Q. Did you say to McAlinden, "You don't have to say
18 anything to me. You have a right to silence"?

19 A. I have no recollection of the conversation with
20 McAlinden.

21

22 Q. Did you have a usual practice of saying to priests who
23 you interviewed in these special interviews, "You don't
24 have to say anything to me. You have a right to silence"?

25 A. No.

26

27 Q. So it's not fair to say, is it, that these priests, in
28 effect, had a right not to talk to you about the matters
29 you were raising with them?

30 A. They had a choice not to speak. There was no ability
31 to force them to speak. There was no canonical process
32 that could require them to speak. And if we were capable
33 of engaging them in conversation, and to get the good
34 outcome that they would resign from ministry and children
35 would be safer, that was the process we followed.

36

37 Q. Now, the removal of faculties towards which you were
38 working in these special sessions only applied to the
39 diocese to which that priest was incardinated; that's the
40 position, isn't it?

41 A. No, it works more broadly than that. Once the
42 priest's faculties have been removed by that bishop, and in
43 the circumstances we're talking about with McAlinden where
44 the bishop subsequently issued a decree removing his right
45 to public ministry and putting other conditions upon it,
46 that applies universally.

47

1 Q. What other conditions were put on McAlinden's removal
2 of rights for ministry?
3 A. That he was not to hold himself out as a priest and
4 was not to wear clerical garb.
5
6 Q. You understood that they were additional matters put
7 on as conditions of McAlinden's removal of faculties, do
8 you?
9 A. Yes.
10
11 Q. How do you know that?
12 A. That's in the decree.
13
14 Q. So they're not normally part of the removal of
15 faculties; they're additional?
16 A. It would depend on the reason for the removal of
17 faculties.
18
19 Q. Did you talk to Bishop Clarke so that you could
20 understand whether it was likely or not that McAlinden
21 would comply with the agreement that had been reached with
22 him that he was not to wear priestly garb or hold himself
23 out as a priest?
24 A. That was a matter between McAlinden and Bishop Clarke.
25 I have no recollection of that conversation.
26
27 Q. Can we take it that you didn't, given your evidence is
28 that you considered those types of matters to be matters
29 for the bishop?
30 A. That would be correct.
31
32 Q. It's the position, isn't it, that you provided some
33 advice to the diocese regarding securing McAlinden to
34 attend for the interview that you were going to conduct
35 with him?
36 A. I'm not sure I understand that question.
37
38 Q. Prior to McAlinden attending to be interviewed by you,
39 you gave the vicar general at Maitland-Newcastle,
40 Monsignor Hart, some advice about what he should do in
41 terms of procedures to follow to secure McAlinden's
42 attendance at the interview with you; do you recall doing
43 that?
44 A. I don't recall, but I probably told him where I'd be
45 or when he had to come or what the arrangements had to be
46 to bring him there.
47

1 Q. I suggest to you that you also knew, at the time of
2 that call or that conversation you had with the
3 vicar general, that McAlinden was ministering in Western
4 Australia?
5 A. At some stage I knew he was in Western Australia, but
6 I don't know precisely when.
7
8 Q. If you wouldn't mind reaching for volume 3 of the
9 materials, tab 244, that's a letter dated 23 May 1995 to
10 the apostolic pro nuncio, Reverend Brambilla. It's
11 authored by Bishop Clarke and it's dated 23 May 1995.
12 You're mentioned in the fourth paragraph.
13 A. Yes.
14
15 Q. Do you see that it's mentioned there that the
16 vicar general said that you were contacted and stipulated
17 that procedure?
18 A. Yes.
19
20 Q. One of the procedures was that he was to ring
21 Bishop Quinn and acquaint him with the accusations and to
22 request him to remove Father McAlinden's faculties?
23 A. Yes.
24
25 Q. So was it the practice that a bishop was able to act
26 on the word of another bishop to remove faculties of
27 a priest who was practising in that other diocese?
28 A. Yes. The bishop where the priest is incardinated
29 would have that authority, for good reason.
30
31 Q. And that he inform Father Denis to proceed immediately
32 to Sydney to be interviewed by you?
33 A. Yes.
34
35 Q. Does that help you in terms of the location of the
36 interview at least being conducted in Sydney, or not
37 necessarily?
38 A. I was presuming the interview was in Sydney.
39
40 Q. All right, I understand. Do you recall having any
41 discussions with Monsignor Hart or Bishop Clarke in 1995
42 about McAlinden?
43 A. There's the diary note that we referred to yesterday,
44 which presumably involved a conversation with
45 Monsignor Hart.
46
47 Q. I'll come back to that, but what I'm asking you is

1 whether you have any recollection now of any further
2 involvement by way of interface with Monsignor Hart and
3 Bishop Clarke in 1995 regarding McAlinden?

4 A. I don't recall.

5
6 Q. If you could reach for volume 2, and you can put
7 volume 3 away for the moment, and turn to tab 200, I want
8 to ask you some questions regarding a meeting of the
9 Special Issues Committee of the Australian Catholic Bishops
10 Conference in November 1992, so a few months before you
11 dealt with McAlinden. I'll just give you a moment to
12 familiarise yourself with that document again.

13 A. I'm sorry, are you waiting?

14
15 Q. I wanted you to have an opportunity, because it's
16 a fairly lengthy document, to familiarise yourself with it.
17 You have done so?

18 A. Yes.

19
20 Q. Do you see on the first page an item:

21
22 *Father Brian Lucas' report and*
23 *recommendations arising out of his trip to*
24 *USA and Canada.*

25
26 A. Yes.

27
28 Q. There is a series of recommendations there. The first
29 one is:

30
31 *It is recommended that the present policy*
32 *of encouraging a plea of guilty be*
33 *continued.*

34
35 Do you see that?

36 A. Yes.

37
38 Q. Did you prepare these notes or not?

39 A. No.

40
41 Q. Do they accurately reflect, at least in terms of the
42 first item I'm just about to take you to, your recollection
43 of what you stated at the time, in broad terms?

44 A. I'd assume they were, but I don't recall the meeting
45 and I don't recall what was said.

46
47 Q. In November 1992, was it your view that the present

1 civil law advice in Australia was not to plead guilty? Was
2 that your opinion or view at the time of how this worked?
3 A. I think that was a prevailing - it would not have been
4 my advice but that was the prevailing view.

5
6 Q. I understand:

7
8 *However, it should be noted that a decision*
9 *of not guilty will often tell only half the*
10 *story. This recommendation will require*
11 *further consideration by Special Issues*
12 *Resource Groups and should be brought to*
13 *their attention.*

14
15 Can we take it that paragraph is talking about a decision
16 to plead not guilty or a decision of not guilty, given that
17 it's talking about pleas?

18 A. No, I think that may well be accurate. One of the
19 worst predicaments we ever had was when there was a verdict
20 of not guilty in circumstances where there was some
21 confidence or reasonable belief that the person was guilty.

22
23 Q. If a person had made an admission that they had
24 committed an offence of sexually abusing a child or
25 children, that information is information that could be
26 used to further investigate criminal allegations against
27 that particular person, isn't it?

28 A. Yes.

29
30 Q. So that information would have been handy for the
31 police to have?

32 A. If it existed.

33
34 Q. And they could have used it, couldn't they?
35 A. Perhaps.

36
37 Q. It's likely they could have used it?

38 A. It would depend on the circumstances of whether it was
39 admissible or not admissible and what the information was,
40 who had it, how they came about it, and so forth.

41
42 Q. It's more than that, isn't it? It's information that
43 the police had that, at least on one occasion, a priest had
44 said, "Yes, I did these things to X, Y, Z child"; if that
45 was the circumstance?

46 A. We had a number of instances where priests made those
47 admissions and pleaded guilty.

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Q. And sometimes they didn't, or did they always plead guilty?

A. In any case I dealt with, I never, ever had a single instance that I'm aware of where anyone ever said anything to me and subsequently pleaded not guilty.

Q. Except McAlinden?

A. McAlinden didn't plead not guilty after I spoke to him.

Q. But you didn't pass any information about him on to the police, did you?

A. Because the victims didn't want me to, and he was never charged. If a situation had arisen subsequently where McAlinden was charged, then that would have become relevant.

Q. But isn't it a chicken and egg thing? If you don't tell the police that he has admitted criminal offences to you, they won't know, will they?

A. Yes, that's exactly right, and if the victims don't tell the police and make a complaint, they won't know, either. This is the dilemma we spoke about yesterday. I understand that dilemma and it was a very difficult dilemma to resolve.

Q. How many instances did you know of where there were acquittals where you knew that the priest had offended?

A. I'm not aware of an instance of that ever.

THE COMMISSIONER: Q. I'm sorry, father, didn't you just advert to one instance a couple of questions ago when you said "One of the worst predicaments we had was a verdict of not guilty", when you knew or had good reason to believe that he was?

A. Yes, but the good reason would have been based on other evidence, never on the basis of some admission.

THE COMMISSIONER: Yes, but I think Ms Lonergan's question was broader than that, her last question.

Was it not, Ms Lonergan? I think the question was "where you knew he was guilty", whether or not that was from an admission from the priest himself or from other material.

1 MS LONERGAN: I'm sorry, Commissioner?
2
3 THE WITNESS: Perhaps I could explain by way of example.
4 It might solve this problem. I can think of one particular
5 priest I interviewed, who absolutely denied anything. He
6 subsequently was charged. He was convicted by the jury.
7 His conviction was then overturned by the Court of Criminal
8 Appeal.
9
10 THE COMMISSIONER: A not uncommon experience, yes.
11
12 THE WITNESS: But no retrial. He never, ever made any
13 statement to me that would have been at all relevant in
14 those proceedings, but I did understand that there had been
15 other families who had made representations to the bishop,
16 with which I was not involved at all, suggesting he may
17 have been guilty. That's the sort of situation I'm
18 speaking of.
19
20 THE COMMISSIONER: Yes, I understand. Thank you,
21 Father Lucas.
22
23 MS LONERGAN: Q. You agreed yesterday that, on occasion,
24 people who said they didn't want their matter to go to the
25 police changed their mind, didn't you?
26 A. That would be the case, yes.
27
28 Q. You know, don't you, that at least one of the victims
29 of McAlinden said that if he wasn't taken out of ministry,
30 she would take the matter to the police or to other
31 authorities?
32 A. That was never said to me.
33
34 Q. But you're aware of it, aren't you?
35 A. I am.
36
37 Q. When did you become aware of that?
38 A. Probably from reading these papers.
39
40 Q. You became aware of that earlier, didn't you?
41 A. I may have. I don't recall.
42
43 Q. You became aware of it in 1995, I suggest to you?
44 A. That could be the case, yes.
45
46 Q. So at that point, did you say, "I've got some
47 information to help. He made admissions to me"?

1 A. No, I think the tenor, as I understand it, was that
2 the victim still did not want to go to the police but
3 wanted McAlinden brought back from the Philippines.
4

5 Q. What I'm suggesting to you is that the position as
6 conveyed to you was that if he wasn't taken out of ministry
7 in the Philippines, they would go to the police?

8 A. And if they had gone to the police, that would have
9 been a good outcome.
10

11 Q. You could have assisted, couldn't you, by saying,
12 "Actually, he made admissions to me that he had interfered
13 with persons A, B and C"?

14 A. If that was the position, and I would have had
15 a better memory of it in 1995, and if the police had
16 interviewed me, I would have given them that information.
17

18 Q. But the police wouldn't have known to interview you
19 because you didn't tell them that you had carried out that
20 interview or had that information, did you, close to the
21 time it occurred, when it was fresh in your mind?

22 A. No, the reason the police didn't have that information
23 was because the victim didn't make a complaint to the
24 police.
25

26 Q. That's the reason why the police didn't have the
27 information that the victim chose to tell them. It's not
28 the reason they didn't have the information that you had
29 and could have told them?

30 A. And if I would have done that, I would have betrayed
31 the victim. As I said yesterday, I'm not going to put
32 myself in a position of betraying the victim.
33

34 Q. Have you ever told police of an admission made to you
35 by a priest?

36 A. I don't think I've ever been asked or put in that
37 position.
38

39 Q. Let's put it this way: the police wouldn't know,
40 would they, that you had been party to an admission unless
41 the priest rang the police and told them or you rang them
42 and told them; isn't that the position?

43 A. Or the victim rang them and told them.
44

45 Q. The victim wouldn't have been there, would they, at
46 the point in time when the priest made the admission to
47 you?

1 A. The victim would have been able to say to the police,
2 if the victim wanted to make some complaint to the police,
3 that the victim was aware that the priest had spoken to me,
4 and I presume the police would have then made inquiries.
5
6 Q. No, that's a totally convoluted way of looking at it.
7 I'm asking you a very simple question. You and the priest,
8 together. The victim is not there for that, are they?
9 A. The victim is aware I've spoken to the priest.
10
11 Q. No, I'm going to stop you. Is the victim present when
12 you have your special conversations with these priests?
13 A. No.
14
15 Q. The only other person who might have been there is
16 John Usher on occasion?
17 A. Yes.
18
19 Q. So the victim can't go to the police and say Father X
20 admitted it to you, can they?
21 A. No, they can't say that, but they can --
22
23 Q. No, they can't say that. You can, but you don't.
24 That's the position, isn't it?
25 A. No, I think, with due respect, that's putting the
26 matter somewhat unfairly and I say that with utmost
27 respect. The whole issue only arises, and the whole
28 predicament only arises, where we have this conflict
29 between what a victim wants to do. And when we had this
30 predicament where victims wouldn't go to the police for
31 whatever reason, I would not betray the victim by
32 volunteering that.
33
34 Q. Your evidence is that about 10 times a priest admitted
35 to you to sexually abusing a child or children; that's the
36 position?
37 A. No, that was a mis-statement.
38
39 Q. It's a mis-statement?
40 A. I said I think there were 10 instances of pleas of
41 guilty by priests.
42
43 Q. I understand. Well, has a priest ever admitted to you
44 that they have sexually abused children, ever?
45 A. Some have.
46
47 Q. About how many?

1 A. I don't recall.
2
3 Q. On any of those occasions, in relation to any of those
4 admissions, did you personally convey those admissions to
5 the police?
6 A. In every one of those instances I was faced with the
7 predicament of a victim not wanting to go to the police.
8
9 Q. No, I'm not asking you that.
10 A. But that is --
11
12 Q. I'm asking you a very specific question. On any of
13 those occasions did you personally ever tell the police
14 that those admissions had been made to you?
15 A. I never felt able to do that.
16
17 Q. So you never did it?
18 A. I never did it.
19
20 Q. We'll go back to the document --
21
22 MR SKINNER: In fairness, my friend should now ask "Why
23 not?"
24
25 MS LONERGAN: Mr Skinner can re-examine this witness when
26 it's his turn.
27
28 THE COMMISSIONER: Yes. Thank you, Mr Skinner. I do
29 think the reason why not is fairly clear from the course of
30 the answers so far.
31
32 MS LONERGAN: Yes, and my understanding is that
33 Father Lucas has taken the opportunity to say why not, on
34 a number of occasions when I have put the matter to him.
35
36 MR SKINNER: For which he has been criticised, with
37 respect, Commissioner. If my learned friend were to ask it
38 in the way that I suggested, it wouldn't be pre-empted and
39 he would have the opportunity, as the evidence is coming
40 out, to explain why not.
41
42 THE COMMISSIONER: I think that it's very clear why not,
43 Mr Skinner, but you will have the opportunity to get from
44 Father Lucas any reasons that he hasn't yet had the
45 opportunity to give.
46
47 MR SKINNER: Thank you, Commissioner.

1
2 MS LONERGAN: Q. I'm going back to the document behind
3 tab 200. On page 4 of the document under the heading
4 "Status and Structure of Resource Groups", there is
5 a statement to the effect that:

6
7 *... Special Issues Resource Groups in each*
8 *State are not necessarily investigative*
9 *bodies, but rather are there to provide*
10 *advice to Bishops and Major Superiors.*

11
12 That was the plan for special issues resources groups, was
13 it?

14 A. Yes.

15
16 Q. Was that actually in play at that time or were they
17 being set up or what was the position?

18 A. I think around this time they were being set up.

19
20 Q. The following comment is made, and I'm going to ask
21 you whether you agree with it or not:

22
23 *It was agreed that there are serious "time*
24 *bombs" ticking away in a number of Dioceses*
25 *at the present time. It is very important*
26 *that the alleged offender be given every*
27 *opportunity to provide all the facts and be*
28 *questioned very fully by an expert*
29 *investigator.*

30
31 Then it does go on about various articles in a particular
32 protocol. I want to ask you in relation to that particular
33 paragraph, do you recall now what the reference to "time
34 bombs" was? From your experience at having been present at
35 this meeting, do you understand what it was describing?

36 A. I presume there were cases being investigated or
37 complaints being made. I would have thought that McAlinden
38 would have been one of them.

39
40 Q. That was going to be my next question. The following
41 statement:

42
43 *It is very important that the alleged*
44 *offender be given every opportunity to*
45 *provide all the facts and be questioned*
46 *very fully by an expert investigator.*

1 Is that a reference to the types of interviews you were
2 doing?

3 A. Yes.

4

5 Q. And "questioned very fully" - can we take it that has
6 no obligation with it in the context of this particular
7 note to make any notes of the questioning?

8 A. Whether you made notes or not would depend on the
9 context and circumstances of the interview.

10

11 Q. In terms of the investigation that you would carry out
12 pursuant to your adoption of this particular approach, what
13 were you investigating?

14 A. I think "investigation" could be a slightly misleading
15 word. You could spend forever trying to establish all the
16 precise facts, but if you could cut to the point and get
17 the man to resign, that was the outcome we were working
18 towards.

19

20 Q. So can we take it that your usual practice did not
21 include getting details about places, times and offences?

22 A. That's correct.

23

24 Q. It was limited to seducing a resignation from the
25 priest?

26 A. The word "seducing" might not have been my best
27 expression yesterday, but encouraging --

28

29 Q. Securing?

30 A. Securing.

31

32 Q. In terms of securing - and I don't want you to adopt
33 that word if you don't like it, but it is a little better
34 than seducing, would you agree?

35 A. Obtaining might be a better word.

36

37 Q. Obtaining. Obtaining resignation is a reference to
38 removal of faculties; is that right?

39 A. And whatever conditions went with that. If I could
40 perhaps explain?

41

42 Q. Yes.

43 A. A man might have his faculties removed but still be in
44 good standing, in the sense that, for example, there could
45 be a situation of mental illness where he is not capable of
46 exercising his faculties as a priest and he has his
47 faculties removed but is still in good standing. There's

1 no criminality, no suggestion of that. In those
2 circumstances, even though he is a priest who has no
3 faculties and he is not allowed to work, he is not a risk
4 to anyone, and there would be no problem there with him
5 being called by a clerical title, wearing clerical address,
6 attending clerical functions and the like. It's much more
7 akin to being retired, and that could be for reasons which
8 are quite benign. When we're talking about having a priest
9 resign from ministry, we are taking it one step further.

10
11 Q. Father, on that approach, there's no differentiation
12 between an unwell, sick retired priest and a retired
13 paedophile priest, is there, if the priest does not
14 cooperate with the requirement that he not wear priestly
15 garb?

16 A. That is a problem when he disobeys that direction.

17
18 Q. In relation to the document we've just been looking at
19 and the investigation process, what were you questioning
20 him very fully about, if you were, or is that description
21 really not applicable to your processes at all?

22 A. I think it was to get him to a point of agreeing to
23 resign, which would require, depending on the
24 circumstances, sometimes many, many hours of discussion.

