

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

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

On Tuesday, 9 July 2013 at 10.28am
(Day 6)

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,

1 THE COMMISSIONER: Yes, Ms Lonergan.

2

3 MS LONERGAN: Commissioner, Detective Chief Inspector Fox
4 was in the witness box. As at last Friday, we were up to
5 Mr Cohen to re-examine. I've been advised that Mr Gyles,
6 on behalf of the diocese, would like to ask some additional
7 questions and also the solicitor acting on behalf of Father
8 Harrigan, Ms McLaughlin, would like to ask some questions.
9 Could Detective Chief Inspector Fox be recalled?

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11 (Transcript suppressed from page 571, line 11 to page 575,
12 line 31)

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<PETER RAYMOND FOX, sworn:

[10.40am]

<FURTHER EXAMINATION BY MR GYLES:

MR GYLES: Q. There's one further matter which I would wish to ask you some questions about. Could you please go to tab 396, which I think is volume 5 of the bundle. You'll recognise it as the complaint you made to the Ombudsman.

A. Yes.

Q. Could you please go to - the page number is at the bottom - page 1052. It is the third page of the report, and could you go to the top paragraph.

A. Yes.

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Q. Can we take it that when you prepared this document for the Ombudsman, you took that seriously in terms of the way in which the document was prepared?

A. Yes.

Q. You were raising what you considered to be a serious issue for the Ombudsman?

A. Yes.

Q. You were presenting the facts to the Ombudsman in the most accurate way you could so that it could be properly considered. That would be right, wouldn't it?

A. Yes.

Q. In this particular paragraph, you deal with a conversation you had with Father Searle on 16 May. Do you see that?

A. Yes.

Q. And then, in the third sentence, it states:

He commented to me, "He seemed to be angry with the world that night ..

et cetera, and then you closed the quotation marks. Do you see that?

A. Yes.

Q. Can we take it that that's the truth?

A. Yes.

Q. That is the truth?

A. Yes.

Q. In other words, that's your best recollection of what he said to you during that conversation?

A. That's part of what he said, of course, but, yes.

Q. So it is only part of what he said, is it?

A. Yes.

Q. Why have you only included part of what he said?

A. This wasn't meant to be a comprehensive "I said/He said" relay of a conversation to the Ombudsman's office. This was - it was purely intended as a succinct capture of

1 the overall tone of what he had to say.

2

3 Q. You're telling us, are you, that what you were trying
4 to do was to capture for the Ombudsman the substance of
5 what it was that Father Searle told you on the phone that
6 day; is that right?

7 A. Yes. The general tone of it, yes.

8

9 Q. Anything that was important, you would have been
10 telling the Ombudsman about, wouldn't you?

11 A. There's so much more that I could have put in this.
12 And again, I think it just boils down to a question of
13 trying to convey enough but still be succinct, and I was
14 happy that that generally portrayed the overall situation.

15

16 Q. You were happy that you had covered those matters that
17 were important; is that right?

18 A. You know, there may be other issues that we're raising
19 now that may be viewed in a different light because of
20 various reasons, but that wasn't the purpose of this
21 overall report to the Ombudsman back in 2003. I just
22 wanted to encapsulate the tone of the conversation for
23 their reference. You know, I don't know whether that was
24 an aspect that they looked into very deeply. Looking at it
25 now, and even then, I don't think it would have been
26 something that would have been an intense aspect of what
27 they were looking at.

28

29 Q. You were still trying to be accurate, weren't you, in
30 what you passed on?

31 A. I think that, you know, I've got no qualms about the
32 quote that's in there.

33

34 Q. That's the other point, isn't it, Detective Chief
35 Inspector Fox; when you look at this document, there are
36 very few times, aren't there, that you've used quotation
37 marks where you are reporting what others have said to you?

38 A. Yes.

39

40 Q. Can we take it that you are using quotation marks in
41 this context because you are confident that you were able
42 to recall the words that are in the quotation marks?

43 A. Back in 2003, yes, I think that would be a fair
44 comment. I think this report was only done a week or two
45 after, if my memory serves me right, but --

46

47 Q. You're not here telling the Ombudsman the substance of

1 what was said; you're telling him precisely what was said,
2 aren't you?
3 A. Yes, part of it, yes, only a very small part. The
4 conversation with Father Searle that I had on the phone
5 that day went for in excess of five minutes. There would
6 be a lot more conversation that I can't now fully recall,
7 but --
8
9 Q. Why was it that you included this sentence of that
10 five-minute conversation?
11 A. Because I think that encapsulates what I was trying to
12 get across to the Ombudsman's office so far as the changing
13 of mind, if I can put it like that, that, in my view,
14 Father Searle had said to me --
15
16 Q. I'm not asking you that. I'm asking you why it is
17 that you selected those 20-odd words of the five-minute
18 conversation you say you had?
19 A. Because that was my recollection. He was conveying
20 that aspect and he was trying to justify a little bit of
21 what occurred.
22
23 Q. Why did Father Searle have to justify anything?
24 A. Because I think - sorry. You're asking me what --
25
26 Q. The sequence of events is that these events, namely,
27 [AH]'s attendance at the presbytery in a drunken state, as
28 you understood it from his parents --
29 A. Yes.
30
31 Q. Some years before this?
32 A. Well, from him - from [AH] himself.
33
34 Q. Thank you. [AH] told you that he had gone out
35 drinking one night and had ended up at the presbytery at
36 Nelson Bay yelling obscenities. In effect, that's what he
37 said to you, isn't it?
38 A. Yes, and again, I suppose I can draw the point there,
39 I think that encapsulates briefly what was obviously a much
40 larger conversation, but, yes, I understand.
41
42 Q. That's what [AH] told you, isn't it?
43 A. Yes.
44
45 Q. And it was [AH] telling you that that caused you to
46 make contact with Father Searle, wasn't it?
47 A. That was only part of what caused me to make contact.

1
2 Q. When you spoke to Father Searle, you asked him whether
3 he recalled the incident during which [AH] had - or the
4 night upon which [AH] had gone to the presbytery?
5 A. Yes. Yes, I did.
6
7 Q. You told us about that in your evidence-in-chief?
8 A. Yes.
9
10 Q. You told us that [AH] had told you that he'd gone to
11 the presbytery and began to yell obscenities - this is at
12 transcript page 223, line 33 - saying, "You're all f...ing
13 paedophiles. You all do..." et cetera; that's what he
14 told you?
15 A. Yes.
16
17 Q. You were asked by my learned friend Ms Lonergan:
18
19 *Where does Father Searle come in?*
20
21 Your answer was:
22
23 *Father Searle came out in the middle of the*
24 *tirade.*
25
26 A. I believe so, yes, that's my recollection.
27
28 Q. That's what you believe because that's what [AH] told
29 you?
30 A. And that is right; that's what [AH] told me and other
31 people told me as well.
32
33 Q. Well, one thing is for certain, isn't it - we know
34 there was no-one with [AH] that night who is able to
35 corroborate what he said to Father Searle, as far as you
36 know; that's right, isn't it?
37 A. That is right, yes.
38
39 Q. He may have told others, who may have passed
40 information on to you?
41 A. No, no, it was conversations Father Searle had with
42 those others and what he relayed to them.
43
44 Q. What's reported to you is that Father Searle came out
45 in the middle of the tirade; that's what [AH] told you,
46 didn't he?
47 A. Somewhere during the course - I suppose I've used

1 the - I don't know if that's what he actually said. My
2 recollection is at some point in the tirade he came out; he
3 wasn't outside before it started.
4

5 Q. Were you telling the truth when you told the
6 Commissioner on 3 July, "Father Searle came out in the
7 middle of the tirade"? Is that what [AH] told you?

8 A. That may have been the words I used. I think the
9 point I was getting across was that Father Searle was not
10 out when [AH] began his abusive tirade and he didn't come
11 out after it had happened, he came out somewhere in the
12 middle of it occurring. As to what point, I don't know,
13 but he was certainly there for some part of it, according
14 to the information I received from [AH] and some other
15 sources.
16

17 Q. The information you received from [AH] was that he
18 turned up drunk to the presbytery and made the comments
19 you've told us about the other day; agreed?

20 A. Yes.
21

22 Q. As to whether or not Father Searle - assuming that
23 that is accurate, assuming that evidence is accurate,
24 assuming that that actually happened --

25 A. Yes.
26

27 Q. -- you don't know, do you, whether Father Searle was
28 in a position to hear that part of the tirade, do you?

29 A. I believe I am, yes.
30

31 Q. You weren't there, were you?

32 A. No.
33

34 Q. [AH] has told you that he came out in the middle of
35 the tirade; right?

36 A. Yes.
37

38 Q. And you rang him, didn't you, to see what his
39 recollection of events was?

40 A. Yes.
41

42 Q. Didn't you?

43 A. Yes.
44

45 Q. And you asked him, "Can you recall the incident?"

46
47 And he said yes, he could?

1 A. Yes.
2
3 Q. You asked him whether he'd be prepared to give a
4 statement about it and he said that he would?
5 A. Yes.
6
7 Q. He came into Nelson Bay police station, didn't he?
8 A. Yes.
9
10 Q. And he gave a statement?
11 A. Yes.
12
13 Q. And he did that willingly?
14 A. Yes.
15
16 Q. You know, don't you, that in the statement his
17 recollection of what was said by [AH] was "Nobody loves
18 me. Nobody loves me." That's what you know he told
19 Detective Brown, don't you?
20 A. Yes. Yes.
21
22 Q. This is a man that you have not met; is that the case?
23 A. No. I recall having met Father Searle at some stage.
24 No, sorry - and I don't believe, before that. I should add
25 that I don't think I met him before that occasion when
26 I'd phoned him up. I'm not suggesting that I knew him from
27 some prior occasion.
28
29 Q. You told us on 3 July, in your evidence-in-chief,
30 that - when my learned friend Ms Lonergan took you to the
31 conversation - ie, the conversation on the phone with
32 Father Searle on 16 May - you were asked specifically:
33
34 *... can you tell me what Father Searle told*
35 *you about that particular event?*
36
37 The event being the incident at which [AH] came to the
38 presbytery.
39 A. Yes.
40
41 Q. And your answer is this:
42
43 *Father Searle told me that [AH] was drunk*
44 *and upset and quite - basically, out of*
45 *control, for whatever reason that he didn't*
46 *know. He told me that the only thing he*
47 *recalls saying was that - trying to get*

1 *[AH] to leave and told him if he didn't do*
2 *so, he'd be calling the police. [AH] [sic]*
3 *went back to the presbytery at this point*
4 *and telephoned the mother of [AH].*

5
6 A. Sorry, No, Father Searle went back to the presbytery.

7
8 Q. I'm sorry, Father Searle went back. All right. When
9 you gave that evidence to the Commissioner, were you
10 telling the truth then?

11 A. I was telling the truth then, yes. But there was more
12 conversation, of course.

13
14 Q. Excuse me. So the truth is, you say, that he told
15 you - ie, Father Searle told you - that the only thing he
16 recalls saying was that, trying to get [AH] to leave, he
17 told him that if he didn't do so, he would call the police.
18 That's the truth, isn't it; that's what he told you?

19 A. That is part of what he told me. That is the truth,
20 yes.

21
22 Q. But that's only part of what he told you?

23 A. Yes.

24
25 Q. If there's another part of what he told you, why
26 didn't you, in that answer, give that evidence to the
27 Commissioner when you were asked the other day?

28 A. I believe it's already in my affidavit, my sworn
29 affidavit, and I felt that at some stage that - did I not
30 make the comment, and I don't know whether it was in
31 response to a question by Ms Lonergan or yourself, that he
32 made the comment that [AH] had been making filthy comments
33 about priests?

34
35 Q. Detective Chief Inspector Fox, can you tell us this:
36 You were asked a specific question. Can we take it when
37 you're asked a specific question in this Commission, you do
38 your best to tell the truth?

39 A. Yes.

40
41 Q. You give a full answer?

42 A. Yes.

43
44 Q. Here you were asked:

45
46 *... can you tell me what Father Searle told*
47 *you about that particular event?*

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When we go to the answer you gave, there is not a suggestion of any reference by Father Searle to [AH] saying anything about paedophile priests or anything of that nature?

A. I believe it was already in my evidence that I had said to this Commission part of the earlier conversation. When you've asked me - and I think everyone would understand, sometimes it is very difficult to get out a full answer as you've suggested.

Q. Particularly if it is a full answer that may not suit, particularly if the additional evidence you want to give is not suitable to your overall purposes.

MR COHEN: I object.

MR GYLES: I withdraw the question.

Q. You then told us that the concern - you say this at page 226, line 28.

And the material that I - was obtained in Father Searle's statement by Detective Brown and also what Father Searle told me over the phone on the 16th ...

Right?

A. Yes.

Q. This is at transcript 226, line 30:

... differed markedly from what the conversation was that relayed to me by [AH]'s parents.

A. Yes.

Q. Right? What was relayed to you by [AH]'s parents was, you say, do you, Father Searle acknowledging or saying something about the abuse of [AH] included matters relating to paedophile priests?

A. Along those lines, yes.

Q. What you're telling the Commission, at transcript line 30 on that page - what you're telling us - is that that matter, ie, the abuse by [AH], including matters

1 relating to or allegations as to paedophile priests, was
2 not in Father Searle's statement; that's the case, isn't
3 it?

4 A. I viewed it that what he ultimately placed in his
5 statement was very watered down from what he had conveyed
6 to me only days earlier and what I had learnt from [AH] and
7 his parents.

8

9 Q. This is the point, Detective Chief Inspector Fox:
10 what you are saying in that answer is that, when
11 Father Searle told you over the phone on the 16th - ie,
12 that all he could remember was that he was drunk and out of
13 control and he was trying to get him to leave, or words to
14 the effect of, "Nobody loves me. Nobody loves me" - your
15 concern was that what Father Searle had told you was
16 different from what [AH]'s parents had told you. That's
17 what you're saying, isn't it?

18 A. No. What I'm saying is what Father Searle placed in
19 his statement on the 19th was different in four things: it
20 was different from what [AH] had said in his statement, and
21 bear in mind my recollection is I photocopied the relevant
22 extract out of [AH]'s statement and handed that to
23 Detective Brown to work off in obtaining Father Searle's
24 statement. Secondly, it differed from what I had learnt
25 from [AH]'s father was part of the conversation he had with
26 Father Searle that night --

27

28 Q. No --

29 A. Sorry, sir, if I could finish. Thirdly, it differed
30 from the conversation that Father Searle had with [AH]'s
31 mother that night; and it differed, fourthly, from the
32 conversation that Father Searle told me about on the 16th,
33 three days before he made his statement. That was the
34 reason of my concern that I've raised before this
35 Commission, which is that, with all those things being
36 consistent - and I don't purport that the conversation was
37 an "I said/He said" of what was had between he and [AH] on
38 the night that this all occurred, but the general tone of
39 what he was saying, that [AH] was saying filthy things
40 about priests, was consistent with all of those things that
41 had occurred before. When he finally provided a statement,
42 none of that was included and all he was saying is that
43 [AH] was making some comment about his parents not loving
44 him. It differed markedly.

45

46 Q. Detective Chief Inspector Fox, you were telling the
47 Commission on 3 July that the concern you had was that

1 Father Searle's statement and also what Father Searle told
2 you over the phone on the 16th differed from the
3 conversation that was relayed to you by [AH]'s parents;
4 that's what you say at transcript line 30. You can have a
5 look at that.

6 A. Sorry, can you read that? I don't have a copy.

7

8 Q. Yes, I will read it out to you:

9

10 *... the material that I - was obtained in*
11 *Father Searle's statement by*
12 *Detective Brown and also what Father Searle*
13 *told me over the phone on the 16th differed*
14 *markedly from what the conversation was*
15 *that was relayed to me by [AH]'s parents.*

16

17 A. No, I - you know, that may not have come out the way
18 it was meant. The way I've explained it here this morning
19 is exactly the concerns that I raised. I may not have
20 articulated it in my answer there to the degree that would
21 give you a greater understanding, but it was clear in my
22 mind, when I answered that, that that's what I was actually
23 saying, which is that what he ultimately produced and
24 provided in his statement differed to all those things that
25 had gone before, and that's the reason that it raised
26 concerns in my mind. It was inconsistent with all those
27 preceding things.

28

29 Q. "All these preceding things", Detective Chief
30 Inspector Fox? We have the evidence given to you by [AH],
31 who was drunk at the time --

32

A. Yes.

33

34 Q. -- and is not in a position to say when it was that
35 Father Searle came out and what part of the tirade Father
36 Searle came out; that's right, isn't it?

37

A. I can't recall exactly now at what stage. You know,
38 [AH] was very clear on the fact that he was out there
39 yelling abuse. I think, off recollection, it was when he
40 threw a beer bottle at the presbytery that resulted in
41 Father Searle coming out. But his tirade in what he was
42 saying, my recollection is much of that continued.

43

44 Q. Is that right? When he said to you that Father Searle
45 came out in the middle of the tirade, what, you didn't
46 accept that?

47

A. That's what I'm saying. I don't think that those two

1 things differ. At some point, Father Searle came out and
2 the general tone of what [AH] was saying to me, he was
3 standing there, you know. I don't want to repeat it.
4 I realise there was a lot of colourful language mixed in
5 with what he was saying, but effectively along the lines of
6 you know, "You all f... Jesus", things of that nature.
7 Yes, it was a drunken tirade. I don't think there was -
8 [AH] never disputed he was quite intoxicated and triggered
9 by an earlier event with Father Searle that day. As he was
10 going through that - I think most people would imagine
11 you've got someone drunk and yelling abuse out the front of
12 your building where you're residing - at some point Father
13 Searle comes out and he hears much of what, of course --
14

15 Q. You say "much of what". On what possible basis,
16 Detective Chief Inspector Fox, can you say that Father
17 Searle heard much of what [AH] had said?

18 A. Because of what was relayed to me of the conversation
19 that Father Searle had had with [AH]'s - both his mother
20 and his father that night.
21

22 Q. Let's put that to one side, shall we?

23 A. Yes.
24

25 Q. Some years after the event, you're dealing with a
26 person who was drunk at the time and he told you that, in
27 the middle of the tirade, Father Searle came out?

28 A. Yes.
29

30 Q. You're an investigator of many years standing, aren't
31 you? That's correct, isn't it?

32 A. I have been around for a little while, yes.
33

34 Q. You're not seriously saying on the basis of what [AH]
35 said to you that you can say Father Searle heard much of
36 that tirade, can you?
37

38 MR COHEN: I object. The evidence isn't confined simply
39 to that proposition. It's been said three times now. It's
40 not a fair question, in the circumstances.
41

42 THE COMMISSIONER: I will allow it.
43

44 Q. I think you can put aside what was said to each parent
45 and, yes, carry on.

46 A. Putting aside what [AH]'s mother and father had told
47 me on the matter, it was still what he said to me over the

1 phone on the 16th. As I said, I don't purport it to be an
2 "I said/He said" of the conversation between he and [AH] on
3 the night, but what he said was consistent with what [AH]
4 had told me in his statement in that - Father Searle
5 obviously explained it to me in a polite way - he was
6 saying filthy things about priests. So that was
7 consistent, I felt.

8
9 MR GYLES: Q. A principal part of your logic is the fact
10 that you say Father Searle told you on the 16th of the fact
11 that the tirade included abuses including this paedophile
12 priest issue; right?

13 A. Yes. Along that tone, yes.

14
15 Q. You had every opportunity, didn't you, when you
16 provided your letter to the Ombudsman to include that part
17 of the conversation in that report, didn't you?

18 A. Oh, there's much more I could have included, yes, and
19 I have not put that it in.

20
21 Q. Do you accept that you had every opportunity in that
22 letter to include that aspect of your conversation with
23 Father Searle?

24 A. Yes, yes.

25
26 Q. You didn't do so?

27 A. No.

28
29 Q. Do you agree with me you had every opportunity when
30 you were asked by my learned friend, Ms Lonergan, "Can you
31 tell me what Father Searle told you about that particular
32 event?", that you had every opportunity in answering that
33 question to include the assertion or a recollection as to
34 Father Searle telling you that the abuse that he heard
35 included matters referring to "paedophile priests"?

36 A. I believe that was already on record, yes.

37
38 Q. Would you agree with me that you had every opportunity
39 in being asked that question to say that was part of the
40 conversation?

41 A. I didn't see the point in repeating it. It was
42 already on the record.

43
44 Q. Do you agree with me that you had every opportunity in
45 answering that question to include the part of the
46 conversation you're now referring to about the paedophile
47 priest aspect?

1 A. I could have added it again, yes.

2

3 Q. Do you agree with me you had an opportunity in
4 answering that question --

5 A. Yes, I could have added that again, yes.

6

7 Q. Okay. Do you agree with me that the proposition that
8 Father Searle telling you that, during the conversation on
9 the 16th, is entirely inconsistent with the answer you
10 gave, which was that:

11

12 *... the material that I - was obtained in*
13 *Father Searle's statement by*
14 *Detective Brown and also what Father Searle*
15 *told me over the phone on the 16th differed*
16 *markedly from what the conversation was*
17 *that was relayed to [AH]'s parents?*

18

19 A. Yes. It is probably poor wording the way I worded it
20 there.

21

22 Q. Do you agree with me that --

23 A. But I think you could read it - I understand what
24 you're putting to me is that you're reading it, but I think
25 in the way I was giving it, I may not have explained it as
26 clearly, but it was very clear in my mind what I was
27 intending to say in response to that question, and that is
28 the evidence that I've given here today.

29

30 Q. The question is: do you accept that what you have
31 said in that answer to my learned friend Ms Lonergan is
32 entirely inconsistent with that matter, ie, the abuse of
33 paedophile priests being included in your conversation with
34 Father Searle on the 16th?

35 A. No, I don't think it is inconsistent with it.
36 I probably could have given a much fuller answer, you know,
37 that may have clarified it, as I, fortunately, have been
38 able to do here today, but I --

39

40 Q. But Detective Chief Inspector Fox, what you're saying
41 in that answer is that your complaint is that when Father
42 Searle spoke to you over the phone, he wasn't telling you
43 the same thing that he had told, you say, [AH]'s parents?

44 A. No, that wasn't point I was making at all. What I was
45 trying to say there is that what he had told me over the
46 phone differed markedly from what he ultimately placed in
47 his statement.

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* Q. That's what you're saying now, but what I'm putting to you is you had various opportunities to say that, when you were on oath - including when you were on oath - and you didn't do so?

MR COHEN: I object to that question, having regard to the passage of evidence that followed that question being examined. The very next question does tend to put that in a different light and, in those circumstances, that's not a fair question.

THE COMMISSIONER: No, I think it is a fair question, Mr Cohen.

MR COHEN: If the Commission pleases.

THE WITNESS: Sorry, Mr Gyles.

MR GYLES: Could that question be read back, please.

(Question marked * read)

THE WITNESS: No, I understand my affidavit is part of the evidence. The evidence that I had given earlier in saying that Father Searle had said that - or attributed part of what was being said by [AH] was that he was saying filthy things. I take your point. I could have expanded much further in my answer, but I didn't for the reason that I felt it was already on record and I didn't need to repeat it. But that is the answer I gave to that question.

MR GYLES: Q. You go on in your evidence, don't you - the proposition that Father Searle had told you in this conversation that the tirade had included matters relating to paedophile priests comes at transcript 230, line 35, when you say:

... I put to him over the telephone that [AH] said that he had been making offensive comments about sexual acts perpetrated by priests against kids.

