

**THE PARLIAMENTARY INQUIRY INTO THE
HANDLING OF CHILD ABUSE BY RELIGIOUS
AND OTHER NON GOVERNMENT
ORGANISATIONS**

**SUBMISSION BY WAY OF REPLY BY PETER
O'CALLAGHAN QC, INDEPENDENT
COMMISSIONER TO MATTERS RAISED BY
COMMITTEE MEMBERS IN THE QUESTIONING
OF SISTER ANGELA RYAN AND THE
INDEPENDENT COMMISSIONER**

1. Committee Member Mr Wakeling put the following to Sister Angela Ryan when she was giving evidence:

"They (the Independent Commissioner and ad hoc Independent Commissioner) indicated that there were 16 cases where they undertook their own quasi Court case to determine a finding and in that circumstance the victim and the alleged perpetrator appeared in the same proceeding which I understand involved no prior psychological or psychiatric assessment or assistance? Do you have a view on that....."

Further on:

"Mr Wakeling: Would you support a process where you brought the perpetrator and the victim together in the same room without prior psychological and/or psychiatric assessment and/or assistance?"

2. These questions imply Mr Wakeling considers the aforesaid hearings had been improperly conducted because the Commissioners heard from both the victim and the alleged perpetrator in the same proceeding and because he understood that no psychological or psychiatric assessment or assistance had been offered to the victim. Put another way the victim was at a disadvantage in the conduct of the hearing. Significantly, those questions were put after I had given evidence, in which inter alia I had stated, as appears below, that victims were not infrequently referred to Carelink before any decision was made as to the veracity of the complaint. No such occasion as Mr Wakeling asserts has occurred.
3. This and the questions of the Independent Commissioner impugns the professionalism and the integrity of the Independent Commissioner, the ad hoc Independent Commissioner, and Counsel Assisting the Commission.
4. I now describe in detail, how hearings were conducted, (with appropriate redactions to preserve confidentiality), in order to correct statements to the contrary.
5. *Mr Wakeling: If I may say Mr O'Callaghan many of the victims who have presented to us – male or female from varying life backgrounds, have a common trait of being mentally scarred. I know as part of this process they have been afforded counselling to assist them with the process. I am wondering whether you thought it was appropriate that the people who were seeing you for the first time in your legal practice were not afforded any care in terms of pastoral care or counselling – to assist them with this harrowing process.*
(Emphasis supplied)

O'Callaghan: Can I answer it in this way. There have been a number of complainants who have said I've got a complaint but because of the palpable distress that they were in, before I have made a decision as to whether or not that complaint has been established, I have exercised my discretion to refer them to Carelink and they have provided counselling psychological support and if necessary if required pastoral support will also be required (sic)

Mr Wakeling: But would you concede that having a counsellor there would have provided a greater benefit for them than not having a counsellor there

Mr O'Callaghan: I am not sure that that is so at all. What has to happen is that I have to be satisfied that the abuse has occurred. Certainly if they wish to have a counsellor there, they can. As I say, many are accompanied by their friends and associates sometimes a counsellor sometimes a solicitor

Mr Wakeling: But Mr O'Callaghan if I may I'm not a psychologist

Mr O'Callaghan: Nor am I

Mr Wakeling: and you are not a psychologist either and we have had many psychologists, people with significant experience in this area talk about the psychological harm that has been perpetrated. Do you think it was appropriate in the circumstances for you in your position to make that judgement call as to whether or not someone should or should not be afforded counselling assistance at that first initial hearing

Mr O'Callaghan: As I say at the initial hearing whether or not I have made a decision and they require counselling I certainly provide it or recommend that it be provided. Mr Wakeling I have over the years in my practice which is a very wide one in maintenance cases in family cases, law cases, personal injury cases become very used to dealing I hope sympathetically and compassionately with persons who are victims of abuse also victims of trauma PTSD and so on. I appreciate I am going to look at and get the criticisms which have been made that I believe that I have acted fairly reasonably and appropriately in these cases

Mr Wakeling: In regard to that comment it is not my criticism

Mr O'Callaghan: I understand

Mr Wakeling: That is obviously a criticism that has been presented to this Committee....

Mr Wakeling: But if Mr Gleeson and Mr O'Callaghan: Certainly there is a perception from the Church that the process that you administer is one that is conciliatory is one that protects the needs of victims is one that is engaging. But what you have effectively described is a quasi legal system. You have acknowledged that victims in the first instance are not afforded any form of counselling or assistance and if an allegation is denied then effectively that victim who is obviously in quite an emotional state is immediately thrust into a legal situation – a court case – in which you stand as the Judge to determine the outcome. Is that a fair summation.

Mr O'Callaghan: Yes can I say this I say to the victim you've told me what your complaint is and it has been decided that you're not going to the police. I must and this appears currently throughout my transcripts put what you say to the alleged offender. In many instances the complainant says "I know what he'll do he'll deny it". Whether or not that happens. Whilst I have found many cases established as appears in my original Terms and Conditions I have to act impartially between the parties

Mr Wakeling: ... what you have in fact described is a process which you have been engaged to perform, which is not that all but is an arbitrary (sic) process which is effectively a quasi legal system in which the victim who has shown courage to come forward and raise a complaint, is in fact afforded no protection from an emotional perspective or from a psychological perspective and potentially they are at their worst and they are then thrust into a legal system.

Mr O'Callaghan: If I might say a number of victims have received counselling and psychological support from Carelink or their practitioners before I have made a decision as to whether or not the complaint is established. Can I just say this: I appreciate that in a limited number of cases in which there is a denial and the complainant wants to continue through the Melbourne process, he or she meets in I submit a fair and a compassionate way the same situation that he or she would meet when standing on the floor of the Magistrates Court

The Chair: I think Mr Wakeling's point was describing the setting, which has been very intimidating for many of these victims. Certainly that is the evidence that we have heard from many of them. I think he was just trying to explain to you or put that to you in relation to that. It is not disputing your role; it is just the manner in which the process was conducted." (Emphasis supplied)

6. In order to correct the damaging perception which Mr Wakeling and presumably Members of the Committee has, I set out below summaries of how complaints were dealt with in confidential hearings conducted by the Independent Commissioner and ad hoc Commissioners. These cases record the only occasions in which the complainant and the alleged offender participated in a hearing in the same room. Mr Wakeling in his questioning of Sr Angela Ryan asserts that there is a process where the perpetrator and the victim are brought together without prior psychological and/pr psychiatric assessment and/or assistance. This is not the case. To preserve confidentiality there are redactions of relevant documents, and the use of pseudonyms. The Committee will be advised in confidence, if they wish, of the real name of the complainant and the alleged offender so that files can be referred to if that is desired, a process which regrettably has not been engaged in by the Committee.

CASE 1

THE HEARING OF THE COMPLAINT OF AB AND BC AGAINST XY

AB and BC were sexually abused by a priest (XY). The abuse of AB was much more serious than that of BC who albeit subsequently entitled to compensation declined to seek it.

Summarily stated AB for many years did not disclose the details of the abuse, and it was therefore not possible to bring complaints or initiate criminal action against XY. See my comment to paragraph 29 in my response to the submission of Glenn Davies.