25
26 Q. And you can't recollect now if you had many, many
27 hours of discussion with McAlinden?

28 A. I don't recall that. I - I don't recall that.

29
30 Q. It's the position, isn't it, that once a priest is
31 ordained, he is a priest for life unless he is laicised?

32 A. That's the theological expression, yes.

33
34 Q. From that point of view, unless all bishops around the
35 world are notified about a particular priest having had his
36 faculties removed for being a paedophile, priests will be
37 unsuspecting if a kind old Irish priest volunteers to come
38 and do, for example, missionary work in their diocese?

39 A. No, as I said yesterday, I think the policy goes the
40 other way. The obligation is not on the bishop to notify
41 all the 5,500 bishops in the world. The obligation is on
42 the 5,500 bishops in the world to follow the most
43 fundamental principle of all church law and management of
44 priests, which is when a priest presents himself, he checks
45 his standing with the bishop where he is incardinated,
46 which is the very principle of incardination. Every priest
47 must belong to a bishop who will know his circumstances.

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Q. Did you satisfy yourself from any conversations with Bishop Clarke that he would make it absolutely clear to McAlinden that he was not able to present himself to work in any other diocese?

A. I think that's exactly the tenor of the decree that he presented to McAlinden and McAlinden signed.

Q. Once you had your conversation with McAlinden, you had no ongoing role at all, did you, as to where he would be placed?

A. No, that was a matter between McAlinden and the bishop, as far as I'm aware.

Q. So would you agree with me that you were only part of dealing with the problem?

A. Yes.

MS LONERGAN: I tender the report of the Special Issues Committee that appears behind tab 200.

THE COMMISSIONER: That report of the committee of 16 November 1992 will be admitted and marked exhibit 151.

EXHIBIT #151 REPORT OF THE SPECIAL ISSUES COMMITTEE, DATED 16/11/1992 (TAB 200)

MS LONERGAN: Q. If you wouldn't mind reaching for volume 4 of those materials, father. If you wouldn't mind turning to tab 288, I just have a few questions about this document. It's an issues paper dated 3 July 1996. Father, I appreciate it's on the letterhead of the National Committee for Professional Standards. Were you on that committee as at that time?

A. I was.

Q. Are you able to assist with the particular function of this issues paper?

A. I think it was to, presumably, provoke some discussion by the various people who were either on the committee or for wider consultation with other church experts.

Q. Is this an issues paper that is heading towards the completion of the Towards Healing protocol or not?

A. In July 1996, the 1992 protocol had been - the revision of that had been well developed. I'm not sure precisely whether at the April plenary meeting of the

1 bishops in 1996 they had a draft of Towards Healing. My
2 recollection is that they did, at least in a preliminary
3 form, and Towards Healing was then signed off by the
4 bishops, according to my recollection, at their plenary
5 meeting at the end of 1996.

6
7 Q. Is it fair to say that at this stage, and to the
8 extent you can relate it in time by this issues paper,
9 there was an evolution of processes in the manner in which
10 these particular complaints of sexual abuse should be dealt
11 with?

12 A. Yes.

13
14 Q. Was there a tending away from the type of approach you
15 engaged in towards a more formalised approach; is that
16 a fair statement?

17 A. Very fair.

18
19 Q. The "General Observations" mark as the first matter
20 that the church must act quickly and prudently. Now, are
21 you able to assist with whether any discussions were held
22 to the effect that bishops ought to look back on their
23 coffers and information they had to weed out any time
24 bombs?

25 A. You mean to destroy evidence?

26
27 Q. No, no, to weed out any time bombs in terms of
28 persons, to look back at things that they had handled not
29 so well in the past and see whether they should act on them
30 now in a proactive way?

31 A. That would have been part of the discussion, yes.

32
33 Q. How are discussions of this nature that are held at
34 the National Committee for Professional Standards
35 disseminated to the bishops?

36 A. That would be, I presume, an attachment to a report at
37 the next plenary meeting, unless it was sent directly from
38 the national committee directly to bishops. It may have
39 been. I don't know. I think at this stage this office had
40 an executive officer, Father David Cappo, and it may well
41 be that he sent these documents directly to bishops.
42 Having looked further through this document - I should have
43 done it more carefully at the beginning - I suspect that
44 this document may not have gone to all of the bishops,
45 because it looks more like a commentary on the document
46 that was being prepared for a statement of principles.
47 I remember that was a document that Mr Costigan QC made

1 some comments on. So I would withdraw the suggestion this
2 went to all the bishops. I think it may have been more an
3 internal document.

4

5 Q. And a discussion paper for the benefit of those who
6 were on this particular committee?

7 A. And the consultants who were looking at that
8 particular principles document.

9

10 Q. You became aware some time in 1995 that there were
11 other issues surrounding McAlinden?

12 A. Yes.

13

14 Q. But you're not able to precisely identify what those
15 issues were from your recollection, but you have gleaned it
16 from papers that you have since read?

17 A. Yes.

18

19 Q. And by "papers", I mean material within the bundles of
20 documents before this Commission.

21 A. Yes.

22

23 Q. You produced through your solicitors a diary note
24 that's handwritten in to a week commencing 11 June and
25 ending Saturday, 17 June 1995?

26 A. Yes.

27

28 Q. I'll just show you a copy of that diary note. I will
29 show that to you for your benefit at the moment. There's
30 a handwritten note there that looks like it says:

31

Ring Allan Hart - McAlinden.

32

33 A. Yes.

34

35 Q. Is that what it says - "ring", not "rang"?

36 A. I think it says "ring", yes. There's an asterisk that
37 refers back to "Friday, 16".

38

39 Q. I see, the asterisk means that it was Friday, the 16th
40 that the call was noted or relates to that date?

41 A. That may be the case. I don't precisely now recall
42 why I would have written it in that form. Perhaps
43 I received a message to ring him and noted that that would
44 have been a convenient day to ring him. I just don't
45 remember.

46

47

1 Q. Can we take it from your evidence that you don't have
2 any particular recollection of your discussion with
3 Allan Hart?
4 A. No, but I can only link it to a letter written
5 a couple of days later.
6
7 Q. You link it to a letter written a couple of days later
8 because you've seen a letter in the materials that were
9 prepared for this Special Commission?
10 A. Yes.
11
12 Q. The letter written a couple of days later is the one
13 dated 20 June 1995 to Monsignor Brambilla, the apostolic
14 nuncio?
15 A. Archbishop Brambilla.
16
17 Q. Is that the one we're talking about, 20 June 1995,
18 behind tab 250, which is volume 3? I'm sorry, I think
19 I confused you by saying Monsignor Brambilla. It's
20 Father Castillo. Is that the letter you're talking about?
21 A. No, I thought it was a letter to the apostolic nuncio.
22 I'd have to refresh my memory.
23
24 Q. There's one of those as well, so we'll find that. But
25 in relation to this particular one, if you wouldn't mind
26 just turning to the letter that appears behind tab 250,
27 that's from Monsignor Hart to a Reverend Castillo in
28 San Pablo in the Philippines.
29 A. Yes.
30
31 Q. So if your evidence is to the effect that there was
32 a note that you were to ring Monsignor Hart about McAlinden
33 on Friday, 16 June, and this letter to Father Castillo is
34 dated 20 June, would you agree there seems to be some kind
35 of relationship, at least in terms of your involvement in
36 the broad sense, with something happening regarding
37 McAlinden?
38 A. My supposition is just drawing an inference from the
39 letters that they were looking for some advice as to what
40 they could do perhaps to bring him back from the
41 Philippines.
42
43 Q. Do you have any recollection of being told that
44 McAlinden was in fact working in the Philippines as
45 a priest at this time?
46 A. I presume that would have been part of that
47 conversation, but I have no recollection of it.

1
2 Q. Wouldn't you remember that?
3 A. No.
4
5 Q. Wouldn't you remember that, because this is a priest
6 about whom your process had failed?
7 A. No, I don't remember that.
8
9 Q. You don't agree that it would have been something that
10 would have jumped out at you as a distressing matter, given
11 that you had gone to the trouble of going through this
12 interview process where you secured his exclusion from
13 ministry, and here he is in another country, apparently
14 practising as a priest?
15 A. Yes, that's very distressing.
16
17 Q. But you don't remember it?
18 A. I don't remember the details of the conversation, no.
19
20 Q. Do you remember being told that McAlinden was
21 practising as a priest in the Philippines in 1995?
22 A. I presume I was told that, but I don't now, 20 years
23 later, remember it.
24
25 Q. You don't remember it?
26 A. No.
27
28 Q. Did you hear that kind of news, that a priest who you
29 thought you had secured an exclusion from ministry for
30 ended up practising as a priest overseas? Do you remember
31 that happening in relation to any other priest?
32 A. No, I've never, ever had that experience.
33
34 Q. So doesn't McAlinden as an example or a case study
35 show an abject failure of the procedure that you carried
36 out?
37 A. No, it's not an abject failure of our procedure. It's
38 an abject failure of the fundamental principle of church
39 law about managing priests.
40
41 Q. It's a problem, isn't it, that the procedure of
42 securing a withdrawal from ministry, albeit with some other
43 conditions, if the priest doesn't comply, provides no
44 safety to children if the priest is allowed to wander off
45 overseas and present himself overseas?
46 A. But he should never have been able to present himself
47 anywhere in the world to any bishop, and as I said, it's

1 a catastrophic failure of the system that the bishop in the
2 Philippines could have been so foolish and so careless to
3 have not made the most simple of investigations as to his
4 standing.

5
6 Q. Is it your expectation that a competent bishop, on
7 reply to any inquiry from a bishop of another diocese about
8 a priest, should identify what the problems were with the
9 priest if the priest presents himself for work to this
10 other bishop in another diocese?

11 A. I think it's enough to say he is not in good standing
12 and he has no right to work there, and you should never let
13 him work there. The details - I mean, the bishop who is
14 receiving that information - that's sufficient information.
15 When the bishop of the place where he is incardinated says
16 to any bishop in the world, "This priest of mine is not in
17 good standing" that's the end of the matter.

18
19 Q. Wouldn't it be better to say, "This priest is known to
20 be a paedophile"?

21 A. That may be helpful and relevant, yes, certainly.

22
23 Q. It's not that it may be helpful and relevant; it's
24 important information for the bishop to have, isn't it?

25 A. He doesn't need - it's useful for him to have, but he
26 doesn't need to have it to send the man back.

27
28 Q. It's important because he needs to know, "I quick
29 smart need to get this paedophile away from children in my
30 diocese"; he needs to know that, doesn't he?

31 A. He needs to know that this man is not in good
32 standing, and the detail of that, yes, is helpful.

33
34 Q. It's more than helpful; the details are relevant and
35 important to protect children from any further offending
36 that may occur while the niceties of getting this
37 paedophile priest out of the diocese are attended to?

38 A. Sorry, I misunderstood the point of your question.
39 For that purpose, most certainly, yes.

40
41 Q. It would have been far preferable, wouldn't it, if the
42 bishop from the Philippines had actually written to
43 Bishop Clarke and asked for information about the priest
44 and whether he consented to McAlinden being incardinated to
45 the diocese of San Pablo, to convey that information,
46 wouldn't it?

47 A. Oh, certainly.

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Q. And saying words to the effect of, "I won't permit McAlinden to be incardinated to your diocese and McAlinden knows why not", is a wholly inadequate answer, isn't it?

A. I would expect it would be.

Q. So have a look at the letter behind tab 239. That's a letter dated 8 November 1994 to Monsignor Bantigue in San Pablo, where Bishop Clarke states that he can't give approval for excardination from the Maitland diocese and incardination to the San Pablo diocese or any permission for McAlinden to work in that diocese and that McAlinden is fully aware of the reasons for this decision?

A. Yes.

Q. Do you see that? It's wholly inadequate, isn't it, to alert Monsignor Bantigue to the level of problem associated with McAlinden?

A. Well, if you're asking - driving towards my opinion on this letter and the procedure --

Q. I am.

A. -- I wouldn't have written the letter. I would have picked up the telephone.

Q. The difficulty is that you weren't the bishop, were you?

A. No.

Q. So you may have views, but you exercised no control over this man who has had his faculties removed but is obviously appearing in another part of the world holding himself out to be a priest?

A. That's true.

Q. I know that you don't recollect details of your conversation with Monsignor Hart, but could you have a look at the letter behind tab 243. In that letter, Bishop Clarke tells, by this stage, Bishop Bantigue about serious allegations having been made against Father Denis; do you see that?

A. Yes.

Q. And that he had been confronted with these accusations by a priest deputed, which was you?

A. Yes.

1 Q. He admitted to the accusations?
2 A. That's what Bishop Clarke says, yes.
3
4 Q. Again, there's nothing in this letter that makes it
5 clear that the accusations are related to children, is
6 there?
7 A. No.
8
9 Q. So, again, that would be an inadequate communication
10 of the dangers presented by McAlinden, would it not?
11 A. It would.
12
13 Q. Just for a point of clarity, the letter refers to
14 accusations in 1994. Did you know anything about
15 accusations in 1994?
16 A. I presume that's a typographical mistake.
17
18 Q. You presume it's the reference to the 1993 allegations
19 with which you were involved?
20 A. I presume so.
21
22 Q. By "involved", I mean involved in dealing with them
23 with McAlinden.
24 A. Yes. If I could make another observation, this may
25 not be appropriate for me to do so, but I also find it
26 quite strange that there was a letter in November 1994 and
27 another letter in May 1995.
28
29 Q. My question is: did you have, to your recollection,
30 any involvement in May 1995 in assisting the more
31 enlightened view of the bishop, slightly more enlightened,
32 to go to the trouble of writing a letter saying that there
33 were problems?
34 A. I don't recall that.
35
36 Q. Sorry to jump around, I'm going to ask you to go back
37 to the letter of 20 June 1995. This is the letter from
38 Monsignor Hart. You accept that --
39 A. Sorry, which tab?
40
41 Q. I'm sorry, behind tab 250. If you had received
42 a message from Monsignor Hart asking you to ring him about
43 McAlinden, it's very likely you would have done so?
44 A. Yes, I presume so.
45
46 Q. Does the asterisk and the time - sorry, I'm going to
47 ask you to go back to your June diary note - a little

1 distance from it give you any clue as to whether you in
2 fact made a call about that matter?

3 A. No, I don't recall.
4

5 Q. Unable to say, all right. What I want to suggest to
6 you is that given the content of Monsignor Hart's letter of
7 20 June, there was in the offing an intention by certain
8 victims of McAlinden to consider instituting criminal
9 charges if certain things weren't attended to. Do you see
10 that?

11 A. Yes.
12

13 Q. The certain things that were to be attended to were
14 trying to get him out of any kind of Catholic ministry?

15 A. Yes.
16

17 Q. So does that letter prompt any recollection in your
18 mind that that further piece of information was conveyed to
19 you by Monsignor Hart in June 1995?

20 A. I don't recall the conversation. That may have been
21 the case, yes.
22

23 Q. Yesterday at the end of the court day, you were asked
24 to take with you a letter dated 5 December 1995 by
25 McAlinden to Bishop Malone that's known as exhibit 78 to
26 those at the Bar table.

27 A. Yes.
28

29 Q. You gave evidence yesterday to the effect that you
30 weren't confident that you had seen this letter before.
31 I understand that having had the opportunity to read the
32 letter, that prompted a different recollection?

33 A. Yes. I'm sorry, and I do apologise. I was mistaken.
34 When I read the letter carefully, it did prompt
35 a recollection that that letter was part of a bundle of
36 letters that my solicitors had retrieved from the diocese
37 of Maitland. I was, I think, mistaken in my comment
38 yesterday when you suggested it was not in the tender
39 bundle and I, rather too quickly, assumed I hadn't seen it.
40 But in fact I had seen it irrespective of the tender bundle
41 and I apologise for my mistake.
42

43 Q. When you say you had seen it, you saw it in the
44 context of being advised by your lawyers in relation to
45 this Special Commission of Inquiry?

46 A. Yes.
47

1 Q. So you saw it this year?

2 A. Only in the last months, yes.

3

4 Q. You're not suggesting that you saw it as at 1995 or
5 1996?

6 A. No.

7

8 Q. In terms of the material conveyed in it, yesterday
9 I drew your attention to this and you noted that it was
10 a disturbing matter that McAlinden was in the Philippines
11 taking confessions from children?

12 A. Yes.

13

14 Q. And also working in a school or college that had
15 children from age kindergarten to adulthood?

16 A. Yes.

17

18 Q. Are there any other observations you wish to make
19 about that particular letter, having had an opportunity to
20 consider it?

21 A. That letter, to me, seems to be his defence to some
22 canonical process based on the two grounds of that
23 canonical process. This is only speculation on my part,
24 but I think he is trying to construct a state of mind of
25 repentance and also perhaps exaggerate the efficacy and so
26 on of his ministry to persuade those who were bringing the
27 canonical process to abandon it. That's only supposition
28 on my part.

29

30 MS LONERGAN: Commissioner, would that be a convenient
31 time?

32

33 THE COMMISSIONER: Yes.

34

35 **SHORT ADJOURNMENT**

36

37 MS LONERGAN: Commissioner, I have had a request from
38 members of the press for access to exhibits 149 to 151
39 inclusive. If those at the Bar table could let those who
40 assist you know by a quarter past 1 as to whether there is
41 any objection to the release of those exhibits.

42

43 THE COMMISSIONER: Yes.

44

45 MS LONERGAN: Q. Father Lucas, I'm going to show you
46 a document headed "Points for discussion" and ask you some
47 questions about it, with a copy for the Commissioner. Just

1 familiarise yourself with that, please. That's your
2 document, is it?
3 A. Yes.
4
5 Q. What was the purpose of its preparation?
6 A. I'm not sure of the pseudonym, but it was in
7 connection with a discussion with a particular priest.
8
9 Q. [NP2]. There is a list of pseudonyms but he is right
10 at the end?
11 A. [NP2], yes.
12
13 Q. You prepared it only for that discussion with that
14 particular priest?
15 A. Yes.
16
17 Q. Did you use it in relation to any other priests?
18 A. No.
19
20 Q. Why was there a need to prepare a particular document
21 for that priest?
22 A. This document was prepared in connection with the
23 second interview with the particular priest, who was
24 particularly difficult, and this document was a way of
25 trying to take the discussion further in a concrete way.
26 I should explain that the proposals in paragraph 5 were
27 never intended to be fully implemented. The strategy was
28 to move him towards resignation from ministry, but this
29 became a discussion point to at least move him some way
30 along the path towards that with a view to enticing him to
31 go further.
32
33 Q. And "go further", meaning laicisation?
34 A. Ultimately, given his age, that was the preferred
35 outcome, but at least a permanent resignation from
36 ministry.
37
38 Q. Age being a young person or an old person?
39 A. Younger.
40
41 Q. No, I mean by the age - you said his age?
42 A. His age. He was --
43
44 Q. He was young?
45 A. Well --
46
47 Q. Younger than McAlinden?