A. Yes.

Q. Can I suggest to you that that is nonsense that you put that to him?

1 A. No.
2
3 Q. I suggest to you that it is nonsense that he said to
4 you during this conversation that he was talking about
5 filthy things that priests do to children?
6 A. No.
7
8 Q. Can I suggest to you that Father Searle, in the
9 conversation on 16 May, did not say to you anything of the
10 sort?
11 A. He did.
12
13 Q. And that his recollection of the tirade, to the extent
14 that he did tell you about it, was limited to what he put
15 in his police statement, ie, "Nobody loves me. Nobody
16 loves me:
17 A. Sorry, I should clarify that. That may have been part
18 of what he said, but what I'm saying is the important gist
19 of what he said related to the comments about clergy and
20 filthy acts and things of that nature.
21
22 Q. Can I suggest to you, Detective Chief Inspector Fox,
23 the reason you had made contact with Father Searle was that
24 you were trying to get him to give evidence of that type,
25 to corroborate the complainant [AH]?
26 A. The reason I rang him is that I felt that the evidence
27 of [AH] and his behaviour that night were indicative of the
28 behaviour of an individual that had been sexually abused.
29 I did not feel that the conversation would be admitted into
30 the criminal trial of Father Fletcher from [AH]'s parents,
31 and that's why I was desirous of having it directly from
32 Father Searle as a conversation that had he with the
33 victim. Whether it would have got into trial or not is
34 debatable. But it was important, yes.
35
36 Q. That was what you wanted him to say, wasn't it?
37 A. No. I wanted him to tell the truth and what concerned
38 me is that what he ultimately provided in his statement -
39 and this report that was done to the Ombudsman was done
40 just over a week later, and it was obviously clearly in my
41 mind at the time that what he had placed in his statement -
42 and I had raised it with Detective Brown that very day,
43 I believe - is that it didn't contain what he had said to
44 me along the lines of only three days earlier.
45
46 Q. It didn't contain what you wanted for the case; that
47 was your concern, wasn't it?

1 A. When you're saying "what I wanted for the case", it
2 sort of sounds like I was trying to put words in his mouth.
3 That's not what I was after. What I was after - and I was
4 desirous of including it in his statement because that's
5 what had he told me three days earlier and it was also
6 consistent with what he had told [AH]'s parents.

7
8 Q. If you're preparing this three days later and using
9 quotation marks as to what he said to you --

10 A. Sorry, this is a bit --

11
12 Q. -- how would you possibly exclude the very piece of
13 evidence that you were frustrated about him not including
14 in the statement?

15 A. Because this report to the Ombudsman wasn't - it
16 wasn't going to be an investigation by them of whether -
17 of necessarily the matters involving Father Searle. It
18 was to make up part of a picture that the Ombudsman was
19 going to look at surrounding the bishop's handling of the
20 Father Fletcher matter and the non-standing down of
21 Father Fletcher and removing him from contact with
22 children. That was their primary concern. This was only a
23 very small portion that was just added to get the Ombudsman
24 a bit of background of information on other things that had
25 been transpiring through the course of the investigation,
26 but I --

27
28 Q. Another person from the church to attempt to drag
29 through the mud; is that it?

30
31 MR COHEN: I object.

32
33 MR GYLES: I'll withdraw the question.

34
35 Q. How can your evidence possibly reconcile with this
36 evidence you gave on 3 July:

37
38 *... he told me that the only thing he*
39 *recalls saying was that - trying to get*
40 *[AH] to leave and told him if he didn't do*
41 *so, he'd be calling the police ... went*
42 *back into the presbytery [and phoned his*
43 *mother].*

44
45 A. As I've said before, the other evidence is
46
47 in my affidavit. I believe I also gave the other evidence

1 and I haven't repeated it there, but - and that's why
2 I made that comment. I felt that was already being taken
3 on board and I didn't need to repeat myself.
4

5 Q. Can I put to you that Father Searle said to you
6 nothing of the sort in respect of [AH] having complained
7 about filthy matters concerning priests?

8 A. He did say that.
9

10 Q. Can I put to you that he never used the words "and in
11 the light of what has now come out, that may be
12 understandable"?

13 A. He certainly did, yes.
14

15 Q. I put to you that there was no further conversation,
16 after he gave his statement, with you?

17 A. Sorry, I - I don't understand that.
18

19 Q. Can I put to you that, after he gave his police
20 statement, there was no further conversation with you; do
21 you agree with that?

22 A. At any time over the next 10 years or when?
23

24 Q. Immediately or in the period shortly after the
25 statement was given?

26 A. I don't think I took it up with him again after his
27 statement was given. I would agree with that, yes.
28

29 Q. This is a man, you would agree, that in your report to
30 the Ombudsman you're certainly casting aspersions about the
31 way in which he dealt with the police, aren't you?

32 A. Yes, I am.
33

34 Q. This is a man who happily spoke to you when you rang
35 him on the phone?

36 A. Yes.
37

38 Q. This is a man who happily went into Nelson Bay police
39 station?

40 A. Yes.
41

42 Q. This is a man who you did not even have the courtesy,
43 on the evidence you've just given, of raising with him the
44 concerns you had after he gave the statement?

45 A. He had already made and signed his statement. You
46 know, it was clear to me that - well, my understanding
47 was - he didn't wish to include in his statement what

1 I considered to be important aspects, and from the
2 conversation we had three days before him giving that
3 statement, you know, I'm not Father Searle, but I wouldn't
4 imagine it would leave too much doubt as to what the
5 importance of what was needed to be placed in his statement
6 was. You know, going back and revisiting it, I felt that
7 it was already fairly clear to him at that time. He may
8 have had a different view. He may explain to this
9 Commission that he had a different view on it, but it
10 doesn't make me back away from the evidence that I have
11 given.

12
13 Q. I wouldn't expect you to, but the point of my question
14 was: despite the fact that you were casting aspersions
15 over him, over his character, in your report to the
16 Ombudsman, on your evidence you've given, you didn't even
17 give him the courtesy of raising the issue with you?
18 A. No.

19
20 MR GYLES: I have no further questions. I would seek a
21 non-publication order in respect of the evidence given in
22 my cross-examination this morning. The evidence that was
23 given previously was reported in the press. This is a
24 parish priest. The evidence he's giving is of extremely
25 tangential relevance to this inquiry.

26
27 THE COMMISSIONER: Wouldn't you want your challenge to the
28 evidence being part of the record?
29

30 MR GYLES: I would be perfectly content, Commissioner,
31 with you making a direction to the press that it be
32 reported that way, but I suspect it won't be.

33
34 THE COMMISSIONER: The other evidence was reported, do you
35 say?
36

37 MR GYLES: It was, yes. That's our concern. Our concern
38 is that Father Searle's position - in my respectful
39 submission, there is absolutely no public interest in
40 Father Searle's character being dealt with in the way that
41 it was after this evidence was given. We do not want the
42 evidence given this morning - in other words, Detective
43 Chief Inspector Fox's assertions that he's continued to
44 make and says he doesn't resile from - to be repeated.
45 Obviously, if there could be some order that there be a
46 fair reporting of Father Searle's position, that would be
47 wonderful, but I'm not sure you have the power to do that.

1
2 MS LONERGAN: Commissioner, you don't have the power to do
3 that.

4
5 THE COMMISSIONER: No, of course not.

6
7 MS LONERGAN: Can I be heard on Mr Gyles application?

8
9 THE COMMISSIONER: Yes, Ms Lonergan. I'm inclined to want
10 the whole picture.

11
12 MS LONERGAN: That's right. The appropriate way for this
13 matter to be dealt with is for Father Searle to give his
14 version of events, which he will be doing, he's on the
15 witness list. Unfortunately, in matters of this nature
16 where there's an examination of assertions and
17 counter-evidence is led on subsequent days, the position is
18 that the assertions can be reported and then the
19 counter-assertions can be reported. This is a public
20 inquiry. The state government wanted this matter run as a
21 public inquiry. It defeats the purpose to have
22 cherry-picking of evidence that suits one party to be
23 published and what does not suit a party to be not
24 published.

25
26 The proper way the evidence should be managed is for
27 it to be reported in the usual way. On occasion
28 reputations may have question marks raised about them. We
29 would expect those present in court to fairly report the
30 evidence where a significant challenge has been made in
31 particular in relation to that aspect of the evidence.

32
33 THE COMMISSIONER: Yes.

34
35 MS LONERGAN: It seems more appropriate that it be --

36
37 THE COMMISSIONER: I would think it would be fair for
38 Father Searle to have that open to the public, frankly,
39 Mr Gyles.

40
41 MR GYLES: May it please you, Commissioner.

42
43 MR COHEN: Might I be heard?

44
45 THE COMMISSIONER: Yes.

46
47 MR COHEN: From the perspective of my client, I adopt what

1 my learned friend Ms Lonergan has had to say. Might
2 I emphasise, from the perspective of my client, that there
3 is the simple proposition that this morning my client's own
4 reputation has been subjected to such scrutiny. It has
5 been put to him that he's wilfully not telling the truth.
6 Those matters properly, in my submission, should be exposed
7 widely to the community in the interests of open justice
8 and, therefore, all are in a position to decide on the
9 evidence what the proper conclusion is, apart from what
10 conclusions ultimately you, importantly, may make in your
11 report.

12
13 THE COMMISSIONER: Thank you, Mr Cohen. I'm not disposed
14 to order that any part of this morning's evidence not be
15 published.

16
17 MR GYLES: May it please you, Commissioner.

18
19 THE COMMISSIONER: Ms McLaughlin.

20
21 MS LONERGAN: Would that be a convenient time?

22
23 THE COMMISSIONER: Yes. Thank you.

24
25 **SHORT ADJOURNMENT**

26
27 MS LONERGAN: Commissioner, last Tuesday, around about
28 pages 192 to 195 of the transcript and again at pages 202
29 to 214 of the transcript, I attempted, in examining
30 Detective Chief Inspector Fox, to deal with a particular
31 matter regarding the possession or otherwise of homosexual
32 pornographic material allegedly belonging to Fletcher in
33 terms of this witness's evidence.

34
35 I attempted to deal with it in a manner that was
36 delicate and took into account not involving persons who
37 didn't need to be involved. It appears that, in attempting
38 to be delicate, some unfairness may result unless I deal
39 with it in a more open manner.

40
41 So, Commissioner, I seek your leave to --

42
43 THE COMMISSIONER: Do you propose to ask some more
44 questions, Ms Lonergan?

45
46 MS LONERGAN: Yes, please, Commissioner.

47

1 <FURTHER EXAMINATION BY MS LONERGAN:
2

3 MS LONERGAN: Q. Detective Chief Inspector Fox, do you
4 recall you gave some evidence in answer to some questions
5 by me on last Tuesday about information that a Mr Hanley
6 gave to you on 29 December 2003?

7 A. Yes.
8

9 Q. I'm going to show you some extracts from your duty
10 book, and I have a copy for the Commissioner. I'll have
11 those passed around the Bar table, together with another
12 document which I'll pass around in a minute. First of all,
13 do you see there's an entry in your duty book of
14 29 December 2003?

15 A. Yes.
16

17 Q. In that, you note your conversation with Mr Hanley?
18

19 A. Yes.
20

21 Q. First of all, did you take any formal police statement
22 from Mr Hanley?

23 A. No.
24

25 Q. Why not?

26 A. At the end of the day, I didn't - it was my belief
27 that the information he provided would not be able to be
28 admitted to the Fletcher trial on the basis of relevancy.

29 Q. You did not consider it to be an important matter that
30 Mr Hanley had raised with you that magazines of a
31 homosexual pornographic nature as well as videos had been
32 found at the presbytery at which Fletcher was present?

33 A. I considered it important, but I - the information was
34 of such a nature that, the way it unfolded, we could not
35 argue for its admission into the trial.
36

37 Q. No, I'm not asking about that. What I'm asking about
38 is: on 29 December 2003 when you spoke to Mr Hanley, it
39 would have been important, would it not, to take a
40 statement from Mr Hanley so you could have a proper record
41 of what Mr Hanley saw at the Lochinvar presbytery?

42 A. No, I didn't think of getting a statement that day.
43

44 Q. In your duty book, however, you have made some notes
45 of your conversation with Mr Hanley; is that right?

46 A. Yes, I have.
47

1 Q. I'm going to hand up a typewritten document. We will
2 use that to assist in deciphering your handwriting on the
3 duty book, Detective Chief Inspector Fox. That typewritten
4 document was prepared in the morning tea adjournment based
5 on you dictating what you were reading in your duty book?

6 A. Yes.

7

8 Q. The relevant parts in relation to Mr Hanley on
9 29 December, could you read out what your duty book entry
10 says regarding that entry, which was Monday, 29 December
11 2003?

12 A. Yes:

13

14 *Speak to Ray Hanley - re Fletcher and he*
15 *was called to Lochinvar Presbytery shortly*
16 *after Fletcher took over and was shown*
17 *pornographic homosexual videos and*
18 *magazines and told by Fletcher that these*
19 *items must have belonged to previous*
20 *priests - Hanley concerned these items may*
21 *have belonged to Fletcher and could have*
22 *been somehow involved in the brief ...*

23

24 Q. "Somehow involved in the brief", was that something
25 Mr Hanley said to you or you said to him?

26 A. No. That was his concern that he raised to me as the
27 basis for his phone call to me.

28

29 Q. The concern was, as you apprehended it, that it may be
30 relevant that Fletcher had, at the presbytery he was then
31 living at, homosexual videos and magazines?

32 A. Yes.

33

34 Q. Did you inquire from Mr Hanley as to whether any of
35 these homosexual videos or magazines included images of
36 underage boys?

37 A. Yes, I did.

38

39 Q. And you have made no note about that in your duty
40 book?

41 A. No - sorry. No, not on that date, no.

42

43 Q. What date did you make that inquiry of Mr Hanley?

44 A. Sorry, I've made no note in my duty book as on that
45 date, yes.

46

47 Q. Did you have more than one conversation with Mr Hanley

1 regarding the content of the pornographic homosexual videos
2 and magazines that he saw at the Lochinvar presbytery?

3 A. I believe I did speak to him on more than one
4 occasion, but I cannot assist now with the dates or times
5 when that occurred.

6
7 Q. Did you make any note of your conversations with
8 Mr Hanley other than the one we're just looking at?

9 A. I may have. I don't - I just don't recall whether
10 I did or didn't, but it's possible I may have.

11
12 Q. Wasn't it important to make sure that there was a
13 notation of what Mr Hanley saw and the nature of this
14 pornographic material? I don't know why you're looking
15 upwards.

16 A. No, sorry, I do that. I apologise. I only do that
17 for the reason I - it's a habit I have when I'm trying to
18 think of something. It was important. Obviously, it would
19 have been preferable if I'd have written more in my duty
20 book that day. I don't know whether I may have written
21 other material on documents attached to the Fletcher brief;
22 it's possible, but I don't recall.

23
24 Q. You took no statement from Mr Hanley --

25 A. No.

26
27 Q. -- regarding what the nature of the images was that he
28 saw at the Lochinvar presbytery?

29 A. No, I did not.

30
31 Q. Do you recall whether Mr Hanley told you whether the
32 images included underaged males?

33 A. My recollection is I specifically asked him the
34 question, so it wasn't volunteered by him. I believe
35 I asked him the question, "Did any of the images show any
36 underaged males or young boys?", and his response was,
37 along the lines was, he was quite - in short, he said that
38 he didn't look that hard. Once he saw what the images were
39 on the covers, et cetera, he had no desire to look.

40
41 Q. Mr Hanley was unable to confirm whether the material
42 had any images of underaged males in it?

43 A. That's correct.

44
45 Q. But wasn't that also an important matter for you to
46 note, given that the criminal charges which you were
47 investigating regarding Fletcher were to do with underaged

1 males?
2 A. If --
3
4 Q. That's a "Yes" or "No" answer?
5 A. Sorry. Yes.
6
7 Q. It was important?
8 A. Yes, it was important.
9
10 Q. But you got no statement from Mr Hanley --
11 A. No.
12
13 Q. -- on that important issue?
14 A. No, I haven't.
15
16 Q. Would you agree that it would be far more relevant to
17 your investigation of Fletcher if the images showed
18 underaged boys than if it was adult pornography?
19 A. I think it would have been relevant regardless; but
20 I take your point, it would have been more concerning if
21 they had been underaged, yes.
22
23 Q. It's not just more concerning. It would have been
24 relevant if it was underage pornography and not relevant if
25 it was adult pornography; would you agree with that?
26 A. No.
27
28 Q. The fact that Mr Hanley was unable to confirm that it
29 showed underaged males in the pornography is not a fact
30 that you have recorded in your note of 29 December, is it?
31 A. No, it is not. He was unable to assist one way or the
32 other.
33
34 Q. But it would have been helpful to have recorded, and
35 thus excluded, whether that pornography included images of
36 underaged males, as least as far as Mr Hanley was able to
37 assist you, wouldn't it?
38 A. Yes.
39
40 Q. You attended the Raymond Terrace Catholic presbytery
41 to speak to Father Harrigan?
42 A. Yes.
43
44 Q. Why did you do that?
45 A. Because I was aware that Father Harrigan had resided
46 at the Lochinvar presbytery prior to the appointment of
47 Father Fletcher.

1
2 Q. Why was that relevant?
3 A. Because of the - because of the conversation relayed
4 to me by Mr Hanley the previous day where he said Fletcher
5 told him that these items must have belonged to the
6 previous priest.
7
8 Q. So the previous priest was Father Harrigan?
9 A. Yes.
10
11 Q. Did you question Fletcher regarding the situation as
12 to the ownership of those items?
13 A. I believe I - I haven't been able to read back through
14 Fletcher's interview, but that would have been the
15 appropriate place to do so. I would imagine that I would
16 have asked him when he was interviewed in two thousand -
17 sorry. I retract that. No, I never, because at that
18 stage, sorry, the situation was that I had already
19 interviewed and charged Father Fletcher and his trial was
20 pending. In that situation of course I wouldn't have been
21 able to ask him that question.
22
23 Q. Is it fair to say that by the time this information
24 came to your knowledge, you would not have been using it
25 for the Fletcher prosecution anyway?
26 A. Yes.
27
28 Q. That is correct, is it?
29 A. Ultimately, I wasn't able to use that information.
30
31 Q. That's not my question. At the time the information
32 came to you, that is on 29 and 30 December 2003, you were
33 not able to use it in the Fletcher prosecution anyway, were
34 you?
35 A. No.
36
37 Q. So what happened with the pornography and who owned it
38 was entirely irrelevant to your investigation as it stood
39 at that time, December 2003?
40 A. To --
41
42 Q. Do you accept that proposition?
43 A. In respect to the victim [AH].
44
45 Q. No, at all?
46 A. No.
47

1 Q. So you say that the ownership of the pornography would
2 have been material that you would have led in the Fletcher
3 prosecution?
4 A. In respect to another victim, yes.
5
6 Q. So, on 30 December, your intention of going to the
7 Raymond Terrace presbytery was to confirm ownership of the
8 pornography, was it?
9 A. Yes.
10
11 Q. Before you went, had you already decided that the
12 pornography must have been owned by Fletcher?
13 A. I hadn't decided that, no. I maintained a strong
14 suspicion based on information I already had, but I wasn't
15 certain of that.
16
17 Q. The information you already had being that some other
18 victim of Fletcher's said that, on an occasion, he was
19 shown material? Is that the other material you had?
20 A. I didn't have - my recollection is that other
21 information didn't come to me till --
22
23 Q. Until 2004?
24 A. That's correct.
25
26 Q. So what is the other information you had in December
27 2003 that led you to suspect that the material belonged to
28 Fletcher?
29 A. The information I had was that although it didn't
30 specifically name - mention videos and magazines, there
31 were - there were documents of an offensive nature alleged
32 to have been in the possession of Fletcher that I felt
33 would have been of assistance to me in the [AH] trial.
34
35 Q. But that wasn't homosexual videos or homosexual
36 magazines, was it? It was material in the nature of
37 cartoons and the like, was it not?
38 A. Yes. Yes.
39
40 Q. So you had no evidence at the time you went to speak
41 to Father Harrigan that Fletcher had in fact been the owner
42 or possessor of homosexual videos or magazines?
43 A. I had evidence that he had, at some stage, possessed,
44 but I didn't have evidence that was strong enough to say
45 that he owned those items.
46
47 Q. In terms of the material that Mr Hanley had seen, you

1 had no evidence, on the day you went to talk to Father
2 Harrigan, that Fletcher owned the items. All you had, at
3 that stage, was Mr Hanley telling you that Fletcher said
4 that these must have belonged to the previous priest?
5 A. That's correct.
6
7 Q. That's the only evidence you had in relation to those
8 items that Mr Hanley had seen?
9 A. Yes.
10
11 Q. Did you have an open mind when you went to see
12 Father Harrigan in terms of ownership of the pornographic
13 material?
14 A. I had suspicions, but I did have an open mind, yes.
15
16 Q. The suspicions were that you thought they belonged to
17 Fletcher, didn't you?
18 A. In view of the nature of the allegations, yes.
19
20 Q. So you didn't go with an open mind to speak to
21 Father Harrigan on 30 December, did you?
22 A. I take your point and I would have to agree with that,
23 yes. Not completely open, I was undecided, but I had
24 suspicions, yes, would be a fair comment.
25
26 Q. You were of the view that the material belonged to
27 Fletcher, weren't you?
28 A. Yes.
29
30 Q. You've made a note in your duty book on 30 December,
31 if you wouldn't mind reading that out from the note and/or
32 the transcript that's been provided to you that you have
33 provided to us.
34 A. Yes:
35
36 *Maitland Police Station - speak to Robbs*
37 *and contact Father Des Harrigan.*
38
39 Q. I'm going to stop you there. Robbs is another
40 officer?
41 A. Yes. He was, I believe, a trainee detective at
42 Maitland at the time.
43
44 Q. Did he come out to Raymond Terrace with you?
45 A. He did.
46
47 Q. Was he present when you spoke to Father Harrigan?

1 A. Yes, he was.

2

3 Q. Continue.

4 A. Yes:

5

6 *9.50am Detective Robbs to Raymond Terrace*

7 *Catholic Church Presbytery speak to*

8 *Father Harrigan. Hanley information told*

9 *Harrigan that? had received information.*

10 *He had previously been at*

11 *Lochinvar presbytery and that*

12 *James Fletcher later showed persons that he*

13 *allegedly located homosexual and*

14 *pornographic videos and magazines.*

15

16 Q. I'm going to stop you there. Just to get some context
17 in what you've recorded in your duty book, would you agree
18 with me that that sentence you've just read out, "He had
19 previously been at Lochinvar presbytery and that James
20 Fletcher later showed person that he allegedly located
21 pornographic videos and magazines" doesn't make sense?

22 A. Yes, it does.

23

24 Q. Can you explain what is meant by your record there?

25 A. What it is, my recollection was that --

26

27 Q. No, I don't want to ask you about your recollection.
28 I want you to assist with explaining what you mean by your
29 note in the duty book starting with "He had previously been
30 at Lochinvar presbytery"?

31 A. He had previously --

32

33 Q. Who is "he"?

34 A. "He" being Father Des Harrigan.

35

36 Q. Right.

37 A. And I put that in context with the entry the previous
38 day about the former priest.

39

40 Q. All right.

41 A. It is poorly worded by me.

42

43 *... and that James Fletcher later showed*

44 *persons that he allegedly located*

45 *homosexual and pornographic videos and*

46 *magazines.*

47

1 Q. Can you just check the handwritten copy of your duty
2 book and just ensure that we have down what you have
3 written there correctly.
4 A. (Witness does as requested). Yes, there is a word
5 crossed out there that I - well, I'm assuming it is crossed
6 out, but I don't know. It may --
7
8 Q. Let's try and see if we can discern meaning by going
9 through it:
10
11 *He had previously been at Lochinvar*
12 *presbytery.*
13
14 That's a reference to Father Harrigan?
15 A. It is.
16
17 Q. And that Father Harrigan was the previous occupier of
18 Lochinvar presbytery prior to Fletcher taking over in
19 mid-2002; is that the history?
20 A. August 2002, yes.
21
22 Q. Thank you.
23
24 *James Fletcher later showed persons --*
25
26 What do you say that is a reference to?
27 A. That's poorly worded because my recollection is
28 Mr Hanley said that he came across the articles in a chest
29 or a drawer or something and pulled them out.
30
31 Q. "He" being Hanley?
32 A. Sorry, "he" being Hanley.
33
34 Q. Yes?
35 A. And it is the other way around; that Hanley showed
36 Fletcher. But I concede that's what I've written down
37 there, that Fletcher later showed --
38
39 Q. Where you are referring to "James Fletcher showing
40 persons", there you're referring to Hanley, are you?
41 A. Yes.
42
43 Q. You're telling Harrigan, are you, from that note, that
44 Fletcher showed somebody this pornographic material?
45 A. Yes.
46
47 Q. And the somebody is or the person is Hanley?