In March 1997 I was rung by a School Principal who had later taught AB. AB now an adult met the Principal in a supermarket and said that she wished to take her complaint further. The Principal contacted me and it was arranged for me to meet with AB and the Principal at a residence in an outlying suburb. The Principal was a most impressive person and she obviously

gave AB significant assistance. I interpolate that AB had troubling psychological problems resulting from the abuse and she had received counselling commencing in 1994. I interviewed AB and the transcript of that interview reveals evidence by AB which if established proved that she had been sexually abused. I advised AB of her right to report the complaint to the police and that I would encourage the exercise of that right. AB had previously complained to the police but it was an unsatisfactory interview which resulted in her not disclosing what she had intended to disclose.

In discussions with the Principal and AB I recommended that she consult with her psychologist and her lawyer in relation to her participating in a confidential hearing, given that she did not wish to report the matter to the police.

In order to demonstrate the way in which I handled the issue of whether AB should participate in a hearing I refer to relevant correspondence: I wrote to AB's solicitors as follows

(i) *"Dear Mr BM*

I have been appointed as an Independent Commissioner by the Archbishop of Melbourne to enquire into allegations of sexual abuse by priests, religious and lay persons working within the Archdiocese of Melbourne.

I enclose herewith a copy of the Terms and Conditions of my appointment and also my appointment as a delegate of the Archbishop pursuant to Canon 1741.

I confirm that you act for AB whom I interviewed on 20 March 1997. I enclose herewith a somewhat imperfect transcription of that interview, the imperfection arising because of the quality of the recording equipment.

As appears from that transcript, I understand that AB is not desirous of reporting this matter to the police though I emphasise again she has a continuing and unfettered right to do so, and I would encourage her to exercise that right. However if she does not wish to exercise that right I maintain the undertaking I gave to her that all that she has told me so far will be treated confidentially.

Because what she has told me does constitute a complaint against XY within the terms of my reference I propose that AB attend at a hearing which I would conduct in the presence of XY and then deal with the complaint. At that hearing there would be a number of other persons present and called including G, Mrs S and BC.

It would be my intention to provide to the solicitors for XY a statement of particulars in respect of the complaint, and in that context it would be of considerable assistance if you were to have BC make an appropriate statement detailing the essence of the complaint. It will be appreciated that the transcript of the interview contains a deal of material which is quite irrelevant and immaterial to the subject complaint.

As also appears from the transcript AB authorised me to obtain a report from Ms L, her psychologist. Such a report would be relevant first for the purposes of the issue

of the complaint made against XY and second in the event that BC seeks to apply for compensation being a subject of sexual abuse by a church person. Should there be any amplification of the above matters required I would be pleased to discuss same with you."

- (ii) Following this on 1 June 1997 Mr Jeff Gleeson, who was Counsel Assisting, wrote to the solicitors for AB as follows:

"Dear Sir

I have been appointed as Counsel assisting the Independent Commissioner, and refer to the hearing of the complaints by AB and BC respectively which are to be heard on 4 June 1997 at Optus Centre, Level 25, Suite 36, 367 Collins Street, Melbourne.

It is proposed to commence the hearings at 9.30 am. I understand that AB will be represented by your Mr M, and I advise that the proposed procedure is that I will lead the witnesses to be called as and for the complainants. You will be entitled to ask whatever questions you wish in further examination in chief, and the witnesses will then be cross examined by the solicitor representing XY.

I will be entitled to re-examine.

I have been instructed by the Commissioner to provide to you for your perusal a copy of a proposed agreement between the parties relative to confidentiality of the proceedings. If you have any objections to or suggestions in respect of this agreement could you advise.

I further advise that there will be a room available for the complainants and their representatives.

If you have any queries arising from the above please advise."

- (iii) The hearing proceeded on the 5th and 6th June 1997 and was then adjourned to allow submissions to be provided.
- (iv) In February 1998 I gave Reasons for my Decision in a Report comprising 43 pages. I set out redacted pages 1 to 3 (paras 1 – 6) and page 43 (paragraph 25.1) of that Report.

REPORT OF COMMISSIONER

1. "Archbishop George Pell the Catholic Archbishop of Melbourne through his solicitors appointed me to act as an Independent Commissioner to enquire into and advise the Archbishop with respect to allegations of sexual misconduct by priests, religious and lay persons, working within the Archdiocese. The Terms and Conditions of my appointment ("the Appointment") are Schedule 1 annexed hereto.

2. Without referring to all relevant terms of the Appointment, Clause 1 (xi) relevantly provides,
- “If a complainant, prior to stating the facts and circumstances constituting his or her complaint informs the Commissioner that he or she is only prepared to divulge those facts and circumstances to the Commissioner upon his assurance that he will not (unless required by law) disclose those facts and circumstances to any person other than a person nominated by the complainant, the Commissioner, unless required by law so to do, shall not disclose those facts and circumstances to any other person save to members of his staff from whom he shall have procured an undertaking of confidentiality”.*
3. The Appointment further provides that the Commissioner is required to “inform the complainant that he or she has an unfettered and continuing right to make that complaint to the police, and the Commissioner shall appropriately encourage the exercise of that right”.
4. Complaints of sexual abuse by Fr XY were made by AB and BC (formerly T). In both instances the complainants did not wish to take the matter to the police, as provided above, divulged relevant facts and circumstances upon the Commissioner’s undertaking of confidentiality.
5. Following the making of the complaints it was decided to hold a hearing and agreement was entered into on 4 June 1997. The parties to that agreement (Schedule 2 annexed hereto) were XY, the Commissioner, AB and BC. The recitals to that agreement state inter alia,
- “B. The priest has been the subject of complaints of indecent assault by the abovenamed female complainants (the “complainants”) and neither of these complainants desire or intend to report such complaints to the police notwithstanding that they have been advised that they have the right to do so.*
- C. It is the practice of the Commissioner to interview complainants of sexual abuse, and the subject of such complaints, and in cases where the complaint is disputed to conduct a hearing to determine the validity or otherwise of the complaint.*
- D. The priest and the complainants have agreed to participate in the hearing before the Commissioner and upon the terms and conditions contained herein.”*
6. Most significantly the agreement further provided inter alia that,”

25.1 I have found that the complaints of AB and BC have been made out. I regard the indecent assault of AB as serious, and I will report accordingly to the Archbishop. I will also report appropriately in relation to BC. Before doing so, and because I understood Mr M wanted the opportunity to make further submissions, I will delay making any recommendations for 14 days, during which time further submissions can be made if desired. I must say that prima facie, I do not consider it appropriate for a priest found to have acted as XY did, to be returned to the Ministry. Accordingly, any further submissions should in effect show cause why I should not recommend to the Archbishop that pending the resolution of whatever canonical processes might be initiated in the light of my recommendations, XY should remain on administrative leave." (page 43)

**Peter J O'Callaghan Q.C.
Independent Commissioner**

9th February 1998"

CASE 2

HEARING OF THE COMPLAINTS BY CK AND CD AGAINST HE

1. CK is the younger brother of sister CD. On 3 July 2006 I was contacted by the mother of CK and CD who told me that a few months ago CK had told she and her husband that he had been sexually abused by HE a layman who was a teacher of altar boys at a Parish of the Archdiocese. CK had recently come to live in Melbourne trying to get a job and had suffered from depression and it was in this context that he told his parents of what had occurred. CK did not know that his mother was ringing me and what was tentatively decided was she would tell him that she had rung me and have him contact me.
2. A little while later I spoke again to the mother who informed me that CK had said that he would contact me. In fact CK did not contact me until April 2007.

However in the meantime on 4 August 2006 I was rung by CD who told me that she had been sexually abused by HE. My notes of that conversation include the following:

"I gather that quite apart from the fact that she herself wants to complain, that pursuant to discussions which she has had with her mother she wants to take the step forward so as to encourage CK to do so.

