

Attachment 30

Letter from Lewis Holdway to the Independent
Commissioner dated 15 January 2008



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Lewis Holdway

L A W Y E R S

Our Ref: RCB:EK:11191
Your Ref: [REDACTED]

15 January 2008

Peter O'Callaghan
Owen Dixon Chambers West
Room 1813
525 Lonsdale Street
MELBOUNRE VIC 3000

By Email

Dear Mr O'Callaghan

REDACTED
Irrelevant

We refer to the abovenamed and to your letter of 18 September 2007.

Our client has instructed us to respond to the matters which you raise in your letter and to your overall dealings with him since he first approached the Commission into Sexual Abuse in 2002. Our client has a number of concerns which are set out below.

1. Use of the transcript of your interview with [REDACTED] in criminal proceedings against Father Pidoto.
Irrelevant

Our client met with you in May 2002 to advise you of his complaint against Father Pidoto. Our client had not spoken to police or made any police report prior to his discussions with you on this occasion. Therefore the assertion in your letter dated 18 September 2007 that our client met with you "shortly after he reported his complaints to the police" is inaccurate.

Furthermore, it was after this meeting with our client, which you tape recorded, that you then advised him that he had a right to go to the police and that if he so wished, you would arrange that on his behalf.

Shortly after the meeting, our client informed you that following your discussions with him, he had decided to make a complaint to the police and you assisted him by arranging this.

At no time during any of the discussions you held with our client, did you inform him that a consequence of him discussing his complaint against Father Pidoto with you directly was that the information he had provided to you could be used against him in any potential criminal proceedings against Father Pidoto.

Our client was therefore shocked and deeply distressed to be questioned by Father Pidoto's defence barrister during the criminal proceedings about matters which he

had discussed confidentially in his meeting with you. The Barrister had also been furnished with a copy of the transcript of that meeting, and went on to extensively use it in cross-examination of our client in an attempt to undermine his credibility.

The cross examination of our client in criminal court proceedings on the issues which had some years previously been discussed between our client and you, placed our client under enormous stress. It also enabled the defence barrister to introduce new evidence into the proceedings which were outside the scope of our client's police witness statement, and could potentially have affected the outcome of the matter.

It is for all of the above reasons that our client finds the reference in your letter to your discussions with him occurring "after" he had spoken to police, totally unfounded and untruthful as well as emotionally distressing.

2. Failure of Carelink to Provide Support

Our client had hoped to find further assistance and support through the services of Carelink, which were introduced to him by you as an organisation which could assist him further.

However, on attendance at Carelink, our client endured further distress due to what he considered to be the unprofessional behaviour of Professor Richard Ball. In fact our client's experience with Dr Ball was so traumatic that he complained about Dr Ball to the Medical Board.

3. Specific Questions Requiring a Response

As you are aware, the jury of the County Court found Father Pidoto guilty on all four of the related charges laid. Whilst this outcome has been of some comfort to our client, he nevertheless remains disturbed as to how your involvement in his matter impacted on the criminal proceedings and how your encouragement of him to tell his story to you prior to him reporting a complaint to the police placed him in such a vulnerable position. Our client has asked us to seek a response to the following questions:

1. Did you obtain his story in order to assist the defence barrister of Father Pidoto?
2. Did you realise that the information you had obtained from our client could be subpoenaed and used against him in criminal proceedings?
3. If you were aware of this, why did you not alert our client to such a possibility?

Your response for question 2 will clarify our client's position in determining whether to take further action against you for what he perceives as unprofessional and dangerous conduct.

4. Who funds the compensation money which you refer to in your letter? Our client seeks to be advised of where the compensation money is sourced from

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15 January 2008

and in particular, wishes to confirm if any of the compensation money comes from the collection plates filled directly by Parishioners.

4. Impacts


Unfortunately for our client, your actions in his complaint process have amounted to an experience of institutional abuse, thus compounding the primary abuse he had experienced at the hands of the offender Father Pidoto. Our client finds himself in a position where he now feels that the offer of compensation is for him a matter of being "too little, too late".

Our client continues to receive ongoing and extensive counselling support in order to manage the impacts of both the primary and institutional abuses which he has endured since approaching the Commission into Sexual Abuse.