1 A. Yes.
2
3 Q. You've used the word "persons"?
4 A. I have.
5
6 Q. That does seem an odd way to explain to Harrigan that
7 what you're investigating is Father Fletcher having found
8 material at the presbytery and showing it to a single
9 person.
10 A. Yes.
11
12 Q. Are you able to assist with --
13 A. I'm not. I don't know why --
14
15 Q. -- what you were doing?
16 A. -- I've written "persons". The only one I had
17 knowledge of was Hanley and I'm trying to think if there
18 was an explanation for that, but I - for whatever reason
19 I put an "S" on person which shouldn't be there.
20
21 Q. Is the position that you were communicating to
22 Harrigan that pornographic material, being videos and
23 magazines, had been found at the Lochinvar presbytery?
24 A. Yes.
25
26 Q. You're not attempting to communicate anything further
27 by that comment there?
28 A. No, I'm not.
29
30 Q. And then you go on?
31 A. Yes:
32
33 *Asked did these belong to you or Fletcher?*
34 *Stated "they were mine".*
35
36 That is, I asked the question, I asked, "Did these belong
37 to you or Fletcher?", was my question, and by that I mean
38 that Father Harrigan responded, "They were mine".
39
40 Q. Did you describe the volume or quantity or titles or
41 images so that Father Harrigan could know what it was you
42 were talking about in terms of the material?
43 A. No, because I - Mr Hanley wasn't able to provide --
44
45 Q. Any of that information?
46 A. -- very much more. As he said, he was quite taken
47 aback, I think by --

1
2 Q. Don't worry about what you think he felt about things.
3 You see your note on 29 December simply records that there
4 were pornographic homosexual videos and magazines, but
5 there's no information regarding quantity?
6 A. That's right.
7
8 Q. Can I ask you this: were you provided with a copy of
9 any of this material by Mr Hanley?
10 A. No.
11
12 Q. Did you at any time see what it was that Mr Hanley was
13 referring to?
14 A. No.
15
16 Q. All right. Go on, if you wouldn't mind continuing?
17 A. I asked him the question:
18
19 *Did these belong to you or Fletcher?*
20 *He stated, "They were mine."*
21 *I said, "Are you sure?"*
22 *He said, "Yes".*
23
24 Q. Did you believe him when he said, "Yes"? That's a
25 "Yes/No" answer, isn't it? Did you believe him or not?
26 A. No.
27
28 Q. Was the reason that you didn't believe him that you
29 went there with a preconceived idea that the material
30 belonged to Fletcher?
31 A. I don't know whether I'd put it in as strong a term as
32 that. I had a strong suspicion that they belonged to
33 Fletcher, I would prefer to say.
34
35 Q. Would you agree with me that it is a matter --
36 A. And that was preconceived, yes.
37
38 Q. Would you agree with me that it is a matter of some
39 personal embarrassment for a Catholic priest to be
40 admitting that the material that you've drawn to his
41 attention was owned by him?
42 A. Yes.
43
44 Q. Do you agree with me it would be odd for a Catholic
45 priest to be prepared to acknowledge it was his material if
46 it wasn't?
47 A. Yes.

1
2 Q. So your impression that Father Harrigan was not being
3 honest when he gave that answer is purely fuelled by your
4 preconceived opinion that the material belonged to
5 Fletcher, isn't it?
6 A. Partly, yes.
7
8 Q. So you didn't go there with an open mind and you
9 didn't question Harrigan with an open mind, did you?
10 A. To that degree, yes.
11
12 Q. You're agreeing with my proposition?
13 A. Yes, I am.
14
15 Q. Isn't it the job of a police officer, when they
16 interview members of the public or have conversations with
17 members of the public relating to their official duties,
18 that they keep an open mind and record what's said?
19 A. I don't know whether I - no, I don't think I can agree
20 with that.
21
22 Q. I suggest to you that you recorded what was said, you
23 said, "Are you sure?" And he said, "Yes"?
24 A. Yes.
25
26 Q. That's an accurate transcript of your exchange with
27 Father Harrigan with respect to the ownership of the
28 pornography; that's the position, isn't it?
29 A. Yes.
30
31 Q. But you still entertained a prejudice that the
32 material was owned by Fletcher, didn't you?
33 A. Yes.
34
35 Q. If you wouldn't mind continuing reading your note. It
36 says:
37
38 *I said, "Do you have them?"*
39
40 Do you see that?
41 A. Yes:
42
43 *I said: Do you have them? Did*
44 *James Fletcher hand them back to you?*
45
46 Q. I'm going to stop you there. Why did you say, "Did
47 James Fletcher hand them back to you"?

1 A. Because he was asserting that he was the owner and
2 I was asking on the basis of what he was maintaining, that
3 Fletcher, if he did it - was the original owner, Fletcher
4 would have had to have handed them back.
5
6 Q. Then he said, "Yes, he did and I have destroyed them"?
7 A. Yes.
8
9 Q. Did you make the note in your handwritten duty book
10 record at the time you had the conversation with Father
11 Harrigan?
12 A. No, I made that, I believe, when I returned to the
13 police station.
14
15 Q. On the same day as the conversation occurred?
16 A. Yes.
17
18 Q. Are you confident that that was his answer, "Yes, he
19 did and I have destroyed them"?
20 A. Yes. Yes, I am.
21
22 Q. Did you believe him when he said, "Yes, he did and
23 I have destroyed them"?
24 A. I wasn't convinced.
25
26 Q. Did you believe him or not?
27 A. I think - that requires a "Yes" or "No" response and
28 I don't think I can fairly answer that with a "Yes" or a
29 "No"..
30
31 Q. Is the reason you can't answer it fairly with a "Yes"
32 or "No" because you had an overwhelming prejudice to the
33 effect that the material was owned by Fletcher?
34 A. No. The reason I make that comment it is not a "Yes"
35 or a "No", if I may - sorry, excuse me.
36
37 Q. Have some water.
38 A. The reason I make that comment, I suppose, in
39 policing, we consistently deal with people that are not
40 always up-front and honest with police and it is always
41 part of our job to try and make an assessment as to whether
42 or not they are or are not telling the truth.
43
44 Q. I'm going to ask you a question about that. Did you
45 form the view that Father Harrigan was lying to you?
46 A. I wouldn't be prepared to say my view was that strong.
47

1 Q. The issue about possession and or destruction of
2 pornographic material was important, wasn't it?
3 A. Yes.
4
5 Q. Did you take a statement from Father Harrigan
6 regarding the matters that you have noted in your duty
7 book?
8 A. No.
9
10 Q. Why not?
11 A. Because I - I could see no way that that information
12 would be admissible at trial.
13
14 Q. Was it the position that, because it didn't fit into
15 your case theory, you didn't get Father Harrigan to commit
16 it to a statement?
17 A. No, that wasn't the reason, no.
18
19 Q. Are you sure?
20 A. Yes.
21
22 Q. And that would be most improper to go about
23 investigations in that fashion, wouldn't it, to not take
24 formal statements from people where information didn't fit
25 in with your personal case theory?
26 A. No, what my view of --
27
28 Q. No - was it improper or not improper to fail to take
29 statements about matters because they don't fit in with
30 your case theory? You can accept or reject that
31 proposition.
32 A. Improper.
33
34 Q. It would be improper?
35 A. Yes.
36
37 Q. Go on, please, and read what else you have noted
38 Father Harrigan said to you? Read it out loud, please?
39 A. I'm sorry, I'm just finding out where I was up to.
40
41 Q. It starts:
42
43 *When is this all going to stop?*
44
45 A. He said - well, it does not say "He said":
46
47 *When is this all going to stop? It has*

1 *hurt a lot of people.*
2 *I said I would expect James Fletcher's*
3 *trial about mid-2004.*
4 *I said I am sorry for any hurt or*
5 *embarrassment this has caused you. Have*
6 *you ever seen any similar material in*
7 *possession of Jim Fletcher.*
8 *I suspect he had some but I never saw him*
9 *with it.*

10
11 Q. With that last sentence, "I suspect he had some but
12 I never saw him with it", your note doesn't attribute that
13 to Father Harrigan, does it?

14 A. That's correct.

15
16 Q. What is your recollection?

17 A. That that is what he said to me is my recollection.

18
19 Q. Are you absolutely confident that he said, "I suspect
20 he had some but I never saw him with it"?

21 A. Oh, yes, yes.

22
23 Q. Would you agree with me that for a Catholic priest to
24 acknowledge he owned and possessed pornography and
25 destroyed it is an extraordinary admission to make?

26 A. Yes.

27
28 Q. In the circumstances wouldn't you, as an experienced
29 police officer, weigh up that factor and be more inclined
30 to accept that the admission was a truthful one?

31 A. Not necessarily.

32
33 MS LONERGAN: I tender the duty book entries,
34 Commissioner, and the transcript.

35
36 THE COMMISSIONER: The duty book extract from Detective
37 Chief Inspector Fox's duty book from December 2003 and the
38 typed transcription will be admitted and exhibit 80.

39
40 **EXHIBIT #80 DUTY BOOK EXTRACT FROM DETECTIVE CHIEF**
41 **INSPECTOR FOX'S DUTY BOOK FROM DECEMBER 2003 AND TYPED**
42 **TRANSCRIPTION.**

43
44 MS LONERGAN: Excuse me, Commissioner. I'm just checking
45 whether I've completed what I needed to do.

46
47 Q. I have a point of clarification from the transcript on

1 2 July, at page 213. I'm just going to hand up a copy to
2 you, detective chief inspector. I'm going to ask you to
3 read from about halfway down page 212 and on to page 213.
4 A. :

5
6 *It is just a statement of impression rather*
7 *than dealing with --*
8

9 Q. No, sorry, read to yourself from page 212, line 34,
10 commencing:

11
12 *You assert that Fletcher removed a quantity*
13 *of homosexual pornographic videos ...*
14

15 Read that just to yourself, and over the page to line 16 on
16 page 213.

17 A. (Witness reads document).
18

19 Q. I just want to clarify an answer you gave and make
20 sure that I understand what you meant by it.

21 A. Yes.
22

23 Q. The questions I'm asking are about line 8, on
24 page 213:
25

26 *Q. Did Father Harrigan tell you the*
27 *material had been removed by Fletcher?*

28 *A. Effectively, yes.*
29

30 Is that a reference to what Father Harrigan told you that
31 Fletcher had returned the material to Father Harrigan?

32 A. Yes.
33

34 Q. And then in the next question and answer:
35

36 *Q. What do you mean "Effectively, yes"?*

37 *A. He told me that Fletcher had given it*
38 *to me before he destroyed it.*
39

40 A. Yes.
41

42 Q. The reference to "he" there is a reference to
43 Harrigan?

44 A. "He" as in Harrigan destroyed it, yes.
45

46 Q. So is it the position that you did not believe
47 Father Harrigan had destroyed the material?

1 A. Oh, no, I didn't disbelieve that Father Harrigan had
2 destroyed the material.
3
4 Q. Did you, at any part of your investigation, establish
5 that the reason why Father Harrigan destroyed it was
6 anything at all to do with the Fletcher investigation?
7 A. Yes.
8
9 Q. When?
10 A. Sorry, can you just ask me that question again?
11 I just want to make sure I heard that right, sorry.
12
13 Q. Did you establish that the destruction by
14 Father Harrigan of the pornographic material had anything
15 at all to do with the Fletcher investigation - the
16 destruction?
17 A. The answer is I don't know.
18
19 Q. So it would be wrong to say, wouldn't it, that
20 Harrigan destroyed the pornography because it had anything
21 at all to do with Fletcher?
22 A. I don't know.
23
24 Q. It would be wrong to state that, wouldn't it, because
25 there's no evidence that there was any connection?
26 A. No, I don't know whether - I can't agree with that
27 either.
28
29 Q. What's the connection?
30 A. Are you talking about the Fletcher investigation?
31
32 Q. No; I'm talking about the destruction of pornography
33 by Harrigan. What has that got to do with the Fletcher
34 investigation?
35 A. Okay. When the third victim --
36
37 Q. No, sorry, I'm going to stop you.
38 A. Sorry, okay, that's why I thought I'd pause.
39
40 Q. The third victim is 2004?
41 A. That's correct.
42
43 Q. We're talking about December 2003 --
44 A. Yes.
45
46 Q. -- when Father Harrigan said to you "I destroyed the
47 pornography I owned"?

1 A. Yes.
2
3 Q. That's the effect of his evidence to you, isn't it?
4 A. Yes.
5
6 Q. You didn't see fit to put that into any sort of formal
7 police statement?
8 A. No.
9
10 Q. You didn't ask him, did you, "Why did you destroy it?"
11 Just have a look at your note that you --
12 A. It is not recorded. I'm just thinking whether I would
13 have - I don't recall, but --
14
15 Q. It would have been a very, very important question,
16 wouldn't it?
17 A. Yes. Yes.
18
19 Q. And his answer would have been very important too
20 because if the reason he destroyed it had something to do
21 with your investigation, that's important and relevant; and
22 if it didn't, it is irrelevant - isn't that the position?
23 A. Yes.
24
25 Q. You have not recorded that you asked him why you
26 destroyed him?
27 A. No, I have not.
28
29 Q. And you've made up your own reason as to why it was
30 destroyed, haven't you?
31 A. I have a number of thoughts on why it was destroyed,
32 but --
33
34 Q. You made them up? You've made them up because you
35 didn't ask Father Harrigan why he destroyed it.
36
37 MR COHEN: I object. That doesn't follow.
38
39 MS LONERGAN: It doesn't follow. You're absolutely right.
40 I withdraw the question.
41
42 Q. You didn't ask Father Harrigan why he destroyed the
43 pornography?
44 A. No.
45
46 Q. But you tell this Commission that your theory as to
47 why the pornography was destroyed was because it was

1 Fletcher's; isn't that the position?
2 A. Sorry, I should go back and answer that last question.
3 I don't recall whether I asked him that. I haven't
4 recorded it. I concede that. But I don't know whether
5 I did or did not ask that.

6
7 Q. You don't have an answer to the question, do you?
8 From the man who destroyed the pornography, you don't have
9 his answer?

10 A. No, I don't.

11
12 Q. What I want to suggest to you is that you made up the
13 answer to the question; that is, that the pornography was
14 destroyed because it belonged to Fletcher?

15
16 MR COHEN: I object. That still does not follow.

17
18 MS LONERGAN: I'm putting the proposition to him and he
19 can reject it.

20
21 THE COMMISSIONER: This time it does follow, Mr Cohen.

22
23 THE WITNESS: There are a number of thoughts I have. I'm
24 not discounting the possibility that it may have been
25 Father Harrigan's material, but I still, at the same time,
26 cannot discount the possibility that the material may have
27 belonged to James Fletcher. What I'm simply saying is I'm
28 not being - what's the word? I'm not being absolutely -
29 absolute on any of the possibilities, but I've got to be
30 honest and say I still maintained some degree of suspicion
31 that there was a possibility it still belonged to Fletcher,
32 but I cannot discount the fact that Des Harrigan - sorry,
33 Father Harrigan was telling the truth either.

34
35 MS LONERGAN: Q. But, Detective Chief Inspector Fox, you
36 have represented to persons in the Police Force in your
37 report and to this Commission --

38 A. Yes.

39
40 Q. -- that the destruction of evidence that would have
41 assisted you in the Fletcher prosecution was a matter about
42 which the Catholic Church should be called into question?

43 A. Yes.

44
45 Q. But it is based, isn't it, on your suspicion, as
46 opposed to the evidence that you have and had as to who
47 owned that material?

1 A. It is based on that suspicion and also other
2 information that I obtained in 2004.
3
4 Q. But other information you obtained in 2004 doesn't
5 directly relate to the material found by Mr Hanley in the
6 presbytery, does it, because you can't know whether it is
7 the same material?
8 A. But I also cannot discount that it is not.
9
10 MS LONERGAN: Those are my additional questions,
11 Commissioner.
12
13 THE WITNESS: That it is, rather.
14
15 MS McLAUGHLIN: Commissioner, I only have a few questions
16 in light of Ms Lonergan's examination-in-chief.
17
18 **<EXAMINATION BY MS McLAUGHLIN:**
19
20 MS McLAUGHLIN: Q. Detective Chief Inspector Fox, can
21 you turn to the exhibit that has your handwritten notes
22 from the log book?
23 A. Duty book.
24
25 Q. Duty book, yes, from 29 December.
26 A. Yes.
27
28 Q. Can you see about six lines down, there is a telephone
29 number, which I don't want you to read out?
30 A. Yes.
31
32 Q. Is that Raymond Hanley's telephone number?
33 A. I believe so, yes.
34
35 Q. He provided that to you?
36 A. I would imagine so, yes.
37
38 Q. At your request?
39 A. In all likelihood, yes.
40
41 Q. And presumably the purpose for that request was so you
42 could contact him again and obtain further information?
43 A. Yes.
44
45 Q. And you did that?
46 A. I know I spoke to him more than once. I don't recall
47 if I phoned him back or if he phoned me back, but I do

1 remember talking to him more than just this one occasion.
2
3 Q. That was in relation to the complaint he made that
4 you've recorded in your duty book that we're talking about
5 now?
6 A. Yes.
7
8 Q. The location of the pornography that you that he says
9 he found at the Lochinvar presbytery?
10 A. Yes.
11
12 Q. Can you recall precisely how many times you talked to
13 him about this?
14 A. It wasn't a great deal.
15
16 Q. Was it more than one phone call?
17 A. It was.
18
19 Q. More than two phone calls?
20 A. I'd - I'd suggest about three --
21
22 Q. About three?
23 A. -- but, you know, I wouldn't be surprised if it was a
24 couple more or one less or something like that, but I think
25 around three would be fair.
26
27 Q. Between two and five on your evidence then, a couple
28 more or --
29 A. Yes, somewhere around there.
30
31 Q. Was that all to do with the issue of the pornography
32 from the Lochinvar presbytery?
33 A. That was the only reason, off recollection, that
34 I had reason to speak to Mr Hanley, yes.
35
36 Q. The only record of the conversation that you've
37 provided to the Commission in relation to this particular
38 matter is the one you put in front of you; is that correct?
39 A. No. I've also provided a little bit more that
40 I recollected. You know, it may not be important, but
41 I tried to recall some other aspects of the conversation in
42 my affidavit, but I don't think, you know --
43
44 Q. Did you make any other notes in your duty book in
45 relation to those other phone calls apart from the one that
46 we have here?
47 A. I don't recall.

1
2 Q. Did you meet with Mr Hanley?
3 A. I don't believe I did, no.
4
5 Q. You're not sure?
6 A. I'm not sure.
7
8 Q. You could have met with him somewhere?
9 A. I could have, but I don't recall it, so - if I'm to
10 venture one way or the other, I would say no, but I'm not
11 certain.
12
13 Q. If you did meet with him, that would be to discuss the
14 issue of pornography. That would be the only basis for
15 your connection to him; that's correct, isn't it?
16 A. No, I don't want to be absolute on that either. You
17 know, my experience with this matter is that I did
18 continually meet and come across people through the course
19 of these investigations for a myriad of reasons, so I don't
20 want to be absolute on it.
21
22 Q. Is it possible that you met up with him to discuss the
23 issue of the pornography he says he located at the
24 Lochinvar presbytery?
25 A. I don't recall it.
26
27 Q. Is it possible?
28 A. It's possible, but I don't think it did occur. It's
29 possible. I don't want to absolutely discount it, but
30 I can't recall it.
31
32 Q. You would agree then that, if it was possible that if
33 you did end up meeting with him, that would have been a
34 significant matter to raise before this Commission?
35 Presumably would you have spoken to him in that event about
36 the pornography that he --
37 A. If I could have recalled meeting with him, I certainly
38 would have included that in my affidavit, yes. But, as
39 I said, I don't want to discount it, but I don't think it
40 did occur, but I'm only guessing.
41
42 Q. Do you recall - well, I'll remind you. You gave
43 some evidence last week in relation to Father Desmond
44 Harrigan --
45 A. Yes.
46
47 Q. -- in relation to his statement, which I think was

1 exhibit 53, which you've been taken to or referred to
2 already today. I'm happy for you to have a look at that,
3 if you like, to refresh your memory. That's a statement
4 dated 20 May. It is exhibit 53, I think I said.

5 A. Sorry, volume number?

6

7 MS McLAUGHLIN: Perhaps if the witness could be shown
8 exhibit 53.

9

10 THE COMMISSIONER: Yes. It is not in your volumes,
11 Detective Chief Inspector Fox.

12

13 MR COHEN: To help us follow, Commissioner, is there any
14 idea where in the bundle it is, so that we can follow it?

15

16 MS McLAUGHLIN: Tab 387, I'm told.

17

18 Q. That's the only statement provided to you by
19 Father Harrigan, isn't it?

20

21 A. Yes.

22

23 Q. That was dated 20 May 2003?

24

25 A. Yes.

26

27 Q. I am unsure of the date, but will you accept that it
28 was 20 May 2003?

29

30 A. Yes, that's the date on it, yes.

31

32 Q. That's in relation to the telephone call received by
33 Father Fletcher from [AH]; that's correct, isn't it?

34

35 A. Yes.

36

37 Q. It doesn't touch upon the issues that have been
38 discussed with you today by Ms Lonergan, does it?

39

40 A. No.

41

42 Q. I'll remind you, you gave evidence last week, on
43 2 July, to Ms Lonergan. I'll quote what you have said and
44 I just want to confirm that that is indeed your position.
45 It is on page 182 of the transcript of 2 July:

46

47 Q. *That was on 20 May 2003. Did you have
any difficulty securing the attendance of
Father Harrigan for an interview?*

48

49 A. *No.*

50

51 Q. *And to your observation, in terms of
your interview with him that led to the*

1 *statement on 20 May 2003, was*
2 *Father Harrigan cooperative with your*
3 *inquiries?*

4 A. Yes.

5 Q. *Did you form a view that*
6 *Father Harrigan was keeping any relevant*
7 *information from you when you interviewed*
8 *him in and around 20 May 2003? For*
9 *example, did you ask him a question and you*
10 *didn't get an answer that was responsive?*

11
12 And your answer was this:

13
14 A. *From my personal perspective, I've got*
15 *to say that Father Harrigan was the most*
16 *forthcoming and helpful of the clergy that*
17 *I took statements from.*

18
19 A. Yes.

20
21 Q. That was your impression on 20 May 2003?

22 A. Yes.

23
24 Q. Was that your impression on 2 July this year when you
25 gave that evidence?

26 A. In - sorry, in the context of the obtaining of the
27 statement, yes.

28
29 Q. Yes, in relation to the statement of 20 May 2003?

30 A. Yes, in that - in relation to that, yes.

31
32 Q. I understand why you're limiting your answer there.

33 A. Yes.

34
35 Q. Between 20 May 2003 and 30 December 2003, when you
36 went to visit Father Harrigan, you had no other contact
37 with him in that period, did you?