1 A. Certainly, yes.
2
3 Q. You have a particular recollection of this priest you
4 dealt with in September 1992?
5 A. I have a recollection of him. The recollection of the
6 detail of the several meetings over several hours - I don't
7 have a clear recollection of that detail.
8
9 Q. But you have no recollection of McAlinden?
10 A. I don't have a recollection of McAlinden.
11
12 Q. Would you agree that McAlinden was a difficult priest
13 to manage?
14 A. I don't know. I suspect he was.
15
16 Q. We'll come back to that issue.
17 A. Could I perhaps explain the difference between this
18 priest and McAlinden? This was a priest I knew personally.
19
20 Q. I'm going to stop you there with a preliminary
21 question.
22 A. Sorry.
23
24 Q. You say you don't remember McAlinden, so how would you
25 be able to explain the difference between the two?
26 A. Because this priest I knew personally.
27
28 Q. I understand.
29 A. I'd never met McAlinden ever - before whatever meeting
30 there was. But this particular priest I had known for
31 many years.
32
33 Q. Is it the position that because you knew this priest,
34 you treated him differently to the way you treated other
35 priests who you met in these special sessions to encourage
36 them to leave the priesthood?
37 A. No, I don't think we treated him intentionally
38 differently, but normally these meetings only took one
39 meeting. In this particular case, I think it took three
40 meetings.
41
42 Q. It's the position that you were attempting to
43 encourage the particular priest related to this "Points for
44 Discussion" document towards laicisation; is that the
45 position?
46 A. Yes.
47

1 Q. But you didn't encourage McAlinden towards
2 laicisation, it seems from the papers at least that you
3 have seen - you personally?
4 A. I don't recall.
5
6 Q. So you may have encouraged him towards laicisation;
7 you just don't recall?
8 A. I don't recall the conversation with him, whether
9 laicisation came up in that conversation or not.
10
11 Q. Would you agree with me that laicisation is a much
12 more final solution in removing a priest from ministry than
13 a removal of faculties?
14 A. It can be, again depending on some circumstances,
15 particularly the age of a priest. For a younger priest,
16 it's certainly a much better option because he can then
17 make a career in the secular world. But for an older
18 priest, it makes very little difference.
19
20 Q. It makes a huge difference, doesn't it, because once
21 they're laicised, they are no longer a priest?
22 A. They are no longer a priest in the theological sense
23 but it doesn't stop them wearing clerical garb or
24 fraudulently presenting themselves in the Philippines.
25
26 Q. You see that as a problem whether, in this case,
27 McAlinden was laicised or had had his faculties removed?
28 A. Yes, but it was a problem, I should say, that was
29 never foreseen. I would never, ever have foreseen that he
30 could ever work as a priest.
31
32 Q. Do you see in paragraph 5.4 of the document you've
33 prepared for the particular priest that wasn't McAlinden
34 there's mention there of an approved program of therapy
35 being available or being made available with a particular
36 doctor, Dr Blaszczyznski?
37 A. Yes.
38
39 Q. Who was he and what did he know about paedophilia or
40 related disorders?
41 A. He is not a medical doctor, medical practitioner. He
42 has a PhD I think in psychology associated with the
43 University of New South Wales, and he had been a person
44 I think known to Father John Usher as someone who, as
45 a counsellor, therapist, could assist with this problem.
46
47 Q. And Dr Blaszczyznski could have assisted with problems

1 of paedophilia; is that the position?
2 A. That's my understanding, yes.
3
4 Q. Was this type of therapy recommended for McAlinden?
5 A. I don't recall that.
6
7 Q. Have you seen any documents anywhere that suggest that
8 it was?
9 A. I don't recall.
10
11 Q. Seeing any documents that suggest that it was?
12 A. Yes.
13
14 Q. Was it your practice at the time to refer all
15 practitioners of paedophilia to have ongoing therapy with
16 Dr Blaszczyznski?
17 A. I think the circumstances varied from individual to
18 individual. My recollection is that Dr Blaszczyznski had
19 already been involved with this particular priest in the
20 past, before this meeting.
21
22 Q. In paragraph 5.6, there's mention of an approved
23 person being appointed to monitor this particular priest
24 and that there needs to be regular reporting. Was that
25 a standard procedure that you would put in place in
26 relation to these meetings you had with priests who had
27 been accused of paedophilia?
28 A. It wouldn't have been standard. Again, much depends
29 on the circumstances of what's going to happen to the
30 priest after he has resigned from ministry. Part of the
31 inducement in this particular case was to construct some
32 opportunity for him to consider there might be some future
33 if he did certain things. There never was any intention
34 that he'd ever have a future, but this was really to engage
35 him in some issues for discussion that could be taken
36 further.
37
38 Q. Did you use this "Points for Discussion" document
39 again in relation to any other priest, on your
40 recollection?
41 A. I don't recall, no, I think this was constructed for
42 the specific difficulties of this particular priest.
43
44 Q. I understand that. Did you use the document, however,
45 for any other priest?
46 A. Not that I'm aware of.
47

1 Q. Were aspects of this document used in relation to
2 other priests with whom you had special meetings?

3 A. Not that I recall.
4

5 Q. But you may have?

6 A. That's possible.
7

8 Q. In point 6 of this document there's mention of:
9

10 *In the event of some possible future*
11 *appointment it will be not in the relevant*
12 *diocese and will not be parochial and will*
13 *be limited to a specialised ministry of*
14 *minimal risk.*

15
16 A. Yes.
17

18 Q. Was that a position that you presented to some priests
19 with whom you had these special meetings?

20 A. There may have been some instance, again depending on
21 the behaviour alleged. Remember some of the priests
22 I dealt with were in conjunction with behaviour that wasn't
23 criminal, and so sometimes a solution could have been some
24 limited ministry in some circumstances, particularly after
25 some program of therapy.
26

27 Q. Was the discussion you were having with [NP2] in
28 relation to offences of sexual abuse of children?

29 A. Yes.
30

31 Q. So why would it ever be appropriate for there to be
32 a possible future appointment in those circumstances?

33 A. As I said, it wouldn't be. In my mind this was never
34 an option. This was the points for discussion to induce
35 him into some conversation, to get him to move to at least
36 think that might be a possibility, to get him to resign,
37 and, once resigned, never to come back.
38

39 Q. So to misrepresent the situation to him and suggest
40 there would be a possibility of a future appointment, when
41 there wasn't?

42 A. This was a "Points for Discussion" and this was
43 a possibility we would have discussed. It would have then
44 become clear to him that this was a very unlikely
45 possibility but something we needed to discuss to draw him
46 into the conversation. In my mind, knowing him as I did,
47 there was never a possibility he would ever work as

1 a priest. In fact, since this conversation was resolved,
2 he has never, ever worked as a priest.

3
4 Q. Why would you put in a "Points for Discussion"
5 document that there was some possible future appointment
6 and where it would not be if that was never a possibility?

7 A. Because this was part of an inducement and discussion
8 with him to draw him into conversation about this, to help
9 him face some realities about his behaviour.

10
11 Q. But it was a misrepresentation of the true situation,
12 in that you would never allow a possible future appointment
13 in relation to that particular priest; is that the
14 position?

15 A. And that's certainly the point in point 1. And then
16 from there, there was the possibility of discussing with
17 him various options, but in my mind there was never
18 a possibility that he would agree in any fashion to these
19 limitations, and in fact the ultimate result we achieved
20 was that he did agree to resign from ministry absolutely.

21
22 MS LONERGAN: I tender that document, Commissioner.

23
24 THE COMMISSIONER: The "Points for Discussion" document
25 will be admitted and marked exhibit 152.

26
27 **EXHIBIT #152 "POINTS FOR DISCUSSION" DOCUMENT**

28
29 MS LONERGAN: Q. Just before you put that away,
30 Father Lucas, I'll ask you a few more questions about it.
31 Would you agree with me that the document incorporates some
32 important general principles relevant to risk management of
33 this particular priest?

34 A. The risk management of this particular priest was that
35 he resign from ministry, which is what we achieved at the
36 third meeting.

37
38 Q. I understand that, but the document incorporates,
39 would you not agree, some important general principles
40 regarding risk management of a potential offender in
41 relation to sexual abuse of children?

42 A. Yes.

43
44 Q. It incorporates comments regarding the need for
45 therapy?

46 A. Yes.

1 Q. The need for monitoring?
2 A. Yes.
3
4 Q. And the need for future reporting?
5 A. Yes.
6
7 Q. But there's no recollection on your part as to whether
8 you went down the path of recommending any such matters for
9 the management of McAlinden?
10 A. No, these general principles were specific --
11
12 Q. I'm not asking you to go into more detail - all right,
13 proceed. Sorry, I should have let you. Go ahead.
14 A. Perhaps this document hasn't been understood. This
15 was a specific document for this specific person. You
16 wouldn't put in place necessarily those particular matters
17 you mention for every particular individual. You'd look at
18 the specific case. I don't recall now the discussion with
19 McAlinden on what, if any, of those principles were
20 relevant to him.
21
22 Q. But would you agree, given your knowledge even in 1993
23 regarding paedophilia, that it would be appropriate for
24 a person suffering from paedophilia to undergo some
25 therapy?
26 A. Well, therapy would be very useful for a 40-year-old.
27 Much less useful for a 70-year-old.
28
29 Q. That was your understanding of the medical,
30 psychological and other related knowledge at the time, was
31 it?
32 A. No, that wasn't my particular knowledge. The therapy
33 for priests was an aspect that tended to be covered by
34 Father John Usher rather than me.
35
36 Q. So you're passing the buck now to Father John Usher,
37 are you?
38
39 MR SKINNER: I object.
40
41 MS LONERGAN: I withdraw the question.
42
43 Q. In terms of future monitoring, you would agree that
44 that would have been a wise matter to put in place in
45 relation to somebody who had been accused on multiple
46 occasions of paedophilia, wouldn't you?
47 A. Yes.

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Q. You have no recollection of having made that arrangement for McAlinden?

A. My understanding is that the bishop wrote to the authorities in England and alerted them and did put such a thing in place.

Q. And you understand that from having read the documents in relation to this Special Commission?

A. Yes.

Q. You didn't understand that at the time, that is, 1993, did you?

A. I may have been told that by the bishop, but I don't recall.

Q. On its face, this particular "Points for Discussion" document that we've just tendered is inconsistent with your evidence that the safety of children was the number one consideration, because on the face of it, it looks like there was a countenance of return to ministry, that is, return to being able to hold himself out as being a priest?

A. No, I absolutely reject that. I absolutely reject any suggestion that the safety of children was not my first priority.

Q. Given the broadness of the document in that it doesn't refer to any particular priest or person, are you sure that it wasn't prepared as a general document to use in these types of conversations you had with priests?

A. I'm absolutely sure, because there's a covering letter that goes with that document to the bishop, which makes that quite clear. I sent to the bishop this document to say this is the basis of our discussion with him.

Q. The fact that you have sent a document contemporaneous with your conversations with [NP2] and a letter to the bishop saying you used it for that does not preclude your using the document in a discussion with another priest, though, does it?

A. It doesn't preclude it, but I had never any intention to do that and I don't have any recollection that I ever did do that.

Q. There are a number of things you don't recollect doing that you may well have done; is that right?

A. Well, that's certainly the case in life. There are

1 many things that we don't recollect doing that we may have
2 done.

3

4 Q. I'm going to ask you whether you agree with a number
5 of propositions regarding paedophile behaviour in terms of
6 your knowledge in 1993 when you were dealing with
7 McAlinden. It's the position and your understanding at the
8 time - that is, early 1993 - that paedophiles typically
9 tended to deny or minimise their behaviour?

10 A. Yes.

11

12 Q. Therefore, an admission of paedophilic conduct would
13 be of significance, wouldn't it?

14 A. Yes.

15

16 Q. And unusual, in your experience?

17 A. A full and complete admission that looked like it
18 wasn't minimisation and obfuscation and so on would be
19 unusual, but it did happen and I can recall an instance.

20

21 Q. And paedophiles who were priests would be fearful of
22 disclosure and its impact on their ability to be allowed to
23 continue as priests?

24 A. Certainly.

25

26 Q. It's your experience that paedophiles tend not to
27 voluntarily seek treatment?

28 A. No, not always. We had some very successful
29 conversations with priests that led to some very successful
30 therapy.

31

32 Q. I didn't suggest always. What I said is that they
33 tend not to voluntarily seek treatment; would you agree
34 with that proposition?

35 A. As a broad general proposition, yes.

36

37 Q. Would you agree that stress and anxiety are factors
38 that may increase the risk of recidivism in terms of
39 paedophile behaviour?

40 A. I've not heard that proposition, no.

41

42 Q. You haven't read that in an article by
43 Dr Blaszczyński?

44 A. I may have, but I don't recall that.

45

46 Q. Did you tend to read articles on paedophilia that were
47 written by Dr Blaszczyński as part of your understanding in

1 dealing with the issues?

2 A. I don't recall any particular article of his, no.

3

4 Q. I'm not suggesting that you should recall any
5 particular article, but did you tend to, given you had some
6 association with him, read his material or not?

7 A. I'm not sure what publications Dr Blaszczyński had.

8

9 Q. Would you agree that many paedophiles have a chronic
10 offending history and a lack of ability to control their
11 offending behaviour?

12 A. Yes.

13

14 Q. Do you recall yesterday giving evidence to the effect
15 that it may be more advantageous to the bishop if an
16 offender is not laicised, because this gives the bishop
17 some leverage over his living circumstances and some better
18 control over him? Hang on before you answer. The
19 transcript reference is 1571 at line 38. I want to give
20 your counsel an opportunity to turn it up. The question
21 I asked you was:

22

23 *Q. Did you hold the view, or do you hold*
24 *the view, that laicisation is appropriate*
25 *for priests who sexually abuse children?*

26

27 And you answered:

28

29 *A. That would depend on some*
30 *circumstances, for a younger priest who*
31 *wants to leave the clerical state and live*
32 *a secular life. But there is also an*
33 *instance, particularly for an older priest,*
34 *where you certainly - and remembering the*
35 *first priority in all of this is to ensure*
36 *that he's not a risk to children - whether*
37 *or not he is laicised may not make much*
38 *difference to that particular issue, again,*
39 *depending on the circumstances.*

40

41 And this is the part I want to direct your attention to:

42

43 *Sometimes it's more advantageous that he*
44 *not be laicised, which gives the bishops*
45 *some leverage over his living circumstances*
46 *and some better control over him. So a lot*
47 *depends on the particular circumstances.*

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I suggest to you that what that answer recognises is the importance of a bishop being able to ensure that there is ongoing supervision of the alleged paedophile; do you agree with that or not?

A. Generally, yes.

Q. What I'm suggesting to you is that your answer suggests that you thought that was an important matter?

A. Yes.

Q. And you thought that in 1993, didn't you?

A. I presume I did.

Q. You also said at page 1634 line 42 that, in your view, the bishop wouldn't necessarily need to know that a person accused of sexually abusing children admitted that he had done that. Do you adhere to that opinion?

A. In general terms, yes.

Q. But would you agree with me that it is important for a bishop to be fully aware of any admissions so he would know how to manage the risk of that particular offender's conduct?

A. The detail of what the priest did generally is not so relevant to what the bishop needs to know for the purposes of managing. Once the bishop is confident that this priest has resigned his ministry because of this particular issue, then the precise living circumstances, what supervision, what therapy if relevant, and so on, is a matter the bishop could then put in place.

Q. Given that you agreed with the proposition that an increase in stress could lead to circumstances of a perpetrator having an increased risk of offending --

A. I'm sorry, I didn't agree with that.

Q. Oh, you did not agree. I'm sorry, I should have listened to your answers. I'm sorry, father. So you don't agree with that?

A. No, I said that was not something I was particularly aware of.

Q. You say "particularly aware of"; it's something you've heard?

THE COMMISSIONER: No, Ms Lonergan. The father said he

1 hadn't heard that and hadn't turned his mind to that.

2

3 MS LONERGAN: Thank you.

4

5 Q. Do you agree with me that it would be important for
6 the bishop to know about the risks posed by a particular
7 priest by finding out what the modus operandi was of the
8 offender, for example, that he accessed children who were
9 relatives or children who were local or who gave swimming
10 lessons or handed out lollies or matters of that nature, so
11 that the bishop could advise those who needed to know, to
12 avoid those situations with this particular alleged
13 perpetrator?

14 A. I must say that's not a matter I turned my mind to.

15

16 Q. To genuinely deal with potential risks to children,
17 isn't it the position that there needs to be stringent
18 supervision of a paedophile?

19 A. There's a limit to what's possible in terms of
20 supervision short of 24-hour-a-day monitoring. But once
21 the particular people that we're dealing with - and
22 remember they're people who, generally speaking,
23 ingratiated themselves with families because of their
24 priestly ministry - once that priestly ministry is removed,
25 they have no parish, they have no appointment, they're not
26 allowed to hold themselves out as a priest, they're living
27 in retirement fashion in some place, there's not much more
28 one can do about that.

29

30 Q. Your answer yesterday was to the effect that the
31 priest would have the status of a retired priest, wouldn't
32 he?

33 A. Yes.

34

35 Q. Not a retired paedophile priest?

36 A. I've never heard of the expression in a directory,
37 "I am a retired paedophile priest".

38

39 Q. So the problem is, isn't it, that the person who was
40 accused of paedophile acts and, on occasion, had admitted
41 to paedophile acts could hold himself out to be a retired
42 priest?

43 A. No. That was the very point of the decree of the
44 bishop - to prevent him holding himself out as a retired
45 priest, not letting him wear priestly garb, specifically
46 telling him he is not to be known as a priest and he had no
47 particular priestly appointment. In my experience, for the

1 priests for whom that worked, that worked very successfully
2 and they would generally retire to some place where they
3 were not known. In my experience, I have never heard of
4 a situation where those priests who were dealt with in that
5 way ever reoffended.

6
7 Q. That arrangement requires the cooperation of the
8 priest, doesn't it?

9 A. It does.

10
11 Q. If there were signs that the priest will not
12 cooperate, that will be an empty decree and an empty
13 requirement, won't it?

14 A. If those signs are clear, yes.

15
16 Q. So if it's the position that a priest is retired to
17 a place where they're not known, then there would be no
18 supervision of him, would there, because there is no bishop
19 or other official of the Catholic Church who knows about
20 their offending history to keep an eye on him?

21 A. No, that's not necessarily the case. When I say "not
22 known", I'm talking more about not known to the public at
23 large, but you would certainly try to put in place some
24 awareness of the bishop of the place where they're living
25 that their situation was that they were not a priest in
26 good standing, lest there be some report back to the bishop
27 that he was not keeping the terms of the arrangement.

28
29 Q. The bishop is not the problem, is he? The priest
30 isn't going to sexually interfere with the bishop. It's
31 the children that are going to be at risk, so the bishop
32 knowing isn't going to help solve that problem, is it?

33 A. No, with respect, the situation is that the priest is
34 a problem to children if he holds himself out as a priest.
35 If the bishop in the place suddenly discovers this man is
36 holding himself out as a priest, then that is a further
37 risk management factor.

38
39 Q. But isn't that just a church-based view, a very
40 enclosed, limited church-based view; do you agree with me?

41 A. I certainly agree with you, and that's why the best
42 solution in these matters would have always been for
43 victims to take the matter to the police. When they don't
44 do that, we are limited, and regrettably limited, to
45 a church-based view.

46
47 Q. But this person could continue to volunteer, to assist

1 with swimming lessons, or hang around playgrounds, or hang
2 around schools and offer to drive children to and from
3 school, a nice, old retired priest, and so the solution
4 that you had come up with in conjunction with McAlinden's
5 bishop had very limited usefulness, didn't it?

6 A. I reject that. In my experience of dealing with these
7 priests, those sorts of situations of hanging around
8 playgrounds, giving lollies to children - I never heard of
9 that situation ever arising.

10
11 Q. You never heard of that situation ever arising?

12 A. No.

13
14 Q. But you heard, didn't you, that that was one of
15 McAlinden's modus operandi, to take children for swimming
16 lessons and then sexually abuse them; you knew that, didn't
17 you?

18 A. No, no, with respect, I'm speaking about after the
19 conversation where he has agreed to resign his ministry.

20
21 Q. You knew that McAlinden was in the Philippines
22 pretending to be a priest within about two years after your
23 conversation with him, didn't you?