We are instructed to reject your offer inviting our client to now apply for compensation money. However, our client would be open to holding a 'without prejudice' discussion with you on the matters raised in this letter.

If you have any questions, please contact Ruth Baker or Paul Holdway.

Yours faithfully



LEWIS HOLDWAY LAWYERS
per Ruth Baker

Attachment 31

Letter from Independent Commissioner to
Lewis Holdway dated 1 February 2008

Commission into Sexual Abuse
Peter O'Callaghan Q.C

Owen Dixon Chambers West
18/15
205 William Street
Melbourne 3000

1 February 2008

Private and Confidential
Attention Ruth Baker/Paul Holdway
Lewis Holdway
Lawyers
20 Queen Street
MELBOURNE VIC 3000

Fax No: 9629 3341

Dear Ms Baker/Mr Holdway

Re: [REDACTED]
Your ref: RCB:EK:11191

I have your remarkable letter of 15 January 2008, replete with defamatory and offensive imputations and misconceptions.

I have dealt with the assertions by inserting into a copy of your letter responses to the relevant paragraphs. I note that in detailing these responses, there has been involved the expenditure of time and inconvenience. I mention this because as explained below, your client must or should have been aware that the assertions made were false, and which would have been equally apparent to you if simple enquiries had been made by you of your client.

1. 1. Use of the transcript of your interview with [REDACTED] in criminal proceedings against Father Pidoto.

"Our client met with you in May 2002 to advise you of his complaint against Father Pidoto. Our client had not spoken to police or made any police report prior to his discussions with you on this occasion. Therefore the assertion in your letter dated 18 September 2007 that our client met with you "shortly after he reported his complaints to the police" is inaccurate."

Response

1.1 It is a nonsense to assert that I conveyed, that I had met with your client "shortly after" he had reported his complaints to the police. In plainest of English I stated the opposite, namely:

"I first saw [REDACTED] in May 2002 and shortly after he reported his complaints to the police". (Emphasis supplied)

That clearly conveyed that the report was made shortly after the meeting which of course was the fact. The relevant tense is "future", not "past". The letter does not state "and shortly before the interview he had reported his complaints to the police.

I have never stated to anyone, that I had first seen your client after he had reported the matter to the police.

- 2.1 2. "Furthermore, it was after this meeting with our client, which you tape recorded, that you then advised him that he had a right to go to the police and that if he so wished, you would arrange that on his behalf".

Response

- 2.2 It is false to say that I so advised. The advice was given at that meeting, as appears from the transcript:

POC: "Before you close off I want to say this to you, that what you have described to me may constitute criminal conduct and I am obliged as is my invariable practice to tell you that albeit that this is and remains completely confidential you have a complete and unfettered right, I think I may have told you on the phone this morning, to go to the police and I've always said to people if you wish to and I encourage you to do so because I cannot be the substitute for the police force. On the other hand people who prefer to deal with the matter confidentially and don't go through that stress, or make that decision at this time. I will set it all out in a letter to you." (T48)

That transcript was provided to your client, but obviously you have either not been provided with same, or you have ignored it.

- 3.1 "Shortly after the meeting, our client informed you that following your discussions with him, he had decided to make a complaint to the police and you assisted him by arranging this".

Response

The following is what occurred. I refer to what I told your client as appears above. I then wrote to him on 7 May 2002 in which inter alia I stated:

"Before going further I emphasise that provision in those Terms and what I have informed you at our conference that you have a continuing and unfettered right to report of what you complained to the police. I encourage you to exercise that right. However if you choose not to whatever you have told me in our conference and as is recorded in the transcript is and will remain confidential until you tell me otherwise....

I am not in a position at this stage to make a decision as to the validity or otherwise of your complaints. First because the identity of the priest of whom you've complained has not been identified and secondly, when that has occurred it will be necessary for me to provide that priest with the substance of your allegations and

invite his response thereto. Once again, this can only occur if you authorise me to do it, because of my previous undertaking as to confidentiality.

I should add that I've not checked the transcript for spelling or other errors and I invite you to comment upon any such errors if they be present...." (Emphasis supplied)

That letter is annexed hereto.