38 A. I don't recall. Nothing jumps to mind, but again
39 I just don't want to be absolute, but I --

40
41 Q. If you did, it was of no consequence?

42 A. Yes, I don't think so.

43
44 Q. It would be fair to conclude then, wouldn't it, that,
45 on 30 December 2003, when you went to visit Father
46 Harrigan, your view then still would have been that he was
47 one of the most forthcoming and helpful of the clergy you

1 had previously dealt with?
2 A. My earliest - I maintain my earlier statement in
3 regard to when Father Harrigan provided that statement to
4 me. I don't want to be unfair to him either. It may well
5 be the case --
6
7 Q. Let's put it this way: if there was no contact between
8 yourself and Father Harrigan between 20 May 2003 and
9 30 December 2003, or if there was, it was of no
10 consequence, as your evidence just was --
11 A. Yes.
12
13 Q. -- there would be no basis, would there, for you to
14 conclude that he was other than a most forthcoming and
15 helpful member of the clergy?
16 A. I think, you know, in context with that, I've got to
17 put on record that I spoke to a lot of people about a lot
18 of interaction within the clergy and, of course, some of
19 that surrounded Father Harrigan.
20
21 Q. In terms of your dealings with him, though?
22 A. My direct dealings with him, I --
23
24 Q. There was no basis on which to conclude that he would
25 be anything other than the most helpful --
26 A. On the basis of my direct dealings with him, that's
27 correct.
28
29 Q. When you went to visit him on 30 December 2003, your
30 expectation would have been that he would be helpful and
31 forthcoming?
32 A. That was my expectation, yes.
33
34 Q. During that conversation you had with Father Harrigan,
35 and you've gone through that in some detail with
36 Ms Lonergan, is it possible that you failed to recollect
37 some of the important details when you talked about that in
38 your evidence today?
39 A. There are some - there may be - you know, there are
40 some details we haven't discussed today. I don't know
41 whether they would greatly assist the truth or otherwise of
42 the discussion.
43
44 Q. I appreciate that you're trying to be fair.
45 A. Yes.
46
47 Q. I put it to you this way. When you attended that

1 meeting with Father Harrigan with Detective Senior
2 Constable Robbs, was it?
3 A. Robbs, yes.
4
5 Q. You brought with you an example or otherwise of
6 pornography to show Father Harrigan?
7 A. No.
8
9 Q. You didn't bring one or two magazines with you at the
10 time?
11 A. No.
12
13 Q. I also put it to you that during that conversation
14 Father Harrigan made no admissions or otherwise in relation
15 to destroying pornography?
16 A. Oh, he certainly did. There's no doubt in my mind
17 about that.
18
19 Q. It is correct, isn't it, that you didn't obtain a
20 statement from Father Harrigan in relation to that
21 conversation?
22 A. That is correct.
23
24 Q. But you've relied on that conversation heavily when
25 you've made your assertions in relation to the destruction
26 of it evidence and the destruction of pornography?
27 A. It was something that's been very clear in my mind,
28 yes.
29
30 Q. I understand it is clear in your mind, but it is
31 correct, isn't it, that Father Harrigan has not had - you
32 didn't give him the opportunity to make a statement in
33 relation to that conversation?
34 A. I didn't require a statement off him, you know, for
35 reasons that it would be unusual for me to have obtained a
36 statement in view of what he was saying. I don't know how
37 I could have used that statement, you know, and not
38 foreseeing this inquiry, of course, at the time. But, at
39 the time. Based on what he said and what I knew about
40 those items, I could not see any way that just taking a
41 statement from him would have been able to be utilised for
42 any criminal purpose.
43
44 Q. So you weren't concerned that, based on what you say
45 he said to you, he was committing an offence of destroying
46 evidence?
47 A. My concern was - I still maintain to this day a

1 suspicion. I suppose, you know, whether that be fair or
2 unfair, and I can appreciate it and I don't want to sound
3 unfair, but I suppose in my role as a police officer, you
4 tend to encounter a lot of people that are not always
5 honest with you, even priests I suppose, because Father
6 Fletcher denied until his death that he'd ever committed a
7 crime. So there is some basis why I sort of say that, as a
8 detective, we don't always accept everyone at their word.
9 I don't want to sound misjudging of people because of that,
10 but I think that that is a professional approach that we
11 have to adopt. Ultimately, at the end of the day, still to
12 this day, I maintain some degree of suspicion over the
13 destruction of those items.

14
15 Q. Suspicion that didn't warrant charges, further
16 investigations or the taking of statements?

17 A. Oh, you know, I couldn't have --

18
19 Q. Is that correct?

20 A. Yes, it is, yes.

21
22 Q. But suspicion that warranted summations in documents
23 that you've tendered that have been tendered in these
24 proceeding alleging the destruction of material?

25 A. Yes, I thought it only - you know, I felt that that
26 was a legitimate thing to do, is to put it before this
27 Commission, yes, without me making a final judgment as to
28 whether or not any of my suspicions were based or baseless,
29 yes.

30
31 MS McLAUGHLIN: Commissioner, I'm probably going to refer
32 to matters that will be obviously subject to a
33 non-publication order and I expect I'll make an application
34 in relation to pretty much everything that I've asked in
35 relation to it, but it is particularly prudent right now.
36 I note the time.

37
38 MS LONERGAN: Commissioner, may I be heard on
39 non-publication order?

40
41 MR GROVES: Yes, Ms Lonergan.

42
43 MS LONERGAN: The position is this is a public inquiry and
44 this material is relevant to the assessment that you make,
45 Commissioner, of events relevant to the terms of reference.
46 There's been evidence given already by Detective Chief
47 Inspector Fox which has, perhaps to some extent, been added

1 to by the further examination on this issue. It is an
2 important issue and. In my respectful submission, a
3 non-publication order is not required and not appropriate.
4

5 THE COMMISSIONER: Yes. I'm not persuaded yet that
6 this --
7

8 MS McLAUGHLIN: I was going to take it forward. It was in
9 relation to material that I haven't yet elicited which
10 I won't. That was in relation to other material that
11 I suspect my friend wouldn't cavil with.
12

13 MS LONERGAN: Commissioner, could Ms McLaughlin and
14 I discuss it over the luncheon adjournment and give a
15 better informed view at 2pm?
16

17 THE COMMISSIONER: Very well
18

19 MR COHEN: I have a particular difficulty again. Given
20 what has transpired this morning and given my client is
21 still under cross-examination, I can't yet have another
22 conference with him. I'm going to have to ask, when this
23 process finally concluded, whenever that occurs, that
24 I have time to have a conference with my client for obvious
25 reasons.
26

27 MS LONERGAN: Ms McLaughlin has indicated that she has no
28 objection to Mr Cohen conferencing with Detective Chief
29 Inspector Fox over the luncheon adjournment. I agree with
30 that position as a better use of the court's time.
31

32 THE COMMISSIONER: Yes. Mr Cohen, feel free to confer
33 with Detective Chief Inspector Fox over the lunch break.
34 We will resume at 2 o'clock.
35

36 MR COHEN: I'm grateful, Commissioner.
37

38 **LUNCHEON ADJOURNMENT**
39
40
41
42
43
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45
46
47

1 **UPON RESUMPTION:**

2
3 MS LONERGAN: Commissioner, I have a couple of matters to
4 note. First, it is proposed today we'll sit until 4.30pm.
5 The reason for that is we started about half an hour late
6 today. I note that given the nature of this inquiry is a
7 matter concerning ongoing investigations, there are often
8 matters that come up on the run and that need to be dealt
9 with at that time, so that was the reason for the late
10 start today.

11
12 Second, members of the media have asked for access to
13 exhibit 80 and could those at the Bar table let the staff
14 of the Special Commission know by 4.45 today whether they
15 have any objections to the release of that document.

16
17 THE COMMISSIONER: Thank you, Ms Lonergan. .

18
19 MS McLAUGHLIN: Q. Do you recall preparing a statement,
20 Detective Chief Inspector Fox, with the assistance of your
21 solicitor dated 7 February 2013? It is a very long
22 statement which has been prepared.

23 A. Yes, initially I prepared it all myself and then there
24 was some assistance, et cetera, yes.

25
26 Q. Are you familiar with the document I'm referring to?

27 A. I think so. I note there's been a couple of versions
28 that have been amended or redacted over time, but --

29
30 Q. That's a statement in which, I think at the beginning,
31 you make the statement that the contents of are true.

32 I'm reading from it here, you can accept that that is what
33 it says, that it is true to the best of your knowledge and
34 belief and you make it knowing that, if it is tendered in
35 evidence, you shall be liable to prosecution if you have
36 wilfully stated in it anything which you know to be false
37 or do not believe to be true - the usual --

38 A. Yes, preamble.

39
40 Q. Which you have done a million times in your position
41 as a police officer. Do you recall giving evidence earlier
42 this morning, in response to a question from counsel
43 assisting, Ms Lonergan, when you were asked in relation to
44 the a conversation had you with Father Harrigan on
45 30 December 2003 why you didn't ask him about why he had
46 apparently destroyed the material? Do you recall being
47 asked that question.

1 A. I believe so, yes. Was that in relation to my notes
2 in my duty book or general?
3
4 Q. Yes.
5 A. Yes.
6
7 Q. Which, you would accept in your evidence earlier this
8 morning, you said was an accurate recollection or record of
9 the conversation you had on that particular date?
10 A. Yes. Sorry.
11
12 Q. You would accept then that, in evidence earlier this
13 morning, when you were asked a question in relation to why
14 you didn't ask Father Harrigan about that question, you
15 didn't think it was important or you didn't think you would
16 have asked that question - would you accept that's the
17 general tenor of your evidence earlier this morning?
18 A. I should qualify this, and I understand what you're
19 heading to. It is in my affidavit that I asked that
20 question, but I don't think - it wasn't in my duty book.
21
22 Q. How have you come to that conclusion just then that
23 that's in your statement?
24 A. I made my statement - I just remember that --
25
26 Q. Your statement goes for --
27 A. Oh, it's --
28
29 Q. -- for 110 pages.
30 A. It does indeed.
31
32 MR COHEN: I object to that question. My learned friend
33 consented to a conference over the adjournment. To suggest
34 how he could possibly remember it, it is not a fair
35 question on any footing.
36
37 MS McLAUGHLIN: I didn't put the words "How can you
38 possibly remember it" at all. I was simply referring to
39 the length of that statement.
40
41 MS LONERGAN: No, you didn't.
42
43 MS McLAUGHLIN: I will also confirm he has refreshed his
44 memory in relation to it.
45
46 THE WITNESS: I have.
47

1 MS McLAUGHLIN: And that's the basis on which he's now
2 giving evidence.
3
4 MR COHEN: Might I indicate there is a further document,
5 which is an affidavit of 24 April 2013. Perhaps we'll be
6 taken to that as well.
7
8 MS LONERGAN: Can I have a discussion with Ms McLaughlin?
9
10 THE COMMISSIONER: Yes, of course.
11
12 (Ms Lonergan and Ms McLaughlin confer)
13
14 MS McLAUGHLIN: Q. I'll refresh your memory, but you
15 may already have had it refreshed at the adjournment, not
16 that --
17
18 MR COHEN: I object.
19
20 THE COMMISSIONER: Not that there is anything improper
21 about that.
22
23 MS McLAUGHLIN: Not that there's anything inappropriate
24 about that.
25
26 MR COHEN: It is not a proper question, with respect.
27
28 MS McLAUGHLIN: I haven't completed the question.
29
30 Q. The question is: do you recall that, in that
31 statement, you described and recounted the conversation you
32 had with Father Harrigan on that night and in that --
33 A. Sorry? That day.
34
35 Q. That day, yes. In that - I'm referring to paragraph
36 85 on page 21 of that document, tab 19 of the particular
37 binder, and I'm reading from it - you say:
38
39 *I then asked --*
40
41 MR COHEN: I object. The witness should be allowed to be
42 taken to the document and shown what it is.
43
44 THE COMMISSIONER: The question isn't finished yet
45 Mr Cohen.
46
47 MS McLAUGHLIN: I'm happy for that to take place.

1 Volume 2, tab 19 of the bundle of statements, paragraph 85.

2

3 MS LONERGAN: The passage also appears, Commissioner, in
4 paragraph 69 of the affidavit of 24 April 2013.

5

6 MS McLAUGHLIN: Q. Paragraph 69. They're the same
7 statement, the --

8 A. What tab, sorry?

9

10 Q. Counsel assisting will provide a copy. (Shown to
11 witness). This is paragraph 85 in the statement prepared
12 on 7 February 2013. Can you see that paragraph at the top
13 of page there, paragraph 85?

14 A. Yes.

15

16 Q. In the second sentence you say:

17

18 *I then asked, "Why did you destroy the*
19 *magazines and videos?" He said, "I don't*
20 *know." I said, "Did anyone have images of*
21 *men under the age of 18?" He said, "No*
22 *they never." I said, "Did you loan them to*
23 *Jim Fletcher or forget to take them with*
24 *you?" He said, "I'm not sure. I think*
25 *I just left them there."*

26

27 A. Yes.

28

29 Q. Would you accept that's quite different to the
30 evidence you gave this morning, which was to the effect you
31 didn't ask Father Harrigan why he destroyed them?

32 A. I did give that answer, yes.

33

34 Q. You would accept this evidence here in this sworn
35 statement you gave is quite different to the sworn evidence
36 you gave this morning?

37 A. I don't know whether - sorry, without me going back
38 through the transcript, whether my mind was applying to the
39 documents that were in front of me at the time asking what
40 questions and answers were contained in them, those
41 questions and answers, of course, are not. I can only
42 think that I was applying my mind to that aspect of it when
43 asked that question, because obviously they're in my
44 earlier affidavit and earlier evidence in the non-public
45 hearings.

46

47 Q. If I take you to that exhibit which was tendered

1 earlier this morning, exhibit 80, which is the transcript
2 of your duty book from that conversation on 30 December?

3 A. Yes.

4
5 Q. You would accept, would you not, that that was a
6 contemporaneous note made very soon after you say the
7 conversation took place?

8 A. Yes.

9
10 Q. And that, therefore, is the best-placed document with
11 which to recall or recount all the important relevant
12 statements that were made during that conversation?

13 A. Yes.

14
15 Q. You would then accept, wouldn't you, if you turn to
16 paragraph 84, which is just before paragraph 85 that
17 I referred you to in your statement on 7 February --

18 A. Yes.

19
20 Q. -- that it is a significantly different --

21 A. No.

22
23 Q. I withdraw that. Which is a longer version containing
24 more information that wasn't contained in your document
25 from 30 December 2003?

26 A. Yes, it is.

27
28 Q. You've added material to it?

29 A. I've included additional conversation that I recollect
30 was canvassed, yes.

31
32 Q. You recollected that in February this year; is that
33 correct?

34 A. Well, I placed it in that document in February this
35 year. It doesn't mean that I only recollected it then.
36 I do recollect it - I made my first version of this, my
37 statement, last year, but I recollect canvassing those
38 questions with Father Harrigan back then.

39
40 Q. Could I take you then, on another matter, to
41 paragraph 82 of your statement.

42 A. Yes.

43
44 Q. You will see there on the fourth line down from the
45 bottom of that, it begins with the statement:

46
47 *He was concerned whether the images may*

1 *have shown males in their teens.*

2

3 A. Yes.

4

5 Q. In that, you were referring to Raymond Hanley; is that
6 correct?

7 A. Yes.

8

9 Q. Am I to understand your evidence in that document, or
10 your recollection of the incident as it is recorded in that
11 document, is that you say then that Raymond Hanley told you
12 he was concerned about the images being possibly involving
13 young persons?

14 A. What the conversation was, sorry --

15

16 Q. I understand what the conversation was, but am
17 I correct in my interpretation of what that statement means
18 in paragraph 82?

19 A. Yes, that's consistent with - I raised the subject
20 with him as to whether or not there were - there may have
21 been images of underage boys, men, in the magazines and he
22 said, "Well, that's part of the reason"; you know,
23 something along the lines of, "That's part of the reason
24 why I'm ringing you. It's been playing on my mind",
25 et cetera. Even though it hasn't got first-person
26 conversation, it was generally along that line. Mind you,
27 I should make it very clear --

28

29 Q. That's enough. You answered it?

30 A. Sorry, he never saw --

31

32 Q. That's sufficient, thank you. Could I take you now
33 back to the topic in relation to your concerns about the
34 material described to you by Raymond Hanley in that
35 telephone call which you've just alluded to?

36 A. Yes.

37

38 Q. Am I correct in thinking that no matter who suggested
39 the idea - him or you - or who confirmed it, at the time
40 at which you had that phone call and then approached
41 Father Harrigan, you were concerned that there might have
42 been some images somewhere in that presbytery that involved
43 young persons; is that correct? That was your suspicion,
44 wasn't it? That's been the tenor of your evidence?

45 A. Sorry, can I just have that question again, please?

46

47 Q. Was it your suspicion - am I correct in understanding

1 your evidence over the last however many days to be that,
2 at the time that you approached Father Harrigan on
3 30 December, you had a suspicion, based on that phone call
4 from Raymond Hanley, that the material he was describing to
5 you may have involved young people; is that correct?
6 A. Yes. Yes.
7
8 Q. You would accept, wouldn't you, that that's a serious
9 criminal offence?
10 A. Yes.
11
12 Q. The possession of child pornography?
13 A. Yes.
14
15 Q. Which carries significant time in custody if convicted
16 or sentenced?
17 A. Yes.
18
19 Q. And it is in that context that you approached
20 Father Harrigan and had that conversation, isn't it?
21 A. It was more in the - no, it was more in the context of
22 if material of that nature did exist and I was able to
23 connect it with Father Fletcher, that it would have been of
24 assistance in the prosecution of Father Fletcher. I don't
25 discount what you're saying. That would be maybe a flow-on
26 matter, but my primary reason, I suppose, investigating the
27 allegations of [AH] in respect to Father Fletcher was my
28 primary --
29
30 Q. But wasn't the purpose of your attendance on
31 Father Harrigan on that day to respond and investigate the
32 call made on Raymond Hanley?
33 A. Yes, I saw that as a dual - yes.
34
35 Q. So, in the course of that, if you had suspicions in
36 relation to the possession of child pornography, you would
37 have investigated that or am I to understand your evidence
38 that you didn't think it was key to your concerns in
39 relation to Father Fletcher?
40 A. Sorry. Are you saying I would have discounted the
41 fact there may have been an additional crime of possession
42 of child pornography? I was entertaining that thought.
43 Many times during investigations --
44
45 Q. I am concerned about your attendance on Father
46 Harrigan on 30 December.
47 A. There are multiple reasons. The primary reason I went

1 there was obviously - well, not obviously, but my primary
2 reason for going there is I felt that there may have been -
3 if there was some material that existed and was able to be
4 connected with Father Fletcher, it may have assisted in
5 [AH]'s allegation, but I didn't discount also the fact that
6 there may have been additional offences in respect to child
7 pornography. That was, you know --

8
9 Q. But which you have accepted are very serious offences?

10 A. Yes, they are.

11
12 Q. And it has been your evidence that you disbelieved
13 whatever Father Harrigan told you in relation to aspects of
14 that discussion on that day?

15 A. No, I wouldn't put it as strongly as that that
16 I disbelieved. I wasn't convinced at what he was saying,
17 I would put it in a fairer way, yes.

18
19 Q. So you still had suspicions?

20 A. Yes, I did.

21
22 Q. But you didn't think they were grave enough to take
23 statements from Father Harrigan to investigate --

24 A. No. That wasn't the basis of why I didn't take a
25 statement, no.

26
27 Q. What was the basis?

28 A. The basis I didn't take a statement is because, on
29 Father Harrigan's information that he provided, that the
30 material was destroyed and there was no way of classifying,
31 if you like, the material, or linking it because it was no
32 longer in existence, I could not legally put a basis
33 together for which a statement obtained from him about the
34 existence or whatever happened to that material would have
35 been sufficient to put before the trial of Father Fletcher
36 in relation to [AH], which was ongoing at that time.

37
38 Q. Your main concern was in relation to Father Fletcher?

39 A. Yes, that was - that was my primary concern. As
40 I said, I don't disagree with your other proposition
41 either, but that was my primary.

42
43 Q. So it wasn't sufficient to proceed to investigate
44 allegations of child pornography, at that point, by taking
45 a statement from Father Harrigan, but it was still a
46 concern when you prepared the document, which is at
47 tab 498, and sent to the Ombudsman, and I'll wait until you

1 see that. It is exhibit 69 that's been provisionally
2 tendered.

3 A. Sorry, 498?
4

5 Q. Tab 498. I think it is volume 6. I think it is the
6 report to the police. Volume 7, I beg your pardon. That's
7 my mistake.

8 A. Yes.
9

10 Q. The penultimate paragraph on the page, on page 1, the
11 second last sentence says:

12
13 *I suspect the material contained some*
14 *images of young boys as mentioned by a*
15 *victim?*
16

17 A. Yes.
18

19 Q. Your suspicion was still sufficient at that point to
20 draft the document in those terms but not sufficient enough
21 to take a statement from Father Harrigan or further
22 investigate, at the time at which the complaint was made to
23 you?

24 A. That's a fair comment, yes.
25

26 MS McLAUGHLIN: I have no further questions, but I wish to
27 ask for a non-publication order in relation to the
28 discussion that connects the issue of pornography possessed
29 by or supposedly possessed by Father Harrigan and Father
30 Fletcher in this conversation and child pornography.
31

32 (Transcript suppressed from page 632, line 32 to line 36)
33
34
35
36
37

38 We have the reputation of Father Harrigan at stake here,
39 who, as a serving member of the clergy, has a great deal to
40 loose if the connections that have been loosely drawn by
41 Detective Chief Inspector Fox can be reported as such.
42 Even if they're reported as loose connections or
43 suspicions, the damage is significant to his reputation.
44 I am couching it in the terms of when I questioned in
45 relation to exhibit 69, which has been also similarly the
46 subject of a non-publication order and that aspect of my
47 cross-examination.

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(Transcript suppressed from page 633, line 2 to line 36)

(MS LONERGAN:) the evidence today is not of a similar character and a non-publication order is thus not appropriate.

MR COHEN: Might I respectfully adopt the comments of my learned friend Ms Lonergan, but if I may particularly submit to you with respect to my client there has been a series of episodes of cross-examination of my client, properly of course, in the circumstances of his evidence being tested, but to the extent that my learned friend Ms McLaughlin, if I may use the metaphor, kicked the door open by taking my client, Mr Fox, to his statement and/or his affidavit, in my submission he is perfectly entitled to have the entirety of that material made public in the interests of full and fair and completely transparent examination of these issues. He does not seek any special favours in that respect and respectfully submits that nor should anybody else in these circumstances.

(Transcript suppressed from page 633, line 37 to line 47)

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MS McLAUGHLIN: Might I respond to the points raised by Mr Cohen. He seems to be alluding to the fact that, because the evidence has been elicited by virtue of cross-examination on Father Harrigan's behalf, he should deal with it as a consequence. The reality is that's my obligation and duty to my client and not to do that would be doing him a disservice. That itself is a completely insufficient basis on which to refuse a non-publication order. The issue should be the public interest in relation to the discussion and the open hearing of that particular material versus the interest of my client. I reiterate what I said earlier in relation to that.

THE COMMISSIONER: Ms McLaughlin, I understand the basis for your application, but it is really impossible for me to make orders that see that no party suffers any harm whatsoever. I think, in the circumstances, particularly in light of the responses which you have elicited, I am not disposed to grant a non-publication order about what the evidence from this afternoon has been.

MS McLAUGHLIN: If it please you.

MR COHEN: Before I commence, Commissioner, could I have the briefest of discussions with Ms Lonergan, if I might have your consent, and I apologise for turning my back on you?