Briefly stated she expressed some quite dire forebodings about CK and his inability to deal with the situation".

3. I then received an email from CD in which she detailed her complaints. It should be noted that CD was contacting me from Perth, where she practised as a Solicitor.

On 9 August 2006 I emailed CD and I set out hereunder that redacted email.

"Dear Ms CD

I refer to your email of 4 August and note its contents and for which I thank you.

Let me explain my position. I am the Independent Commissioner appointed by the Archdiocese of Melbourne to enquire into allegations of sexual abuse by priests, religious and lay persons within the Archdiocese of Melbourne. It would seem from what you describe that HE held a position of control in relation to the Parish which would make him a "church person" within the meaning of that phrase in the terms and conditions of my appointment.

For your information I attach herewith a copy of the terms and conditions of my appointment.

I principally do so because as you will see it is a requirement of that appointment, and indeed my invariable practice to state to complainants who raise matters which might constitute criminal conduct, that they have a continuing and unfettered right to report the matter to the police, and I encourage the exercise of that right. This is because it is important that I am not seen as a substitute for the police force, or perhaps being seen as a means whereby crimes might be covered up.

If the matter is reported to the police, then I do nothing more, until the police investigation and any proceedings emanating therefrom are concluded.

On the other hand, there are many complainants who having been advised of that right, nonetheless desire not to go to the police. This is for a variety of reasons including in some cases the reluctance to become involved in the stress and strain of Court proceedings.

Having said that, and because your complaint certainly alleges criminal conduct, would you let me know what you wish to do. In any event I further explain the procedure I typically follow in dealing with a complaint, which is either not reported to the police, or it has been and the police process has been completed.

I usually interview that complainant in person and take a fully transcribed statement from them. However unless it is the fact that you are likely to be travelling to Melbourne, that does not seem a feasible arrangement in these circumstances.

What I could do at a time convenient to you is, to telephone you and have a full discussion in relation to this matter which discussion, (with your consent), I would record so there would be a transcript of that interview.

I am satisfied that a person is a victim of sexual abuse I can refer that person to Carelink which is an agency set up to provide free counselling and psychological support for victims of sexual abuse. I will forward under separate cover the brochure. which was published at the time of my appointment now as long ago as 1996. Please advise to what address? Subject to updating eg. the current Chairman of the Compensation Panel is now David Curtain Q.C., this document demonstrates the interaction between the Commission, Carelink and the Compensation Panel. I should also add that the current Director of Carelink is Dr Michele Pathè an eminent psychiatrist.

I trust that I have not overwhelmed you with information but it is important for you to appreciate precisely what my role and position is.

Additionally to being referred to Carelink if it is desired to have psychological counselling support, I can refer the relevant person to the Compensation Panel which has jurisdiction to make binding recommendations of compensation up to a limit of \$55,000.

I am of course conscious also of the position of your brother but at this stage I concentrate only on you.

When I spoke to your mother some time ago she told me that HE was now at[location]. If his name is correctly spelt as H there is no reference to that in the phone book.

I look forward to hearing from you by email, by phone or both. Please be assured of my concern to provide relevant assistance.

Yours sincerely

*Peter O'Callaghan
Independent Commissioner"*

4. Things went into abeyance until 2 May 2007 so far as CD was concerned though I had interviewed CK accompanied by his mother on 30 April 2007.

5. With the consent of CD I wrote to HE on 2 May 2007 stating inter alia:

"It is not CD's present intention to report her complaints to the police, and of course if she did so, as is my usual practice, I would refrain from taking any action pending the outcome of police investigations.

I invite you to respond to the above complaint which you can do in writing or by meeting with me accompanied if you wish by any person of your choice. If you wish to meet with me please ring my secretary at the above number to arrange a mutually convenient time".

6. On 28 May 2007 I interviewed HE and the transcription of that interview commences:

"P: I'm starting a conference with HE who has come to see me after I had written to him in relation to complaints I had received from CD and CK and you've received those letters obviously

HE: I did get them

P: and what do you say about them

HE: I was a bit shocked to be quite honest. Absolutely dumbfounded what would you like to

P: Well what do you say to them how do you respond to their allegations

HE: Completely wrong

P: I see so you deny what they say”.

I then had a lengthy discussion with him in which he was referred to the details of the complaints but in respect of which he maintained his denials.

7. Because of what I apprehended was the stressed position of CD and CK I had written to Sue Sharkey of Carelink on 9 May 2007 as follows:

“Sue Sharkey

Re: CD

CD has made a complaint against HE, but I have not as yet communicated that complaint to him. Accordingly no decision has been made by me in relation to the matter. However as is the case with CK I am prepared to direct that they be seen by Carelink as soon as possible. Enclosed is the proposed letter that I will send to HE which details the abuse which CD alleges she suffered....”

8. On 18 June 2007 I wrote to CD the redacted terms of which read:

“Dear Ms CD

I refer to previous correspondence and advise that consequent upon meeting with HE on 28 May I referred the transcript of that interview to him and he replied saying ‘I have read it and accept it as a true record and I have nothing to add’.

I enclose herewith a copy of that transcript, in which you will see that HE denies the allegations that you make.

In those circumstances it is my practice to invite the parties to attend a confidential hearing which I will conduct in much the same manner as a Magistrate would conduct a criminal information in the Magistrates Court.

Mr Jeff Gleeson of Counsel will assist the Commission, and it will be his duty to adduce relevant evidence and make submissions to assist the Commission.

You as Complainant, if you wish, can be represented by a lawyer or any other person of your choice. Either your Counsel or Mr Gleeson will adduce evidence from you, and in respect of that evidence you can be cross-examined.

Likewise the person the subject of the complaint can be represented, and if he gives evidence he of course will also be subject to cross-examination.

The above procedure is the only practical method of resolving the issue of the validity or otherwise of your complaint.

Typically the hearings are confidential and each of the parties and witnesses undertakes not to disclose the contents of the hearing, though in the event of the complaint being established, the information acquired at the hearing will be used by me to make recommendations to the Archdiocese, and likewise the Complainant would be free to disclose he or she has been sexually abused and has applied for and received compensation etc.

If the parties consent evidence can be given on oath. I have no power to require a person to give evidence under oath but the Evidence Act provides that if the witness consents then I can administer the oath which of course is binding.

Please let me know as to your response to the above, and if you have any queries and wish to discuss the matter personally I suggest that you ring Mr Jeff Gleeson of Counsel, who is very experienced in these matters and he will provide you with whatever information or assistance you require."

9. On 18 June 2007 I wrote to Mr Jeff Gleeson as follows:

"Re: CD

I have forwarded under separate cover the file in respect of the abovenamed who complains that she was abused by one HE, whom I will rule was a church person albeit a layman.

I will revert to you in relation to the implications of that.

You will see from my last letter that I invited her to contact you if she had any queries.

I understand that she is not very happy at the prospect of a hearing, but that is the only way to go. She is a lawyer and Carelink is providing counselling support for her albeit no finding has as yet been made.

I also forward the file of CK her brother, to whom I will be writing a substantially similar letter.

With respect to the hearings whilst they should be separate hearings it would be somewhat illogical not to conduct them on the same day. I would welcome your comments on that.

I should add that CK is a much more affected person than his sister, and indeed is a known bipolar and suffers accordingly. He has already stated to me that he is most reluctant to meet with HE.

I will be in touch."