4.1 3. On 9th May 2002 your client rang me and advised that he had now identified the priest who had molested him. He wrote to me on the same day stating inter alia:

"As per your letter of 2nd May 2002 (sic) and my telephone conversation this morning, I have now identified the priest who sexually molested me, as per my interview on 30th April 2002. His name is Terrence Melville Pidoto...

I would welcome you to invite Pidoto's response to my terrible experience." (Letter annexed)

5.1 4. On 13 May 2002 I wrote to your client stating inter alia:

"There are problems in my dealing with your complaint in the context of referring it to Father Pidoto. This is because an appeal by Father Pidoto against his conviction of four counts of indecent assault in February was upheld by the Court of Appeal on Friday 10 May. He will now be standing trial again for these offences. It has been my practice to refrain from taking any steps in investigating and acting upon complaints of sexual abuse if those complaints are the subject of police investigation and potential charges in Court hearings. The reason for this is of course that I cannot be a substitute for the police force and it would be inappropriate for me to be making contemporaneous findings in respect of matters which are investigating.

I again point out that you have a continuing and unfettered right to report your complaint to the police. If you do the police will take a detailed statement from you, and in that context the transcript of the interview you had with me would obviously be relevant. If the police decided to prosecute Father Pidoto there would be a preliminary Court hearing ie. at Magistrates Court level, and if following that he was committed for trial this would take place in the County Court or the Supreme Court (most probably the County Court) some considerable time hence.

The point I perhaps somewhat labouredly am endeavouring to make is that if you are going to report the matter to the police, then the sooner you do so the better. I appreciate very much the stress that you are under, and may be for your own purposes that you do not want to report the matter. If so I reiterate my undertakings of confidentiality...I have had the transcript corrected and provide you herewith with an amended copy.

PS. I dictated the above on Saturday and since then you advised my Secretary you proposed to report the matter to the police which I encourage you to do." (Emphasis supplied)

6.1 Your client rang me on 14th May 2002. He stated:

"Had I got his messages. I told him that the letter had gone this morning and later that included the corrected transcript. I explained that I had said in that letter that I had dictated it Saturday and then put a ps consequent upon his advice that he wanted to report the matter to the police. He insisted that he was gung ho about going to the police and I applauded this. I told him that I would endeavour to get in touch with the appropriate police. I finally contacted Leigh Abbey (of the Sexual Crimes Squad) who said that Broken Rites had at [REDACTED] insistence contacted him yesterday. I then spoke to Chris O'Connor (Leigh Abbey advising me that he was the chief) and told him that this man was stress A, and that he needs to be handled carefully. I also pointed out that I was aware of the tremendous load that the sexual squad had. He said that would happen is that somebody would be deputed to take a statement from [REDACTED] but these things take time. In that context Leigh Abbey said that somebody else had come forward to him, following the announcement of the successful appeal, and he said that he thought Kosoffsky (sic) in respect of whom a nolle had been entered might perhaps revive his position

I then spoke to Chris O'Connor at the Sexual Abuse Squad and he said that [REDACTED] should ring him at 4 pm tomorrow. Again I stressed the need to give him a bit of a nurse and he said that he would endeavour to look after that."

6. 21 May 2002

7.1 Your client was interviewed by the police and made and signed a statement. He gave to police the transcript of the interview of 30 April.

8.1 6. 24 May 2002

I was rung by Fiona Jones of the Sexual Crimes Squad and she asked me whether I believed that it was to me that your client had first made a complaint, to which I replied in the affirmative. She then said that it would be necessary for me to make a statement because of my being the first person. Consequently on 30 May 2002 I wrote to Senior Detective Jones of the Sexual Crimes Squad as appears from letter annexed hereto in which I enclosed a draft statement of what had occurred, with annexures. Subsequently on 4 September 2002 I wrote to Detective Jones enclosing my signed statement and annexures as annexed hereto.

9.1 7. On 6 June 2002 I wrote to your client stating inter alia:

"I have received the application for compensation, but as I have endeavoured to point out previously, because your complaint is now the subject of police investigation and probable prosecution, it is my invariable practice to take no further step pending the completion of the investigation and proceedings emanating therefrom.

In those circumstances I will take no action in relation to the application for compensation which can remain on the file pending the above.

I have written to Carelink explaining that it was really inappropriate for them to provide you with an application at this stage, when I have not made a relevant decision.