THE COMMISSIONER: Yes, Mr Cohen.

(Ms Lonergan and Mr Cohen confer)

MR COHEN: Thank you, Commissioner.

MS LONERGAN: Commissioner, do we take it from the comments you made through my learned friend Ms McLaughlin that you have, in effect, ruled on the matter raised by Ms McLaughlin?

(Transcript suppressed from page 634, line 41 to line 43)

MS LONERGAN: Thank you, Commissioner. I should, for the sake of completeness, tender those paragraphs that Ms McLaughlin took Detective Chief Inspector Fox to from

1 his previous affidavits. I will have to come up with a way
2 that they can be appropriately formatted so that only those
3 parts that were examined upon are tendered and I will
4 attend to that. I won't have that stand in the way of
5 Mr Cohen --

6
7 THE COMMISSIONER: From paragraphs 82, 84 and 85 of the
8 affidavit?

9
10 MS LONERGAN: Yes, Commissioner.

11
12 THE COMMISSIONER: Very well. The relevant references
13 from the affidavit of the witness from those paragraphs
14 will be admitted and marked exhibit 81.

15
16 MS LONERGAN: Also paragraph 26, if I could tender - yes,
17 that's correct, Commissioner.

18
19 THE COMMISSIONER: Exhibit 81.

20
21 **EXHIBIT #81 RELEVANT REFERENCES FROM THE STATEMENT OF**
22 **DETECTIVE CHIEF INSPECTOR FOX, REFERRED TO IN EXAMINATION**
23 **BY MS McLAUGHLIN**

24
25 MR COHEN: Save for one clarification, there is a
26 distinction between the statement of February which, as it
27 were, kicked off the process involving Detective Chief
28 Inspector Fox and the affidavit of April.

29
30 THE COMMISSIONER: I beg your pardon.

31
32 MR COHEN: They're not identical and lest there be some
33 confusion later, particularly when you come, Commissioner,
34 to consider these materials, it should be understood the
35 source from which these materials have come in.

36
37 MS LONERGAN: I couldn't hear Mr Cohen. I don't know what
38 he was saying.

39
40 THE COMMISSIONER: Mr Cohen makes the point that there is
41 a difference between the statement of February and the
42 affidavit of April by the witness.

43
44 MS LONERGAN: My learned friend Ms McLaughlin took the
45 witness to paragraphs 82 to 85, as I understand it, of his
46 statement.

1 THE COMMISSIONER: Of his statement, yes. I may have
2 inadvertently used the word "affidavit". I apologise for
3 the confusion.

4
5 MR COHEN: It is clear now, thank you.
6

7 Q. It will involve, Detective Chief Inspector Fox, a
8 certain amount of navigating through voluminous documents
9 I'm afraid, but we'll give it our best shot.

10
11 I'm making the assumption that the witness has access
12 to the transcript, but I think that may be a fallacious
13 one; is that right?

14
15 THE COMMISSIONER: It is. Of course we can supply it.
16

17 MR COHEN: Could I just have a moment, Commissioner? I'm
18 doing this in the interests of saving time later,
19 Commissioner.
20

21 THE COMMISSIONER: Thank you.
22

23 MR COHEN: For your purposes, Commissioner, and those at
24 the Bar table following this, the material I'll take the
25 detective chief inspector to is contained in the
26 transcripts of 2 and 3 July, that is, the second and third
27 days of the hearing last week, I think.

28
29 THE COMMISSIONER: Are we awaiting production of the
30 transcript?
31

32 MR COHEN: I believe so. I don't mean to put pressure on
33 those behind me. I apologise. It just occurred to me as
34 I stood up that perhaps the transcript wasn't as easily
35 available as I assumed with the tender bundle.
36

37 MS LONERGAN: I provided the witness with a copy of the
38 2 July transcript in my examination prior to the luncheon
39 adjournment. I'm wondering if it is still sitting on the
40 witness box. I don't believe it was handed back. Yes, so
41 there's the 2 July. I will have it handed to the witness.
42

43 MR COHEN: Q. For those who are following the transcript
44 with particularity and for the witness, would you have
45 regard to transcript page 115, lines 9 to 14. You were
46 asked the question:
47

1 Q. Are you able to say now at what point
2 you first saw this progressive creation of
3 this particular case report?
4

5 This was in relation to evidence that Detective Inspector
6 Watters had given. Your response was:
7

8 A. I would have seen it around the time
9 really from the very start from when Mark
10 created it. As his supervisor, it was part
11 of my role to periodically open Detective
12 Watters' cases, and so I would have seen it
13 from that stage, yes.
14

15 You've given evidence that it was part of your role
16 periodically to open Detective Watters's cases. Was that
17 part of a wider general practice of reviewing the cases of
18 those whom you supervised?

19 A. Yes, it was. I --
20

21 Q. Just stop there. How many were you supervising at the
22 time?

23 A. A ballpark figure - probably around 15 CI staff.
24

25 Q. Why was it 15 in total?

26 A. At that stage, my recollection is Detective Senior
27 Sergeant Pollock was seconded to other duties and I think
28 Detective Sergeant Mitchell gave evidence also here that he
29 was taken to a task force Sibret.
30

31 Q. So three became one; is that your evidence?

32 A. That's effectively what occurred for a number of
33 years.
34

35 Q. Given that circumstance and given there were 15 or so
36 involved, what was your practice at the time in supervising
37 the cases of those who reported to you?

38 A. Effectively, what occurred is the - amongst all those
39 detectives, and also from time to time a number of
40 uniformed staff that were assisting, I would set a time
41 aside for a couple of hours, possibly on an average of,
42 say, one a week, where I would sit down and have them bring
43 up their - all their case workloads electronically on the
44 COPS system and have discussions with them and work through
45 all their cases. I think - you know, at that stage, Lower
46 Hunter was a bigger command than what Newcastle is today
47 and it certainly took the stage as the biggest command in

1 the state back then.

2

3 Q. Does that mean, at this time, given the numbers
4 involved and the process you were identifying, doing the
5 rough mathematics, you would get to Detective Senior
6 Constable Watters, as he then was, about once every three
7 months?

8 A. Yes, it would be approximately once every three months
9 or so to get around to it, yes.

10

11 Q. And that was your practice --

12 A. That probably applied to all the CI staff.

13

14 Q. That was your practice with respect to all of those,
15 as you put it, CI staff at the time?

16 A. Yes.

17

18 Q. The next issue I want to raise with you is in relation
19 to your further evidence at page 118 of the transcript of
20 2 July 2013.

21 A. Sorry, just in relation to that --

22

23 Q. In relation to what, detective chief inspector?

24 A. The last - my last response as to whether I was there
25 alone performing those roles.

26

27 Q. Yes.

28 A. I said Detective Sergeant Mitchell went to Sibret.
29 I believe he went to another task force first. I don't
30 know whether - but ultimately it led to Sibret around that
31 time.

32

33 Q. Have regard to transcript 118. Look at the bottom of
34 the page starting at line 43. You were asked:

35

36 *Q. What was his answer, if anything?*

37 *A. He said - I want to get it as correct*
38 *as I can. He said, effectively - I can't*
39 *remember the exact words, but effectively*
40 *he said, "I'm sorry. I don't know anything*
41 *about that."*

42

43 Then you said:

44

45 *I did ask him another question, I think,*
46 *along the line of, "Are you aware if anyone*
47 *in the church would be aware of allegations*

1 *of that nature?" And his words were along*
2 *the lines of, "I can't help you. You'll*
3 *have to ask Bishop Malone.*

4
5 Is that the material in respect of which you gave evidence
6 just this afternoon in relation to paragraph 69 of your
7 affidavit or paragraph 84, I think it was, of the
8 statement? Is that the context in which you gave that
9 evidence of just a few minutes ago in response to the
10 questions of Ms McLaughlin?

11
12 MS LONERGAN: This is about Bishop Clarke.

13
14 MR COHEN: I'm sorry. I've made the mistake. I withdraw
15 that. You're quite right. I beg your pardon. I withdraw
16 the question. I'm sorry; I have that wrong. I will move
17 to page 119. I will move on to another question,
18 Commissioner. I apologise for that error.

19
20 Q. Would you look at transcript page 130, please,
21 Detective Chief Inspector Fox.

22 A. Yes.

23
24 Q. Would you look particularly at lines 13 to 17. Do you
25 see there that you were asked in relation to your
26 discussions with Bishop Malone:

27
28 *Q. Did you formally caution him or was it*
29 *a formal police interview on any level?*

30
31 Your response was:

32
33 *I was still making up my mind about that.*
34 *I certainly did not caution him. I wanted*
35 *to, at that stage, find out exactly what*
36 *had happened and why.*

37
38 I won't take you to the detail, but you've already
39 indicated in your evidence today and you repeated it on
40 this day, to the effect that you wanted to give Bishop
41 Malone "the benefit of the doubt" - that was the phrase you
42 used. Do you recall that evidence?

43 A. I do.

44
45 Q. In relation to that, at this time you had no
46 documents; is that so? You had suspicions, but no
47 documents; is that so?

1 A. I'd spoken to people, yes, but I had nothing material.

2

3 Q. Who were the people to whom you had spoken and, in
4 particular, if you'd remember to make reference to their
5 identity by reference to the list of pseudonyms?

6 A. [AH], [BJ], possibly [BI], and I don't know if the
7 other person has an acronym here, but just to be safe,
8 [AH]'s partner at the time.

9

10 Q. Your evidence was that what you were informed by those
11 people informed your suspicions; is that a fair summary?

12 A. Yes.

13

14 Q. What were you informed by those people to give rise
15 to such suspicions as you've identified in relation to
16 Bishop Malone?

17 A. [BJ] - sorry, I just want to be on the same
18 wavelength. [BJ] first contacted me to tell me that she
19 had received a telephone call from Bishop Malone, and
20 during the course of that telephone conversation between
21 those two individuals, Bishop Malone had disclosed that he
22 and the other clergy that we've mentioned had travelled to
23 Branxton and met with Father Fletcher and, during the
24 course of that conversation, had disclosed that there was a
25 police investigation and he had also disclosed the identity
26 of [AH] to Father Fletcher.

27

28 Q. So it was [BJ] was your evidence who informed you of
29 that; is that correct?

30 A. Yes.

31

32 Q. You also made reference to [AH] a moment ago in
33 identifying information you'd received giving rise to
34 suspicions?

35 A. Yes.

36

37 Q. What information giving rise to those suspicions had
38 you received from [AH]?

39 A. When I spoke to [AH] on 3 June that year, we took an
40 initial report of - from where I've created the COPS event
41 of an overview of his sexual abuse by Father Fletcher.
42 I spoke to him, I believe, mostly in company with his
43 partner at the time. He told me that he'd come finally to
44 become comfortable with the idea of making an official
45 complaint and providing me with a statement and pursuing
46 criminal charges against Father Fletcher for his abuse. We
47 created the COPS event from brief details that day and

1 I actually asked him a - working through just very briefly
2 some of the allegations that were later substantiated in
3 the verdict, he was uncertain as to certain dates and
4 places and things of that nature. So, as is my general
5 practice, I asked if he could go away and spend a day or
6 two researching that, that he refer to other materials,
7 school reports and things that he would be able to put
8 things in line with a timeline to better state when certain
9 offences had occurred, and it was on that basis that he
10 agreed that he would contact me later that week to come
11 back in and start making his statement for that process to
12 begin.

13
14 Q. You made reference to another person. I think
15 I recall it as [BI]?

16 A. Yes.

17
18 MR HARBEN: Commissioner, could I ask for the last answer
19 to be struck from the record? The answer to the question
20 was just not responsive to the question. As I understand
21 this evidence relative to page 130 of the transcript, it
22 relates to the visit with Bishop Malone following the
23 disclosure by [AH]'s mother of a telephone call. This
24 witness has said this afternoon that he had spoken to [AH]
25 about that particular matter. He was just asked by his
26 counsel what was it that [AH] said and none of the answer
27 which he just gave was responsive to that question. He
28 spoke about other matters, but nothing to do with the
29 matter that he visited Bishop Malone about.

30
31 THE COMMISSIONER: Mr Harben, the question was what
32 informed him of his suspicions?

33
34 MR HARBEN: Yes.

35
36 THE COMMISSIONER: And Mr Fox's previous answer had been,
37 "I had spoken to people - [AH], [BJ] and possibly [BI], and
38 [AH]'s partner."

39
40 MR HARBEN: Yes, and he was asked about what [AH]'s mother
41 had said and he related that. He was taken to what [AH]
42 had said and the witness gave a response relevant to 3 June
43 and some other time, none of which imparted the answer to
44 the question which he was asked.

45
46 THE COMMISSIONER: Yes. That was part of that last
47 answer, I think.

1
2 MR HARBEN: Not at all, Commissioner.
3
4 THE COMMISSIONER: The second part of the answer, I think,
5 was in one continuous sweep.
6
7 MR HARBEN: It had nothing to do, with respect, with
8 information that Bishop Malone had travelled and seen
9 Father Fletcher - not one word about that.
10
11 THE COMMISSIONER: No, nothing from [AH].
12
13 MR HARBEN: That's right.
14
15 THE COMMISSIONER: The first part of the answer was about
16 what [BJ] said, that is, [AH]'s mother.
17
18 MR HARBEN: I'm not objecting to that, but the specific
19 answer relevant to [AH], which was a separate question,
20 called for the information imparted to this witness by [AH]
21 that caused him to see Bishop Malone when he did on
22 20 June.
23
24 MR COHEN: No, with respect, that was not the question at
25 all. The question was: "What informed your suspicions
26 about Bishop Malone?" It was not so constrained in the way
27 my learned friend suggests you understand, Commissioner.
28
29 MR HARBEN: With respect, my learned friend has taken us
30 to page 130, lines 13 to 17. That's what this is about.
31
32 THE COMMISSIONER: Yes, it is about the meeting with your
33 client.
34
35 MR HARBEN: Yes, that's right.
36
37 THE COMMISSIONER: But then what --
38
39 MR HARBEN: But, Commissioner, this witness cannot just
40 run off and repeat some broad allegation about matters. If
41 this is re-examination, he must be limited to be responsive
42 to the questions he's asked specifically.
43
44 THE COMMISSIONER: Yes. As I understand it, nothing that
45 the witness has said in relation to what [AH] told him
46 affects your client.
47

1 MR HARBEN: No, but that's my point. The question invited
2 a response. The answer did not provide the response to the
3 question, which was why I took the objection at the end of
4 the answer.

5
6 THE COMMISSIONER: Yes. I don't see any point in striking
7 it out just because it was non-responsive.

8
9 MR HARBEN: Can I just say this, Commissioner. If we're
10 going to have this sort of general approach to
11 re-examination, then we're going to be here a long time
12 having objections to every answer. The witness must be
13 confined, with respect, if everybody is going to be dealt
14 with fairly, to be made responsive to the questions he is
15 asked in re-examination.

16
17 THE COMMISSIONER: You make a valid point, Mr Harben.

18
19 MR HARBEN: Thank you.

20
21 THE COMMISSIONER: Thank you for raising it.

22
23 MS LONERGAN: Whilst the general suggestion that Mr Harben
24 raises as to witnesses being responsive to questions is
25 helpful, Commissioner, you don't have the power to strike
26 an answer from the record, but I would respectfully suggest
27 an admonition to Detective Chief Inspector Fox to answer as
28 directly as possible would greatly assist all.

29
30 The other matter to raise is that it is not
31 technically re-examination although, again, some judgment
32 ought to be exercised in terms of Detective Chief Inspector
33 Fox's answering the questions as directly as possible. He
34 is a professional witness in the sense of his training and
35 background and experience and there's really no excuse to
36 not answer in a direct fashion.

37
38 THE COMMISSIONER: Yes. Thank you.

39
40 Q. I'm sure you'll take on board what Ms Lonergan has
41 said Mr Fox.

42 A. Yes, Commissioner.

43
44 THE COMMISSIONER: Mr Cohen, had you received the answer
45 to your question yet?

46
47 MR COHEN: I think the answer to that is "Yes",

1 Commissioner. Might I just indicate, before I move to the
2 next question, that it is nothing more than a personal
3 approach that I adopt. While my learned friend Ms Lonergan
4 is quite correct that this is not re-examination in the
5 strictest sense, as understood by the Evidence Act, it is
6 my practice to try and adopt such an approach simply so
7 I can't be accused, or more particularly my client can't be
8 accused, of being the beneficiary of Dorothy-Dix type
9 questions later in submissions.

10
11 THE COMMISSIONER: All right. Please continue.

12
13 * MR COHEN: Q. Detective Chief Inspector Fox, in your
14 further evidence you've identified later in the transcript
15 in particular - and I won't take you to it - at transcript
16 page 301, line 31, "ostracism" and, indeed, I think your
17 phrase even was "intimidation", directed to the victims of
18 crime and their families. Do you remember that evidence?
19 A. Yes, I do

20
21 MR SKINNER: I apologise; I can't hear Mr Cohen.

22
23 MR COHEN: I thought these amplification devices were
24 working. I do apologise.

25
26 MS LONERGAN: I can't hear you either, Mr Cohen.

27
28 MR COHEN: I'll start again. Is that better?

29
30 MR SKINNER: Yes.

31
32 THE COMMISSIONER: Would you like the question repeated
33 Mr Cohen?

34
35 MR COHEN: That might be simplest.

36
37 (Question marked * read)

38
39 MS LONERGAN: Could I note for the record that does not
40 appear at page 301 at line 31. No, I'm terribly sorry,
41 line 34. I have it.

42
43 THE COMMISSIONER: There is no mention of "intimidation".

44
45 MS LONERGAN: If the transcript is going to be put to
46 Detective Chief Inspector Fox, it ought to be put.

1 THE COMMISSIONER: Yes.

2

3 MS LONERGAN: There's no word "intimidation".

4

5 MR COHEN: I withdraw that word. I stand corrected.

6

7 THE COMMISSIONER: Mr Cohen, could you please put the
8 precise passage.

9

10 MR COHEN: Yes.

11

12 Q. You were asked - I'll give the question and answer:

13

14 *Q. So that if that process took a period*
15 *of months, it follows, doesn't it, that*
16 *no-one - that Fletcher could have continued*
17 *doing whatever it was he was doing*
18 *unchecked and unsupervised?*

19

20 That was a question put to you by Mr Harben of senior
21 counsel?

22

A. Yes.

23

24 Q. Your response was:

25

26 *A. Sir, that's operating on the premise,*
27 *I believe, that the victim's state of mind*
28 *in June of 2002 was very different to what*
29 *it was six months later as a direct*
30 *consequence of Bishop Malone's actions and*
31 *the conduct and ostracism that came back*
32 *and affected him and his family.*

33

34 You go on to say:

35

36 *In early June, when he first came in, I had*
37 *no thoughts that this was going to be a*
38 *process that would be drawn out. I would*
39 *have expected that I, hopefully, would have*
40 *typed up that statement within a week or*
41 *two. That was my expectation.*

42

43 What I wanted to ask you is: in terms of that process of
44 ostracism you've identified, I would like you to have
45 regard to a document, please, and that will be found in
46 volume 5 of the tender bundle, behind tab, as I understand
47 it, 394. Just before you go to the document in particular,

1 can I direct your attention to page 279 of the transcript.
2 I want to make good on my recollection of the phrase
3 "intimidation" and direct your attention to transcript
4 page 279. This is the transcript of 3 July. Do you have
5 that, Detective Chief Inspector Fox? I'm told you have in
6 the witness box both 2 July and 3 July; is that correct?

7
8 THE COMMISSIONER: I don't think that's correct.
9 Detective Chief Inspector Fox had to hand one back. He was
10 not allowed to have two at once.

11
12 THE WITNESS: If I have difficulty, I may be able to --

13
14 MR COHEN: Q. Just stop there. (Handed to witness).

15
16 MS LONERGAN: For the record, I did hand up a copy of both
17 dates of the transcript to remain with the witness and
18 I have no idea why one came back.

19
20 MR COHEN: Because it was handed back, remember.

21
22 THE WITNESS: Was it page 175?

23
24 MR COHEN: Q. Page 279 on 3 July. Do you have 279?

25 A. No, I don't. Maybe in this new one.

26
27 Q. The day is 3 July.

28 A. Yes, 279 appears that it will be here. I have that.

29
30 Q. You gave some evidence, starting at line 22. A
31 question was put in respect of a page of a document to
32 which you had been take:

33
34 Q. *On page 5, just above the heading*
35 *"Recommendation", you comment about what*
36 *you term as "Reprisals are another*
37 *distasteful aspect of sexual abuse in the*
38 *church"...*

39
40 There's a reference to an extract from that document. Then
41 the question continues.

42
43 *Do you consider that sort of reprisal of*
44 *the activity that can interfere with police*
45 *investigations and, if so, how?*

46 A. *I considered that - you know, just on*
47 *the damage aspect, on the cost of - is one*

1 *thing but, the intimidatory nature of that*
2 *conduct is a much greater concern.*

3
4 A. Yes.

5
6 MR COHEN: I take the chief inspector to that,
7 Commissioner, for two reasons: one to elicit his
8 recollection of the evidence but also to make good on my
9 recollection of the evidence previously which attracted
10 some criticism.

11
12 Q. Having regard to those two items of evidence, your
13 evidence earlier about ostracism and then about
14 intimidatory conduct, I would ask you to look at the
15 document which is at volume 5, tab 394. Do you have that
16 document?

17 A. I do.

18
19 Q. Do you see that there are three pages, relevantly
20 pages 1043, 1044, and 1045?

21 A. Yes.

22
23 Q. I would ask you to accept from me and assume that this
24 is a file note produced by Bishop Malone. Could I ask you
25 to read it, please, and when you've read it, would you
26 kindly let me know.

27 A. (Witness reads document).

28
29 MS LONERGAN: I note my learned friend Mr Cohen hasn't
30 asked a question yet, but has shown, in effect, another
31 person's note about a conversation with a third person to
32 this witness. That's not a proper way to go about
33 questioning this witness. I know a question hasn't been
34 asked yet. I don't know what the question is going to be,
35 but I can't see any valid question that could arise, in my
36 respectful submission.

37
38 THE COMMISSIONER: It might surprise all of us. Mr Cohen,
39 what's the question?

40
41 MR COHEN: Q. The question is: had you seen that
42 document in May 2003 when you were taking the statement of
43 Bishop Malone?

44
45 THE COMMISSIONER: Yes, I will allow you to ask that.

46
47 THE WITNESS: No.

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MR COHEN: Q. Had you seen it then, would that have changed your view about giving him the benefit of the doubt?

MR HARBEN: I object to this. This is not this witness's note. It's not been dated. It is, at best, musings and shorthand versions of thoughts that were obviously being jotted down from time to time. He is not the witness to be asked to interpret what the words mean or meant or could have meant or could have been meant to mean.

THE COMMISSIONER: No.

MS LONERGAN: I agree with Mr Harben.

THE COMMISSIONER: Yes. In any event, it is not a document which could attract any culpability on the part of your client, Mr Harben.

MR HARBEN: No.

THE COMMISSIONER: No. I won't allow that, Mr Cohen.

MR COHEN: If the Commissioner pleases.

Q. Having regard to the evidence you gave most recently I showed you in the transcript at page 279, lines 22 to 35, you are giving evidence there of a general concept of reprisal activity, are you not, in that evidence there?

A. Yes, that's true.

Q. What were the particular examples that motivated you to give that general evidence that you understood as at, in the circumstances, the time of the trial of Father Fletcher?

MR GYLES: I object to the question. What my learned friend is introducing here is said to be a difference between the victim's state of mind in June 2002 and the position six months later, ie, the end of 2002.

MR COHEN: No, I'm not doing that at all. I'm asking, having regard to the evidence at 279, which talks conceptually in general terms, what particular instances came to his notice that informed that general proposition.