10. On 3 July 2007 CD wrote to me advising that she had read the transcript of my conference with HE and stated that she disagreed with almost all of the contents but wished to note following matters. She included in that letter: *"in relation to the hearing I have a few procedural questions should I direct them to you or to Mr Gleeson?"*

11. On 4 July 2007 I advised her I had passed her email on to Mr Gleeson to whom she should direct any procedural questions.

12. Following the conference with CK I wrote to Ms Sue Sharkey of Carelink on 2 May 2007 in the following terms:

“Re: CK

CK has complained that he was abused by HE at a Parish.

HE, I have virtually decided, is a church person within that meaning of that phrase in the terms and conditions of my appointment because for many years he instructed altar boys and altar girls in the art of serving Mass. However the allegation is that he invited those children to his home where he abused them.

Be that as it may I have taken the liberty of referring CK to you because he is a very troubled and concerned man. He is a diagnosed bipolar and is receiving treatment from the Melbourne Clinic from I think Dr N. He has advised that CK should seek assistance from persons versed in the treatment of victims of sexual abuse.

I have accordingly strongly recommended to him that he contact you. I enclose herewith a copy of my letter to him which I trust is self explanatory”.

13. Following CK going to Carelink he was referred to a psychologist Dr RM who thereafter treated him.

14. On 15 January 2008 Mr Jeff Gleeson with respect to the hearing advised me in the redacted terms hereunder:

“I am proceeding with arrangements for the hearing in the HE/CD, and CK matter to take place on Thursday 31 January. At this stage I anticipate that the hearing will take between half a day and a day.

As you know, CK has psychiatric issues and is extremely anxious that he not be in the same room as the Respondent. CD is presently proposing to give evidence from Perth. As a result I am booking video conference facilities for a 3 way link: 2 at different locations in Melbourne (one will be attended by you, me, the Respondent and his solicitor (M) and the other will be attended by CK, Dr RM (his psychologist) and, I understand, his girlfriend and mother) and one in Perth for CD. We will be able to see the relevant parties in both locations by way of a split screen.

As Perth is 2 hours behind I have scheduled the hearing to commence at 11.00 am Melbourne time.

Please let me know if any of the above arrangements are not in order. I will provide you with further details in due course....”

15. The hearing of the complaint took place on 31 January 2008 and the transcript of that hearing comprises 115 pages. Relevantly the hearing commenced with a statement I made:

“Good Morning everyone. I’m Peter O’Callaghan the Independent Commissioner and you’ve signed agreements and undertakings in respect of the hearing of complaints by Ms CD and Mr CK against Mr HE. The fact is that CD is on audio link or video link to Perth and CK is on video link in another room in Melbourne. What is proposed to be followed is the complaint by CD will be taken first, her evidence will be led by Mr Gleeson who appears to assist the Commission, and she will then be cross examined by Mr M who appears for HE. When CD is giving her evidence CK will not be able to hear that and vice versa. When CD has completed her evidence there will then be the evidence of CK and then followed by whatever evidence. I understand Mr M will be calling HE and that would then complete the proceeding. So I’ll handover to you Mr Gleeson so that you can make what ever explanatory remarks you want to make and then proceed to take the evidence of CD.”

16. CD gave evidence followed by that of CK who gave his evidence by video link because as stated above he did not want to be in the same room as HE. Also present in that room to provide support for CK were his mother and Dr RM who also gave evidence.
17. Mr M then called HE and he was cross examined by Mr Gleeson.
18. I then stated:

“Now that I gather is the completion of evidence and in accordance with the usual practice you Mr Gleeson will prepare some written submissions which you will refer to the complainants for their input and they will be provided to Mr M and Mr M will then prepare submissions in reply and when those submissions have been received (which I don’t propose to impose time limits on other than to ask that it be done as promptly as is reasonably possible). I will then consider the submissions and make a decision”.

I duly received submissions and in the course of considering the same on 3 June 2008 I was contacted by Senior Detective Inspector RS.

19. Consequently on 4 June 2008 I wrote to CD and CK in the redacted terms hereunder:

“Re: CD and CK v HE

I refer to the hearing of the complaint, the submissions received by me from Counsel Assisting and Mr M.

I must advise you that I have been contacted by Detective Senior Constable SR who has advised me that HE is under investigation in respect of a complaint of sexual abuse by a woman who alleges this occurred, at a time when she attended the same Church, as did the Complainants. On the execution of a search warrant at HE’s home, there was obtained (as I gather) a transcript of an interview I had with HE relative to the subject complaints. Consequently I was contacted by Detective RS.

Whilst I will not take into account or be affected in my considerations of the subject complaints, by what Detective RS has told me, I am obliged to disclose this and I invite the

parties to make any supplementary submissions if they wish in relation to this matter. Please advise as to this.

That however is not the end of the matter. Detective RS is desirous of interviewing the Complainants, so as to decide whether their complaints have any relevance to the investigation of the complaint the police are currently investigating. Both of the Complainants being aware of their right to report the matter to the police have declined to do so. Further all statements and what occurred at the hearing, is so far as I am concerned, the subject of confidentiality.....

I have forwarded the same letter as herein to Mr Jeff Gleeson, Mr M and to CK."

20. On 8 June 2008 CD advised she was happy to provide a statement to Detective RS and on 16 June 2008 she wrote to me:
"I hereby authorise and direct you to release my statement to Detective Senior Constable RS 'which was done'". Similarly with CK.
21. On 13 June 2008 I provided my Reasons for finding that CD and CK had been sexually abused by HE.
22. Following this CD and CK applied for and were awarded compensation, and continued to receive counselling etc.

CASE 3

HEARING OF THE COMPLAINT BY CJ against JE

1. This was a complaint originally made to Towards Healing of sexual abuse by a Nun, when CJ was in Grade 4.
2. I interviewed CJ at her home in an outlying suburb. She was suffering from the effects of a car accident suffered many years ago and for which she was receiving some protracted treatment from a psychologist Mr N. He provided a report which stated inter alia:
"I write to inform of the treatment program for CJ with particular emphasis in what she has revealed of her childhood sexual abuse and the possible extent of impact it has had upon her. I have continued to see her in regard to the physical pain she experiences and more specifically for the emotional and psychological effects of the pain that has resulted from a

motor vehicle accident on the [date]. She continues to evident severe depression and diminished sense of well being due to her limited ability to cope with her pain and the ongoing life management issues that implicate her general and relational well being...."

3. Suffice it to say that discussions which took place between Counsel Assisting the Commission and the solicitor appearing for JE were epitomised by the following:

"I refer to our discussions in relation to this matter and confirm that CJ has now advised that she wishes to proceed with her complaint against JE. Accordingly I attach a letter setting out the particulars of the complaint...."

4. A confidential hearing took place on 16 March 2006. Mr Jeffrey Gleeson SC appeared as Counsel Assisting the Commission and the respondent was represented by an experienced and competent solicitor. Prior to this hearing I had had several discussions with the complainant in which I detailed the procedures which would be applied at the hearing. I had also conferred with Counsel Assisting the Commission and as is noted in my Reasons for Decision *"pursuant to signed agreements of confidentiality and undertakings, the proceedings at the hearing are and remain confidential as do these Reasons for Decision"*.
5. The complainant had continued to be treated by Dr N and a perusal of the transcript of the hearing makes clear that the complainant was an articulate and confident witness. Following the hearing Counsel Assisting the Commission and the solicitor for the respondent provided cogent and helpful submissions. I provided lengthy Reasons for my Decision which was that I concluded that the complaint was established.