I also reiterated to Carelink which I do to you also, namely that you are entitled to the continuing services of Carelink, of which I strongly recommend you avail yourself.

I have received from Carelink a copy of your statement to the police and I have been contacted by Detective Senior Constable Fiona Jones. She has asked me to make a statement in relation to my meeting with you and conducting the interview of 30 April 2002 and to provide her with copies of the tape recordings (she already has transcript). This I will do."

- 10.1 8.** "At no time during any of the discussions you held with our client, did you inform him that a consequence of him discussing his complaint against Father Pidoto with you directly was that the information he had provided to you could be used against him in any potential criminal proceedings against Father Pidoto".

Response

- 10.2** As appears from the above I advised your client that if he went to the police, they would want to know the details of my interview with your client. The information that I provided was not provided so that it could be used against your client, but rather would form part of the material used to prosecute Pidoto.

- 10.3** The Prosecution both at the committal and at the trial would have been obliged to make available to the defence the transcript of interview and my statement to the police. Consonant with this the list of witnesses to be called by the Crown included me.

- 11.1 9.** "Our client was therefore shocked and deeply distressed to be questioned by Father Pidoto's defence barrister during the criminal proceedings about matters which he had discussed confidentially in his meeting with you. The Barrister had also been furnished with a copy of the transcript of that meeting, and went on to extensively use it in cross-examination of our client in an attempt to undermine his credibility"

Response

- 11.2** I have already made clear that a consequence of your client going to the police necessarily removed my obligations of confidentiality about what he had said to me. This was made crystal clear in my letter where I said "*if you do (ie, report the matter to the police) the police will take a detailed statement from you and in that context the transcript of the interview you had with me would obviously be relevant...*"

- 12.1 10.** "The cross examination of our client in criminal court proceedings on the issues which had some years previously been discussed between our client and you, placed our client under enormous stress. It also enabled the defence barrister to introduce new evidence into the proceedings which were outside

the scope of our client's police witness statement, and could potentially have affected the outcome of the matter".

Response

12.2 I refer to the above.

12.3 I have perused the transcript of the trial, which does not provide support for the above. Indeed Defence Counsel was very cautious in seeking to refer to your client's interview with me. When Defence Counsel sought to explore the time when your client became aware of Pidoto's identity, after discussion with the Judge he abandoned that line of cross examination, obviously because it might have allowed the Prosecution to tender the 30 April statement of interview, which would have strengthened the Prosecution case by introducing matters which demonstrated the concerns which his abuse of your client had produced.

I enclose herewith pages 417 to 427 of the full transcript where reference is made actually or incidentally to my role in the matter. As appears at page 417 your client was asked:

Did you contact a person by the name of Peter O'Callaghan?
 Answer: I did speak to Peter O'Callaghan. Yes but he wasn't my first phone call...

But generally you discussed the incident with him, had a lengthy conversation about the incident.

Answer: Well he gave me two choices. He said "you can talk to me now or you can talk to the police but probably best if you talk to me now".

That of course is not what took place at my interview with your client on 30 April 2002.

12.4 In that context

Mr Polak Defence Counsel: "That was a tape recorded conversation.

Answer: Correct. He recorded it yes.

You had a transcript of that

No I was never given a transcript.

Question: You didn't receive a transcript.

Answer: No I did not and he said that it was just for his notes, so he didn't have to take notes...."

Again this is contrary to what occurred at the interview, and your client was provided with the transcript which he amended and was given the corrected transcript. However Defence Counsel did not seek to use the 30 April transcript, and my Statement which he clearly could have. But to have done so would probably have had admitted into evidence that transcript, which would have

strengthened the Prosecution case. Thus the assertion that the transcript provided evidence against your client is obviously wrong.

13.1 11. "It is for all of the above reasons that our client finds the reference in your letter to your discussions with him occurring "after" he had spoken to police, totally unfounded and untruthful as well as emotionally distressing".

Response

13.2 I repeat that it is an impossible construction of what I had written to say that my discussions with your client occurred after he had gone to the police. In what way it can be rhetorically asked, could a true statement in September 2007, of what occurred cause emotional distress. To assert that what I had said in my September letter was "totally unfounded and untruthful", is but another defamatory imputation in your letter.