24 A. And I expressed my very strong views about that
25 yesterday at some length.

26
27 Q. You knew, though, didn't you, that within about
28 two years after your conversation with McAlinden, he was in
29 the Philippines pretending to be a priest?

30 A. That happened.

31
32 Q. It happened, and you knew, as early as May 1993, that
33 there were difficulties being experienced by the diocese
34 with McAlinden's cooperation with what the bishop had
35 arranged for him in terms of where he should be and what he
36 should be doing?

37 A. Yes, I understand he wanted to change his living
38 arrangements.

39
40 Q. More than that: you knew, didn't you, that the bishop
41 had seen McAlinden walking around wearing his priestly
42 uniform and his crosses within a month or two of having had
43 his faculties removed; you knew that, didn't you?

44 A. I didn't know that then, but I've seen that in the
45 papers.

46
47 Q. You were told that, weren't you, by Monsignor Hart?

1 A. I may have been, but I don't recall.
2
3 Q. And you knew that there were difficulties with the
4 placement in May 1993 as a result of Monsignor Hart sending
5 to you a proposed letter that was going to be sent to
6 McAlinden where those matters were referred to?
7 A. Yes.
8
9 Q. So at that stage you knew that he had been sent away
10 to England; you knew that, didn't you?
11 A. Yes.
12
13 Q. And you knew that that arrangement was coming apart,
14 didn't you?
15 A. Yes.
16
17 Q. Did you follow up personally to see whether there were
18 any reports of McAlinden continuing to offend?
19 A. No.
20
21 Q. Did you follow up in terms of any other priest with
22 whom you had had one of your special meetings as to whether
23 they continued to offend?
24 A. No, they were referred back to their bishop, and
25 I have no recollection ever of receiving a report from any
26 priest I ever dealt with by their bishop that they ever
27 offended after I dealt with them.
28
29 Q. Did you actually follow up with the bishops and ask
30 that question?
31 A. No, but I can tell you for certain that if a bishop
32 knew that a priest we had dealt with had reoffended after
33 we had dealt with him, I would for certain have been told
34 that by the bishop.
35
36 Q. You expected that no bishop would ever allow a priest
37 to practise in their diocese without having cleared whether
38 he was of good standing?
39 A. I explained that at some considerable length
40 yesterday, that is an absolute fundamental principle.
41
42 Q. And it wasn't done, was it, in relation to McAlinden,
43 from what we can tell?
44 A. Not in the Philippines.
45
46 Q. Yes, so not all bishops act in the way you expect them
47 to, do they?

1 A. No, there are 5,500 bishops in the world, and I'm sure
2 one or two of them make a mistake.

3

4 * Q. And you expected Bishop Clarke to tell the bishop in
5 the Philippines about McAlinden's offending, didn't you,
6 rather than write a coy letter saying McAlinden knows why
7 he shouldn't be there?

8 A. No, no, my --

9

10 MR SKINNER: Commissioner, to be quite fair, this is
11 a letter written not by my client two years after his
12 involvement, after one phone call with Monsignor Hart. It
13 was put to him also that Monsignor Hart said something to
14 him, and he said he didn't recall that. Titters around me.
15 Monsignor Hart never said that in his evidence. Where are
16 we going with all this? All this is just a rehash of what
17 has been put to my client for a day and a half. Is it
18 leading anywhere? If not, I object on relevance.

19

20 THE COMMISSIONER: Mr Skinner, do you object to the
21 question that was just asked?

22

23 MR SKINNER: I object on relevance, yes.

24

25 MS LONERGAN: Commissioner, could I have the question read
26 back, please?

27

28 (Question marked * read)

29

30 MS LONERGAN: In my respectful submission, it is
31 permissible. It is not irrelevant and it is permissible.

32

33 MR SKINNER: I object. In fact, I am reminded there is
34 another basis. The way the question is framed and the way
35 it is coming into context is implying that my client had
36 some expectations in 1995. With respect, how possibly
37 could he have? He knew nothing about any of this. That
38 has been his evidence to date. If my friend wants to ask
39 him did he know anything about it, again although he has
40 already answered that, with the Commissioner's leave, if
41 you consider it relevant to re-ask it, she can, but she
42 can't put it to him that that is a fair submission on the
43 evidence to date. He knew nothing about it in 1995. How
44 could he have an expectation at that time?

45

46 THE COMMISSIONER: Father Lucas has already commented on
47 the coyness or otherwise of the letter, Mr Skinner.

1
2 MR SKINNER: Yes.
3
4 THE COMMISSIONER: Ms Lonergan, I will permit you to ask
5 what you would have expected the bishop to do.
6
7 MR SKINNER: Hypothetically.
8
9 THE COMMISSIONER: Yes.
10
11 MS LONERGAN: Yes, I'm happy for it to be hypothetical.
12
13 Q. What would you have expected a bishop to do, in those
14 circumstances, knowing what he knew about McAlinden, to the
15 extent you understand it?
16 A. From when?
17
18 Q. I beg your pardon?
19 A. Sorry, I don't mean to be difficult, but what should
20 he do from what date?
21
22 Q. Could I have the question reread?
23 A. I understand the question, but you asked me what did
24 I expect the bishop should have done?
25
26 Q. Yes, as opposed to writing a coy letter in November
27 1994 saying Father McAlinden knows why he is not allowed to
28 be there?
29 A. Well, I'd take it back long before 1994.
30
31 Q. Yes.
32 A. And there would have been a number of steps perhaps
33 that Bishop Clarke could have put in place. I'm not
34 familiar with what arrangements were made in the next place
35 where he lived, what reports the bishop may have required
36 from that place. On the specific question of what I think
37 the bishop should have done when he got the reports,
38 I think, from [AL] and [AK] that they heard McAlinden was
39 in the Philippines - if you're asking me what I would have
40 done if I had been asked to advise on what to do --
41
42 Q. Yes.
43 A. -- I would have made a telephone call to the bishop
44 and I would have put Monsignor Hart on the plane to the
45 Philippines to bring him home.
46
47 Q. And that would have been your advice if you had been

1 asked?
2 A. I can only speculate, but that would be - if you're
3 asking me now with more mature reflection what would have
4 been a good thing to do, that's what I would suggest would
5 have been a good thing to do.
6
7 Q. Your diary note suggests, does it not, that you had
8 a conversation with Monsignor Hart in 1995 about McAlinden?
9 A. Yes.
10
11 Q. And you've given evidence to the effect that you knew
12 in 1995 that McAlinden was in the Philippines?
13 A. Yes.
14
15 Q. Is it your evidence that you did not know that that
16 information had been drawn to the attention of the
17 authorities at the diocese by women who had been victims of
18 McAlinden?
19 A. I'm not sure how that came to their knowledge.
20
21 MS LONERGAN: Commissioner, I can't remember if I tendered
22 the 1995 diary. I tender it.
23
24 MR SKINNER: I ask my friend to ask a few further
25 questions in proof of that.
26
27 MS LONERGAN: I will deal with that. Thank you,
28 Mr Skinner.
29
30 Q. Father, do you still have that extract from the diary
31 in the witness box with you? Do you see it is copied on to
32 an A4 piece of paper. Is it the position that it's
33 actually a blown-up version of a very small page from
34 a diary?
35 A. Yes.
36
37 Q. To that extent, the handwriting on it has been
38 a little diffused by the process?
39 A. Yes.
40
41 Q. But you're still confident that it says, "Ring Allan
42 Hart - McAlinden"?
43 A. Yes.
44
45 MS LONERGAN: I tender that diary.
46
47 THE COMMISSIONER: The extract from Father Lucas's diary

1 of June 1995 will be admitted and marked exhibit 153.

2
3 **EXHIBIT #153 EXTRACT FROM FATHER LUCAS'S DIARY OF JUNE 1995**

4
5 MS LONERGAN: Q. Do you recall making a media statement
6 in 2012 where you professed a certain view in relation to
7 child protection? You probably made many. Why don't I do
8 it this way: I'll hand up a copy of a media statement you
9 made in July 2012.

10 A. July 2012?

11
12 Q. Yes.

13 A. Yes, I do remember what you are speaking of.

14
15 Q. You actually remember that, do you?

16 A. I do.

17
18 Q. You have a truly excellent memory, father.

19 A. No, no, it was a very dramatic moment.

20
21 Q. I'll let you have a look at that.

22 A. Yes.

23
24 Q. I draw your attention in particular to the last
25 paragraph, which says:

26
27 *Since I was a young solicitor engaged in*
28 *representing child victims of abuse in*
29 *Sydney children's courts I have been aware*
30 *of the tragic consequences of physical,*
31 *sexual and emotional abuse of children. It*
32 *is completely contrary to my values to ever*
33 *allow a known offender to be in a position*
34 *of trust with children or to interfere with*
35 *the processes of justice.*

36
37 A. Yes.

38
39 Q. Is that a view you held in 1993?

40 A. It was a view I held in 1976.

41
42 Q. And continue to hold?

43 A. Certainly.

44
45 Q. So wouldn't you agree with me that encouraging
46 a priest to leave priestly ministry where he is cut loose,
47 in effect, from the church does not in any way accomplish

1 a removal of risk from him to children?
2 A. I think that's too extreme. One can only do what one
3 is physically capable of doing in the circumstances, and
4 I explained at some length this terrible dilemma we had
5 where victims refused to take matters to the police. And
6 then we have the other dilemma; even if they do take
7 matters to the police and the police charge and prosecute,
8 and as we had with McAlinden, the offender is acquitted, we
9 still have a dilemma. So there is no way, in my mind, that
10 one can ever absolutely take away any risk with respect to
11 any particular individual, and even after 20 years in
12 prison, the person comes out and can still be a risk.
13
14 Q. In the mid-1990s, you were party to discussions where
15 a system was set up where intelligence was able to be
16 provided to the police?
17 A. Yes.
18
19 Q. Without the revelation of victims' names?
20 A. Yes.
21
22 Q. And would you agree with me that that was an option or
23 an idea that could have been pursued in 1993?
24 A. Well, it could have been if we had thought of it in
25 1993 and if the Child Protection Enforcement Agency had
26 been in place in 1993 and if the arrangements with the
27 various detectives I spoke to had existed in 1993. I fully
28 accept that we had progressed through a stage of learning
29 and practice here, and it would have been wonderful if, in
30 1993, we knew what we knew in 1995 or 1996, but we didn't.
31
32 Q. Do you agree with me that you were good at encouraging
33 priests to get out of priestly ministry?
34 A. I had some successes and some failures.
35
36 Q. What was your proportion of success?
37 A. Mostly.
38
39 Q. What percentage, roughly?
40 A. I wouldn't like to hazard a guess.
41
42 Q. Better than 70 per cent?
43 A. Oh, we're speculating. As soon as I mention
44 a figure - yesterday I mentioned a figure that I said was
45 very slippery, give or take a few, and it has been locked
46 into the media today as the absolute figure. I'm cautious
47 about more slippery figures.

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Q. Better than 50/50? You won't say?

A. There were a number of conversations, of course, at different depths with different people. The sort of conversation with McAlinden, the sort of conversation with [NP2], but there were other more casual conversations about all sorts of clerical behaviour, including non-sexual misconduct, that I had with priests. That was the nature of my job.

Q. In 1992 and 1993 when you spoke to any victims of sexual abuse, did you encourage them to go to the police?

A. No, as I gave in my evidence yesterday, that was a matter about which, in those days, I was much more neutral, because what I was concerned about - and I think this is the situation in 1992, and I don't know, I'm not familiar, as the Commissioner would be, with the changes in prosecutorial processes, but in 1992 for a victim to prosecute a case would be much more difficult than it would be I think even in the late 1990s or into the 2000s. So I was more neutral in those days than I was subsequently where there was more encouragement. Then once we were able to put in place the protocol with the NSW Police, which was a major, major step forward, then we came to a situation where we would require victims to sign a declaration that they had been told very explicitly that they should go to the police and they had very explicitly chosen not to go to the police.

Q. Would you agree with me that engagement with the police would be made much easier, particularly where the victim had been sexually abused by a priest, if that victim was supported to go to the police by representatives of the Catholic Church?

A. I would think if the victim gave the slightest hint of wanting to go to the police, they would have received absolutely all the support they wanted. But when a victim --

Q. That's not my question, father, and I'm going to stop you. I want you to answer my question, please. Would you agree with me that if children, often adults by the time they come forward, received actual support and encouragement to go to the police with their complaints, they would be much more likely to do so?

A. But when they've given a very explicit direction, of their own initiative before the matter has even been raised

1 by anybody, that they don't want to go to the police for
2 very good reason, to try to dissuade them from that would
3 become a problem.
4
5 Q. You don't know that; you're just hazarding a guess
6 now, aren't you?
7 A. I know I have a very clear recollection of [AL], and
8 that was the circumstance there.
9
10 Q. But I'm not asking you about [AL]. I'm asking you
11 a broader question that asks for your response to the
12 proposition that where a person is abused by a priest and
13 they receive encouragement from an official of the Catholic
14 Church - encouragement and support - to go to the police,
15 they're far more likely to do so, aren't they?
16 A. In a hypothetical sense, certainly. That's obvious.
17
18 Q. You have a good memory about some things, don't you?
19 A. I have a very good memory of some things and a not so
20 good memory of other things.
21
22 Q. But you don't recall McAlinden, none of your dealings
23 with him at all?
24 A. Since I was interviewed by the police, I have searched
25 my memory. I'm not here, counsel, to obfuscate about that.
26 If I remembered, I'd remember.
27
28 Q. He's the only priest you ever interviewed, as
29 I understand your evidence, who had already been charged
30 with a child sexual offence before you met him?
31 A. I'm not sure if that's true or not.
32
33 Q. Oh, there may have been others that you interviewed in
34 your particular conferences with them who had already been
35 charged with sexual offences relating to children?
36 A. There was another one I can remember now explicitly,
37 yes.
38
39 Q. You remember that person, do you?
40 A. I do.
41
42 Q. You don't remember McAlinden?
43 A. The reason I remember that person is that person was
44 [NP2].
45
46 Q. McAlinden had a strong Irish accent. Did you
47 interview many accused paedophiles who had a strong Irish

1 accent?
2 A. I'm sorry --
3
4 Q. You don't recall?
5 A. I don't recall.
6
7 Q. You have given evidence to the effect that you recall
8 that McAlinden had been charged and acquitted in another
9 state in Australia?
10 A. I think that's what I was told, yes.
11
12 Q. And that that charging and acquittal had been attended
13 by some publicity; do you recall that?
14 A. That was my understanding.
15
16 Q. You had an understanding, because it was drawn to your
17 attention by one of his victims that you interviewed, that
18 that's what led her to come forward about the matter?
19 A. That's my understanding.
20
21 Q. You recall with crystal clarity that the victim
22 attended the interview with you with a nun as a support
23 person?
24 A. Yes.
25
26 Q. And you recall the nun herself?
27 A. I don't recall her, but I recall there was a nun
28 present.
29
30 Q. You didn't recall her name was Sister Redgrove. That
31 was a prompted recollection?
32 A. That was because of the material, yes.
33
34 Q. You recall that she was the only person who ever
35 attended with a nun as a support person, as I understand
36 your evidence yesterday?
37 A. No, there was another - well, there was another priest
38 I interviewed, who I think was brought to the Cathedral
39 House by a nun, but my recollection is that the nun didn't
40 remain in the room for the conversation.
41
42 Q. But the situation with [AL] was that the nun did
43 remain in the room?
44 A. Certainly.
45
46 Q. Having heard of the additional complainants, that is,
47 [AJ] and [AL], being in addition to what had happened in

1 Western Australia, you would have been concerned, with your
2 legal background, that McAlinden may well have evaded
3 justice?
4 A. That was certainly a possibility.
5
6 Q. In your general experience, and you've acknowledged
7 that already, paedophiles tend to obfuscate and minimise,
8 so it's unusual for a paedophile to admit particular
9 paedophile behaviour?
10 A. That's the tendency, yes.
11
12 Q. Bishop Clarke, in his letters that I have taken you
13 to, but I'll take you to them again if you need your memory
14 refreshed, refers to McAlinden having admitted to sexual
15 abusive conduct?
16 A. That's Bishop Clarke's words, yes.
17
18 Q. And Bishop Clarke's words relate to admissions
19 regarding sexual abusive conduct having been made to you?
20 A. That's what Bishop Clarke said, yes.
21
22 Q. You've also seen letters written by McAlinden that
23 suggest that he also acknowledges that he made some types
24 of admissions to you?
25 A. And he also wrote that he made a number of denials
26 that are probably not correct.
27
28 Q. You were told that he had disobeyed his bishop in
29 being seen wearing crosses and priestly garb?
30 A. Yes.
31
32 Q. In May 1993 you were consulted regarding signs of
33 disobedience or difficulties with his placement in the
34 United Kingdom?
35 A. Yes.
36
37 Q. Although you say you had nothing to do with that
38 particular arrangement of him being sent to the United
39 Kingdom?
40 A. Yes, from what I have seen in the materials,
41 Monsignor Hart wrote me - sent to me a draft letter he was
42 intending to write to McAlinden.
43
44 Q. You learnt in May 1995 that he was in the Philippines
45 pretending to be a priest?
46 A. At some stage, yes.
47

1 Q. He was away from the control of his bishop in those
2 circumstances, if he was in the Philippines pretending to
3 be a priest?

4 A. Yes.

5

6 Q. But you still say you don't recollect this particular
7 man?

8 A. That's exactly right.

9

10 Q. Isn't it evident from that combination of matters that
11 the procedure that you pursued in relation to him had
12 failed?

13 A. On the basis that there was in fact criminal behaviour
14 in the Philippines, and I've not seen any evidence that
15 there was --

16

17 Q. Did you ask?

18 A. Well, I don't know whether that has ever been alleged
19 or said. On that basis, it would be a failure. But if in
20 fact, after the day he walked out of speaking to me, he
21 never offended again, then in that sense it was a success.
22 So we have to know much more detail to know whether, in
23 absolute terms, the procedure was a failure or not. It was
24 a failure as to risk, I certainly agree with that.

25

26 Q. Was it the position that it was your view that the
27 church process of removing McAlinden from ministry was more
28 important than the criminal processes that could have been
29 activated in this state?

30

31 MR SKINNER: I object. The witness has never said that.

32

33 MS LONERGAN: I'm not suggesting he said it. I didn't put
34 it to him. I asked him. I'm entitled to ask him that
35 question.

36

37 MR SKINNER: I agree, but I thought it was put. Sorry.
38 If my friend is not suggesting it, I don't object. I might
39 have misheard.

40

41 THE COMMISSIONER: Thank you, Mr Skinner.

42

43 MS LONERGAN: Q. Given your evidence yesterday, father,
44 at page 1665 line 21, the likelihood is, isn't it, that as
45 a paedophile, McAlinden would have continued to offend?

46 A. Well, not necessarily. There comes a point sometimes
47 in the lives of these people where they don't continue to

1 offend.

2

3 MS LONERGAN: Commissioner, could I have the question
4 reread that Mr Skinner objected to --

5

6 THE WITNESS: I recall that question. I wasn't sure if
7 you wanted me to answer that question. I would absolutely
8 reject the suggestion that I would put church process above
9 criminal process. I absolutely reject that. I've always
10 rejected that. But you can only work with the criminal
11 processes when you have victims who will allow you to do
12 that, and this was always the dilemma.

13

14 MS LONERGAN: Q. One way of commencing a criminal process
15 of some kind, much as you had done after 1995, was to relay
16 intelligence regarding McAlinden to the police so that they
17 could make choices about how to investigate or go about
18 protecting children from this particular paedophile; would
19 you agree with that?