CASE 4

HEARING OF THE COMPLAINT BY MA against AE

1. This was a complaint made in 2005 by MA and her mother in respect of the alleged conduct of AE, long before he was a church person. The complaint was alleged to have occurred when MA was five years old and AE fifteen years. Because when the complaint was lodged he had become a church person, I was asked to investigate and report upon the matter, and the Terms of my Appointment were expanded accordingly.

2. AE denied the complaint and it was agreed that I should conduct a confidential hearing to determine the validity of the complaint. The complainant was a distinguished international lawyer and was represented by lawyers. Before the hearing took place, I had a number of conversations with the complainant, and her solicitors. The hearing was conducted on 13 October 2005 by video link between the Independent Commissioner, Mr Gleeson SC as Counsel Assisting and AE from a hearing room in Melbourne, the complainant in a hearing room in an Arabic country, and the complainant's mother and MA's solicitor in a hearing room in Brisbane.
3. Following the hearing and the receipt of Submissions, on 24 April 2006, I gave Reasons for my Decision which was that the complaint had not been established.

CASE 5

HEARING OF THE COMPLAINTS BY BA AND PR

1. In August 2006 the solicitors for BA forwarded a complaint he made against PR when BA was approximately 7 years of age and attending a Catholic Primary School. On 17 August 2006 I forwarded that complaint to PR who it in strong terms.
2. BA has claimed that he had reported the complaint to the police when it occurred, and the police came down and spoke to his father but no action was taken. I was advised that BA did not want to take the matter any further as far as the police were concerned and this was also the view of BA's solicitors.
3. Shortly after this I was advised that BA was unable to take any further action because of his serious psychological difficulties.
4. I wrote to PR advising that BA's 'solicitor' have advised me *"that he is unable to take any further action in this matter for some months. This is because he has to be hospitalised for psychiatric treatment consequent upon recent problems including as I understand it attempted suicide. I will be in contact with you in due course."*
5. In September 2007 the solicitors for BA wrote to me inter alia:
"As you will appreciate from the medical material BA is in an extremely fragile psychiatric state. I am not confident that BA can participate without severely compromising his

psychiatric health. He is severely disabled and could not attend an assessment with psychologist JC without extreme difficulty. I ask that you consider an alternative to a hearing. If a hearing is necessary I wonder if we might consider a modified hearing process to accommodate BA's precarious psychiatric condition. Perhaps it could be arranged that BA and PR attend on different days so they do not cross paths. Perhaps cross examination could be limited in time or to a concise number of questions. For example BA has been very frank as to other results which have harmed him. This is clearly documented in the medical material. Perhaps cross examination and issues of causation could be avoided. To fail to attempt to accommodate BA's psychiatric illness would mean that the most severely damaged complainants are unable to access justice neither through the Commission nor via any other matters."

6. On 31st July 2008 I met with BA accompanied by his solicitor, wife and son. In that conference it was apparent that BA was psychologically disturbed. In that conference BA verified the complaint and discussion took place with respect to a hearing but no decision was then made. At the conclusion of the conference the solicitor stated:
"I guess Peter you will be in contact with me about suggestions about how to move forward from here".
7. On 11 September 2008 I wrote to Mr Jeff Gleeson stating inter alia:
"I enclose herewith the file in respect of the complaint made by BA against PR. Jeff you will see from the file that the complaint which I transmitted to PR now an 88 year old man was strongly denied. Ordinarily, I would conduct a hearing but as was evidenced by early statements from BA's solicitors and when I interviewed him on 31 July there are great difficulties with him being present in the same room as PR".
8. It was eventually agreed that there would be a confidential hearing at which BA would not be present but would participate by way of video link. It was also agreed that PR would not cross examine BA. The hearing was fixed for 16 July 2009.
9. On 25 June 2009 Mr Jeff Gleeson Counsel Assisting advised BA's solicitor:
"I can confirm that BA's reasonable fees of appearing at the Commission hearing on 16 July will be paid".

10. At the hearing BA was represented by Mr M of Counsel instructed by solicitors WV. Counsel Assisting the Commission was as stated Mr Jeff Gleeson SC. PR appeared in person.
11. BA was not present in the hearing room, but viewed the proceedings, gave evidence in chief and was cross examined via video link.
12. Written Submissions were provided by Counsel Assisting and Counsel for BA.
13. In December 2009 I gave my Reasons for Decision in which I relevantly stated:
"In the face of the grave inconsistencies in the evidence of the complainant and the lack of any corroboration and the sworn denial by PR that he ever fondled the complainant's genitals I am not satisfied that the complainant was a victim of sexual abuse as alleged....."Whilst I have great sympathy for the troubled mental history of the complainant, I must dismiss the complaints."
14. On 21 February 2010 the solicitors for BA wrote me:
"Thank you for your email of 23 December 2009. I note that you determined that you were not satisfied that BA had been the victim of abuse by PR. Thank you for your consideration of this matter... I attach my tax invoice for costs and disbursements...."
 Those fees were paid by the Archdiocese.

CASE 6

HEARING OF THE COMPLAINTS BY TC v WB

1. TC complained that she had been sexually abused by a priest WB. For reasons unnecessary to refer to here, I was unable to deal with this complaint. Consequently Archbishop Pell appointed Paul Marshall Guest QC (as he then was) to act as an ad hoc Independent Commissioner to inquire into and advise in relation to the aforesaid allegation of sexual abuse.
2. Mr Guest interviewed WB and some additional witnesses. WB denied the abuse and Mr Guest therefore considered it necessary to conduct a hearing which was held on 14

August 1997. WB was represented by Senior Counsel and the Commission was assisted by Mr J Gleeson of Counsel.

3. I have consulted with Mr Gleeson who advised that TC was supported in bringing her complaint by her husband, a consultant psychiatrist and Ms R, psychotherapist who initially raised the complaint with me. The psychotherapist had commenced treating TC from 28 February 1996
4. The contested hearing was conducted on 14 August 1997. TC's husband attended the hearing with his wife, and provided a draft submission on her behalf. In that submission TC's husband refers to advice given by a Barrister situate in Cairns.
5. Thus it was that TC had engaged the services of a psychological counsellor prior to and during the period in which she was making her claim and attending the contested hearing. She was also actively and directly supported at all times throughout her complaint by her psychiatrist husband.
6. Final written Submissions of Counsel were completed in December 1997 and on 16 March 1998 Mr Paul Guest QC reported in writing that the complaint of sexual abuse was established. TC later applied for and was awarded compensation.

CASE 7

HEARING OF THE COMPLAINTS BY FM v MP

1. This was a boundary violation complaint alleging that MP (a priest) had forced sexual intercourse against FM many years ago. I interviewed FM on a number of occasions whilst she was also receiving psychological treatment from therapists. I had a number of discussions with FM, in which I advised her the actions open to her.
2. Because MP denied the allegations it was agreed that there should be a confidential contested hearing and MP's solicitors requested that because of the prevalence of the communications I should not conduct the hearing. Whilst I did not consider I was obliged to recuse myself, I acceded to that request.

3. Accordingly Paul Lacava SC (as he then was) was appointed ad hoc Commissioner. A hearing was conducted, at which appeared Mr Jeff Gleeson Counsel Assisting, and MP was represented by a highly experienced and competent solicitor.
4. Mr Lacava found the complaint was established and FM applied for and received compensation.