14.1 11.2 Failure of Carelink to Provide Support

"Our client had hoped to find further assistance and support through the services of Carelink, which were introduced to him by you as an organisation which could assist him further. However, on attendance at Carelink, our client endured further distress due to what he considered to be the unprofessional behaviour of Professor Richard Ball. In fact our client's experience with Dr Ball was so traumatic that he complained about Dr Ball to the Medical Board".

Response

14.2 Your client was referred to Carelink by Broken Rites, and it was after this he contacted me. I understand that your client's complaint to the Medical Board was dismissed, which significantly you neglect to state. In that context I also point out that Ms Helen Last allegedly stated to Kate Tozer of the ABC that a person not identified by Ms Last, (but inferentially was clearly your client) had made complaints about my conduct. I threatened to take proceedings against Ms Last but did not do so when she denied that the truth of what Kate Tozer claimed to have been reported to her, and Ms Last also apologized.

15.1 12.3 Specific Questions Requiring a Response

"As you are aware, the jury of the County Court found Father Pidoto guilty on all four of the related charges laid. Whilst this outcome has been of some comfort to our client, he nevertheless remains disturbed as to how your involvement in his matter impacted on the criminal proceedings and how your encouragement of him to tell his story to you prior to him reporting a complaint to the police placed him in such a vulnerable position. Our client has asked us to seek a response to the following questions":

Response

15.2 Before going to those questions, I repeat as appears from the transcript of interview and other correspondence, I made it clear that unless and until your client decided to go to the police, what he had told me would remain

completely confidential. But obviously that could not be the position, after he had reported his complaints to the police.

15.3 13. I deal with the questions as follows:

1. Did you obtain his story in order to assist the defence barrister of Father Pidoto?

Response

15.4 This offensive question does not deserve an answer, save to point out your client's "story" to me accorded with the statement he made to the police, and far from assisting the defence, provided cogent evidence of the depredations of Pidoto. It was later given to Defence Counsel by the Prosecution.

16.1 2. Did you realise that the information you had obtained from our client could be subpoenaed and used against him in criminal proceedings?

Response

16.2 There was no occasion to consider this question. Your client had provided to the police the 30 April transcript. To the extent the police and the Prosecution used this evidence, it was as part of the Prosecution case against Pidoto.

3. If you were aware of this, why did you not alert our client to such a possibility?

Response

16.3 I refer to my response to 2 above.

14. Your response for question 2 will clarify our client's position in determining whether to take further action against you for what he perceives as unprofessional and dangerous conduct.

Response

16.4 Your client's perception is ill founded. He has no basis for taking any action. This is not the case so far as I am concerned as appears below.

17.1 15. 4. Who funds the compensation money which you refer to in your letter? Our client seeks to be advised of where the compensation money is sourced from and in particular, wishes to confirm if any of the compensation money comes from the collection plates filled directly by Parishioners.

Response

17.2 To this impertinent and mischievous question the answer is NO.

18.1 16. 4. Impacts

Unfortunately for our client, your actions in his complaint process have amounted to an experience of institutional abuse, thus compounding the primary abuse he had experienced at the hands of the offender Father Pidoto. Our client finds himself in a position where he now feels that the offer of compensation is for him a matter of being "too little, too late".

Response

The advice to your client in September that he could now make application for compensation reflected the fact as appears in the letter that until the Court proceedings were resolved I could take no further steps. In short the process of compensation was set in train as soon as was reasonably convenient.

- 19.1 17.** "Our client continues to receive ongoing and extensive counselling support in order to manage the impacts of both the primary and institutional abuses which he has endured since approaching the Commission into Sexual Abuse".

Response

- 19.2** "I assume that these counselling costs are still being met by Carelink and will continue to be whilst your client is in need of therapy for the undoubted grave abuse he suffered. If this is not the case please advise.

- 20.1 18.** "We are instructed to reject your offer inviting our client to now apply for compensation money. However, our client would be open to holding a 'without prejudice' discussion with you on the matters raised in this letter".

Response

There seems to be no point in holding any discussions with your client in relation to the matters raised in this letter. The process of compensation remains available to your client, and it will be noted that I play no part directly or indirectly in the calculation of compensation. The process involves me reporting to the Compensation Panel that I am satisfied that sexual abuse has occurred, and your client would then be free to appear before the Compensation Panel and recover such an award of compensation as is appropriate.