20

21 A. And if we had the procedures in place in 1993 that
22 were in place that I was able to establish and negotiate
23 with the police in 1996, that would certainly be the case.

24

25 Q. As a man with a legal background, particularly in
26 child protection, you would have thought deeply about these
27 issues, would you not, even in 1992 and 1993?

28

29 A. There are some things that you learn in life, and
30 there are some times when you don't know what you know
31 subsequently.

32

33 Q. And you didn't think conveying some information about
34 this man and his paedophile tendencies was something that
35 you ought to do?

36

37 A. The process in 1992 wasn't available, because there
38 was no Child Protection Enforcement Agency then. There
39 wasn't the protocol with the NSW Police where one could
40 make a report and still, at the same time, protect the
41 wishes of the victims.

42

43 Q. Although there wasn't a child protection unit, you
44 knew, didn't you, that the police would investigate and
45 pursue charges of sexual assault on children; you knew
46 that?

47

48 A. Yes, and they would do that, and if the consequence of
49 them doing that was that they turn up on the doorstep of
50 one of the victims who has explicitly told me not to do
51 that and, as a consequence of that, there was some

1 breakdown in family relationship or some panic or some
2 self-harm, that would have been a disastrous outcome.
3 So there were --
4

5 Q. And it's also a disastrous outcome, is it not, that an
6 unrecognised paedophile continues to travel around the
7 world with the risk that he may sexually abuse children?

8 A. But that risk had been substantially minimised, almost
9 to the point of non-existing, by the action that was taken.
10

11 Q. Because he could present himself as an old, retired
12 priest?

13 A. As I said, there was no way ever I would ever have
14 foreseen that a bishop in the Philippines could have been
15 as careless as that particular bishop was.
16

17 MS LONERGAN: Those are my questions, Commissioner.
18

19 THE COMMISSIONER: Thank you, Ms Lonergan.
20

21 Q. Just before we break, Father Lucas, may I ask you
22 this: you have mentioned the very specific and rather
23 unusual reason that [AL] had for not wishing a complaint to
24 be made to police. Did any other victims ever proffer any
25 reasons why they didn't want their complaints taken to the
26 police?

27 A. I think there were a number of reasons, Commissioner.
28 I don't recall specifically, and I tended to deal much less
29 with the victims than Father John Usher did through the
30 Centacare process. He would tend to report to me simply
31 words to the effect that he had spoken to a particular
32 victim or a victim had gone for counselling to Centacare.
33 He wouldn't necessarily have told me all of the different
34 reasons.
35

36 In my mind, there are a range of reasons. The sort of
37 reason that [AL] gave is at the top end of the range of
38 very understandable reasons. There are other reasons that
39 go to personal circumstances, an unwillingness, for
40 example, to have to tell other members of the family of
41 something that has happened when the person was young,
42 through to the fear of the legal process.
43

44 I think one of the great developments has been the
45 ability to deal with victims in a much more sensitive way
46 than was the case in 1992. Certainly when I was involved
47 in the practice of law in the early 1970s, it was

1 horrendous - I mean, I won't go into the detail. You'll
2 know what I mean about the way in which victims in sexual
3 assault cases, both young and old, were dealt with.

4
5 There are some other reasons that are, in my mind,
6 more marginal - I just don't want to get involved; it's not
7 my problem. I think we would have to admit that there
8 would be some at the very other extreme, where there's
9 a desire to make some allegation, sometimes for malicious
10 reasons, but, when pressed, a person then withdraws or
11 refuses to pursue it. That would be a rare instance, but
12 they're the two extreme positions and there will be a range
13 in between.

14
15 THE COMMISSIONER: Thank you, father. That's helpful.
16 I will adjourn until 2.15.

17
18 **LUNCHEON ADJOURNMENT**

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1 **UPON RESUMPTION**

2
3 MS LONERGAN: Commissioner, there is one matter that has
4 been drawn to my attention that I ought to have taken
5 Father Lucas to. Before I do that, the media have
6 requested release of the following exhibits: numbers 83 to
7 89 inclusive, number 96, number 118 to 119 and 152 and 153.
8 A number of those exhibits were tendered much earlier, but
9 it seems they missed the usual arrangement where I would
10 announce on to the record that they have been requested.
11 If anybody has an objection to those being released, if
12 they could let those assisting you know by 4.15.

13
14 THE COMMISSIONER: Thank you, Ms Lonergan.

15
16 MS LONERGAN: Q. Father Lucas, I have a couple of
17 questions for you just very briefly about a document that
18 appears behind tab 150, which is in volume 2 of the
19 materials. It should be a letter dated 31 March 1988.
20 It's a typewritten letter from McAlinden to Bishop Clarke.
21 Do you have that document?

22 A. Yes.

23
24 Q. My question is about something that appears on page 2,
25 and the question is directed to the activities of the
26 Australian Catholic Bishops Conference in about April 1988.
27 The question is directed to whether or not you can assist
28 in relation to some matters that McAlinden refers to in
29 this letter as having occurred at about that time. In the
30 second paragraph on that page, the long paragraph, about
31 halfway through, McAlinden says this:

32
33 *My original plan (already formulated in my*
34 *mind long before these "allegations" had*
35 *been made known to me) to transfer to*
36 *a much warmer climate, for medical reasons,*
37 *would have taken care of both of these*
38 *problems; however, it seems that you have*
39 *thwarted that opportunity also - at least*
40 *insofar as the Australian Bishop are*
41 *concerned.*

42
43 Do you see that?

44 A. Yes.

45
46 Q.

47 *In this regard it would seem that my only*

1 *recourse now would be to send a copy of*
2 *this letter to each of the Bishops to whom*
3 *I had previously written when they were at*
4 *Kensington for the Meeting. It probably*
5 *won't change their way of thinking, but, at*
6 *least, it will let them see there is*
7 *another side of the story.*
8

9 My question is whether you can assist as to whether this
10 particular reference seems to suggest that McAlinden was
11 raised with the Australian Catholic Bishops Conference in
12 1988?

13 A. My recollection is that - was this included in
14 a notice to produce that I searched the records of that -
15 of minutes?

16
17 Q. Yes, it was.

18 A. My recollection is that we did search thoroughly all
19 of the minutes of the Australian Catholic Bishops
20 Conference and there was no reference to McAlinden.
21 I would expect, and I was not secretary of the Bishops
22 Conference, of course, in 1988, but having 11 years'
23 experience now in conducting those meetings, I've never,
24 ever had an instance that I can recall where a particular
25 priest's particular situation would be discussed in open
26 session by the bishops that would then appear in
27 the minutes. I would expect that if there were some
28 discussions among the bishops, this may have been among
29 a group of bishops or something like that outside of the
30 plenary session. It would not be minuted.

31
32 Q. In terms of April 1988, did you have any role in
33 attending any such sessions if there was discussion
34 regarding allegations related to sexual abuse?

35 A. Yes, in April 1988 was the presentation that
36 John Usher and I gave to the bishops, and that document is
37 in my affidavit.

38
39 Q. Do you have a recollection of there being any
40 discussion about any named priests about whom allegations
41 had been made?

42 A. No.

43
44 Q. In your answer to the effect that it would be unusual
45 for there to be a discussion of any individual priest, is
46 it your recollection that situations might be mentioned,
47 but it wouldn't be associated with any name, or was it that

1 there would be no discussions of any individual instances
2 in your presence at least?

3 A. I think the session that John Usher and I gave, if my
4 recollection is correct - and this was in April 1988 rather
5 than November 1987 - the first presentation that John and
6 I gave, I definitely remember was in the evening, and it
7 was outside their normal session.

8

9 Q. Outside their normal session in that you and
10 Father Usher gave a lecture and the bishops who chose to
11 attend would be there?

12 A. And one hundred per cent of them came and that was
13 noted at the time, even though it was an out-of-session
14 information presentation, and it was in the evening.

15

16 Q. Given your answers and the fact that at this
17 particular April session of the Australian Catholic Bishops
18 Conference, you and Father Usher provided certain
19 information regarding management of sexual abuse
20 allegations, is it possible that a group of bishops did
21 discuss particular matters regarding particular priests,
22 but in your absence?

23 A. That's certainly possible. I just should indicate
24 that we were a long way from devising means of management
25 in April 1988. That came over the next couple of years.

26

27 MS LONERGAN: Thank you, Commissioner.

28

29 THE COMMISSIONER: Thank you, Ms Lonergan.

30

31 **<EXAMINATION BY MS GERACE:**

32

33 MS GERACE: Q. Father, I appear for [AJ] and a number of
34 other persons here at this inquiry. I might just ask some
35 preliminary questions. I understand you don't identify as
36 a canon lawyer. Is it the case when priests are doing
37 their training that they are given some education in the
38 nature of what the canons are?

39 A. Yes. In my time, the undergraduate course in canon
40 law was a two-year course. It was two subjects spread over
41 two years. It was very narrowly focused on more the
42 general principles of canon law. There are six books in
43 the code of canon law. I remember Bishop Geoffrey
44 Robinson, who was our lecturer, indicated that we didn't
45 cover book 6, which in hindsight was somewhat tragic,
46 because that's the book that deals with the penal process.

47

1 Q. Even so, not having studied that in the course of your
2 studies, the canons were originally published in Latin;
3 that's accurate, isn't it?
4 A. The canon law that we studied in my undergraduate
5 years in the late 1970s was the 1970 code.
6
7 Q. The English version?
8 A. It was in Latin. When I say we didn't study book 6,
9 that's the general penal code; the general principles of
10 the code were studied and it was in Latin but we studied
11 from an English translation.
12
13 Q. So English translations of the canons were available
14 when you did your studies?
15 A. Yes.
16
17 Q. And subsequently?
18 A. Yes.
19
20 Q. Is it correct to describe the canon law as a civil
21 code setting out a number of rules or otherwise?
22 A. Yes.
23
24 Q. And you're adept by virtue of your legal studies --
25 A. I was confused in that first answer when I said we
26 didn't study book 6. I remember there was a seminar on the
27 new code. I was confused. I'm sorry for that mistake.
28 That was what was not covered, because it was not regarded
29 as something of general knowledge. But the canon law that
30 I studied in 1977-78 I think was a more general approach to
31 canon law.
32
33 Q. In any event, the canon law was a set of rules and
34 guidelines in terms of what needed to be done and how
35 things operated and how penal processes or otherwise could
36 be taken against priests, amongst other things?
37 A. Yes.
38
39 Q. They were available in English?
40 A. Yes.
41
42 Q. And you're adept, from your training and otherwise
43 through your experience, in reading legislation?
44 A. Yes.
45
46 Q. You gave some evidence yesterday about a celebret?
47 A. Yes.

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Q. Is that given to a priest on ordination or is it something given to a priest when they travel out of the diocese to which they are incardinated?

A. When they travel out of the diocese.

Q. So it is not something that they would have ordinarily?

A. That's correct.

Q. Were you aware in or about 1995, or do you agree with this proposition, that often if a priest presented somewhere where they were not known, if that presentation occurred on the recommendation of someone they did know, some time might be allowed to a priest to produce a celebret?

A. That could happen if there was someone of authority giving some reference for them, yes. When I say that they wouldn't need to produce a celebret - if they were going to work for any length of time, a celebret is not sufficient. They would need to make direct inquiries back with the bishop where the person is incardinated.

Q. But in terms of presenting somewhere, at least in the initial stages it might be that someone might accept someone into a diocese if it came on the recommendation of someone who was known to the bishop, if someone vouched for them personally?

A. And someone of authority.

Q. But do you accept that that was a practice that occurred?

A. It would be not a usual practice, I would say. A bishop ought to go directly to the bishop of the place where the priest is incardinated.

Q. Did I understand your answer a few questions ago to say that it could occur, if someone of authority vouched for someone, that a bishop would allow someone to do some work and give them some time to produce a celebret in due course if that was going to be something more long standing?

A. I think it could occur, but one would need to be a little more prudent, I would think.

Q. It's best practice, obviously, to be prudent when you're accepting a priest into your diocese that you don't

1 know?

2 A. Yes.

3

4 Q. Can I ask you a question about the Special Issues
5 Committee and its formation after 1988, it was designed to
6 be a specialist advisory group to provide advice to bishops
7 about how to respond to sexual abuse allegations?

8 A. There were two committees. One was the national
9 committee, which was a more general policy advisory body
10 that didn't deal with individual cases, and part of the
11 strategy that came in place around 1989, 1990, 1991 was to
12 establish in each province what was called then the Special
13 Issues Resource Group, which was a group of people to
14 provide advice.

15

16 Q. Dealing with the national committee, that was a group
17 designed to be a specialist advisory group to provide
18 advice to bishops about how to respond to sexual abuse
19 allegations?

20 A. In general terms, that's the national body, yes.

21

22 Q. And that body worked on the drafting of the protocol?

23 A. Yes.

24

25 Q. And voted upon its implementation after consultation?

26 A. Yes.

27

28 Q. That document had a number of different functions, one
29 of which was to provide a guide for uniformity of response
30 to those allegations?

31 A. Yes.

32

33 Q. And one of the functions was also a child protective
34 function, if I understand your evidence?

35 A. Yes.

36

37 Q. You were, I think as you have alluded to and we've
38 heard, part of the smaller group on a local level to which
39 specific allegations or problems could be referred for
40 further advice and investigation?

41 A. It wasn't a smaller group. It was a different group.

42

43 Q. Within the northern states, as I understand it, were
44 you and John Usher the contacts for that smaller group?

45 A. For the Special Issues Resource Group in the province
46 of Sydney, which was basically the state of New South
47 Wales.

1
2 Q. So it was you and John Usher throughout New South
3 Wales?
4 A. And some others who were participants from time to
5 time.
6
7 Q. As at 1993, were you aware of an organisation called
8 the Servants of the Paraclete?
9 A. Yes.
10
11 Q. Is it accurate to describe the Servants of the
12 Paraclete as being a group that ministered to priests in
13 difficulty?
14 A. Yes.
15
16 Q. That included priests with drinking problems?
17 A. Yes.
18
19 Q. And various other problems with their ministry?
20 A. Yes.
21
22 Q. Including problems of a sexual nature?
23 A. Yes.
24
25 Q. And controversially or otherwise - and I'll come to
26 this in a minute - providing ministry to priests with
27 problems with sexual abuse of children or predilection to
28 paedophilia?
29 A. Yes.
30
31 Q. Did you understand as at 1993 that one of the
32 founders - do you know who the founder was of the Servants
33 of the Paraclete?
34 A. No, I'm sorry, but there was a priest by the name of
35 Father Liam Hoare, who was part of a presentation to the
36 bishops, I think in 1991. I'd have to test my recollection
37 from looking at the papers, but I recognised his name in
38 what I read. He was from the Servants of the Paraclete in
39 the United States.
40
41 Q. Could you have a look at exhibit 120, which is a desk
42 calendar 1993. It is not your desk calendar. It is not in
43 the volumes. If you could have a look at the last page of
44 that document, there is a note that says, "Can you ring
45 Father Brian Lucas"?
46 A. Yes.
47

1 Q. The evidence appears to be that this was a message
2 left for Monsignor Hart --

3 A. Yes.

4

5 Q. -- on or about a date in March 1993, and that the
6 writing "Servants of the Paraclete" as it's written there,
7 and the words underneath, "Dresses - him down", are also
8 Monsignor Hart's words?

9 A. Yes.

10

11 Q. So it's not your writing, not your note, but it
12 appears to be a message that was left for Father Hart to
13 call you. Having looked at that, can you assist and tell
14 us whether, when you spoke to Monsignor Hart at or about
15 this time in March 1993 in relation to Father McAlinden,
16 you might have mentioned the organisation Servants of the
17 Paraclete?

18 A. That's quite possible.

19

20 Q. Were you aware as at 1993 that there were treatment
21 facilities offered by the Servants of the Paraclete
22 throughout the world?

23 A. I'm not sure of the exact locations. The one I knew
24 of I think was in New Mexico, but I presumed they had other
25 places. I don't know. I don't know where. I have
26 a recollection that they might have had either English or
27 Irish origins, but I can't be sure.

28

29 Q. Are you able to assist, do you know whether there was
30 one in London, for instance?

31 A. That could be possible. I don't recall.

32

33 Q. Did you understand that the Servants of the Paraclete
34 recommended a form of ministry to assist priests in
35 difficulty through prayer and eucharistic adoration, for
36 instance; that was the form of ministry that they applied,
37 as opposed to therapeutic psychological measures as at
38 1993?

39 A. My recollection - and this could be fragile - from the
40 presentation of Father Hoare in that 1991 seminar was that
41 it was a fairly intensive psychological program, but
42 I could be mistaken.

43

44 * Q. Were you aware that some who had been with the
45 Servants of the Paraclete had formed the view that
46 paedophile priests could not be cured through their
47 measures and that there should be a means by which there

1 could be immediate involuntary laicisation of offender
2 priests once there was sufficient evidence of their
3 offending?
4

5 MR GYLES: I object. The terms of reference go to police
6 investigations and whether those police investigations were
7 hindered. Father Lucas has told us over a long period now,
8 since he started giving evidence, as to his state of mind
9 as to the process which he undertook in 1993. He is not
10 drawing upon this material as part of the reasons for the
11 process that he undertook, and it doesn't seem to me to be
12 of relevance at all.

13
14 THE COMMISSIONER: Ms Gerace, it doesn't seem to me --

15
16 MS GERACE: We'll get there.

17
18 THE COMMISSIONER: Very soon?

19
20 MS GERACE: Yes, we'll get there very soon. It deals with
21 the issue of laicisation. I will come back to that, but
22 I just wanted to ask Father Lucas some of these preparatory
23 questions.

24
25 THE COMMISSIONER: As Father Lucas has indicated that he
26 may well have commended or mentioned the Servants of the
27 Paraclete to Monsignor Hart, then I will permit you to
28 explore that.

29
30 MS GERACE: Thank you.

31
32 THE WITNESS: Sorry?

33
34 MS GERACE: Could the question be read back?

35
36 (Question marked * read)

37
38 THE WITNESS: I'm not sure who you mean when you talk
39 about "some who had been" - are you talking about
40 therapists or participants, I'm sorry?

41
42 MS GERACE: Q. It was a letter from the Servants of the
43 Paraclete to the Vatican. I could get that letter, if you
44 need to see it, but I'm asking you whether you were aware
45 of that view at all as at 1993?

46 A. I'm not aware of any of that to do with the Servants
47 of the Paraclete, I'm sorry, no.

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Q. Can I ask you some further questions about the protocol from the "Plenary Meeting April, 1992", "Protocol for Dealing with Allegations of Criminal Behaviour". It's correct to understand this is a general protocol that applied whenever an accusation was made against a cleric of criminal behaviour, whether or not that cleric had been charged?

A. It tended to apply mostly in circumstances where they hadn't been charged. If they had been charged and there was a legal process in place, then most of what's in that protocol would not be relevant, except for those parts, of course, that deal with the need for proper care of victims and the like.

Q. So you're saying it was only applied where charges hadn't been laid, or it could be used in either circumstance?

A. You'd need to look at what the circumstances were, what the charges were, whether the charges had been laid and subsequently dismissed or further action needed to be taken.

Q. It might be that whether a person had been charged or not, there might be a different response; is that correct?

A. No, the general experience I had was that if the priest was charged and was going through a court process, one would steer well clear of involving oneself in that, except for those parts of the protocol that relate to care of victims and the like.