CASE 8

HEARING OF COMPLAINT BY HA against CB

1. In 2005 I received a complaint from HA that he had been the subject of physical abuse by CB (a Nun) when he was 5 to 6 years old and a student at a Catholic Primary School in a provincial city. I relayed that complaint to the Religious Order of which CB was a member and I was advised that CB had early dementia, a severe diabetic condition and was resident in an aged care hostel and that she denied the allegations transmitted to her and did not recall the complainant or the incidents of which he complains.
2. In those circumstances, consonant with my usual practice I decided that there should be a hearing to decide the validity or otherwise of the complaints.
3. On 24 May 2007 a hearing took place. Mr Jeff Gleeson was Counsel Assisting the Commission and the respondent was represented by a most experienced and competent solicitor.
4. CB for the reasons stated above was not only unable to give evidence, but was not able to provide relevant instructions to her solicitor. Also present at the hearing as a witness having signed a confidentiality agreement was HA's mother.
5. Following the hearing I received Submissions from Mr Gleeson and CB's solicitor. I gave Reasons for my Decision on 5 February 2008 in which I stated:

"I have no hesitation in finding that the complaints have been established. I have reached that decision because I had no reservation in accepting the truthfulness of HA's evidence.....I am satisfied that the events of which the complainant complained do fall within the definition of sexual abuse contained in the Terms and Conditions of Appointment namely:

1. *Conduct by a person with a pastoral responsibility for a child or young person which causes serious physical pain or mental anguish without any legitimate disciplinary purpose as judged by the standards of the time when the behaviour occurred.”*
6. HA applied for and was awarded compensation.

CASE 9

HEARING OF A COMPLAINT BY FR against BA

1. FR complained of being sexually abused by BA (a priest). This abuse had been the subject of complaints by FR to the Vicar General and the Pastoral Support Office. FR has had a very troubled psychiatric and psychological problems. That sexual abuse had been the subject of criminal charges against BA which were heard in September 2006 and resulted in BA being acquitted.
2. I saw FR and his solicitors on a number of occasions in 1997 and 1998 and on 4 March 1999 I wrote to my solicitors stating:

“I confirm that I am unable to deal with the complaint by FR against BA because of the necessary frequent contact I have had with FR. In these circumstances it would be embarrassing for me to deal with the complaint, and accordingly it has been decided I understand to appoint Mr David Curtain QC as an ad hoc Commissioner to deal with the complaint.”
3. Consequently Mr Curtain commenced hearing evidence on 6 March 2000 and continued hearing evidence over nine sitting days concluding the evidence on 26 April 2000.
4. The complainant was represented by Mr PC of Counsel and BA by Mr G QC. Counsel Assisting the Commission was Mr Jeff Gleeson.
5. Mr Curtain found that the complaints were established. In August 2000 I reported to the Compensation Panel. The Commission paid the costs of the representation of BA and the complainant at the aforesaid hearings. These costs were paid by me and the Archdiocese reimbursed me.
6. Subsequently FR applied for and was awarded compensation.

CASE 10**HEARING OF A COMPLAINT BY BG v PK**

1. BG complained that PK (a priest) had had protracted sexual relations with her which because of the ages of the party constituted a boundary violation. I had conferences with BG and I interviewed PK who denied the allegations. It was accordingly decided that a confidential hearing would be held and this took place on 13 December 2004 and several days thereafter. Ms A of Counsel appeared for the complainant, Mr S of Counsel appeared for the defendant and Mr Jeff Gleeson was Counsel Assisting the Commissioner.
2. On 23 August 2005 I delivered Reasons for Decision in which I found the complaint was established.
3. BG subsequently applied for and was awarded compensation.

CASE 11**HEARING OF A COMPLAINT BY DL, DM, MJ and EV against GM**

1. On 15 September 2004 I was rung by DL who complained that she had been abused when a school girl at a Catholic Parish School by GM (a Nun). I met with DL on 28 September 2004 and forwarded to her a transcript of that conference. In the letter forwarding same I wrote:

"As I advised you, I necessarily have to take normal investigatory steps to verify your complaint. In that context I enclose herewith an authority to Dr E which I invite you to sign and return to me. I will then forward it to Dr E and obtain her report".
2. I wrote to Dr E requesting a report *"detailing your knowledge of DL's condition and in particular the impact you assess the sexual abuse has had upon her"*. In that conference DL was asked by me whether she knew MJ who coincidentally had made a complaint to me at that time in relation to his complaints of what had occurred at the Parish School. DL looked up MJ's phone number in the phone book and had a lengthy conversation with him.
3. I transmitted the complaints to the Superiors of GM and suffice it to say that the complaints of DL and MJ were denied. Consequently it was agreed that I would conduct a confidential hearing between DL and MJ against GM and that hearing commenced on 14 November

2005. It continued on 15 and 16 November and during the hearing the names of other students were mentioned. It should be noted that at all times DL was receiving therapy from Dr R with whom I had considerable contact. In the course of the hearing when other names were mentioned DL contacted these persons and consequently DM and EV made complaints which were all heard together.

4. Thus the hearings took place on 14, 15, 16 November 2005 and 2 March 2006. On 26 October 2006 I provided my decision which relevantly stated:

"I am satisfied that within the meaning of the phrase and the Terms and Conditions of my Appointment, the respondent (GM) sexually abused the complainants in the circumstances detailed....."

Subsequently the four complainants applied for and were awarded compensation.

CASE 12

HEARING OF A COMPLAINT BY SM against BM?

1. On 6 December 1996 I received a letter from the Solicitors for BM stating that they had been notified by SM's solicitors that she wished to pursue her allegations and that they were instructed:

"That the Church has established a forum whereby compensation relating to these matters can be discussed without the necessity of legal proceedings. The Solicitors requested that I contact SM's solicitors direct 'so that SM's allegations can be considered'."

2. I accordingly wrote to SM's solicitors stating inter alia:

"If AB has a complaint of sexual abuse, I would appreciate hearing from her directly or through you as her representative. My duty is to investigate and report upon such allegations, but I emphasise, as appears from the Terms and Conditions, that if the sexual abuse alleged constitutes criminal conduct then I advise the complainant that he or she has a continuing and unfettered right to report that matter to the Police and I would encourage the exercise of that right."

3. Relevantly I wrote to SM's solicitors on 2 May 1997 stating inter alia:

"In those circumstances it seems to me that the only way in which the matter can be resolved is by me hearing the respective parties and deciding where the truth lies. If I found your client had been the victim of sexual abuse then she would be entitled to be referred to the Compensation Panel to apply for compensation and also to receive free counselling and psychological support from Carelink. I accordingly invite you to advise as to whether your client is prepared to participate in a hearing before me at which would be present MM and his legal representatives and of course your client and her legal representatives. I would invite the representatives for your client to put forward the claim of sexual abuse and for the opposing party to respond to it as was thought fit. I would invite the parties to sign undertaking of confidentiality as to what takes place at this hearing."

4. On 5 May 1997 SM's solicitors wrote:

"Further to your fax of the 2nd inst I wish to advise that our client and her legal representative is prepared to participate in the hearing before you at which would be present MM and his legal representative."

5. On 8 May 1997 MM's solicitors wrote:

"Our client is prepared to participate in the proposed hearing and we await notification of the proposed time and date of the hearing".

6. The hearing was fixed for 12 June 1997 and on that date MM, the Independent Commissioner and SM executed an agreement the recitals of which relevantly provided:

"D. MM has been the subject of complaints of indecent assault by the abovenamed complainant (the complainant) and the complainant does not desire or intend to report such complaints to the Police notwithstanding that she has been advised that she has the right to do so".