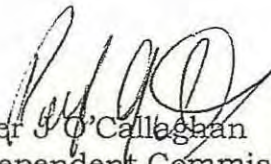
Conclusion

Your firm has recklessly made itself the vehicle for the publishing of false and defamatory statements given to you by your client, and which you apparently accepted without reserve and, the making of relevant enquiries. A perusal of the transcript of 30 April, 2002 and of the correspondence between your client and me would have revealed the falsity of the assertions made.

Accordingly I advise that unless within fourteen days of this letter the false assertions in your letter are withdrawn and apology made, I will refer the matter to my solicitors (Mahonys,) for appropriate action, which may include the reference of the matter to the Legal Services Commissioner.

I await your reply.

Yours sincerely



Peter J. O'Callaghan
Independent Commissioner

Encs.

Attachment 32

Letter from Lewis Holdway to the Independent
Commissioner dated 28 February 2008



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Lewis Holdway

LAWYERS

Our Ref: RCB:TC:11191

28 February 2008

Mr Peter O'Callaghan QC
Commission into Sexual Abuse
Owen Dixon Chambers West

525 Lonsdale Street
MELBOUNRE VIC 3000

By Facsimile: 9225 7114
No. of Pages: 3

Dear Mr O'Callaghan

We refer to our previous correspondence and thank you for allowing further time within which to obtain our client's instructions to respond to the matters you raise in your letter of 1 February 2008.

Firstly, we note your comments regarding the timing of your first appointment with [redacted] in relation to his police report. We apologise for the misunderstanding conveyed regarding the timing of this meeting, in our letter of 15 January 2008.

What we had wished to convey to you, was that our client's concern was based on his actual experience at that time, of telling you his story prior to you telling him that he could make a police report.

[redacted] correctly instructed that after you had tape-recorded your interview with him, you then advised him of his right to go to the police. Indeed, in your own quotation provided in paragraph 2.2 of your letter of 1 February 2008, you begin your final comments as noted in the transcript to [redacted] with: "Before you close off, I want to say this to you, that what you have described to me may constitute criminal conduct, and I am obliged, as is my invariable practice, to tell you that albeit that this is and remains completely confidential, you have a complete and unfettered right....to go to the police...".

Our client's concern, and it is one that we share, is that this information would have been better placed for him, had it been given prior to him making the actual complaint to you. That is, had you advised him of this at the beginning of the interview rather than at the end, he may not have proceeded with the interview at all.

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A member of The Southern Cross Legal Alliance with associated offices in Sydney, Brisbane, Perth, Auckland & Christchurch

Lewis Holdway Lawyers

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28 February 2008

It would have been particularly helpful at that point for our client, if your advice as noted in your paragraph 5.1 that *"the police will take a detailed statement from you, and in that context, the transcript of the interview you had with me would obviously be relevant"* had been provided and fully discussed prior to any detailed complaint.

We note and accept the further points you have outlined in paragraphs 8.1 and 9.1 of your letter. However, the issue of primary concern for [REDACTED] was, as noted above, that the advice given was after the event of his disclosure to you. It would have been preferable for our client to be given that information at the first point of contact with you, and would have enabled him to make an informed decision about whether to make a statement to the police. Such a course of action would also have avoided the arising of our client's strongly formed perception that you had provided information to the police which our client had believed at that time, would not go beyond his meeting with you.

We further note your point in paragraph 10.2 of your letter, that the information you provided to police was to assist in criminal proceedings against Father Pidoto, and not to aid the defence. While we accept this, it is most unfortunate that despite the prosecution of Pidoto being your intention, this same information was in fact used to attempt to discredit [REDACTED] during cross-examination. Further, as he was not aware of it being available to the Defence he was caught by surprise while in the witness box.

We respectfully suggest that in cases where the complainant intends to make a report to police, that the implications of a complainant speaking to you prior to a police report, should be more fully explained to the complainant including that to see you and talk to you prior to seeing the police, may place them in a position of disadvantage if and when the matter comes before the Court.