Q. And perhaps standing a priest down whilst charges were in process?

A. Yes.

Q. So coming back to the question, the document applies whether or not priests were charged?

A. Yes, some aspects of it would apply, yes.

Q. In either circumstance?

A. Yes.

Q. On page 4, at paragraph 3, "Responsibilities of Bishops, Major Superiors and Superiors" - do you need that document in front of you? It's your protocol. I have it as part of exhibit 142, which was your affidavit dated 11 March 2013.

1
2 THE COMMISSIONER: It wouldn't be in those volumes,
3 father.
4
5 MR SKINNER: Annexure C to the affidavit, Commissioner.
6
7 THE COMMISSIONER: Unfortunately, it's very hard to read
8 on the exhibit.
9
10 MR SKINNER: If my friend is trying to take my client to
11 the 1992 protocols, it's annexure C to his affidavit.
12
13 THE COMMISSIONER: Annexure C, yes, all right. Does it
14 exist in any of the bundles?
15
16 MS GERACE: It's at tab 190 in volume 2.
17
18 MR SKINNER: Yes, that appears to be so.
19
20 MS GERACE: Q. Do you agree that's the same document?
21 A. Yes.
22
23 Q. I was asking you to go to page 4, paragraph 3, which
24 says, "Responsibilities of Bishops, Major Superiors and
25 Superiors".
26 A. Yes.
27
28 Q. Father Lucas, at the time this protocol was being
29 discussed and drafted, one of the key issues that needed to
30 be considered was when - this is a general question -
31 clerics might have to report matters within their knowledge
32 to the police. Do you agree with that - matters of
33 allegations of sexual abuse to the police?
34 A. I don't see a reference to that in the paragraph --
35
36 Q. There is no reference in paragraph 3, but at the time
37 this protocol was being drafted, one of the live issues,
38 one of the areas of concern for the church, was the
39 circumstances in which an obligation might arise upon
40 a cleric to report to the police information about sexual
41 abuse by a clergy member. Do you agree with that?
42 A. Under the criminal law or the child protection law?
43
44 Q. Under any law.
45 A. Yes, certainly.
46
47 Q. So wherever the obligation arose, one of the concerns

1 of the church at around this time, from 1988 through to
2 1992, was when am I under an obligation to go to the police
3 with information that I have; do you agree with that?

4 A. Yes.

5
6 Q. If I have a look at paragraph 3 here,
7 "Responsibilities of Bishops, Major Superiors and
8 Superiors". I'll take you to the rest of the document, so
9 I'm not going to stop you from looking at, but if I have
10 a look at the "Responsibilities of Bishops, Major Superiors
11 and Superiors", nowhere within this document is there
12 a description of any obligation or otherwise and when it
13 might arise for a bishop, a major superior or a superior to
14 report information that they receive to the police. Do you
15 agree with that?

16 A. Yes.

17
18 Q. Could you have a look through the rest of the document
19 and tell me when, in this protocol, if at all, the advice
20 to bishops about how they should respond to allegations of
21 sexual abuse deals with their responsibility and when to
22 report information that they know to the police?

23 A. I'd say 4.1.2.

24
25 Q. "To respect the civil law"?

26 A. Yes.

27
28 MR SKINNER: If my friend could read the whole thing.

29
30 MS GERACE: I was about to. I just paused for breath.

31
32 Q.
33 *To respect the civil law and not obstruct*
34 *or pervert the process of justice.*

35
36 A. Yes.

37
38 Q. Is that the only reference? Keep looking.

39 A. 6.4.1.

40
41 Q.
42 *Each cleric or religious who becomes aware*
43 *of a complaint, or the possibility of*
44 *a complaint, either against himself, or*
45 *another cleric or religious, is obliged ...*
46 *to notify that fact to the competent*
47 *ecclesial authority, who shall immediately*

1 *refer the matter to the relevant Special*
2 *Issues Resource Group.*

3
4 *Requirements in some States or Territories*
5 *for mandatory reporting should be taken*
6 *into account.*

7
8 Is that the only guidelines or matters pointed out in this
9 document?

10 A. 6.4.5.

11
12 Q. Yes. That deals with the reverse obligation, doesn't
13 it?

14 A. It deals with a situation when a complaint comes to
15 the attention of a competent authority in a particular way,
16 the resource group will deal with the departmental
17 officers.

18
19 Q. But what I just said then - 6.4.5 deals with the
20 reverse obligation, doesn't it? It sets out:

21
22 *It should be made known to departmental*
23 *officers --*

24
25 The definition of which includes police --

26
27 *that subject to obligations of law, the*
28 *competent ecclesial authority wishes to be*
29 *informed by departmental officers of*
30 *allegations against a cleric or religious.*

31
32 A. Yes.

33
34 Q. So 6.4.5 is dealing with a situation the protocol
35 wished to put in place that, where the police became aware
36 of information about a cleric, your group wished for the
37 police to notify the competent ecclesial authority of those
38 charges?

39 A. And to work with them, yes.

40
41 Q. Yes, I understand that, but I'm just dealing with what
42 guidelines were provided in this document to bishops?

43 A. Yes. 7.5.

44
45 Q. Yes. Now, that talks about not interfering with
46 another person's right to go to the police, doesn't it?

47 A. No, it also talks about:

1
2 *... an obligation in law, to make*
3 *a complaint to departmental officers must*
4 *be respected.*

5
6 So if there's an obligation in law to report, that must be
7 respected.

8
9 Q. Yes, I understand, but that's not providing guidance
10 to the bishops about when they must report matters to the
11 police, is it?

12 A. No, the structure of this protocol is that the bishop
13 would take advice from the Special Issues Resource Group
14 about those obligations.

15
16 Q. The point of my questions is this: was the point of
17 this protocol that if a decision was to be made about
18 reporting matters to the police, the bishop would report to
19 the Special Issues Resource Group, and you, as the Special
20 Issues Resource Group, or whoever was within the group at
21 the time, would then provide the relevant advice about when
22 to report matters to the police?

23 A. Yes, if a specific question was asked by a bishop or
24 a situation arose about that, some appropriate legal advice
25 or whatever would be provided, yes.

26
27 Q. I know you said then that if a specific question was
28 asked. This document was brought into play to give advice
29 to bishops?

30 A. Yes, and it was drafted by the lawyers in a way that
31 suggests that if there is an obligation in law to make
32 a complaint, you must comply with the law.

33
34 Q. See if you agree with this suggestion: this document
35 does not actually provide any concrete guidance, itself
36 within this document, about when the obligation might
37 arise; do you agree with that?

38 A. I agree with that.

39
40 Q. It does say, however, that any cleric who gets
41 information must report it to the bishop or the competent
42 ecclesial authority?

43 A. Yes.

44
45 Q. It does oblige them to refer the matter to the Special
46 Issues Resource Group, doesn't it?

47 A. Yes.

1
2 Q. My point is, doesn't the protocol then require the
3 Special Issues Resource Group to provide that information
4 to the bishop?
5 A. Yes.
6
7 Q. In the circulation of this document, were you aware of
8 some criticism - and I'll ask generally first and then go
9 to the specifics - prior to its implementation about
10 a concern with this document in two respects: firstly,
11 that it did not acknowledge any obligation or otherwise to
12 report matters to the police when it came to the knowledge
13 of the --
14 A. Yes.
15
16 Q. You agree that that was an area of contention?
17 A. That's true, yes.
18
19 Q. Secondly, that it failed to provide any guidance to
20 bishops about when that obligation might arise within the
21 document itself?
22 A. Yes.
23
24 Q. It was the case, was it not, that prior to its formal
25 implementation, you received some correspondence from
26 a Dr --
27 A. Nicholas Tonti-Filippini.
28
29 Q. On 26 July 1990, and that is at tab 177, so if you
30 want to open that for me. Do you have that letter?
31 A. Yes.
32
33 Q. Do you want to have a quick look at that or do you
34 know the letter well?
35 A. I don't know it well. I've read it, but we'd need to
36 go to precise words if we need to.
37
38 Q. I will. Why don't you just take a moment to read
39 that.
40 A. Yes.
41
42 Q. Did you know Dr Tonti-Filippini at 26 July 1990?
43 A. Not as well as I know him today.
44
45 Q. But he was an ethicist; is that right?
46 A. That's right.
47

1 Q. Is one of the things he raised with you this concern -
2 this appears on page 2 - about the protocol:

3
4 *However, the statutory obligations of*
5 *individuals who, in the Church process from*
6 *reporting, to notification of the Bishop or*
7 *major superior, to investigation and*
8 *possible treatment, become aware of the*
9 *abuse is not made clear.*

10
11 A. That was his view.

12
13 Q. Was it also his view that the protocol should include
14 a section on the statutory obligation to report which
15 exists in several jurisdictions? That appears on page 4,
16 second paragraph.

17 A. Yes.

18
19 Q. Did he also make some comment about the
20 responsibilities of bishops and major superiors as set out
21 in your protocol, in which he said:

22
23 *It is of the utmost importance that the*
24 *criminal behaviour by a person in*
25 *a position of trust within the Church be*
26 *subject both to the civil law and to*
27 *canon law. In no way can one be seen to*
28 *substitute for the other.*

29
30 Do you see that comment in the final page, second
31 paragraph?

32 A. Third paragraph, yes.

33
34 Q. Yes, the third paragraph. Does he further exhort you
35 in these terms:

36
37 *For the sake of the Church, reasonable*
38 *suspicion of a crime must be reported to*
39 *the authorities.*

40
41 A. Yes, he says that.

42
43 Q. Did he also say that, in his view at the time - and
44 I appreciate it's only his view:

45
46 *Any attempt to contain it within an*
47 *in-house investigation and management risks*

1 *bringing the Church into disrepute.*

2
3 A. Yes.

4
5 Q. Would you agree with me that the issue of when
6 information came to church officers should be reported to
7 the police was one that you were alive to at or about the
8 time of the formation of the protocol?

9 A. Yes.

10
11 Q. It was being suggested here that wherever a reasonable
12 suspicion of a crime existed, it should be reported to the
13 authorities?

14 A. Yes.

15
16 Q. And you disagreed with that view; you personally
17 disagreed with that view as at 1990 when it was expressed
18 to you?

19 A. No, I'd absolutely support that view, provided - with
20 this qualification - that one had the liberty to do that.

21
22 Q. So do we come back now to your position that you could
23 not do so where a victim had said they did not want to go
24 to the police?

25 A. Yes.

26
27 Q. But nowhere within your protocol, do you agree, does
28 it say that where a reasonable suspicion of crime exists,
29 it must be reported to the authorities?

30 A. That's true.

31
32 Q. And nowhere does it say, even in a modified form,
33 "unless a victim does not wish to go to the police"?

34 A. No, we put it in general terms because a victim not
35 wanting to go to the police is only but one reason, and
36 I think it left it in more general terms to comply with the
37 law as the law is, which varies, of course, from state to
38 state.

39
40 Q. But do you agree that in this protocol nowhere does
41 there appear, even the general principle that a reasonable
42 suspicion of a crime must be reported to the authorities?

43 A. No, it puts it in different terms. It says you must
44 comply with the law.

45
46 Q. But it doesn't tell bishops what the law is, does it?

47 A. Because the law is different in every state, and short

1 of annexing the advice that came in 1996, which is about
2 a six-page or seven-page advice setting out the law in
3 every state, the protocol left it in general terms to
4 comply with the law.

5
6 Q. But, father, you just agreed as a general proposition
7 that you agreed with the views expressed by Tonti-Filippini
8 that, for the sake of the church, reasonable suspicion of
9 a crime must be reported to the authorities?

10 A. Where that is in accordance with the law and the
11 constraints allow that to happen.

12
13 Q. I understand that, but that comment there that you've
14 just made, that reasonable suspicion of a crime must be
15 reported to the authorities within the confines of the law,
16 even as a general proposition doesn't appear in those terms
17 in the protocol, does it?

18 A. Not in those terms.

19
20 MR GYLES: I object. The question was not just in the
21 confines of the law. It was in respect of further
22 constraints, as the witness said.

23
24 THE COMMISSIONER: Yes.

25
26 MS GERACE: Q. You understood what I was putting to you,
27 father?

28 A. I understand. Certainly, that's correct.

29
30 Q. That qualification in those terms, that statement
31 plain in those terms with those qualifications, does not
32 appear in the protocol?

33 A. Yes, Mr Tonti-Filippini's view did not prevail, in
34 those terms. My recollection is - and I'm not quite sure
35 how many lawyers pored over that document - that the final
36 conclusion was that the law needed to be stated more
37 generally to accommodate the vastly different laws in
38 different states and also the vastly different
39 circumstances that could put constraints on that general
40 principle of reporting suspicion.

41
42 Q. But it is the position now, isn't it, that reasonable
43 suspicion of a crime known to the clerics must be reported
44 to the authorities even where a victim does not wish the
45 matter to go to the police?

46 A. That's the change of the current protocol, yes.

47

1 Q. And the information is provided in an anonymised form?
2 A. That's correct. That was the arrangement I was able
3 to negotiate with the NSW Police, but I should say this:
4 we have been unsuccessful in negotiating that with the
5 Victorian police.
6
7 Q. One of the other matters I wish to discuss with you in
8 relation to the protocol, if you still have it in front of
9 you - it's at tab 190. The protocol was the church's
10 attempt to deal with complex problems brought to it in the
11 nature of sexual abuse by a clergy member?
12 A. Yes.
13
14 Q. And I understand from your evidence that one of the
15 motivating factors was responding to victims' concerns,
16 firstly?
17 A. Yes.
18
19 Q. And, secondly, protecting children?
20 A. Yes. Well, I put them the other way around.
21
22 Q. Yes, I understand. I didn't mean to rank them in any
23 order. But protecting children and responding to victims'
24 concerns?
25 A. Yes.
26
27 Q. It was also, was it not, a way of dealing with the
28 church's concerns about its own clergy?
29 A. Yes.
30
31 Q. And providing a uniform way to respond to the church's
32 own concerns about clergy offending, firstly?
33 A. Yes.
34
35 Q. And secondly its liability in respect of priests
36 offending once they had certain information?
37 A. Yes.
38
39 Q. Is it correct for me to say that the protocol needs to
40 be understood within the limits of church processes as they
41 existed in 1992 for dealing with its own clergy who were
42 offending?
43 A. Yes.
44
45 Q. As at 1992 when this protocol was put into place,
46 there were very limited abilities within the church for the
47 church to unilaterally sanction or deal with priests who

1 were offending, in an expedient way; do you agree with
2 that?
3 A. Within the church law, as I understood it, the church
4 law would not enable a bishop to impose a permanent penalty
5 without a penal process.
6
7 Q. And that couldn't be done speedily?
8 A. No, it couldn't be done speedily.
9
10 Q. So that there were bishops who felt somewhat
11 hamstrung, to use a colloquial term, in being able to
12 respond effectively and quickly to information that came to
13 them about priests who may have been offending; do you
14 agree with that?
15 A. In the context where, for whatever reason, the matter
16 was not referred to the police, yes.
17
18 Q. It was also the case in 1992 that you could not obtain
19 readily involuntary laicisation of a priest, even where the
20 church had some strong information of offending by that
21 priest?
22 A. Yes, to impose the penalty of dismissal from the
23 clerical state required a penal process.
24
25 Q. And that required a formal process being put in place?
26 A. Yes.
27
28 Q. Notification?
29 A. Yes.
30
31 Q. Documentation of the application?
32 A. Yes.
33
34 Q. Appointment of advisers to the various parties?
35 A. Yes.
36
37 Q. Argument?
38 A. Evidence.
39
40 Q. Appointment of a judge?
41 A. Yes.
42
43 Q. Determination?
44 A. Yes.
45
46 Q. Did it also require going to the Holy See at that time
47 to obtain the final - or was the decision of the judge --

1 A. I'd need to check that, but I think that the judge
2 could impose the penalty, which may need to have been
3 ratified by the Holy See. I'm sorry, I don't know that
4 precisely.
5
6 Q. It's of no moment except to say that it was not an
7 expedient process, was it?
8 A. Exactly right.
9
10 Q. And it was not something that could be done when
11 something needed to be done in the heat of the moment in
12 response to information coming to the church about
13 a priest?
14 A. That process couldn't be done. There were other
15 options in the short term.
16
17 Q. Could a priest be stood down involuntarily?
18 A. Yes.
19
20 Q. For a short period of time?
21 A. A reasonable period of time, but not dismissal from
22 the clerical state and not a permanent penalty.
23
24 Q. In terms of being stood down, that would also afford
25 some right of appeal or otherwise to a priest who felt he
26 had been stood down inappropriately as well?
27 A. Yes.
28
29 Q. That would then involve some other processes provided
30 by the canons in terms of dealing with it, if it was not
31 accepted by that priest?
32 A. Yes, that's correct.
33
34 Q. So in those circumstances, it was thought necessary to
35 devise a means by which the bishops could respond to
36 information that came to them so as to act in the
37 protection of the church; do you agree with that?
38 A. Yes.
39
40 Q. Do you also agree that what this protocol provided was
41 a secret process by which these matters could be dealt with
42 discreetly and quickly?
43 A. Yes.
44
45 Q. Does the word "professional secrecy" as it's used
46 within this document have any particular meaning other than
47 confidentiality?

1 A. Not that I'm aware of.

2

3 Q. So there's no reason why, under the heading
4 "Confidentiality", it says that the matters need to be
5 dealt with with professional secrecy?

6 A. I think that's a word probably some lawyer put in
7 there to try to allow some - my understanding of
8 "professional secrecy" would be the sort of secrecy that
9 a professional could share with colleagues or within
10 a particular limit. That's a word someone has put in
11 there.

12

13 Q. The protocol putting in place a secret and discreet
14 way of dealing with these problems was also advantageous
15 for the church, was it not, in the minimisation of scandal?

16 A. I don't think it's - I mean, it would defy commonsense
17 to have this process public. That's just not the way one
18 would deal with that sort of situation. It's just beyond
19 my comprehension that you would publish, for example, the
20 evidence of, or the complaints of, complainants. One has
21 to respect the privacy of everyone.

22

23 Q. My question was: it also afforded an advantage to the
24 church? I'm not saying it's the only reason, but one of
25 the advantages of a secret and discreet process was that
26 scandal could be contained within the offices of the
27 church; that's accurate, isn't it?

28 A. To some extent.

29

30 Q. You gave some evidence about the need for
31 confidentiality and not taking notes when you were
32 interviewing a priest who had been suspected of offending.

33 A. Yes.

34

35 Q. One of the things you said was that a priest would be
36 unlikely, in your experience, to give you information if
37 they thought you were taking notes?

38 A. Yes.

39

40 Q. In the context of understanding the secret procedure
41 or process, what was the advantage afforded to the priest
42 from the secrecy that attended the process?

43 A. His rights are respected, his privacy is respected,
44 the same as the privacy of complainants is respected.

45

46 Q. When we talk about his rights being respected, one of
47 the things you've already identified was his right to

1 silence?

2 A. Yes.

3

4 Q. You described the right to silence existing within
5 canon law?

6 A. Yes.

7

8 Q. But you also used that term, did you not - and
9 disagree with me if it's not accurate - to mean the right
10 to silence that exists in the criminal law, in the civil
11 law - it's often called the civil law, but the criminal law
12 of the state?

13 A. Yes.

14

15 Q. So do I understand your evidence to be that one of the
16 benefits afforded a priest through this process is that you
17 would make no record of any admissions so that you would
18 preserve his right to silence in the event the priest was
19 subsequently charged?

20 A. I don't think that was the primary motivation. That
21 would be a consequence, but the real motivation was to put
22 in place a situation where he would speak. Now, if
23 subsequently the matter went to court, obviously the
24 conversation could be the subject of evidence, assuming the
25 priest himself was not in a position to object to that
26 evidence on the basis of duress or whatever other reason.