1 THE COMMISSIONER: About reprisals.
2
3 MR GYLES: The evidence given at page 279 is not referable
4 to the Fletcher investigation at all.
5
6 MR COHEN: That's not right.
7
8 MR GYLES: As I read that evidence, it has nothing to do
9 with that.
10
11 MR COHEN: Allow me to set the ground.
12
13 Q. Does your evidence at page 279 have anything to do
14 with the investigation of Father Fletcher?
15 A. Absolutely, yes.
16
17 Q. Do you need the earlier question repeated or do you
18 understand the question I asked?
19 A. Do you wish me to confine my answers only in regard to
20 ostracism concerning Fletcher only?
21
22 THE COMMISSIONER: "Reprisals" I think was the word.
23
24 THE WITNESS: Reprisals, sorry.
25
26 MR GYLES: Can I flag something? Can I indicate that,
27 given the criticism that was made this morning of not
28 taking objections to evidence at the time, if this evidence
29 is hearsay evidence, then I propose to object to it and
30 I would like to have the opportunity to do that at the
31 appropriate time, thank you, Commissioner.
32
33 MR COHEN: In fairness to my friend, what he wants is
34 perfectly reasonable. I will approach it this way.
35
36 Q. Having regard to the evidence that informed your view
37 given at page 279 of the transcript, you were informed of
38 things, were you, directly by persons about this notion of
39 reprisal activity?
40 A. Yes, I was.
41
42 Q. Having regard to that, who were the persons - again
43 using the list of pseudonyms, please, if that is
44 appropriate - that gave you such information that allowed
45 you to obtain that information on what appears to be a
46 firsthand hearsay basis?
47 A. Do you want me to confine my answer only to the

1 Fletcher investigation or more --
2
3 Q. To start with, yes, that would be simplest. I take it
4 by reason of that last answer there are other circumstances
5 beyond Fletcher; is that right?
6 A. Oh, yes, many, yes.
7
8 Q. We'll come back to that. But we'll start with
9 Fletcher first, please
10 A. [AH], BI, [BJ], there was a specific incident, but I'm
11 just trying to think of which of the three siblings of [AH]
12 it related to and I just can't off the top of my mind.
13
14 Q. Who were those three siblings?
15 A. [BAJ], [BB] and [BC].
16
17 Q. [BAJ]?
18 A. [BAJ].
19
20 Q. Yes, and?
21 A. [BB], [BC].
22
23 Q. Thank you. Starting with [AH]?
24 A. There's more, Mr Cohen, if you --
25
26 Q. Please?
27 A. I think I can mention his name --
28
29 Q. Just check to see if there's a pseudonym or not,
30 please. Caution should be the watchword here.
31 A. I'm fairly confident he's not. Mr Gogarty.
32
33 Q. Yes, that's correct.
34 A. And --
35
36 Q. Your evidence is, is it, that having --
37 A. Sorry, I'm still going.
38
39 Q. Sorry?
40 A. Also other examples were given to me by [BG], [BK].
41
42 Q. Yes?
43 A. [BE].
44
45 Q. Yes?
46 A. And [AB].
47

1 Q. That's quite a list. Can we start, please, with
2 Mr Gogarty.

3 A. Yes.

4

5 Q. What did he inform you --

6

7 MR GYLES: I object. Classic hearsay, Commissioner. My
8 learned friend cannot get this evidence out through
9 Detective Chief Inspector Fox.

10

11 MR COHEN: I respectfully submit to the contrary having
12 regard to the provision of section 62 of the Evidence Act.
13 I'll take you to it.

14

15 MR GYLES: Commissioner, what are you supposed to do with
16 this evidence if these people are not being called? If one
17 wants to deal with the Evidence Act, under section 135 of
18 the Evidence Act, one weighs up the probative value of the
19 evidence against the time it would take to deal with it.
20 The probative value of this evidence, given as hearsay
21 evidence with no opportunity to test the relevant evidence,
22 is of no probative value. Commissioner, you simply should
23 not allow this witness to be used to introduce potentially
24 a whole new array of evidence that hasn't been dealt with
25 at all in his cross-examination.

26

27 THE COMMISSIONER: May I ask the witness a question?

28

29 Q. The reprisals that were reported to you by these
30 people, were they all by or threatened by the same person
31 or group of persons?

32

33 A. No.

34

35 Q. Were they threatened or made by any individual who was
36 represented in this inquiry today?

37

38 A. In the majority, no. There may be one.

39

40 Q. Which one of those people that you've listed reported
41 to you some fear of reprisal or some actual reprisal by
42 someone represented --

43

44 A. [BI], number 32.

45

46 THE COMMISSIONER: All right, I think I understand where
47 the witness is going there.

48

49 Ms Lonergan, what do you say about that? I am not
50 inclined to entertain any evidence about reprisals by

1 inchoate groups or people or individuals or groups not
2 represented in this inquiry.

3

4 MS LONERGAN: The difficulty we have is that this
5 Commission is set up to inquire into Detective Chief
6 Inspector Fox's statements in the public domain regarding
7 certain things which include ostracism and matters of that
8 nature.

9

10 THE COMMISSIONER: Yes.

11

12 MS LONERGAN: To the extent that there is a basis for
13 these public statements that he has made, the strength or
14 otherwise of the material on which he bases those
15 statements is something that this Commission has to look
16 at.

17

18 THE COMMISSIONER: Yes.

19

20 MS LONERGAN: I understand my learned friend's objection
21 that the evidence ought not be admitted as to the truth of
22 the assertion --

23

24 THE COMMISSIONER: The truth of the matter, yes.

25

26 MS LONERGAN: -- and the hearsay nature in which they've
27 come to Detective Chief Inspector Fox's knowledge and
28 attention is a difficulty. However, it is a matter that
29 this Commission needs to examine and, from that point of
30 view, it is not wholly irrelevant.

31

32 THE COMMISSIONER: Yes. Even though not admitted as to
33 the truth of the assertions or allegations.

34

35 MS LONERGAN: That's right, Commissioner. I have been
36 reminded that one of the particular aspects in our letters
37 patent that we are charged to inquire into is:

38

39 .
40 *... whether, and the extent to which,*
41 *officials of the Catholic Church*
42 *facilitated, assisted, or cooperated with,*
43 *Police investigations of "relevant*
44 *matters", including whether any*
45 *investigation has been hindered or*
46 *obstructed by, amongst other things, the*
47 *failure to report alleged criminal*
offences, the discouraging of witnesses to

1 *come forward and the alerting of [offenders*
2 *and other matters].*

3
4 And "relevant matters" is defined as.

5
6 *.. including the responses to such*
7 *allegations --*

8
9 That is, allegations of sexual abuse on the part of
10 McAlinden and Fletcher --

11
12 *by officials of the Catholic Church ...*

13
14 As I apprehend the area Mr Cohen is moving into, it does
15 directly relate to the response by officials of the
16 Catholic Church in the broader sense. It is difficult in
17 that --

18
19 THE COMMISSIONER: Down to laypeople or parishioners or --

20
21 MS LONERGAN: I think there's a combination of matters
22 that Mr Cohen is going to go to. I can't predict entirely
23 what the evidence is going to be. As I apprehend, it
24 involves at least some official of the Catholic Church in
25 relation to some of the persons he has listed.

26
27 I do understand Mr Gyles's cries of trepidation about
28 the matter, but it is difficult to know how this Commission
29 can assess the strengths or basis of the views of Detective
30 Chief Inspector Fox without hearing what they are, limited
31 as they may be, Commissioner.

32
33 MR GYLES: Commissioner, with all due respect, there is an
34 entirely appropriate means by which individuals such as
35 Detective Chief Inspector Fox can raise matters for
36 consideration by the Commission, and many have done so,
37 including Detective Chief Inspector Fox, in a very fulsome
38 way. We can assume that those matters, or I take it that
39 those matters are all being considered and dealt with. It
40 is not justification for giving hearsay evidence in the
41 witness box, raising concerns when concerns can be raised
42 appropriately in a different way.

43
44 The way this should be dealt with is if Detective
45 Chief Inspector Fox has relevant evidence on this aspect,
46 it should be given either by way of private hearing or by
47 way of submission. It can then be considered. What has

1 fallen from my learned friend Ms Lonergan is that she
2 doesn't know what evidence this is. This is evidence that
3 was not given in chief. It has not, at the moment, come up
4 until now, with what might be described as re-examination,
5 which may involve introducing a whole new aspect to this
6 inquiry.

7
8 I would challenge what my learned friend says about
9 the proposition it is likely to involve church officials.
10 This may be no more than matters concerning other
11 parishioners, which would have no relevance to the inquiry.
12

13 One needs to tread very carefully with this material.
14 I maintain my objection and if there is relevant evidence
15 that's to be given by an individual which may contain
16 serious criticisms of people, they would be entitled to be
17 heard and it is a whole - one can't skirt over these
18 things.

19
20 THE COMMISSIONER: No, if there is an allegation, it
21 should be tested. It should come from a direct source and
22 should be subject to testing.
23

24 MR GYLES: Yes. This material is really something that
25 should be raised by way of submission, not in the witness
26 box, in my respectful submission. That doesn't mean that
27 the Commission is not dealing with it - of course it is.
28 No doubt there are a large number of submissions that have
29 been made which have been considered and are being
30 considered by the Commission, and what it's doing here is
31 dealing with evidence, relevant evidence, going to those
32 issues if it considers that appropriate.
33

34 MS LONERGAN: Commissioner, can I be further heard on
35 that?
36

37 THE COMMISSIONER: Yes.
38

39 MS LONERGAN: There is a distinction that needs to be
40 drawn. It is not about what those particular people will
41 say in evidence happened to them. It is about a possibly
42 mistaken, a possibly ill-informed, a possibly misjudged
43 understanding of what this witness has about what those
44 people have told him and how that's informed certain
45 assertions he has made in the public domain about actions
46 of officials of the Catholic Church, so it is not entirely
47 a matter that can be dealt with by evidence from those

1 persons.

2

3 One way that perhaps the evidence ought to be confined
4 is that it be confined to actions by church officials as
5 opposed to a more inchoate sort of invitation to discuss
6 matters where there can be no attribution to a church
7 official.

8

9 THE COMMISSIONER: Mr Cohen, is it possible for you to
10 confine your question to any reprisals which were asserted
11 to have come from or threatened by officials of the church?
12

13 MR COHEN: I can, indeed. The party nominated by
14 Detective Chief Inspector Fox in that list --

15

16 THE COMMISSIONER: [BI]?

17

18 MR COHEN: Yes. [BI] is just such a person, if I'm
19 permitted to pursue that line.

20

21 THE COMMISSIONER: Yes, I will permit you to.

22

23 MR COHEN: Q. Detective Chief Inspector Fox, you've been
24 sitting patiently in the witness box. Before the legal
25 argument, you gave a list of names that have been recorded
26 but in particular, you identified, did you not, [BI]?

27

28

29 Q. My original question was, having regard to the general
30 proposition of your evidence at transcript 279 about the
31 notion of reprisals, what was it that you were informed of
32 by [BI] particularly that gives you a basis to identify it
33 as within this general concept of reprisal?

34

35

36 Q. Starting with the first in time, when was that?

37

38 A. It was soon after his son came to see me to report
39 that he'd been sexually abused by Father Fletcher. [BI]
40 was in a difficult position, in that he was directly
41 employed by the Newcastle-Maitland diocese, which made it a
42 very difficult situation for him, of course. As he tended
43 to - as he continued to support and that support for his
44 son strengthened through that process, he told me of
45 instances where he was feeling more and more alienated at
46 his place of work, specifically in relation to: various
47 priests that he had regular contact with began to avoid
him; many were reluctant to acknowledge him or engage him

1 in conversation; his relationship with his direct employer,
2 Bishop Malone, began to suffer and deteriorate
3 considerably.
4

5 Q. Just stop there. You were told that by [BI]?

6 A. Oh, yes. And at times [BI] became quite visibly
7 upset. He felt that, because he was supporting his son, he
8 was being treated unfairly by the diocese, and particularly
9 by Bishop Malone, to such a stage that he confided in me
10 very early on that he felt that the diocese would
11 ultimately refuse to renew his contract and try and
12 terminate his employment as such, which is what ultimately
13 occurred, and he - you know, I spoke to him numerous times
14 through that period and --

15
16 Q. What period exactly are we talking about?

17 A. We're talking about through the latter half of 2002
18 over the next number of years. The situation just
19 continued --

20
21 Q. Two, three, four years? How many years?

22 A. Probably three, four years.
23

24 Q. Please continue. What else did he tell you in the
25 nature of what you understood having been told by him was a
26 reprisal?

27 A. He felt, because had he sided with his son and
28 supported his son, that he was being made to pay the
29 penalty by the diocese and that he --

30
31 Q. Let me stop you there. Did he ever indicate to you
32 directly what he meant by "paying the penalty" as you
33 characterise it?

34 A. Yes, he did. He felt --
35

36 Q. What did he say?

37 A. He said that he felt - along the line of is that the
38 diocese were going to try to squeeze him out of his job and
39 that they didn't want him there. He had supported his son
40 more than what he'd shown loyalty to the diocese at the
41 time. And by "the diocese", I mean not necessarily
42 specifically Father Fletcher, but certainly priests in
43 general.
44

45 Q. Of the list that you gave, is [BI] the only one who
46 could be characterised as an official of the Catholic
47 Church? Excuse me, Detective Chief Inspector Fox.

1 A. Yes.

2

3 MR COHEN: I'm trying to be careful. Commissioner, I am
4 trying to be careful; I'm trying to cleave to your
5 determination.

6

7 THE COMMISSIONER: Yes - is [BI] the only one who
8 complained about reprisals by anyone who can be determined
9 an official of the Catholic Church?

10

11 MR COHEN: Excuse me, Commissioner. I'm sorry to cut
12 across you, but I had understood that what you were seeking
13 was not by an official but a person on that list who was an
14 official.

15

16 THE COMMISSIONER: No, Mr Cohen.

17

18 MR COHEN: Sorry, I misunderstood. I am so sorry.

19

20 MR HARBEN: Could I join, at this stage, with my learned
21 friend Mr Gyles in his objection. I appreciate you made a
22 ruling about it being admissible, but to ask that this be
23 made perfectly clear that this evidence can be used for
24 nothing more than it has been said to this witness. It is
25 not evidence of the truth and it should be understood by
26 everybody who has listened to it that that's the case.

27

28 THE COMMISSIONER: Yes, it is accepted on that basis
29 alone, Mr Harben --

30

31 MR HARBEN: Thank you.

32

33 THE COMMISSIONER: -- as something that was said to him,
34 but not evidence of the substance of what was said.

35

36 MR COHEN: Thank you, Commissioner.

37

38 Q. Is that all the material that you wanted to identify
39 for the Commission's purposes that you understood having
40 been told directly by [BI]?

41 A. And I probably can only add to that that the ostracism
42 that he explained to me is --

43

44 Q. This is [BI]?

45 A. [BI]. He told me, where he was employed at the
46 diocese head office down here at Hamilton, that he was
47 obviously very good friends, got along very well with

1 numerous clergy, had meetings with them on a regular basis,
2 and that extended, in his view, that he considered many of
3 them friends on a personal basis as well as professional.
4 From the time that his son complained, that immediately
5 began to diminish, where many of them would - and
6 I remember him telling me that, on occasions, when he would
7 be walking along and certain clergy saw him, they would
8 turn the other way and avoid him, and he felt that was done
9 directly as a result of his support for his son.

10
11 Q. He told you that that was his feeling, did he?

12 A. Yes, he did.

13
14 Q. You mentioned Mr Gogarty in that same list. Did
15 Mr Gogarty inform you that he had suffered or believed that
16 there were reprisals directed towards him?

17 A. In relation to officials of the church?

18
19 Q. Yes.

20 A. Mr Gogarty - yes, most of what Mr - I will avoid the
21 other areas. I understand it only relates to the official
22 of the church. There are many other areas, but Mr Gogarty
23 told me similarly that his relationship with many clergy -
24 that is, priests within the Maitland-Newcastle diocese -
25 began to diminish immediately after he came forward with
26 his allegations to myself and --

27
28 Q. His allegations being he was a victim of Fletcher?

29 A. That's correct. He was also sexually abused by
30 Fletcher. He came forward. At one point, we did charge
31 Fletcher with a number of offences against Mr Gogarty, but
32 I won't elaborate on that process. I don't know whether
33 that's helpful. But as a direct consequence of that, there
34 was much greater and wider ostracism, but it did also
35 extend to specific members of the clergy that he'd grown up
36 friendly with --

37
38 Q. That is, Mr Gogarty had grown up with these members of
39 the clergy; is that your understanding?

40 A. Grown up with interaction with members of the clergy.

41
42 Q. You were told this by Mr Gogarty?

43 A. Yes. Again, in a similar manner to [BI], that those
44 relationships began to markedly diminish and he felt cut
45 off from them from that time.

46
47 Q. In that list of names you gave, you also mentioned

1 [BJ].
2 A. Yes.
3
4 Q. Did [BJ] inform you of what [BJ] understood to be
5 reprisal activity directed towards [BJ]?
6
7 MS LONERGAN: I object. It needs to be by officials of
8 the Catholic Church.
9
10 MR COHEN: I was about to say that very thing. My friend
11 beat me to the punch.
12
13 Q. I was about to append to that question, if you still
14 have it, Detective Chief Inspector Fox, by officials of the
15 Catholic Church. Do you want me to repeat that question or
16 do you have it all now?
17 A. No, I have it all. I suppose the fact is that [BJ]
18 had been a very devout Catholic, who held a number of --
19
20 MR GYLES: I object.
21
22 MR COHEN: Q. Stop. I understand the nature of the
23 objection. Stop there, please. What did [BJ] say to you
24 directly, not your perception of how devout or otherwise
25 that person was. What did that person say to you about
26 reprisals that that person understood to be directed by an
27 official of the Catholic Church?
28
29 MR GYLES: If anything.
30
31 MR COHEN: I'm grateful for the assistance of my learned
32 friend.
33
34 THE WITNESS: It touches on - I'm trying to be careful of
35 my response here. [BJ] held a number of positions over
36 many years --
37
38 MR COHEN: Q. Stop there. When did you have this
39 discussion where this information was imparted to you by
40 [BJ]?
41 A. Over many years from --
42
43 Q. Starting first in time?
44 A. Commencing in 2002, from the very earliest contact in
45 June 2002.
46
47 Q. That was in relation to what exactly? That very

1 earliest of contact arose by reason of what fact?
2 A. The very first contact I had was [BJ] contacted me to
3 tell me that she had received a telephone call from Bishop
4 Michael Malone and --

5
6 Q. What did she tell you about that telephone call?

7 A. She told me that Bishop Malone had disclosed to her,
8 during the course of that call, that he had, with a number
9 of other priests, visited Father Fletcher and had told
10 Father Fletcher about the police investigation and the
11 identity of her son, who was a victim of Father Fletcher.
12

13 Q. Are there any other matters - that's a
14 background information --

15 A. Yes, she --

16
17 Q. -- but what led to your understanding and what
18 discussion did you have with [BJ] about reprisals flowing
19 from an official of the Catholic Church. As I said, she
20 had held - I think her statement explains that in more
21 detail, but she had held a number of offices for --
22

23 Q. No, stop. You'll get objections.

24 A. Sorry.
25

26 THE COMMISSIONER: Q. Was she threatened to be removed
27 from office or what were the reprisals that were threatened
28 or actually effected against her?

29 A. Yes. Her overall treatment which she said - I'm just
30 trying to be careful. She felt that the priest that
31 presided over the parish was aware of certain other conduct
32 going on that didn't relate to clergy and took no action
33 and stood aside. As a result of that, she felt forced to
34 stop going to mass to --
35

36 MR GYLES: I object to this.
37

38 MR SAIDI: I object to this. Really, there is a limit to
39 one's patience in terms of these answers being given.
40 We're on limited time and the witness is a professional
41 witness and we're not getting answers.
42

43 THE COMMISSIONER: Q. I'm sorry, Mr Fox, were there any
44 reprisals threatened against [BJ] by an official of the
45 Catholic Church, or indeed was a reprisal taken out against
46 her by an official of the Catholic Church, according to
47 her, to you?

1 A. Perhaps it may be best to leave it to [BJ] to give her
2 own evidence in that regard, because I can hear more
3 objections coming, Commissioner.
4

5 MR COHEN: Q. Stop there then, Detective Chief Inspector
6 Fox. Having regard to the way the Commissioner has framed
7 what evidence she's prepared to receive in this way, you've
8 identified a number of people who are all, with the
9 exception of Mr Gogarty, identified by pseudonyms.

10 A. Yes.

11
12 Q. Are there any more in that list, if any, who
13 relevantly have communicated to you their concern,
14 understanding or position, however you describe it, but
15 directly to you in a conversation with you about the
16 feeling that they have suffered a reprisal at the hands of
17 an official of the Catholic Church?

18 A. I think the safest area I can probably explain is not
19 only what was told to me but what I observed in person is
20 that during the --

21
22 Q. Stop there. Observed in person with respect of whom?

23 A. Myself. In relation to numerous clergy, some of whom
24 I knew by sight, others whom I also knew by name.
25

26 THE COMMISSIONER: Q. Was this during the trial of
27 Fletcher?

28 A. Yes, Commissioner.
29

30 Q. In the courthouse?

31 A. Yes.
32

33 Q. And you've already given evidence about that?

34 A. Yes, I have.
35

36 THE COMMISSIONER: Thank you.
37

38 MR GYLES: In any event, that has nothing to do with the
39 investigation. The investigation had concluded by that
40 point, Commissioner.
41

42 THE COMMISSIONER: Thank you, Mr Gyles.
43

44 MR COHEN: It is a matter for you whether that should be
45 pursued or not. That question is hanging there. What is
46 your ruling in respect of that? Should I move on?
47

1 THE COMMISSIONER: As to the matter of the courthouse?
2
3 MR COHEN: No, this line of other reprisal information.
4 Am I able to continue?
5
6 THE COMMISSIONER: As I understood it, Mr Cohen, only [BI]
7 and perhaps [BJ] were claiming that any reprisals had been
8 directed at them by officials of the Catholic Church, as
9 opposed to other people, civilians, laypeople.
10
11 Q. Is that right?
12 A. I think that is a fair comment, Commissioner.
13
14 MR COHEN: I take it, therefore, I have exhausted that
15 topic. I will move on.
16
17 MR GYLES: Can I say before my friend moves on, and
18 adopting the position of Mr Harben, it is very important to
19 appreciate that evidence does not go to the truth of the
20 matters asserted and we will need to hear from [BI] and
21 [BJ] as to the specifics, if that's to be fairly dealt
22 with.
23
24 THE COMMISSIONER: Yes, I understand that, Mr Gyles.
25 Thank you. Mr Cohen?
26
27 MR COHEN: Excuse me Commissioner.
28
29 (Mr Cohen and Ms Lonergan confer).
30
31 MR COHEN: Thank you, Commissioner.
32
33 Q. Would you look, Detective Chief Inspector Fox, at
34 transcript page 358. I'm sorry, I should explain, this is
35 the transcript for 4 July, I apologise.
36 A. (Shown to witness).
37
38 MR COHEN: My apologies, Commissioner. I had overlooked
39 some of these questions. I had forgotten how long
40 Detective Chief Inspector Fox was in the witness box.
41
42 THE COMMISSIONER: Yes. And it is getting longer,
43 Mr Cohen.
44
45 MR COHEN: I'm sorry, Commissioner.
46
47 Q. Do you have page 358?