Although it is clear from your correspondence that you communicated that police would be interested in the transcript, the possibility of being cross-examined on the transcript was never spelt out to our client, nor was he prepared for this. It is for this reason that he instructed us to raise these issues with you. As a person with no legal training who was also suffering acute effects from his disclosure of the assaults against him and who was experiencing suicidal ideation, he needed these matters to be fully and accurately explained to him so he could make an informed decision as to whether or not he wanted to tell his story to you.

We note your comments regarding the use of the transcript in the criminal court proceedings, however, our client's instructions are that his experience of the use of the transcript in cross-examination was both distressing and disturbing, and resulted in him feeling somewhat "dobbed in" by the Commission into Sexual Abuse.

Finally, we take this opportunity to apologise for the misunderstandings communicated in our letter of 15 January 2008. No offence was meant to you. We were endeavouring to communicate the depth of our client's feelings about the unexpected use of your transcript in Court as part of your process.

We note that our letter did not publish anything. It was wholly a written communication between us as legal representatives for a victim who had approached you and you in your capacity as Commissioner into Sexual Abuse of the Melbourne Catholic Archdiocese.

Lewis Holdway Lawyers

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28 February 2008

If you have any queries, please contact Ruth Baker or Paul Holdway of our office.

Yours faithfully



LEWIS HOLDWAY LAWYERS
per Ruth Baker

Attachment 33

Letter from the Independent Commissioner to
Lewis Holdway dated 5 March 2008

**Commission into Sexual Abuse
Peter O'Callaghan Q.C.**

**Owen Dixon Chambers West
18/15
205 William Street
Melbourne 3000**

5th March 2008



Private and Confidential

Attention Ruth Baker
Lewis Holdway
Lawyers
20 Queen Street
MELBOURNE VIC 3000



Dear Ms Baker

Re: **REDACTED**

I have your letter of 28 February 2008 which purports to apologise for misunderstandings, a euphemistic description of the many falsities contained in your letter of 15 January 2008.

I do not accept those apologies, because they are inadequate and unresponsive.

The essential false claim in your said letter was that I had seen your client after he had been to the police, and that I made available to the defence the transcript of interview of 30 April 2002.

I did not provide the transcript to the defence, nor did I provide it to the police. This your client did.

I reject the spurious claims and assertions in your letter of 28 February. However because to take the matter further would require involving your client which I do not wish to do I do not intend to waste any further of my time on these matters.

Notwithstanding his false and damaging instructions to you, I retain sympathy for your client, because of the gross abuse he has suffered. The sooner there is some finality to the matter the better.

In that context I am pleased that your client now wishes to apply for compensation pursuant to what I said in my letter of 18 September 2007 and paragraph 20.1 of my letter of 1 February 2008.

I already hold a signed application for compensation which I have referred to in previous correspondence. I will fax to you a copy of that application.

I will write to the Compensation Panel in the terms of the letter attached hereto, and having done that I will be functus officio. I play no part directly or indirectly in the

computation of compensation. On the assumption that your client has been receiving treatment from expert therapists I recommend that a report or reports are made available to the Compensation Panel in respect of the impact which this abuse has had upon your client.

The only information I will provide to the Panel is what is contained in the attached letter. Specifically I will not be advising the Compensation Panel in any shape or form, of the matters referred to in recent correspondence.

The Chairman of the Panel, Mr David Curtain QC, will in due course contact your client to arrange for an informal and non-legalistic meeting with the Panel.

Yours sincerely



Peter O'Callaghan
Independent Commissioner

Encs.

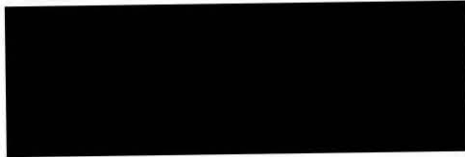
Attachment 34

Letter from the Independent Commissioner to
Mr David Curtain, Chairman of the Compensation
Panel, dated 5 March 2008

Commission into Sexual Abuse
Peter O'Callaghan Q.C

Owen Dixon Chambers West
18/15
205 William Street
Melbourne 3000

5th March 2008



Private and Confidential
Mr David Curtain
Chairman
Compensation Panel
C/- Clerk B

Dear David

Re: REDACTED
Irrelevant

I am satisfied that the abovenamed was the victim of gross sexual abuse by Fr Terry Pidoto. The nature and the circumstances of that abuse are described in a statement by the applicant to the police on 21 May 2002. He had prior to this, complained to me of the abuse in substantially similar terms to what appears in the police statement.