27

28 Q. So whether it was the primary motivator or not - and
29 I think you used this term - a consequence of the procedure
30 offered to the priest was a secret procedure by which no
31 record would be made of their admissions and thereby their
32 rights would be protected at law to continue to maintain
33 the right to silence; do you agree with that?

34 A. Yes.

35

36 Q. When information was brought to you in your role as
37 a member of the Special Issues Resource Group, your role
38 was partly to investigate the nature of the complaints that
39 were being made?

40 A. Only in the very broadest sense. Normally by the time
41 the matter came to me, there had been already some
42 complaint or some initial investigation. I understood my
43 role was certainly not to go into the detail of the
44 complaint. I tended to take the complaint on face value,
45 which had probably been reported to me second-hand from
46 a complainant. I saw my role - and when I say "my role",
47 that would generally include John Usher as well in these

1 situations - as taking the priest through a process to
2 a point where he would agree to resign his ministry, if in
3 fact that was the outcome that was sought.
4
5 Q. In terms of getting to that final end point, some
6 degree of investigation - I think you agree with this - was
7 necessary?
8 A. It depends on what information was already available.
9
10 Q. You needed to make an assessment, somehow or other,
11 that there were credible complaints, didn't you?
12 A. Generally that had already been done by someone else
13 in referring them.
14
15 Q. But I'm putting to you a proposition that you did need
16 to do that as a positive fact?
17 A. Sometimes yes. Sometimes no.
18
19 Q. You would then meet with the priest to discuss the
20 allegations afterwards?
21 A. Yes.
22
23 Q. Part of that process was for you to make inquiries of
24 the priest and gauge for yourself whether there was
25 substance to the complaints or not?
26 A. Yes.
27
28 Q. And also then to form a view, if you could, to extract
29 an admission where you felt that that might be obtainable?
30 A. Yes.
31
32 Q. And then to advise further on what might be done?
33 A. Yes.
34
35 Q. Was part of the inducement given to priests referred
36 to you the fact that this was a way the matters could be
37 dealt with in a discreet way, without potentially the
38 involvement of police?
39 A. Yes.
40
41 Q. So whilst you couldn't guarantee that charges wouldn't
42 be laid, could you, in your role - you didn't tell priests
43 charges won't be laid?
44 A. Certainly not.
45
46 Q. But part of the inducement given to priests was,
47 "Participate in this process, and it might be a way that

1 police action could be avoided in the future"?

2 A. It was generally the message from the victims that
3 they didn't want to go to the police, and it may be that if
4 he participated in that process, the desire of the victim,
5 which was a serious concern, would be achieved, because the
6 tendency generally - not always - of a victim was that they
7 wanted the priest out of ministry so he would not be a risk
8 to others. And if he voluntarily went along that path,
9 that might put him in a position that would be different if
10 he refused and those victims then went to the police. In
11 hindsight, of course, perhaps that was erroneous. Perhaps
12 it might have been better not to have had this process and
13 forced victims to go to the police. To some extent, that's
14 where things have now developed. The consequence of that,
15 of course, brings another downside - that priests won't
16 resign voluntarily, they won't plead guilty. There will be
17 prosecutions and court cases, and sometimes convictions and
18 sometimes acquittals. When you have the acquittals, you're
19 back to where you were in the beginning. So either
20 process - and I fully accept the absolute complexity of
21 this, and these were the very issues we wrestled with at
22 the time. There is no way that you can go here that is
23 absolute. The values are in constant conflict.
24

25 Q. I accept the difficulty of the task that you have, but
26 I just want to be clear that part of the inducement offered
27 to the priests was that this was a discreet way to deal
28 with a complaint that may avoid the potential for police
29 action?

30 A. That's certainly the case.
31

32 Q. That was definitely conveyed to the priests, wasn't
33 it, at the time of those conversations?

34 A. It may or may not have been explicit, depending on
35 what the circumstances were.
36

37 Q. But in circumstances where you believed the victims
38 wanted someone removed, and if that occurred, they would
39 not go to the police, that would be conveyed to a priest,
40 wouldn't it?

41 A. Generally.
42

43 Q. Because that would be a great inducement, would it
44 not, if there was evidence of complaint that was credible
45 and gave a priest an opportunity to avoid potential future
46 action - that would be a great inducement, I suggest, to
47 a priest being forthcoming to participate in the process?

1 A. Yes.
2
3 Q. And potentially also to make admissions?
4 A. Depending on whether he did. We did have some
5 situations where, as it were, they would take that option
6 notwithstanding their denials.
7
8 Q. Which brings me to the next point: and a great
9 inducement to the priest to take a resignation from active
10 ministry, even without admission, but because it offered
11 a chance to possibly avert police action?
12 A. If they thought that would be an option.
13
14 Q. So the process provided a means for the church to have
15 a priest resign from active ministry in a discreet and
16 secret way, which you've agreed, which it couldn't
17 otherwise achieve through its formal processes expediently;
18 do you agree with that?
19 A. That's true.
20
21 THE COMMISSIONER: When you say "expediently", Ms Gerace?
22
23 MS GERACE: Expeditiously.
24
25 THE WITNESS: That's what I understood.
26
27 MS GERACE: The witness was far too polite to point out my
28 error, but thank you, Commissioner.
29
30 THE WITNESS: I understood it as speed, not --
31
32 THE COMMISSIONER: It may be an added nuance.
33
34 MS GERACE: Thank you. I wish I could strike the record
35 so it didn't appear and I didn't have to read it again
36 tonight.
37
38 Q. Could I ask you, father, to look at tab 189, please,
39 in volume 2. It's a media release, not prepared by you but
40 by Father Usher. Can you take a moment to read that?
41 A. I've read that.
42
43 Q. I'm going to ask you two separate questions about
44 this, the first being about the paragraph beginning,
45 "Centacares throughout Australia".
46 A. Yes.
47

1 Q. It states:

2

3 *Centacares throughout Australia see*
4 *their most important role as assisting*
5 *women and especially children who have been*
6 *assaulted in any way by religious or*
7 *clergy ...*

8

9 A. Yes.

10

11 Q. From your knowledge, was that one of the primary roles
12 of Centacare at the time in 1992?

13 A. No, that wouldn't have been the primary role of
14 Centacare. Centacare was a very large, complex social
15 welfare agency. They would provide that service, but they
16 weren't established for that purpose.

17

18 Q. But it was one of the services it provided?

19 A. Yes.

20

21 Q. Do you know that this media release was in fact
22 published?

23 A. I expect it was.

24

25 Q. Does this media release exhort members of the public
26 who might be needing counselling or otherwise in relation
27 to sexual abuse to contact Centacare?

28 A. Yes, the last paragraph.

29

30 Q. Can I ask you, then, about the second paragraph of
31 this document. It's a public comment by Father Usher in
32 which he says:

33

34 *... the Catholic Church throughout*
35 *Australia views that the sexual assault of*
36 *women and children by religious and clergy*
37 *is an extremely serious matter and any*
38 *church person suspected of criminal*
39 *behaviour in this regard is automatically*
40 *stood down and the matter is put in the*
41 *hands of civil authorities.*

42

43 Do you see that comment there?

44 A. Yes.

45

46 Q. That's not in fact true, is it?

47 A. No, there's implied in that, obviously, the

1 willingness of the victim to allow that to happen.

2

3 Q. There is nothing in this media release by the church
4 in March 1992 that qualifies that statement in any way; do
5 you agree with that?

6 A. That's true.

7

8 Q. So to the extent that this document conveyed to the
9 public that the approach of the church would be that where
10 criminal behaviour was suspected, the matter would be
11 immediately put in the hands of civil authorities, that
12 position was wrong?

13

14 MR GYLES: I object. This has nothing to do with this
15 inquiry. This is not a document of this witness. We are
16 not here to debate the rights and wrongs of this media
17 release. The position of this witness is clear in terms of
18 his state of mind on this issue. It's just simply not
19 relevant, in my submission.

20

21 MS LONERGAN: May I be heard on this?

22

23 THE COMMISSIONER: Yes.

24

25 MS LONERGAN: In my respectful submission, it is relevant.
26 It is squarely relevant to the issue of church processes,
27 statements as to what will be done, as compared to what in
28 fact was being done, and this person is the appropriate
29 witness to put it to, because he was instrumental,
30 particularly at the time of the release, in protocols being
31 formulated and acted upon.

32

33 THE COMMISSIONER: Thank you, Ms Lonergan. It is said to
34 be Father Usher's statement about what the views of the
35 Catholic Church throughout Australia are.

36

37 MS GERACE: It came from the Catholic Archdiocese of
38 Sydney, to which this witness was attached at the time, as
39 I understand.

40

41 Q. 1992?

42 A. Yes.

43

44 Q. Father John Usher and Father Lucas were together part
45 of the committee that drafted the response for clergy to
46 sexual abuse, and this was a public statement by the church
47 in March 1992, a matter of weeks before April 1992,

1 published about what they were going to do.

2

3 THE COMMISSIONER: I will permit you to pursue it.

4

5 THE WITNESS: This is a media release.

6

7 MS GERACE: Q. Yes. Does that mean it needs to be less
8 accurate?

9 A. I'm sure you don't want me to speak about the media
10 inaccuracy.

11

12 Q. No, but I'm talking about the church's approach to the
13 media and how accurate it wishes to be.

14 A. Yes, and this is a general statement of principle.
15 What is not stated there is "except where victims do not
16 want that to happen". Perhaps that should have been in
17 there in hindsight, but that's not what's stated there,
18 yes.

19

20 Q. It is not accurate insofar as it describes the
21 position of the church that where they have information
22 that suspects criminal behaviour, the person will be
23 automatically stood down and the matter put in the hands of
24 civil authorities; do you agree with that?

25 A. As a general statement of principle, it is accurate.
26 What is not there is the further nuance of circumstances
27 where that can't happen. Yes, in hindsight, if you were
28 wanting to make this document more accurate, there would be
29 a comma and the words "except where victims or other
30 constraints don't allow that to happen". This is a media
31 release inviting people to respond in the context of some
32 publicity, obviously, a report of another organisation,
33 indicating what the church's general policy and principle
34 is. Without any doubt in my mind, the general policy and
35 principle was always that matters should go to the civil
36 authorities. We only had the dilemma when victims didn't
37 want that to happen.

38

39 Q. Father, this was a response by the church to concerns
40 about publication and various other publicity that existed
41 about the problem of sexual abuse by clergy, wasn't it?

42 A. Yes.

43

44 Q. It was an attempt by the church to let the public know
45 what they were going to do in response to it?

46 A. Yes.

47

1 Q. What you put to me about nuance or otherwise about
2 when a matter would be put in the hands of the civil
3 authorities I accept is a view that you held about when it
4 needed to be done. The point I'm asking you is this: this
5 document says that there is a blanket principle that when
6 a person is suspected of criminal behaviour, they will be,
7 one, automatically stood down and, two, the matter put in
8 the hands of the civil authorities. That's what the
9 document says, isn't it?

10
11 MR SKINNER: Commissioner, I object. It doesn't say
12 anywhere in it "blanket". That might sound excessively
13 pedantic. It's not meant to be. The point is this: it is
14 clearly not this witness's document. My friend has made
15 her point. If she is going to put a nuance on it by
16 injecting extra adjectives that are not there, with
17 respect, she ought to accept my client's answer that there
18 should be also inferred what he says is a nuance.
19 Otherwise, we'll just go on and on, round and round. The
20 document speaks for itself, in my submission.

21
22 THE COMMISSIONER: Thank you, Mr Skinner. I think
23 Father Lucas is able to give an answer and to deal with the
24 question.

25
26 MR SKINNER: My specific objection remains, then. If it
27 is to be quoted to him, it ought to be quoted precisely.

28
29 THE COMMISSIONER: Mr Skinner, that's reasonable.

30
31 MS GERACE: Q. You understood that I wasn't quoting the
32 document then, when I put that to you?

33 A. With due respect, I was about to say exactly what
34 Mr Skinner said. The word "blanket" is not there. It is
35 a general statement of principle. It doesn't say it is
36 absolute. Certain things obviously are implied. This is
37 a three-paragraph media release. The protocol that was put
38 in place is some 15 pages. A media release is a media
39 release. It gives a general principle. There were
40 obviously, at times, constraints that prevented reporting
41 of those matters.

42
43 Q. That paragraph, that statement, in what it says to the
44 public about how the church will respond to these matters,
45 is unqualified; do you agree with that?

46 A. It is, in its form.
47

1 MS LONERGAN: Commissioner, I have been requested by
2 Ms Gerace to tender the document that this witness has just
3 been cross-examined about. I tender it. It appears behind
4 tab 189, a media release dated 16 March 1992.

5
6 THE COMMISSIONER: That media release, tab 189, will be
7 admitted and marked exhibit 154.

8
9 **EXHIBIT #154 MEDIA RELEASE DATED 16/03/1992 (TAB 189)**

10
11 MS GERACE: Q. Father, when the protocol was put in
12 place, was general training provided or available to all
13 clergy?

14 A. Yes.

15
16 Q. Was it compulsory? Did clergy have compulsory
17 training, or was it a matter of clergy making themselves
18 available?

19 A. My recollection is that John Usher and I, together or
20 separately - and this would only be generally the dioceses
21 of New South Wales, although I did make a presentation in
22 Melbourne - would present to general gatherings and
23 in-service days for clergy.

24
25 Q. So it was available to Monsignors, deans, consultors -
26 all priests of the diocese?

27 A. The clergy of the diocese, yes. Whether on
28 a particular day a particular priest had a funeral and was
29 not there, one wouldn't know.

30
31 Q. Was the protocol published in a general form in terms
32 of notification through some magazine or otherwise?

33 A. I don't recall.

34
35 Q. Do you recall through what period after April 1992
36 that training took place?

37 A. It would have been over the year or two after that.

38
39 Q. As I understand your evidence, and I just want to be
40 clear about this, you don't recall whether the first
41 contact in relation to McAlinden came from Bishop Clarke or
42 the vicar general, Monsignor Hart; is that right?

43 A. I don't.

44
45 Q. You don't have any specific recollection of who you
46 spoke to, at what time, in between those two people, about
47 McAlinden?

1 A. No.
2
3 Q. In preparing for this matter, were you provided with
4 a copy of [AJ]'s affidavit to read?
5 A. I saw, I think annexed to another document, a copy of
6 [AJ]'s statement, yes.
7
8 Q. So you've seen that, and when you saw [AJ]'s
9 statement, or the name [AJ], did that name at all ring
10 a bell to you?
11 A. No.
12
13 Q. You don't remember her at all in any way, her name at
14 all, except now from having read the documents?
15 A. That's correct.
16
17 Q. The fact is that you don't even recall having any
18 conversation with someone else at or about this time; is
19 that right?
20 A. Obviously, there were recollections of conversations
21 with Bishop Clarke and Monsignor Hart. I have a clear
22 recollection of the meeting with [AL]. I understand, and
23 I don't resile from the fact, that there were conversations
24 by telephone, but I don't have a recollection of those
25 telephone calls.
26
27 Q. Do you recall earlier I said to you, and you were
28 asked this as well yesterday, that in order to have dealt
29 with McAlinden in relation to these matters, you would have
30 needed some details of the complaint, and you've said you
31 felt that you could do what you did with only an overview
32 of the basic nature, that it was a sexual assault?
33 A. Yes.
34
35 Q. You disagree with the proposition that you would have
36 asked or sought to find out what, when or where that
37 assault occurred?
38 A. It may have been when and where, because they're
39 non-contentious issues. Was it at school? Was it at home?
40 Which parish? Approximately what year, which in some
41 instances of course can quickly identify whether, for some
42 reason, this is fanciful. The priest - I've had all these
43 situations - wasn't ordained at that time or wasn't ever in
44 that parish, or in the case of teachers, never taught that
45 subject in school. So the broadest general information
46 about the "when" and the "where", but for the reasons I've
47 explained in some detail, the "what" and precise detail was

1 not something I would generally want to go into, and I'm
2 presuming, from the conversation with whoever gave me the
3 telephone number of [AJ] and asked me to ring her, that
4 there would have been some expansion of what her particular
5 circumstances were.

6
7 Q. If in fact [AJ] had told that person any of the
8 detail?

9 A. Oh, yes, certainly, that's correct.

10
11 Q. So you agree that you would like some information
12 about when and where, and you would like some general
13 information that it was a sexual assault of some sort, but
14 for the reasons you've already identified, you say you
15 didn't ask for information about the nature of the assault?

16 A. That would be my general practice.

17
18 Q. If in fact the Commission has heard evidence from two
19 witnesses that an account was provided to you of the nature
20 of the abuse by McAlinden, would you agree that that may
21 mean the following things: one is that you did not follow
22 your usual practice in this case when dealing with either
23 [AJ] or [AL]?

24
25 MR GYLES: I object. How can this witness answer
26 a question based upon evidence given by others which
27 requires him to make some assessment of that evidence in
28 giving the answer that he gives? An assumption can be put
29 to him, but the question in those terms is an unfair
30 question.

31
32 THE COMMISSIONER: I expect you would say, Mr Gyles,
33 because how much detail is "some" detail?

34
35 MR GYLES: Yes. And I might say, ringing in my ears is
36 that I asked a question of a similar character, and I think
37 there were three objections to it, which were accepted by
38 you, Commissioner. In the fullness of time, I realised
39 that perhaps it wasn't a wise question. I maintain the
40 objection now.

41
42 THE COMMISSIONER: So you've learnt your lesson.

43
44 MS GERACE: I think the difference is that this witness
45 has read those affidavits in terms of preparing, so the
46 information came to this witness in another sense. I'm not
47 putting strictly to the witness, "Someone says this. You

1 say that." I want to take the witness through this really
2 so that there is no issue in terms of submissions that
3 I might make later. I will deal with it in a different
4 way.

5
6 THE COMMISSIONER: You're seeking to establish whether
7 it's possible that Father Lucas in these instances did go
8 into some detail about the sexual assaults?

9
10 MS GERACE: Yes.

11
12 MR SKINNER: Commissioner, I do make the point that
13 although, as the witness has confirmed, there is
14 a statement of [AJ] in some of the material, there is no
15 statement of [AL] anywhere. I accept that she has
16 accurately put that there is some evidence about what [AL]
17 said, but that is not something that my client would know
18 about. It was given in a different way.

19
20 THE COMMISSIONER: All right, Mr Skinner. Ms Gerace has
21 undertaken to approach this area in a different way.

22
23 MS GERACE: Yes, I will attempt to do so.

24
25 Q. Father Lucas, at any stage were you advised, or in
26 preparing for this matter, of evidence given by
27 Sister Paula about what occurred at your meeting with [AL]?
28 A. No - oh, I think I have seen the transcript of that
29 evidence.

30
31 Q. So you've seen the transcript of that evidence and
32 what Sister Paula says was said during that meeting about
33 the nature of the assault by McAlinden against [AL]?
34 A. Yes.

35
36 Q. You saw, through that transcript, that Sister Paula
37 has given evidence that [AL] provided a description to you
38 of what McAlinden did?

39
40 MR GYLES: I object. That is being put as a fact. The
41 witness can deal with assumptions. The witness cannot deal
42 with an assessment of evidence, and that's exactly what
43 he's being asked to do. This is the very problem that
44 I identified earlier.

45
46 THE COMMISSIONER: Yes. Thank you, Mr Gyles.