1 A. Yes, I do.
2
3 Q. Do you see line 4 through to line 24? This is during
4 the cross-examination of you by Mr Harben of senior
5 counsel? Do you see that evidence?
6 A. Yes.
7
8 Q. Do you see the series of questions was put --
9 A. Yes.
10
11 Q. -- culminating in a question at 24.
12
13 ... so you knew something about him?
14
15 You said "Yes", but you weren't invited to say what it was
16 you knew about Bishop Malone. What was it that you knew
17 about Bishop Malone in this context?
18 A. Again, my information that I gained there was, as a
19 direct result of speaking to the numerous persons who had
20 either worked with him or had direct contact with him over
21 a period of time and during the course of the
22 investigation.
23
24 Q. Are those people people who have --
25
26 MR HARBEN: Commissioner, could I ask that time frame of
27 the question so that we can get the time frame of the
28 answer?
29
30 THE COMMISSIONER: Yes. I think it is based on a question
31 of yours.
32
33 MR HARBEN: I understand what it is based on,
34 Commissioner. I'm not sure the witness, in responding, is
35 confining himself to that. The easiest way to do that is
36 to have the time frames outlined in the question because
37 then we can see them.
38
39 THE COMMISSIONER: Thank you.
40
41 MR COHEN: Q. I thought the question made it abundantly
42 clear. It related to that transcript. If it doesn't, this
43 is, is it not, as at the time of your discussion with
44 Bishop Malone; is that correct, Detective Chief Inspector
45 Fox?
46 A. Yes.
47

1 Q. That discussion was on 20 June 2002?
2 A. Yes.
3
4 Q. Very well. Then having regard to that temporal
5 boundary that's been imposed upon you, would you kindly
6 answer the question?
7 A. What I'd been told is that [BJ] had relayed to me
8 a number of discussions that she'd had with Bishop Malone.
9
10 Q. Stopping you there, when did [BJ] do this? Having
11 regard to the fact that you are, in answer to Mr Harben's
12 questions, talking about a discussion with Bishop Malone on
13 20 June, 2002, when did you have the discussion with [BJ]?
14 A. A number of times. It commenced --
15
16 Q. When was the first one?
17 A. It commenced around the date that Bishop Malone
18 visited Father Fletcher on 4 June 2002.
19
20 Q. Yes. Please go ahead.
21 A. She explained to me that Bishop Malone had contacted
22 her, that he had expressed sympathy in relation to what had
23 allegedly occurred to her son. She told me that she felt
24 that the initial apology and expressions of regret were
25 very "ingenuine", very superficial and without any true
26 compassion for the difficulty that she and her family were
27 going through at that time. I spoke to her and others and
28 I was made aware of --
29
30 Q. When was this that you spoke to her?
31 A. I spoke to her on a number of occasions from that
32 date.
33
34 Q. Before 20 June?
35 A. Yes, yes, I'll confine my responses specifically to
36 that period, and I was told some personal information
37 about Bishop Malone, which I will leave out, but also
38 that - I was also told by [BJ] about aspects of his
39 interaction with various clergy. As an example --
40
41 Q. Stop there, please.
42 A. Yes.
43
44 Q. [BJ] said to you that it was [BJ]'s perception, or
45 what was the basis that [BJ] was advancing this information
46 to you?
47 A. Because she had interacted with Bishop Malone over a

1 number of years, from her dealings within the church and
2 also partly as a result of her former husband's employment
3 with the church --
4

5 Q. She was telling you, was she, of her personal
6 experience?

7 A. Yes.
8

9 Q. Yes. Please continue.

10 A. And there were aspects that came out. I learnt from
11 both [BJ] and [BI] in that period that there was a degree
12 of animosity between Bishop Malone and former Bishop
13 Clarke. The full basis of that I didn't really go into,
14 but I think a lot of that revolved around the fact that -
15 and if I can use the term that had been used to me by those
16 individuals and a number of others since --
17

18 Q. Those individuals being [BJ] and [BI]; is that right?

19 A. Yes - that Bishop Malone had expressed along the lines
20 of he'd inherited a poison chalice from Bishop Clarke and
21 hadn't really been told the full extent of what had been
22 going on within the Maitland-Newcastle diocese over many,
23 many years and possibly decades. He felt that he had
24 walked into a blind and was made the scapegoat for a lot of
25 the indiscretions and bad decisions that had occurred at an
26 earlier time.
27

28 Q. Is that the material that led you to express a view in
29 your evidence at page 368 of the transcript that you, as
30 you put it, knew what sort of person he was, and you
31 responded you had some idea?

32 A. Yes.
33

34 Q. -- some ideas, plural?

35 A. Yes. And I think, you know, whether it be right or
36 wrong, and I understand that it's hearsay and I just taper
37 it with the view that Bishop Malone seemed to be under
38 pressure from time to time by groups of priests that had
39 been in the diocese over many years.
40

41 MR GYLES: I object. This is it not responsive to any
42 question. The question related to matters he had been told
43 about Bishop Malone by certain individuals. This is
44 something different to that.
45

46 THE COMMISSIONER: Yes.
47

1 Q. From what you've said, Detective Chief Inspector Fox,
2 none of that would lead you, would it, to doubt the word of
3 Bishop Malone, indeed, one could only have sympathy with
4 him; is that right?

5 A. Indeed, in many respects, Commissioner, I would concur
6 with that view.

7

8 Q. Mr Harben was asking you about whether you had any
9 reason to doubt what he said to you?

10 A. Yes. I suppose that predominantly revolved around the
11 fact that both the parents that I have spoken about, both
12 felt that a lot of what - and again, on their basis, they
13 were relaying to me that they felt that, at that period in
14 time, Bishop Malone was very "ingenuine" and simply going
15 through the motions of saying the right things to appease
16 them and to satisfy them in relation to what they were
17 going through, but they - I do recall a term that was used
18 to me by [BJ] at one time is that there was no genuine
19 pastoral care.

20

21 Q. Yet, from what you've said, it sounds as though Bishop
22 Malone had reflected on these matters and thought that he
23 hadn't been told about the terrible history that the
24 diocese had experienced?

25 A. Yes. I understand it is a very difficult situation
26 and I can sympathise with the bishop in respect to that.
27 I suppose only he can really answer those aspects. I'm not
28 trying to judge him one way or the other and certainly,
29 over the years, I've seen some very good work and some
30 schemes he's initiated that I will applaud him for. But
31 I suppose, like everybody, there is a balance of these
32 things and a learning experience over time as well.

33

34 But during the initial inquiries in relation to the
35 Fletcher investigation, my own personal view from the
36 experiences that I had, if I'm allowed to go there, is that
37 he was still probably naive as to many aspects and things
38 that had been going on within the diocese and it seemed
39 quite complex dynamics operating within the confines of the
40 diocese, churches, and the diocese headquarters at that
41 time and --

42

43 THE COMMISSIONER: All right.

44

45 MS LONERGAN: Commissioner, I'm concerned that there are
46 now speeches being made as opposed to answers to questions
47 that are shedding any light on the specific issue of

1 reprisals, which, as I understand it, was what we were
2 looking at.

3

4 THE COMMISSIONER: There did seem to be a tension in what
5 had gone before which I was seeking to clear up,
6 Ms Lonergan.

7

8 MS LONERGAN: Yes, I understand, Commissioner, but it did
9 seem to be deviating away from clarification, in my
10 respectful submission, but if you're assisted by it, please
11 continue.

12

13 THE COMMISSIONER: I apologise for butting in, Mr Cohen.

14

15 MR COHEN: Not at all, Commissioner. You are the person
16 who must decide these matters. You need to be satisfied to
17 hear everything you need to hear, may I say with great
18 respect.

19

20 Q. I'll leave the transcript now. I want to take you to
21 one more document, Detective Chief Inspector Fox. For the
22 purposes of the Commissioner's team assisting getting their
23 materials back, could you return the transcripts provided.
24 When that is done, can I ask you to have regard to a
25 further document which is in volume 6 of the tender bundle,
26 behind tab 421. Do you have that document?

27

28

29 A. Yes, I do.

30 Q. Perhaps you might just wait, Detective Chief Inspector
31 Fox, while everybody, most importantly, the Commissioner
32 has an opportunity to obtain and look at the document.

33

34 That document, as it were, is the other side of a
35 recording of a conversation you had with the Professional
36 Standards Office in Sydney; is that correct?

37

38

39 A. Yes.

40 Q. Is it the case that, on 25 May 2004 you rang the
41 Professional Standards Office about - I'll read it out:

42

43 *Rang about the family that had made the
44 second complaint against Fletcher.*

45

46

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1
2 MR GYLES: I object to the question. This is after
3 Fletcher was charged. To the extent there is reference to
4 any information here, it could not have hindered that
5 investigation which is the only relevant investigation
6 concerning Fletcher.
7
8 THE COMMISSIONER: What do you say, Ms Lonergan? You have
9 had a look at tab 421 for the purposes of this question.
10
11 MS LONERGAN: I didn't consider it irrelevant.
12
13 THE COMMISSIONER: You don't consider it irrelevant?
14
15 MS LONERGAN: No, not yet.
16
17 THE COMMISSIONER: No.
18
19 MR COHEN: Can I approach it this way --
20
21 THE COMMISSIONER: I'll permit Mr Cohen to ask the
22 question.
23
24 MR COHEN: Q. Detective chief inspector, before you
25 answer this question allow the Commissioner to consider it
26 because I assume there will be an ongoing question. My
27 next question was going to be: why did you make this phone
28 call?
29
30 Is that acceptable to you, Commissioner?
31
32 THE COMMISSIONER: Yes.
33
34 MR COHEN: Q. In which case, Detective Chief Inspector
35 Fox, why did you make this phone call recorded in this file
36 note on this date?
37
38 MR HARBEN: I object. The answer to that question is
39 obvious from a reading of the document. It is clear it is
40 based on some hearsay, so we run into the same problems.
41 What he's now being asked to do is give his version of the
42 other side of the conversation as opposed to being asked
43 about the document, when we will get to the argument about
44 what can be asked about that.
45
46 MR COHEN: Might I be heard about that?
47

1 THE COMMISSIONER: Yes, Mr Cohen. Can it be established,
2 Mr Cohen, whether the witness considers that that is an
3 accurate reflection of the phone call?
4

5 MR COHEN: Q. You heard the Commissioner's question,
6 Detective Chief Inspector Fox. Is the substance of this
7 file note to which I've directed your attention - that is
8 to say, the document of 25 May 2004, behind tab 421 in
9 volume 6 of the tender bundle - complete and accurate?

10 A. Yes.

11

12 Q. That being so, what motivated you to make this call on
13 this day?

14 A. Having, I suppose, walked through the treatment that
15 the family of --
16

17 THE COMMISSIONER: Q. Detective Chief Inspector Fox, in
18 the fourth paragraph there, it gives an account of your
19 motivation and what you were seeking. Is it accurate, sir?

20 A. Yes, it is.
21

22 MR GYLES: I maintain my objection in the light of this
23 answer. This has to do with providing support for the
24 family. It's got nothing to do with anything to do with
25 the Fletcher investigation.
26

27 THE COMMISSIONER: The trial wasn't concluded at that
28 stage, I think. No, it wasn't.
29

30 THE WITNESS: It hadn't commenced, Commissioner.
31

32 THE COMMISSIONER: No. There would be an argument,
33 Mr Gyles, that the investigation was on foot at that time.
34

35 MR COHEN: Indeed there's an available argument,
36 Commissioner, that the investigation was probably on foot
37 unless and until all the appellate processes were
38 determined.
39

40 THE COMMISSIONER: Yes, which was even after the offender
41 was deceased.
42

43 MR COHEN: Quite.
44

45 MR GYLES: There's no suggestion that the witnesses who
46 have been the subject of this evidence this afternoon were
47 not fully supportive of the Fletcher investigation. They

1 were and Fletcher was charged, Fletcher was convicted,
2 Fletcher went to gaol. That's a consideration.

3
4 THE COMMISSIONER: You've made your point about this
5 document.

6
7 MR COHEN: I was going to ask this simply, and it is a
8 matter for those who assist you and who are instructed by
9 Ms Sullivan, but I would simply submit, and it is all
10 I can do, that the probative value of this document is such
11 that it ought be received by you into evidence as an
12 exhibit.

13
14 Subject to that consideration, might I also address
15 Mr Harben's point about this being hearsay. There is a
16 certain tension about that. Section 69(2) of the Evidence
17 Act would have this become a business record as of its
18 simple physical force; that is to say, it contains a
19 business record about the representation of a previous fact
20 and is admissible and is an exception to the hearsay rule.

21
22 Subsection (4) of section 69 renders that
23 consideration just a little bit more tricky - and I say
24 this possibly against myself - in the circumstances of this
25 Commission because it talks about, in effect, Australian
26 proceedings. There is an available argument, probably a
27 powerful one, that this is an Australian proceeding and, in
28 the way of these things, section 69(4) carves out the
29 carve-out, so that the exception is then carved out and it
30 is rendered again hearsay.

31
32 I would submit that this, nonetheless, is a business
33 record and receivable. Whether or not those who assist you
34 wish to tender is another question.

35
36 THE COMMISSIONER: That is correct, Mr Cohen. In any
37 event, I am aware of it and the force of it.

38
39 MR COHEN: Might I be heard on that point? Perhaps an
40 interim step is that this document be marked for
41 identification so it not be lost in the ether.

42
43 THE COMMISSIONER: Very well.

44
45 MR COHEN: Having regard to the relevant exigencies of the
46 Special Commissions of Inquiry Act, being aware of it is a
47 different thing from being able to rely upon it. If it is

1 not an exhibit in evidence, it possibly isn't available to
2 you. I'm just concerned about that proposition.

3
4 THE COMMISSIONER: I will mark it MFI9 and at an
5 appropriate time we may revisit that question.

6
7 **MFI #9 FILE NOTE OF A CONVERSATION WITH THE PROFESSIONAL**
8 **STANDARDS OFFICE, 25/5/2004 (TAB 421)**

9
10 MR COHEN: Thank you very much, Commissioner. I am much
11 indebted. On that footing - I know everybody will cheer on
12 this - I believe I have concluded my questions. I'm sorry,
13 I have one more.

14
15 Q. I believe you're in volume 6. Could you retrieve
16 volume 5, please. When you have that, would you kindly go
17 to tab 359 in volume 5. You gave some evidence, I believe
18 it was today, if not yesterday - I think it was today,
19 I don't believe I have the transcript record - that the
20 operational size of the parish that Father Fletcher was in
21 had been, I think your phrase was, doubled or expanded at
22 least. Was that your evidence earlier today?

23 A. My evidence was, I think I said in - I believe it was
24 in August that his parish was expanded to include the
25 Lochinvar parish as well.

26
27 Q. Does this document of 3 October 2002 attributed to
28 Bishop Malone demonstrate, as a record, that fact?

29 A. It appears to confirm that, on 1 August 2002, that
30 Father Fletcher's parish also included the parish of
31 Lochinvar.

32
33 MR COHEN: Commissioner, might that document also be marked
34 for identification?

35
36 THE COMMISSIONER: Yes, thank you. MFI10.

37
38 **MFI #10 DOCUMENT LETTER FROM BISHOP MALONE TO REVEREND**
39 **JAMES FLETCHER 3/10/2002 (TAB 359)**

40
41 MR COHEN: Thank you, Commissioner. I have no other
42 questions.

43
44 THE COMMISSIONER: Thank you, Mr Cohen. Yes, Ms Lonergan?

45
46 MR COHEN: I'm sorry, Commissioner, in the interests of
47 time, I've inadvertently overlooked something. I have

1 been, most helpfully, reminded by Ms Lonergan, senior
2 counsel.

3

4 Q. Could I ask you, Detective Chief Inspector Fox, you
5 have still got access to the bundle which contained your
6 statement of 7 February 2013 to which you were taken by
7 Ms McLaughlin? Do you remember being taken to that
8 document?

9 A. I do.

10

11 Q. Do you still have ready access to that document in the
12 witness box?

13 A. I don't, sorry. (Shown to witness).

14

15 Q. Where the flag is on that document, Detective Chief
16 Inspector Fox.

17 A. (Witness reads document).

18

19 Q. Would you accept from me paragraph 28 in your
20 statement is reproduced in paragraph 69 of your affidavit
21 of 24 April.

22 A. Yes, I accept that.

23

24 Q. Is that paragraph 28 the material you were thinking of
25 when you gave evidence about your discussion with
26 Bishop Clarke in answer to questions that were put to you
27 in cross-examination?

28 A. Yes. That's the only time I met Bishop Clarke.

29

30 MR COHEN: If the Commissioner, please.

31

32 THE COMMISSIONER: Thank you, Mr Cohen.

33

34 <EXAMINATION BY MS LONERGAN:

35

36 MS LONERGAN: Q. You have in the witness box with you a
37 document by way of statement that you prepared in February
38 this year?

39 A. Yes.

40

41 Q. The paragraph that your attention has been directed to
42 by Mr Cohen is a paragraph that deals with your
43 conversation with Bishop Clarke in 2002-2003; is that
44 right?

45 A. Yes.

46

47 Q. In that paragraph you refer to a conversation that you

1 had with Bishop Clarke?

2 A. Yes.

3

4 Q. The document that you have with you in the witness box
5 is one you prepared in February this year?

6 A. Yes.

7

8 Q. In that document you state the following, as the terms
9 of your conversation regarding McAlinden:

10

11 *An alleged victim of Denis McAlinden has*
12 *told us the church is aware of at least two*
13 *other women who are alleged sexual assault*
14 *victims of this priest. Do you have any*
15 *knowledge of that?*

16

17 And he said, "No"; do you see that?

18 A. Yes.

19

20 Q. In this statement that you prepared in February this
21 year, you go on to say that there was further conversation,
22 and this is the way you have noted it or referred to it in
23 the statement. You say:

24

25 *Retired Bishop Clarke then suggested*
26 *I speak to current Bishop Michael Malone.*

27

28 A. Yes.

29

30 Q. Does that sentence refer to a retort at that point, an
31 additional part of the answer "No" to the effect that
32 Bishop Clarke, at that point, suggested you speak to
33 current Bishop Michael Malone?

34 A. Yes, he did. He suggested that twice. I probably,
35 you know --

36

37 Q. He said it twice, did he?

38 A. I probably could have - yes.

39

40 Q. Don't worry what you could have. We have to try to
41 understand whether the material you've got in this
42 paragraph that you prepared for this Commission is
43 different to the evidence you have given before the
44 Commission about this matter last week. Do you understand
45 the difficulty that's been created?

46 A. I do.

47

1 Q. Because the evidence --
2 A. I should have put that in - I understand what you are
3 saying --
4
5 Q. No, no, stop, stop. The evidence you've given to
6 the Commissioner is different to what is in this statement,
7 isn't it, on the matter of the conversation with Bishop
8 Clarke? Can you have a look - I'm just directing --
9
10 MR GYLES: That's an unfair question, with all due
11 respect.
12
13 MS LONERGAN: Q. I didn't want you to look upwards.
14 I want you to look at your statement --
15 A. Sorry.
16
17 Q. -- because I am asking you about your statement.
18 Do you see what you say after the sentence, "Retired Bishop
19 Clarke then suggested I speak to current Bishop Michael
20 Malone", you then refer in your statement - please look at
21 it.
22 A. Yes.
23
24 Q. You refer to a further conversation. Do you see that?
25 A. The second question and answer, yes.
26
27 Q. I said:
28
29 *Do you know why Father McAlinden left*
30 *Australia or where he might be now?*
31
32 A. "Might now be", yes.
33
34 Q. He said,
35
36 *You'd have to speak to Bishop Malone. I'm*
37 *afraid I cannot help you.*
38
39 Do you see that?
40 A. Yes.
41
42 Q. That's different to the evidence you've given before
43 this Commission in that you have not given evidence to the
44 Commission that there was an additional question by you,
45 "Do you know why Father McAlinden left Australia or where
46 he might be now?"
47 A. I do recall during the course --

1
2 Q. No, no, I'm not asking you that. I'm asking you to
3 recognise that the evidence you have given before the
4 Commission didn't include that additional question, did it?
5 A. Not per se, as has been read on to the record as such,
6 yes. I have - I believe that, during the course of my
7 evidence I have mentioned that there was a second question
8 and answer.
9
10 Q. If I suggest to you that you have not, in your
11 evidence before this Commission, raised that there was a
12 further question by you to Bishop Clarke in that meeting,
13 to the effect, "Do you know why Father McAlinden left
14 Australia or where he might be now"?
15 A. No, I didn't - I didn't - I didn't raise the question
16 in that - so far as what is recorded in my statement there.
17
18 Q. All right. What I'm asking you about is whether you
19 acknowledge that you didn't before the Commission --
20 A. Yes; yes, I do.
21
22 Q. -- orally give that as part of your evidence of the
23 conversation you had with former Bishop Clarke?
24 A. Yes.
25
26 Q. You agree?
27 A. Yes, I agree.
28
29 Q. In the report that you prepared in November 2010,
30 you don't mention - we'll go to it if we need to, it is
31 exhibit 79 - when you quote your conversation with
32 Bishop Clarke that there was an additional question, "Do
33 you know were Father McAlinden left Australia or where he
34 might be now?" I'll just have you shown exhibit 79 so you
35 can have a look.
36 A. Is that my report of 25 November?
37
38 Q. I'm sorry, exhibit 69. I'm terribly sorry. Yes, it
39 is.
40 A. No, I can recall. I'm fairly confident --
41
42 Q. No, just have a look at it.
43 A. Okay.
44
45 Q. Would you turn to page 4 of the report, which is
46 page 1377 down the bottom middle.
47 A. Yes.

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Q. Do you see the conversation in inverted commas and italics that you've recorded in this report in November 2010 regarding your conversation with former Bishop Clarke?

A. In inverted commas, yes.

Q. And do you see that there's nothing there about a question asked by you of former Bishop Clarke, "Do you know why Father McAlinden left Australia or where he might be now"?

A. No, I never included that in the report, that's true.

Q. So why is it that you have included it in the statement that you prepared for the Commission but didn't include it in your report in 2010 and didn't include it in the evidence you've offered to the Commissioner last week?

A. The simple explanation is I didn't intend for the report to be comprehensive. The point I was making in the report, which was an internal police report, is that Bishop Clarke had, on all appearances, lied about his knowledge. I could have gone on and recorded that, but I could have recorded so many other things that I've given in evidence before this Commission in that report, but that wasn't the idea of the report. The report predominantly related to other things, but I just wanted to highlight a number of aspects.

Q. You didn't see the need to include the further question you asked, "Do you know why Father McAlinden left Australia or where he might be now"?

A. I didn't feel that that would add any more weight to - yes, I suppose that's a poor term. Anything you add would add a bit more weight, but I didn't want the report to go on as a massive article. I haven't included in that many things.

Q. I'm going to stop you. We need to stick to the basics here. Is there a difference between what's in the statement you prepared for this Commission and what's in your report in November 2010, in terms of the additional question that you asked --

A. Yes.

Q. All right. Just look at your 2013 statement. Do you see how you've set out the conversation there? I want to make sure it is understood what you are attempting to record there.

1 A. Yes.

2

3 Q. After the first question and answer, which is, "Do you
4 have any knowledge of that?", he said, "No", and then you
5 go on to insert a sentence,

6

7 *Retired Bishop Clarke then suggested*
8 *I speak to current Bishop Malone.*

9

10 A. Yes.

11

12 Q. Are you attempting to convey that, at that point,
13 former Bishop Clarke said, "You'll have to speak to Bishop
14 Malone"?

15 A. Yes.

16

17 Q. You are, all right. So that is consistent with the
18 first part --

19 A. That's true.

20

21 Q. I'll withdraw that. That is consistent with what
22 you've put in your November 2010 report?

23 A. Yes.

24

25 Q. You go on to say in your statement that you asked an
26 additional question, and this is the bit I want to ensure
27 is clear. You are not suggesting, are you, that the only
28 time former Bishop Clarke said to you, "You'd have to speak
29 to Bishop Malone. I'm afraid I cannot help you", was in
30 response to the question about where Father McAlinden is
31 currently or why he left Australia?