7. The hearing took place on 12 June 1997 and there was a recorded transcript of that hearing. SM was called by her solicitor to give evidence and was cross examined by MM's solicitors. MM was called and examined in chief by the solicitor and was then cross examined by SM's solicitor. Following this the parties made submissions in writing which I duly considered along with the evidence called at the hearing.

8. On 17 July 1997 I gave my Reasons for Decision in writing which concluded:
"In the circumstances I find that the complainant was the victim of sexual abuse being that involved in the beach incident.....With respect to the complainant because I have found that she was the victim of sexual abuse (as defined) she is entitled to apply to the Compensation Panel and she is also entitled to the services of Carelink. In this regard I will communicate appropriately with the complainant's solicitors.
9. The complainant did not apply for compensation but in or about November 1998 the complainant took the complaint to the Police. What occurred thereafter is set out in Attachment 6 to my reply to the Police Submission.

CASE 13

THE HEARING OF THE COMPLAINT BY BA against JM

1. In January 2004 I received a complaint from Queensland Professional Standards Resource Group on behalf of BA.
2. On 11 January 2004 BA signed a contact report stating inter alia:
"I still state that I do not wish to take my complaint to the Police or other civil authority at this time and I ask that a Church process be established".
3. On 8 April 2004 BA wrote to me consequent upon my having advised him that JM (a priest) had denied his complaints. BA wrote inter alia:
"Thank you for your letter dated 16/3/04. I would expect that JM would deny absolutely my complaints. Consequently I would agree to attend a hearing with yourself and JM although I feel somewhat daunted by the prospect of that confrontation I absolutely know that I am telling the truth and will go to the ends of the earth to prove it...."
4. Preparations were discussed in relation to the holding of a hearing but on 7 June 2004 I was advised by BA's wife *"existing bail was revoked and he was remanded in custody awaiting trial which we believe will be in 6-8 weeks time".*
5. JM had instructed solicitors to act for him to whom on 18 June 2004:

"I refer to recent correspondence. I have been advised that the complainant is not and will not be in a position to pursue his complaint. Therefore I propose to take no further steps in the matter until further advised".

6. On 5 February 2008 I wrote to JM's solicitors:

"I was run by BA in late November 2007 who advised me that he had been released after three and a half years in jail. He said that he would agree to participate in a hearing which you will recall was contemplated some time ago. However he needed the permission of the Parole Board which I advised him to seek to obtain. I have written to you so that you might advise JM that the matter is being revived....."

7. On 28 May 2008 I wrote to JM's solicitors:

"I refer to my letter of 5 February and advise that consent will be forthcoming from BA's Parole Officer to allow him to travel to Melbourne and participate in the hearing I propose to conduct in relation to his complaint against your client. I have referred the file to Mr Gleeson SC, and he will no doubt contact you in relation to the matters raised by you in previous correspondence eg. particulars of the complaint etc...."

8. I then wrote to BA's Parole Officer explaining the procedure which letter concluded:

"You will be advised of the agreed date of hearing, and I understand that you will then obtain final permission for BA to travel interstate..."

9. The hearing took place on 7 August 2008 and Mr Gleeson was Counsel Assisting the Commissioner and JM's solicitor appeared to represent him. Mr Gleeson called BA and the following passages from the transcript is self explanatory:

(i) *"G: (Gleeson) Given evidence to the effect that if it is the case that SM was not present in the role of College Chaplain prior to 1964 then in your words you'd have no case*

B: I'd have no case

G: Are you able to see JM today to say whether he is the person who visually is consistent with your recollection of the person who sexually abused you in the manner described in the particulars

B: I might have to say that JM is very different to what I remember him as a young man but the voice is unmistakably JM's....

P: (Independent Commissioner) Well I'll have to tell you that I've received from the Catholic Archdiocese of Melbourne because of this interplay of dates from the Business Manager of the Archdiocese, Mr Francis Moore, and he said I have reviewed our records and advise that JM was appointed as Assistant Priest to (a named Parish) commencing on 1 February 1964 and that he held this position until his appointment as Parish Priest at D commencing on 28 January 1967. They are from the records of the Archdiocese.

B: Well true to my word I have to say to you that I have to withdraw my complaint

G: I was going to suggest a short break

P: Yes

G: and invite the submission based on that for the complainant to consider this morning's complaint

P: alright well do you want some more time to consider that

B: um look I don't understand how I could be so mistaken but I guess I would just yeah I would like just 10 minutes or so

P: certainly

B: to think about it if that's ok

P: certainly you go out

(ii) M: (JM's Solicitor): If the complaint is continued with we'd like a longer break just so that I can ensure that the complainant's read this as obviously I need to cross examine him on the contact report

P: yes indeed

M: so if we have a short break

G: perhaps we'll switch off an we might indicate that the transcript that the fact from which Mr O'Callaghan read was delivered to the hearing and during BA's evidence right this morning

M: and I can just indicate to you Mr Commissioner that the evidence I propose from JM will be that those dates concur with his memory of his appointments and service

P: yes....

(iii) P: We are resuming the hearing having stood it down to allow BA to consider his position and some little time has elapsed since then and have you had consideration given to this matter

B: I have Mr Commissioner I have decided that I will withdraw the allegation

P: Yes

B: I have no I don't wish to try to worm my way around it I just wish to say that I truly believed that JM was the offender though I cannot prove the time the timeis not consistent with my memory

P: and not consistent with you're being a much younger boy than 15 or 16

B: Yes

P: Yes well Mr B you're obviously a man of some intelligence and having considered your position and withdrawing your complaint I think it is to your credit that you have done so, of course there has been the misfortune of JM being the subject of the complaint which no doubt was a cause of distress and concern to him.

B: that's right

(iv) M: thank you Commissioner. My client has instructed me to just indicate the following. Firstly he vehemently maintains his denial of the allegations. Secondly he is respectful of the stance taken by the complainant at this stage of the process...

10. *I record that BA to his credit withdrew his complaint and apologised. Likewise JM to his credit accepted BA's apology, and in a discussion with BA, JM provided him with guidance and support".*

CASE 14

HEARING OF A COMPLAINT BY CP against BA

1. On 23 December 1996 CP rang me and indicated that he had a complaint of sexual abuse by BA. Because of the imminence of Christmas it was arranged that the complainant

would be interviewed by me the following day. This occurred and there was a transcript made of the interview. The complainant was advised inter alia that he had the right (which right he was encouraged to exercise) to report the matter to the police if it constituted criminal conduct. For reasons given by the complainant he said he was not desirous of going to the police and in those circumstances it was agreed that what he disclosed would be kept confidential.

2. On 5 March 1997 I provided that transcript of interview to BA requesting him to attend my office on 13 March.
3. Following this there were discussions with BA's solicitors. For reasons unnecessary to state here there was further discussion in respect of other matters and it was finally agreed that there would be a hearing on Tuesday 10 June 1997.
4. On the morning of 5 June 1997 I received a letter from BA's solicitor which stated that application will be made that I should disqualify myself, for the reasons given in that letter and which were amplified at the hearing which took place on 10 June 1997.
5. By written Reasons given on 18 June 1997 I rejected this application.
6. BA appealed to the Archbishop which appeal was rejected.
7. At the hearing Mr DG QC appeared for BA and Mr Jeff Gleeson appeared as Counsel Assisting the Commission. The hearing commenced on 16 September 1997 and continued on 23, 27 and 29 January 1998. Written submissions were filed. A further hearing took place on 28 May 1998.
8. On 30 September 1998 I gave my Reasons for Decision comprising 67 pages plus attachments. In my findings I wrote inter alia:

"I am satisfied that CP was the victim of sexual abuse and that BA indecently assaulted him on a number of occasions...