1 MS GERACE: I hadn't got to my question. I hadn't put it
2 as a fact, but, anyway, I will get to it.

3

4 Q. Assume, please, that Sister Paula has given evidence
5 to the effect that in your meeting with [AL], [AL]
6 described to you the nature of the abuse that
7 Father McAlinden had carried out upon her.

8 A. Yes.

9

10 Q. Assume also that [AJ] has given evidence that in your
11 conversation with her, you asked her what had occurred, and
12 she provided to you a description of an assault undertaken
13 by Father McAlinden upon her.

14 A. Yes.

15

16 Q. Assume also that her evidence is that at no stage did
17 you interrupt the provision of that information to you.
18 That's the assumption. It's possible, isn't it, father,
19 that on this occasion in relation to McAlinden, you did not
20 follow your usual practice in either (a) not seeking that
21 information about the nature of the assault or (b)
22 interrupting someone giving that to you and saying, "It's
23 not necessary for me to know that"?

24

25 MR GYLES: I object. The difficulty with this question
26 and the nature of questioning of this type is that in
27 considering whether it is possible involves an assessment
28 of the evidence that is given. There is nothing wrong with
29 putting an alternative view and saying, "Is it possible
30 that this happened?", but one cannot do it in the way in
31 which it is being done, in my respectful submission.

32

33 THE COMMISSIONER: Yes, can the first part of the question
34 be asked - and I hope I'm not being too simplistic.

35

36 Q. Is it possible, father, that in the cases of [AL] and
37 [AJ], you were told details of the assault, contrary to
38 what you feel --

39 A. As I have a clearer recollection of the meeting with
40 [AL] and knowing what it is alleged she said, I would think
41 given the nature of what she said, that would be something
42 I would have remembered. With respect to the phone
43 conversation with [AJ], that is much more problematic.

44

45 THE COMMISSIONER: As the second part of the question,
46 Ms Gerace, do I understand that you are putting to the
47 father that he has a practice of interrupting people if

1 they commence to give details of --

2

3 MS GERACE: That was the father's evidence as I understood
4 it yesterday.

5

6 THE WITNESS: There would be a practice, if a victim was
7 going into too much detail, that I would pause and say,
8 "It's best we not go there", and I may or may not have, in
9 the circumstances, gone into some explanation as to why,
10 "This matter might end up in court and it's much better, if
11 for example you're interviewed by the police, to be able to
12 say to the police that you haven't talked about this with
13 me", because the risk then is that, obviously, the police,
14 doing their job very thoroughly, would then seek my account
15 of her account. As soon as we then have my account of her
16 account, and obviously there would be differences by the
17 nature of recollection, some issue would be raised in the
18 defence that perhaps I had put words in her mouth. If
19 a victim was very enthusiastic about wanting to tell their
20 story - and that's a very good thing that they may wish to
21 do - my practice would be to ask them to write it out in
22 their own handwriting.

23

24 THE COMMISSIONER: Q. So is it possible, then, father,
25 that in [AL]'s case, you just allowed her to speak in
26 detail?

27 A. I don't recall, but I think, given the detail that
28 I've seen and the nature of it, that is not something
29 I think I would normally have pursued.

30

31 Q. Pursued or remembered?

32 A. Well, I would have remembered it if it had have been
33 said. And if it had have been said and now I would have
34 remembered, I would have remembered that I would have
35 stopping her saying it. You understand the position I'm
36 in.

37

38 THE COMMISSIONER: Thank you.

39

40 MS GERACE: Q. Forgive me for not picking this up. What
41 was your answer in relation to whether it was possible you
42 didn't follow that procedure in the case of [AJ]?

43 A. That was a telephone conversation about which I have
44 much less capacity to remember.

45

46 Q. The point is that you gave some evidence that you
47 refuted that it had happened, even though you don't recall

1 the conversation?
2 A. The evidence I gave that I refuted was that I took
3 a detailed statement over the telephone.
4
5 Q. So you don't refute any suggestion by [AJ] that she
6 told you some details about what happened to her at the
7 hands of Father McAlinden?
8 A. There may have been some details, but certainly not,
9 as it was put to me, as I understood the question, that
10 I took a detailed statement over the phone. And as
11 I recall the material in the statement she made, there were
12 statements even going further than that, and that is what
13 I would seek to refute.
14
15 Q. You've agreed with me that you would ordinarily ask
16 where and when?
17 A. If I didn't know that already, and it may well be that
18 I'd already been told that.
19
20 Q. You knew who, because you called [AJ] or you had
21 dealings with [AJ]?
22 A. No, I would have had a message from someone,
23 presumably either Bishop Clarke or Monsignor Hart, and
24 I presume that was simply a message by telephone to
25 telephone [AJ], and I presume I was given the telephone
26 number and I telephoned her as requested.
27
28 Q. So you knew the "who", because someone had told you?
29 A. The name, yes.
30
31 Q. You agree that you would have asked the "where" and
32 the "when"?
33 A. Or known that already.
34
35 Q. Or known that already?
36 A. Yes.
37
38 Q. It could have come through some other source, the
39 "where" and the "when". What I'm trying to explore with
40 you is to suggest to you that in relation to [AJ], you may
41 not have followed your usual practice and may have asked
42 something along the lines, "What did he do?", or, "What was
43 it about?", or, "What happened?", something broad natured
44 like that, while on the phone?
45 A. That's possible but, as I said, would be contrary to
46 my usual practice.
47

1 Q. Assume that [AJ]'s evidence was that the assault
2 occurred in her home when she was a child and that it
3 occurred when Father McAlinden asked her to come and sit on
4 his knee.

5 A. Yes.

6

7 Q. Assume that the assault occurred in those
8 circumstances. Would you have a look, please, at the
9 document at tab 275 of volume 4. It's not your document.
10 It's exhibit 76. Do you have in front of you a letter to
11 the Most Reverend M Malone, dated 27 January 1996?

12 A. It is.

13

14 Q. Do you see on the front page of the document the third
15 paragraph, beginning, "For my part"?

16 A. Yes.

17

18 Q. Then if we go down to the ninth line, beginning:

19

20 *... another name he mentioned was ...*

21

22 A. Yes.

23

24 Q. This is a letter from Father McAlinden to
25 Bishop Malone in 1996, so after your meeting with him, in
26 which he says:

27

28 *... another name he mentioned was "AJ";*
29 *even though she occasionally sat on my knee*
30 *on the few occasions I visited their home,*
31 *I certainly did nothing to that child that*
32 *was indecent.*

33

34 MR SKINNER: Commissioner, I have to do it through you,
35 but I could have assisted my friend. It's the pseudonym
36 [AJ] which is of some difficulty because that would imply
37 a name, which was not necessarily the name, and the change
38 is important.

39

40 THE COMMISSIONER: Is there an error?

41

42 MR SKINNER: No. [AJ] is a pseudonym for a woman who had
43 two names - a married name and a maiden name. It is the
44 use of the maiden name that's entirely relevant and
45 important in this context. I don't know if my client has
46 the redacted version or the full version.

47

1 THE COMMISSIONER: Yes, that's a good point, Mr Skinner.
2 I, of course, have a redacted version here. You're saying,
3 are you not, that the name there is the maiden name?
4
5 MR SKINNER: It is the maiden name, which is the very
6 point subsequently raised in another context.
7
8 THE COMMISSIONER: Thank you, Mr Skinner. That is
9 helpful.
10
11 MS GERACE: I am grateful to my friend. I have never seen
12 the unredacted version, so I wasn't aware of the different
13 name being used.
14
15 Q. Father, have a look at this unredacted version, but
16 still use the same pseudonym, [AJ]. Father, could I exhort
17 you not to state the name?
18 A. I understand, yes.
19
20 Q. Just use [AJ].
21 A. Yes, I understand.
22
23 Q. Having a look at that line, another name he mentioned
24 was [AJ]:
25
26 *... even though she occasionally sat on my*
27 *knee on the few occasions I visited their*
28 *home, I certainly did nothing to that child*
29 *that was indecent.*
30
31 Have you read this whole letter?
32 A. Yes.
33
34 Q. Father McAlinden is writing to Bishop Malone, is he
35 not, in the context of dealing with one of the matters that
36 you had raised with him?
37 A. Yes.
38
39 Q. He raises the maiden name [AJ]?
40 A. Yes.
41
42 Q. In that, he mentions a circumstance of the child
43 having sat on his knee?
44 A. Yes.
45
46 Q. But denying that he did anything indecent to her?
47 A. Yes.

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Q. One explanation for that appearing in Father McAlinden's correspondence is that that was in fact a matter that you had put to him during your meeting with him?

A. That's possible, but I don't recall that.

Q. That's all I wanted to ask you about that document, father. You gave some evidence that it was not your usual practice to advise victims who have come forward of admissions that were made by the priest; do you agree with that?

A. Yes.

Q. That was evidence you have given. You can assume, and I think you know from what you have read of [AJ]'s statement, that she asserts that you did advise her of admissions that had been made; you've seen that, haven't you?

A. Yes.

Q. You can assume also from the questions that were put to you yesterday by senior counsel assisting about Sister Paula that she has given evidence that suggests that you told her that you had obtained admissions from Father McAlinden?

A. That's what they've said.

MR GYLES: I object. For a start, it suffers from the same problem I've risen about before, and this is the third time, because it involves an assessment of the evidence. In any event, that assumption is not evidence that has been given at a public hearing, as I understand it. He is being asked to comment upon evidence. Again, what needs to be put is, "There is an alternative version of events; is that possible?", without the --

THE COMMISSIONER: Without the prefatory words.

MS GERACE: I'm sorry, I didn't understand it was being put in that way. The witness was asked these questions yesterday.

THE COMMISSIONER: Yes.

MS GERACE: I am putting it to him fairly, to ask him whether it's possible, in his mind, that he did not follow

1 his usual practice, because I wish to make a further
2 submission to him about whether he in fact had a general
3 practice. I am pointing out some inconsistencies in what
4 he says was his general practice and giving him an
5 opportunity to answer those accusations.
6

7 THE COMMISSIONER: Can you do it with an assumption,
8 putting to Father Lucas to assume that this was said.
9

10 MS GERACE: Isn't that what I did?
11

12 THE COMMISSIONER: "Is it possible"?
13

14 MS GERACE: Q. Assume there are two witnesses, that two
15 people say that you did in fact tell them separately that
16 Father McAlinden made admissions to you.

17 A. I'm not sure whether I would have used the words "made
18 admissions". I think I probably was reporting back not
19 much more than, "We've had a talk and he has agreed to
20 leave ministry", from which I fully appreciate they would
21 have inferred admissions.
22

23 Q. Father, I understand that's your position.

24 A. Yes.
25

26 Q. I understand you've given evidence that that's your
27 general practice, your usual practice.

28 A. Yes. And I could be wrong - I know you're putting to
29 me is it possible.
30

31 Q. Yes.

32 A. It is possible, absolutely possible, but I can --
33

34 Q. It is absolutely possible?

35 A. I can only tell you what is the best of my assumption,
36 my usual practice and what I would have expected to have
37 done on this occasion, but since I have no absolute memory
38 of it, I'm not in a position to be absolutely certain about
39 anything.
40

41 Q. And you accept those matters as a possibility, given
42 your limited memory?

43 A. Yes.
44

45 Q. I just want to be clear. Thank you. You understood
46 as at 1993 the general nature of the offence of misprision
47 of felony?

1 A. Yes.
2
3 Q. You understood that that offence comprised a person
4 having knowledge of a crime?
5 A. Of a felony.
6
7 Q. I'll take you through it step by step, father.
8 Firstly, that you had knowledge of a crime - yes?
9 A. If I could explain, while I knew a crime of misprision
10 of felony, I would need to have refreshed my memory as to
11 the precise elements of the common law offence of
12 misprision of felony, and I can say that my understanding
13 of the common law offence of misprision of felony was that
14 it was something that was to some extent regarded as a dead
15 letter of the common law and had been repealed in some
16 jurisdictions.
17
18 Q. In terms of what you understood in 1993, the offence
19 was committed when a person had knowledge of a crime, which
20 was a felony, having been committed?
21 A. Yes.
22
23 Q. And did not provide information about that felony to
24 the authorities?
25 A. Yes.
26
27 Q. In order to understand that a crime had been
28 committed, you would need to know some facts, some basic
29 facts, of what was alleged to have been done?
30 A. Yes.
31
32 Q. To know that it has been committed would involve
33 either an admission or witnessing it yourself or some other
34 information confirmatory of the allegations?
35 A. Yes.
36
37 Q. Just to be clear about your evidence, you say, father,
38 that you do not recall meeting McAlinden - yes?
39 A. That's correct.
40
41 Q. You do not recall speaking with [AJ] or her name -
42 yes?
43 A. Yes.
44
45 Q. You did not ask, and you do not believe, although you
46 acknowledge it's a possibility, that you had any
47 information about the nature of the offence committed

1 against [AJ] other than a general allegation that it was
2 a sexual abuse; that's your evidence?
3 A. Yes.
4
5 Q. And the same position in relation to [AL]?
6 A. Yes.
7
8 Q. That you recall her, but you did not ask, nor would
9 you, in your usual practice, seek or obtain any information
10 about the nature of the offences committed against her?
11 A. Yes.
12
13 Q. You have no recollection of the admissions obtained by
14 you from Father McAlinden?
15 A. Yes.
16
17 Q. Or obtaining any admissions at all?
18 A. Yes.
19
20 Q. Notwithstanding documents suggest otherwise in
21 relation to your having obtained admissions?
22 A. That's my recollection.
23
24 Q. So you do not recall any of the matters which might go
25 to suggesting that you had committed the offence of
26 misprision of felony in your investigation of
27 Father McAlinden when interviewing either [AJ] or [AL];
28 that's correct, isn't it? That's your evidence?
29 A. Yes.
30
31 Q. However, in 1993 you were of the understanding that
32 you did not have an obligation to go to the police where
33 the victims did not want you to do so; yes?
34 A. Yes.
35
36 Q. And, in those circumstances, it was your further
37 understanding that the offence of misprision had not been
38 committed?
39 A. In 1993 the misprision of felony crime had been
40 abolished in New South Wales and replaced by section 316.
41
42 Q. Did you also understand in 1993 that you had not
43 committed an offence if the victims did not want you to go
44 to the police?
45 A. That was certainly my understanding.
46
47 Q. It was your understanding then that there was no

1 obligation upon you to go to the police in those
2 circumstances?

3 A. That's correct.

4

5 Q. So it's the case that whilst you cannot recall any of
6 the facts that might have suggested that you had committed
7 a criminal offence, you have a crystal clear memory of the
8 single fact that might suggest you're not guilty of any
9 offence; that's the case, isn't it?

10 A. Yes, the crystal clear memory of [AL] absolutely and
11 for good reason not wanting to go to the police I have
12 always maintained is a crystal clear memory.

13

14 Q. I just want to be clear that we understand your
15 evidence that the single thing you can recall is the one
16 fact that you believe, in your mind, made you not guilty of
17 any offence?

18

19 MR SKINNER: I object. If my friend wants to stop hinting
20 and stop asking questions that are willing to wound but not
21 kill, she should ask the question she really is hinting at,
22 in my submission.

23

24 MS GERACE: I am getting there.

25

26 THE WITNESS: Slow death or quick death.

27

28 MS GERACE: Q. Father, it is a slow death, I'm sorry,
29 but sometimes you need to get there a long way to get the
30 point made.

31 A. Sometimes there is also resurrection after death.

32

33 Q. Yes, I understand. The way of Christ is one of
34 suffering, I understand. Bear with me, we're almost there.

35 A. I'm sorry, I do apologise. I didn't mean to be
36 jocular.

37

38 Q. That's absolutely fine. I haven't forgotten what
39 I was saying. Father, I just want to be clear that is your
40 evidence, isn't it: the one thing you can recall is the
41 fact that you believe would be a defence to any prosecution
42 of you in relation to your investigation of those matters?

43 A. No. I think if we were looking at defences to
44 section 316, if that's what we're talking about, and we
45 start with the 1998 Law Reform Commission analysis of
46 section 316, I think notwithstanding what I remember, there
47 would be a significant number of issues with respect to

1 that section that might be used as a defence. But it is
2 clear in my mind, because this was the very issue that was
3 so important to those victims, and the reason I remember it
4 is not to set up a defence to section 316. I'll take my
5 chances under section 316, but I will not betray what
6 victims wanted.

7

8 Q. Father, just coming back to that point, you have given
9 as your explanation for why you didn't go to the police
10 your belief as to what the victims had expressed - yes?

11 A. With respect to [AL], it's more than a belief. It's
12 an absolute certainty.

13

14 Q. And you have given in answer to questions before this
15 Commission that you believed that exculpated you from any
16 obligation to go to the police with the information - yes?

17 A. Yes.

18

19 Q. I am suggesting to you directly that that evidence is
20 not true that all you can recall is that single piece of
21 evidence that [AL] didn't want to go to the police and that
22 you cannot recall any of that other information provided to
23 you?

24 A. That's what you're putting to me as a proposition?

25

26 Q. Yes.

27 A. I reject that completely.

28

29 THE COMMISSIONER: Thank you, Ms Gerace.

30

31 MR SKINNER: There's one thing left, if I may,
32 Commissioner?

33

34 MS LONERGAN: Commissioner, we're not in re-examination
35 yet and Ms Gerace should be permitted to conduct the
36 cross-examination of the witness and complete it, and then
37 we'll move on to the next person who should cross-examine,
38 which may not happen until tomorrow, given the time. It is
39 not up to Mr Skinner to stand and make a footnote on
40 another practitioner's cross-examination, in my respectful
41 submission.

42

43 MR SKINNER: Would you hear me, Commissioner?

44

45 THE COMMISSIONER: Well, very well. Ms Gerace, have you
46 finished your examination?

47

1 MS GERACE: I think so. I'll wait to hear what my learned
2 friend has to say.

3

4 MR SKINNER: I understand Ms Gerace acts for [AJ] and has
5 instructions from [AJ]. It is entirely a matter for her
6 if, upon her instructions, she puts what she has been told
7 about the conversation, or not, that [AJ] had with my
8 client, but it is an appropriate moment for me to remind
9 her, through you, that if she doesn't put an obvious
10 question, appropriate submissions can be made. She has
11 instructions from [AJ] as to what was said in the
12 conversations that [AJ] has said she had with my client.
13 Now, she either ought to put it or take the submission that
14 the evidence now lies where it lies.

15

16 THE COMMISSIONER: Thank you, Mr Skinner.

17

18 MS LONERGAN: Commissioner, could I make this suggestion,
19 that Mr Skinner and Ms Gerace, as counsel who have
20 continued to cooperate with the processes of this
21 Commission, have a discussion after hours, which is where
22 we now are, on this particular matter and it can be dealt
23 with first thing in the morning with this witness, if
24 necessary, or we can move on to the next counsel to
25 question this witness. I also have a proposal that we
26 start at 9.30 in the morning, Commissioner.

27

28 THE COMMISSIONER: Yes, very well, Ms Lonergan. Does
29 anyone object to that course?

30

31 Q. Is that convenient to you, father - 9.30?

32

33 A. Not really, but I have to be here. I have several
34 matters I'll need to cancel, but I certainly will cancel
35 them and be here at 9.30.

35

36 THE COMMISSIONER: Thank you, father.

37

38 MS LONERGAN: Could I also raise that there has been
39 a request by the media for a copy of exhibit 154, and if
40 those at the Bar table could let those assisting you know
41 by 4.15 as to whether there is any objection to the release
42 of that.

43

44 THE COMMISSIONER: All right, thank you.

45

46 **AT 4.10PM THE COMMISSION WAS ADJOURNED**
47 **TO FRIDAY, 26 JULY 2013 AT 9.30AM**

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