32 A. No, he said it --

33

34 Q. He said it twice?

35 A. He said it twice.

36

37 Q. Thank you.

38 A. Yes, they're not the exact words, but --

39

40 Q. That's all we need. That's all we need. To that
41 extent, there is no tension, as you see it, between the
42 statement that you prepared in February this year and your
43 evidence before the Commission in that it is still your
44 position that former Bishop Clarke told you you needed to
45 speak to Bishop Michael Malone, both in relation to
46 previous complaints or other complaints about other women,
47 as well as the issue regarding McAlinden's current

1 location?

2 A. Yes, that's exactly right.

3

4 MS LONERGAN: Thank you, Commissioner. Commissioner,
5 could I have a five-minute break to speak to those who
6 instruct me?

7

8 THE COMMISSIONER: Yes.

9

10 **SHORT ADJOURNMENT**

11

12 MS LONERGAN: Thank you for that time, Commissioner. It
13 will assist in a smoother re-examination on a particular
14 matter.

15

16 Q. Detective Chief Inspector Fox, you gave some evidence
17 on Tuesday, 2 July regarding the question of documents you
18 say you sent to the Ombudsman in May 2003?

19

A. Yes.

20

21 Q. You will recall that one of the documents you were
22 shown - which is exhibit 56, which is behind tab 396 - was
23 a report that you prepared dated 29 May 2003?

24

A. Yes.

25

26 Q. Do you have a copy of exhibit 56 there in the witness
27 box with you?

28

A. I have 69.

29

30 Q. No, exhibit 56. Do you have that in your hand there?

31

A. No.

32

33 Q. It is coming. Someone will bring it to you.

34

A. Yes.

35

36 Q. Exhibit 56, Detective Chief Inspector Fox, is your
37 report dated 29 May 2003 to the Ombudsman. Do you see
38 that?

39

A. Yes.

40

41 MS LONERGAN: Could the witness also be shown the
42 transcript of 2 July 2013.

43

44 Q. I think that's already there in the witness box with
45 you. Turn to page 147 and 148 and just read those pages to
46 yourself from line 36.

47

A. Line 36 on 147?

1
2 Q. Page 147, line 36. Do you recall I was asking you
3 some questions about this disk that you had allegedly
4 prepared for the Ombudsman? Just stop at page 148,
5 line 27.
6 A. (Witness does as requested).
7
8 MS LONERGAN: Could the witness also be shown exhibit 69.
9
10 THE WITNESS: That's here.
11
12 MS LONERGAN: Q. I'm sorry, not exhibit 69. I will come
13 back to that. Tell me when you've got to line 27 on
14 page 148.
15 A. Yes.
16
17 Q. The effect of your evidence, Detective Chief Inspector
18 Fox, was to the effect that you provided the report of
19 29 May 2003 at the request of the Ombudsman's office; is
20 that right?
21 A. Yes, I did.
22
23 Q. You also gave some evidence to the effect - I'll turn
24 it up shortly - that you sent a disk in of the "I said/He
25 said" conversation you had with Bishop Malone --
26 A. Yes.
27
28 Q. -- prior to you sending the statement on 29 May; was
29 that the position? I'm just asking you about what
30 happened?
31 A. Yes, I believe I did.
32
33 Q. Is it your evidence that you sent a computer disk in,
34 did you, with no letter or correspondence or anything
35 accompanying it?
36 A. No, no. My recollection is I - it wasn't in
37 isolation. It was - from memory, it was a
38 three-and-a-half-inch disk that I put in a yellow envelope
39 and I attached that to a document.
40
41 Q. The three-and-a-half-inch disk, what do you mean; like
42 a floppy disk?
43 A. Yes, sorry, that was all in vogue back then.
44
45 Q. So a plastic square disk for a computer?
46 A. That's my recollection.
47

1 Q. What do you say accompanied that disk?
2 A. I remember, for some reason, I can recall it was a
3 yellow envelope that I --
4
5 Q. What was in the yellow envelope?
6 A. Sorry, the disk. I put the disk in a yellow envelope
7 and sealed it.
8
9 Q. What was in the envelope with the disk - nothing?
10 A. Sorry, the disk in isolation, yes, sorry. And then
11 I pinned that to a document, whether it was an earlier
12 report or a copy of my statement, and caused that to be
13 mailed down.
14
15 Q. You mailed something to the Ombudsman?
16 A. Yes.
17
18 Q. In what? What was it sent in? You've got the yellow
19 envelope with the disk. You've got a document attached to
20 the front. What was it in, to the best of your
21 recollection?
22 A. I imagine in A4-size --
23
24 Q. I don't want you to imagine. Do you recollect or not?
25 A. No, I don't.
26
27 Q. You recollect putting the disk in a yellow envelope?
28 A. Yes.
29
30 Q. But you don't recollect what piece of stationery --
31 A. Well, sorry, I should --
32
33 Q. Stop! Stop! What piece of stationery ended up
34 surrounding the whole missive you were sending to the
35 Ombudsman at that time; is that the position?
36 A. My recollection is I remember sending disks a number
37 of times and I should say --
38
39 Q. No, I'm going to stop you. Did you send more than one
40 disk to the Ombudsman; is that your evidence?
41 A. No. No, I don't recall sending it to --
42
43 Q. Let's not talk about what you sent to other places.
44 Let's focus on the disk you say you sent to the Ombudsman
45 in 2003, in May.
46 A. Yes.
47

1 Q. Do you recollect that you put the disk in a yellow
2 envelope?
3 A. Yes.
4
5 Q. You recollect that you put something on the front but
6 you can't describe what it is that you put on the front?
7 A. Yes. I don't - I don't want to guess. I did attach
8 it to something. Obviously it had to be addressed
9 somewhere, but I don't recall specifically what it was.
10
11 Q. What do you say was the document or piece of paper or
12 identifying material you sent with the disk to the
13 Ombudsman at the time you sent it to the Ombudsman?
14 A. It may have been a report or an earlier version of
15 this report.
16
17 Q. What --
18 A. I'm not sure.
19
20 Q. What report?
21 A. Sorry, the report that ultimately was dated 29 May.
22
23 Q. Could the witness be shown exhibit 51, please.
24 (Shown to witness). Do you see that's a statement you
25 prepared on police letterhead dated 28 May 2003?
26 A. Yes.
27
28 Q. Do you see that? Having a look at that document, does
29 that prompt any recollection as to whether that was the
30 document you sent with the disk?
31 A. It is quite likely it is, as in paragraph 3, it says:
32
33 *I produce the disk on which that electronic*
34 *note was stored.*
35
36 Q. Are you guessing in relation to that?
37 A. I am guessing. I'm only making the assumption that
38 that's the document because of what it says in it. I can't
39 be certain that that was it, but it makes sense that it
40 was.
41
42 Q. Your best guess is that this was the document you sent
43 with the disk to the Ombudsman's office, is it?
44 A. Yes.
45
46 Q. If it is not this document, what other document would
47 it have been?

1 A. All I can say - all I can suggest is that it may have
2 been the report dated 29 May, but it may have been an
3 earlier version of it that I've mailed down and then - no.
4 I'm not sure, is the honest answer. I just don't know.
5
6 Q. The only document that refers to having produced a
7 disk is this statement that was done on police format which
8 is exhibit 51?
9 A. Yes.
10
11 Q. Could the witness be shown tab 389, which is in
12 volume 5. It is exhibit 55.
13 A. Is it 55 or 56?
14
15 Q. Exhibit 55. It is tab 389. It is dated 21 May 2003.
16 It is a document prepared by you.
17 A. Okay. Yes.
18
19 Q. There's nothing in that document - and take your time
20 to have a look at it - that refers to a disk recording a
21 conversation that you had with Bishop Malone, is there?
22 Have a look at the second page and the paragraph at the top
23 of the second page in particular.
24 A. Yes.
25
26 Q. Do you see you conclude with this statement:
27
28 *My own statement and other issues will be*
29 *addressed in a report to follow in the next*
30 *week.*
31
32 Do you see that?
33 A. Yes.
34
35 Q. There's no way you sent a disk with that report,
36 is there?
37 A. Not if I mailed it on 21 May, no.
38
39 Q. More than that. You actually conclude with the
40 comment that:
41
42 *My own statement and other issues will be*
43 *addressed in a report to follow in the next*
44 *week.*
45
46 A. Yes, that's right.
47

1 Q. You would have referred to a disk in this document if
2 you'd sent it, wouldn't you?
3 A. I may or may not have. I don't --
4
5 Q. It would be very poor practice, would it not, to send
6 a report to the Ombudsman and send with it an important
7 disk but not refer to it at all in the document?
8 A. Only other than if the disk was attached to that
9 statement which makes reference to the --
10
11 Q. No, I'm going to stop you. I'm talking about - it is
12 a theoretical question - a question about police practice,
13 a question about your personal organisation in terms of
14 communicating with the Ombudsman.
15 A. Yes.
16
17 Q. I'm putting a proposition to you. It would be very
18 poor practice, wouldn't it, to send a statement off to the
19 Ombudsman with a disk but make no reference in the written
20 document to the fact that you have sent the statement with
21 a disk?
22 A. Yes.
23
24 Q. But on 28 May - exhibit 51 - when you prepare your
25 statement in formal police format, you mention that you
26 produce the disk.
27 A. Yes.
28
29 Q. What I want to suggest to you is that you faxed that
30 statement to the Ombudsman's office and that it was not
31 accompanied by a disk and by that statement I mean
32 exhibit 51. What do you say to that?
33 A. No. My - again, my normal practice would be to fax
34 the original report then. I don't know when the
35 Evidence Act changed but I think it still needed the
36 original signature and it would have been the case that
37 I would have forwarded the original signature hard copy
38 statement down, which, I suppose, as we all know, mail gets
39 there a couple of days later, but I would have faxed
40 something down and hopefully it would have married up with
41 the hard copy when it arrived a couple of days later.
42
43 Q. Your evidence now is, is it, that you sent the
44 original of your statement accompanied by a disk after you
45 faxed the statement that's exhibit 51? Is that the
46 position that you now state?
47 A. Yes. I don't recall faxing it down there, I should

1 make that clear, but that wouldn't be unusual for me to do
2 that but --

3

4 Q. What I'm asking you about is your evidence before this
5 commission. Are you now saying that you sent the disk
6 after you faxed your statement to the Ombudsman?

7 A. I don't recall. I don't recall faxing it. I don't
8 say that I didn't but I don't recall faxing it, but
9 obviously you can't fax a disk, so I would have imagined,
10 you know, that the disk would have been attached to the
11 hard copy of the statement or, at the very least, someone
12 down there would have said to me, "Listen, your statement
13 mentioned the disk" --

14

15 Q. No, no, no, I'm going to stop you.

16 A. Okay.

17

18 Q. I'm just turning up a transcript reference for the
19 assistance of the witness, Commissioner. Do you see in
20 your transcript of evidence on 2 July, at page 148, around
21 about line 16 to 27, that part of your evidence that I had
22 you read a little while back? Do you see you say there:

23

24 *... there had been some exchanges between*
25 *us, predominantly via the telephone,*
26 *I believe there may have been also by*
27 *email ...*

28

29 I'm sorry, I will read that again:

30

31 *... I believe there may have been some also*
32 *by email, I was then requested if I can do*
33 *a complete report outlining everything on*
34 *how it came about and also prepare - well,*
35 *actually, my recollection is that I did*
36 *send some of it to the Ombudsman and an*
37 *electronic version of the "I said/he said",*
38 *at some stage before that.*

39

40 And "before that" being in reference to your report to the
41 Ombudsman on 29 May 2003?

42 A. Yes.

43

44 Q. Do you see there your answer suggests that you sent
45 this prior to sending your statement on 29 May?

46 A. No, no, no. When I said "electronic version" I meant
47 via email electronically.

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Q. Are you sure that you sent it by email electronically in 2003?

MR COHEN: I object. There is a mercurial difference between this. Can I speak to my learned friend?

THE COMMISSIONER: Yes.

MS LONERGAN: Q. Are you sure you sent anything to the Ombudsman in 2003 by way of email?

A. I remember emails, some emails between the officer at the Ombudsman's office and myself. I am sure of that. You know, again, if you're saying to me --

Q. I'm not saying to you anything. I'm just trying to get clarification.

A. Yes, sorry. Yes, there was an exchange of emails between us around that time, I do recall that.

Q. Can we take it by "exchange of emails" you were not able to send a three-and-a-half inch floppy disk by email?

A. Obviously not, no.

Q. What do you mean "with exchange by email" --

A. I may have electronically --

Q. -- in terms of the "I said/he said" material?

A. Yes. I may have electronically attached a copy of the "I said/he said" - electronically.

Q. Who was the person at the Ombudsman's office with whom you were having email exchanges in 2003 regarding this matter?

A. My recollection is there were three individuals, but predominantly the main one was a lady by the name of Anne Barwick.

Q. Which of those three did you send an electronic version of the "I said/he said" documents, do you say?

A. Via email --

Q. Yes.

A. -- are we talking about? I don't recall.

Q. You really are unable to recall which of those persons you sent that very important almost contemporaneous

1 document to; is that the position?
2 A. There was a lot - you know, all I can say is through
3 that period there was --
4
5 Q. No, no, please answer my question.
6 A. Yes. Yes. The answer to that is "yes".
7
8 Q. You don't recall?
9 A. No.
10
11 Q. One of the persons was Anne Barwick. Who were the
12 other two that you were having email exchanges with at that
13 time? It is important, so please rack your brain to
14 identify them.
15 A. There were - they were all women. The other two - all
16 three were women who worked down there and I don't recall
17 the names off the top of my head at the moment. I think
18 one of them is mentioned somewhere in some of the
19 correspondence or one of my duty book entries somewhere.
20
21 Q. Were the other two people male or female?
22 A. Sorry, they were all female.
23
24 Q. All female?
25 A. All three were females.
26
27 Q. We have Anne Barwick?
28 A. And two others.
29
30 Q. You can't remember the other two?
31 A. No.
32
33 Q. We'll come back to that at another time, if necessary.
34 Why did you need to send a disk, a floppy disk, a
35 three-and-a-half-inch floppy disk version to the Ombudsman
36 if you had already sent them an electronic version of the
37 same document by email?
38 A. Yes. They wanted to verify the date that I first
39 created it and that was my understanding. It was the
40 disk that it was created on. I'd already copied it on
41 to another disk, so I sent them that one down to verify
42 that.
43
44 Q. We're talking about two disks now, are we? You said
45 you'd already created it on one disk and you copied it to
46 another disk. Are we talking about two disks?
47 A. I know I still have it and I may have copied it on to

1 the hard drive. My recollection was I sent them an
2 electronic version on a disk to verify that the
3 conversation occurred within two or three days. The
4 original document was saved on that date.

5

6 Q. Where is the master disk or the disk from which you
7 copied the version you sent to the Ombudsman?

8 A. I've got a feeling it would still be in my - it may
9 still be on my police hard drive somewhere.

10

11 Q. When you say "disk" do you mean an individual item or
12 do you mean a file saved on your police hard drive?

13 A. I just don't recall when the system changed over.

14

15 Q. You're the one giving evidence regarding the existence
16 of a disk.

17 A. Yes.

18

19 Q. You're giving evidence to the effect that you copied
20 from one disk to another disk to provide it to the
21 Ombudsman. Can we take it from your evidence that there is
22 an item, namely, a disk, which has the original version of
23 this document on it?

24 A. That's the one that was sent to the Ombudsman and
25 I kept a copy of it on - what I'm saying is I don't
26 recollect whether it was on - the specific computer that
27 I was on at the time, whether I stored it on that hard
28 drive or whether the police department had evolved by that
29 stage to having a centralised computer in Sydney where our
30 documents were all stored, regardless of what location we
31 were entering the data on the system from.

32

33 Q. Do you recall a couple of answers back you told me --

34 A. Yes.

35

36 Q. I haven't even finished. You can't recall yet.
37 You'll just have to hang on. Do you recall you told me
38 that you copied from a disk to another disk the material so
39 that you could send it to the Ombudsman?

40 A. What I'm saying - the hard drive disk or the hard
41 drive - yes, my terminology --

42

43 Q. There's a difference between "disk" and "hard drive",
44 would you not agree?

45 A. No, I - I --

46

47 MR COHEN: I object. Is that right? We don't have any

1 evidence about that, with respect.

2

3 MS LONERGAN: Isn't that a matter of common knowledge?

4

5 MR COHEN: Is it?

6

7 THE WITNESS: No. I - I - sorry.

8

9 MR COHEN: We are talking about 2003, with respect, not
10 2013. There have been material changes in technology in
11 that time.

12

13 THE COMMISSIONER: Yes, thank you, Mr Cohen. I understand
14 you to mean a disk, something that you can carry around,
15 versus something which --

16

17 MS LONERGAN: It is this witness's evidence that there was
18 a disk that he copied to another disk: that's his
19 evidence. I don't know. I wasn't there. I'm trying to
20 understand this witness's evidence in a way that we can get
21 to the bottom of what was provided to the Ombudsman or what
22 wasn't.

23

24 Q. There was no second disk - is that your evidence now?

25

26 A. No. What I'm saying is, you know, again, it is my
27 terminology. I just referred to the - yes, not a removable
28 disk as such. The disk as in the hard - it's probably my
29 poor terminology, but hard drive disk.

29

30 My recollection is the Ombudsman's office wanted to
31 know where I recorded it. I told them they could have the
32 disk because I took a view that it was inadmissible the
33 material in it, really, for the criminal process, so I was
34 happy to forward that, but I kept a copy, but I already had
35 a copy of it on my hard drive disk or my - I probably
36 copied it a number of times over the years, but obviously
37 I've retained a copy at some stage, but how I did so
38 exactly then - but I certainly sent them a disk down which,
39 you know, on the basis of that statement says that
40 I forwarded that down for them.

41

42 Q. You sent that disk down prior to your sending of your
43 report of 29 May 2003; is that the position?

44

45 A. I'm not - I'm not certain. That would be the most
46 likely scenario, but I'm not certain.

46

47 Q. Your evidence has been to that effect - see page 148,

1 lines 16 to 27 - hasn't it? Let me move on to this
2 question. Are you now saying you don't know when you sent
3 the disk to the Ombudsman?
4 A. I'm saying that on the basis of the material I have
5 and I probably should put it across. There was a report
6 sent down, as you've pointed out, on 21 May. I've been
7 asked --
8
9 Q. Yes. We've had a look at that and there's nothing
10 there that refers to a disk, but there is a reference to
11 that you're going to prepare some material and send it.
12 A. That's right. They've asked for me to prepare a
13 statement and during the course of discussion --
14
15 Q. No, no, I'm going to stop you. Between the letter to
16 the Ombudsman of 21 May and your report of 29 May, what do
17 you allege was sent to the Ombudsman by you?
18 A. My statement is dated 28 May, which is between --
19
20 Q. All right, sorry, between 21 and 28 May, what do you
21 allege was sent to the Ombudsman by you, if anything?
22 A. The 21st - obviously, the report of the 21st --
23
24 Q. No, no, after that?
25 A. Sorry, after that --
26
27 Q. Between the 21st - that is, the report you sent on the
28 21st - and the material that you prepared and sent on and
29 around 28 May, what do you say you sent?
30 A. My statement - well, I imagine it would have been
31 around that date. The fact that I've --
32
33 Q. No, I don't want you to imagine. I'm asking you to
34 provide us with your best recollection of what was sent,
35 after you sent the report on the 21st and before you sent
36 either your statement prepared on the police format of
37 28 May or your report of 29 May?
38 A. I can't recall anything else. I may have but I can't
39 recall anything.
40
41 Q. Why are you saying "I may have"? Is that just to
42 reserve the position in case something turns up?
43 A. Yes, something may turn up. I don't recall sending
44 anything else down. I would imagine --
45
46 Q. It wasn't a disk. Is that the position? You didn't
47 send a disk between the 21 May report and the 28 May

1 report; is that your position?
2 A. My recollection is that I did send it down there. In
3 all likelihood and I can't say emphatically but I would be
4 surprised if I didn't attach it to a copy of the statement
5 simply because the statement says I produced the disk on
6 which that electronic note was stored.
7
8 Q. When do you say you sent a hard copy of the statement
9 with the disk attached to the Ombudsman?
10 A. On or about 28 May.
11
12 Q. Is it your recollection that you sent your statement
13 of 28 May and/or your report of 29 May to the Ombudsman in
14 any form other than hard copy form, that is, by mail or DX
15 or delivery?
16 A. The answer is I don't recall, you know, if I'm not to
17 go to "maybes", but I don't recall.
18
19 Q. I suggest to you that the way in which you transmitted
20 both your statement of 28 May and your report of 29 May was
21 together by fax. What do you say to that?
22 A. That wouldn't surprise me, yes.
23
24 Q. I suggest to you that they were both transmitted
25 together on 29 May 2003. Do you accept that?
26 A. Yes.
27
28 Q. And that no disk accompanied that particular
29 transmission. It may seem obvious but would you accept
30 that?
31 A. I accept that yes.
32
33 Q. And that no disk was ever provided by you to the
34 Ombudsman at all?
35 A. No, I disagree with that.
36
37 Q. You're aware, aren't you, that a letter has been
38 tendered from the Ombudsman of New South Wales to the
39 effect that they have no record or knowledge of you
40 providing an electronic version by form of disk to the
41 Ombudsman's office?
42 A. I'm aware of that.
43
44 Q. I suggest to you that the Police Force of New South
45 Wales have been unable to locate any record of you having
46 created on police computer or produced by way of hard copy
47 disk any disk that fits the description of the one we are

1 dealing with?
2 A. I don't know how that would be done, but yes, if
3 they've had a search for it and said they can't find it on
4 the hard drive, I accept that.
5
6 Q. Can you identify with as much precision as possible
7 where a copy of the disk might now be found, if at all?
8 A. When you say "a copy of the disk", are you talking
9 about the material on the disk as in electronic form?
10
11 Q. No. There would be plenty of copies of that in the
12 court right now.
13 A. Yes.
14
15 Q. An electronic version somehow saved on to a computer
16 hard drive, on to a floppy disk on a computer somewhere,
17 where would we be able to find that?
18 A. There's a copy of it at my home, on my home computer,
19 which at some stage I had brought home.
20
21 Q. How did it get on to your home computer?
22 A. I think I would have copied it from a work computer on
23 to a memory stick. I don't know exactly but it is most
24 likely I copied it on to a memory stick and then copied it
25 on to my home computer at some point in time.
26
27 Q. And you're aware from the letter from the Ombudsman of
28 New South Wales that's been tendered that it is the
29 Ombudsman's position that they received your statement and
30 report by facsimile. Are you aware of that?
31 A. Yes, I'm aware of that.
32
33 MS LONERGAN: Excuse me, Commissioner.
34
35 Those are my questions, Commissioner.
36
37 THE COMMISSIONER: Detective Chief Inspector Fox, thank
38 you very much for your evidence.
39
40 I am sorry, Mr Cohen? Nothing more?
41
42 MR COHEN: No, No, No, I think we were both daydreaming,
43 Commissioner, I apologise.
44
45 THE COMMISSIONER: I thought there was something going on.
46 Thank you very much, sir, for your evidence and you are
47 excused.

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THE WITNESS: Thank you.

<THE WITNESS WITHDREW

MS LONERGAN: Commissioner, given the time, could we adjourn until 9.30 in the morning?

THE COMMISSIONER: 9.30.

MS LONERGAN: Yes, thank, you, Commissioner

AT 4.50PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 10 JULY 2013 AT 9.30AM

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