The indecent assaults occurred substantially in the terms described by CP. I have reached this conclusion by preferring the evidence of CP to that of BA. I found CP a convincing and truthful witness albeit reacting at times with emotion to cross examination. Having seen him at the hearing, having previously interviewed him, having read the transcript and

having listened to the recorded evidence, I am left in no doubt that the complainant is telling the truth....”

9. CP did not at that time make application for compensation, but did so in 2003 and was awarded compensation.

CASE 15

HEARING OF A COMPLAINT BY MA against RG

1. On 3 December 1999 in an interview I had with MA (a mature aged woman) she complained about the conduct of RG (a priest). The interview was recorded and transcribed. I detailed the complaint in a letter sent to RG in March 2000 enclosing relevant extracts from the interview. RG denied that he had been guilty of any misconduct within the meaning given that term in the Terms and Conditions of my appointment.
2. I conducted a hearing on 18 September 2000. MA was accompanied by Ms L a psychologist who was there simply to provide support and did not participate in the hearing. RG appeared as did Mr Jeffery Gleeson as Counsel Assisting the Commission. I delivered Reasons for Decision on 15 January 2001 which Reasons concluded:

“I have no doubt that the abuse suffered by MA as a child has loomed large in her psyche and has contributed to the vulnerability she felt at what she saw as RG’s breach of his duty towards her. It is most regrettable that RG for the reasons given felt himself constrained to act as he did. But in so acting I do not consider he committed sexual abuse. As appears in correspondence herein MA desires to have no further contact of any sort with RG. To the extent that it is open for me to do so I direct RG to respect MA’s wishes in that regard, as he had previously agreed to do.

In all the circumstances and particularly because of the fact of her having been previously sexually abused by a priest I authorise and request that Carelink to continue to provide support and counselling for MA.”
3. I add that MA was critical of my decision which she detailed in a four page letter to me on 18 January 2001.

CASE 16

HEARING OF A COMPLAINT BY SF against BA

1. By letter of 14 May 1997 SF's solicitor complained that SF had been sexually abused by BA. That complaint repeated the complaints which SF had made to the Police and which were the subject of a trial in the County Court in September 1996 and which resulted in BA being acquitted.
2. I wrote to BA as follows:

"I received a complaint from SF's solicitors in May 1997 that you sexually abused him. In short SF repeats the complaints which he had made to the Police and which were the subject of your trial in the County Court in September 1996.

The procedure which I intend to follow and the hearing of the complaint is the same as the procedure which I followed (in respect of previous complaints). I understand from the office of Mr DG QC that he will not be representing you but it may be that you will be represented by some other person or if not appear on your own. Mr Jeff Gleeson will be Counsel Assisting the Commission and he will follow the procedures as previously. It is Mr Gleeson's duty to ensure that all relevant material and submissions are placed before the Commission. I am assuming that you will be present in my Chambers at 4.30 pm. on Monday 25 September 2000 to proceed with this matter. If that is not the case, because that date is unsuitable to you please advise my secretary urgently and a mutually suitable date will be arranged."
3. Unfortunately because of some failure of communication, neither SF's solicitor or Mr Gleeson appeared on 25 September. I telephoned BA's sister and informed her that the meeting proposed for 25 September could not proceed but that there would be a hearing on October 2 at 4.30 pm. For a number of reasons the hearing fixed for 2 October did not proceed but was adjourned to 10 October 2000.
4. Mr Gleeson appeared to assist the Commission, Mr B appeared as solicitor for SF who was also present. BA was not present, I stated:

"Following the hearing on 2 October I wrote to BA enclosing a copy of the transcript of that day and stating that I assumed that he would be present in my Chambers on Tuesday 10 October and that I would expect that he would advise me of the contrary if he were not".

5. On Monday I received a letter from him which read:

"At last I am in receipt of a communication from your office dated Wednesday 9 October. In an attempt to obtain some measure of justice for myself as a victim of orchestrated efforts by others for compensation I am in the process of independent counselling. But as a consequence all actions purporting to concern myself will be conducted in another forum which you will be advised."

6. The transcript records:

"Now the position is that it is now almost five minutes to five and there has been no appearance by BA, nor have I received any communication from him subsequent to the letter which I have recently read out.

In those circumstances what I propose to do, subject to any submissions from anyone is to have Mr Gleeson examine SF and put on record the matters which he wants to say and then to do as I have said in the letter namely refer that to AB and invite his response and to proceed from there"

7. Mr Gleeson then called SF and obtained his details of the sexual abuse which SF had complained he had suffered. I then stated:

"POC:very well what I will do as I have said have this transcript typed up I will provide a copy to BA. I had told BA in the letter to which he refers in his letter namely mine of the 4th October that I would assume that he would advise me whether or not he would attend and if he did not attend that the matter would proceed in his absence. I do not propose to make any decision and I have not made any decision until I have given him the opportunity to respond to what SF has said and unless and until he has done that I will take the matter no further and I will keep you advised. I will now terminate this hearing".

8. On 10 April 2001 I wrote to BA:

"I refer to my letter to you of 16 October 2000 enclosing a transcript of what took place at the hearing of the complaint by the abovenamed held in my Chambers on 10 October 2000.

As I stated in my letter to you of 16 October you did not attend that hearing and that if I had not heard from you within 14 days "I will proceed to make a decision in the matter".

I must advise you that I am satisfied that you did sexually abuse SF substantially in the manner described by him in the transcript of evidence.

In making this decision and pronouncing my satisfaction beyond reasonable doubt, I am conscious of the fact that you were acquitted of charges in respect of SF in the County Court in 1996.

But your position is that I am satisfied that you sexually abused CP, Mr David Curtain QC was satisfied that you sexually abused FR, and has stated above I am similarly satisfied in respect of SF.

In those circumstances I propose to recommend to Archbishop Pell that you should not be returned to the ministry but that you should be invited to resign as Parish Priest".

9. SF applied for and was awarded compensation in November 2001.

CASE 17

HEARING OF A COMPLAINT BY BS against RP

1. BS made a complaint in a letter written to me on 19 October 2001 in which there was enclosed a statement by BS.
2. On 20 January 2002 I interviewed BS in the company of his solicitor. Subsequently an ad hoc Commissioner Mr David Curtain QC was appointed and commenced hearing evidence on 10 June 2003 and continued hearing evidence over seven sitting days concluding on 26 June 2003. The parties then made submissions in writing the last of which was reviewed on 26 August 2003.
3. BS was represented by Counsel and RP by a solicitor. Counsel Assisting the Commission was Mr Jeff Gleeson.

4. In Reasons published on 3 December 2003 Mr Curtain found that sexual and other abuse had not occurred.

CONCLUSION

1. From July 2012 three other hearings have been conducted, which I do not refer to save to say they were conducted as those referred to above.
2. I repeat and emphasise that the above hearings are the only occasions, in which the Complainant and the Respondent were in the same room. Further they demonstrate that contrary to what is said has been the testimony of victims, there is no evidence that victims were treated other than with fairness and compassion. I am happy to provide to the Committee in confidence the names of the parties referred to, and I again state that the relevant files remain available for inspection.



.....
Peter J O'Callaghan QC

30th July 2013