Additionally I enclose the transcript of the evidence of REDACTE given at the trial of Pidoto, which resulted inter alia in Pidoto being convicted in respect of the offences against the applicant. Whilst lengthy, it necessarily details the nature and extent of the abuse.

I also enclose a signed Application for Compensation which was made in 2002. It was necessarily held in abeyance pending the resolution of the proceedings emanating from the police investigation and the aforesaid trial.

Lewis Holdway Lawyers act for REDACTE, and I have advised that firm that you will contact them or their client to arrange for a meeting with the Compensation Panel. I have recommended that the Panel should be provided with reports from experts as to the impact that this abuse has had upon him.

Should there be any queries please advise.

Kind regards.

Yours sincerely


Peter O'Callaghan
Independent Commissioner

Encs.

Attachment 34A

Examples where Police took no action on the basis that offenders were deceased (or overseas) at the time of complaint

Attachment 34A (Examples where Police took no action on the basis that offenders were overseas or deceased at time of complaint)

Complainant ID	Comments
COM.0056.0006.0000	<p>The complainant indicated that he had reported his complaint of abuse some 10 months prior to seeing the Independent Commissioner but was advised that nothing much could be done by the Police as the offender had suicided.</p>
COM.0029.0001.0000	<p>The complainant advised that he had reported his complaint of abuse to the Police prior to seeing the Independent Commissioner but was advised that:</p> <p><i>"The police don't take a statement because they came back and told me that he's deceased ... and that being the case they don't take statements."</i></p>
COM.0038.00005.0000	<p>The complainant made the following comments in relation to reporting his complaint of abuse to the Police:</p> <p><i>"I have spoken to friends of mine in the police force in relation to bringing this person to justice and they feel that it will not be of any benefit bringing a 76 year old to the courts as his age will play a factor and also my reliving the experience and being put under the microscope will only prolong my fears. I agree with what the police have told me".</i> Further, on being advised that the abuse he described constituted criminal conduct and encouraged to go to the police by the Independent Commissioner, the complainant stated: <i>"I have known a few people who have done that [reported to the police] and the police have sort of just shrugged them off. Half the time they can't even find the offender and have (sic) the other time they're not around any more, so, I know another person who had much the same experience, I don't think it was in relation to the Catholic movement or anything, but by the time they checked on the offender they found that the offender was dead, so that sort of put him in turmoil a fair bit ..."</i></p>

<p>COM.0072.0003.0000</p>	<p>The complainant reported his complaint of abuse to the police prior to seeing the Independent Commissioner. The complainant advised the Independent Commissioner that the Police would not take action against the offender as he was overseas. The Independent Commissioner stated:</p> <p><i>"The police have indicated to this complainant that they do not propose to take any further action because of the fact of [offender] being overseas".</i></p>
<p>COM.0126.0001.0000</p>	<p>The complainant indicated that there was little point reporting his complaint of abuse to the Police:</p> <p><i>"You state that I should place the matters into the hands of the police. Yes, I should have done that many years ago and maybe saved some other individuals from being molested by those they trusted. I feel it is far too late for that now. The police that would be concerned in the case are in Victoria and I in South Australia. Like the Church, they would most probably place it in the "Too Hard" basket and forget about it"</i></p>
<p>COM.0136.0008.0000</p>	<p>The complainant indicated that he had reported his complaint of abuse to the Police some 5 or 6 years prior to seeing the Independent Commissioner and stated:</p> <p><i>"From what I believe the police they were trying to charge him but he was overseas ... And I let the investigation go but I didn't really participate much in it ..."</i></p>

Attachment 34B

Copy of acknowledgement of informed decision to
be obtained from victims who do not
wish to go to Police

Sexual and Other Abuse

The Melbourne Response

CATHOLIC ARCHDIOCESE OF MELBOURNE

..... of DO

HEREBY ACKNOWLEDGE:

1. The Independent Commissioner has explained to me that he has been appointed by the Catholic Archbishop of Melbourne to investigate allegations of abuse.
2. The Commissioner has informed me that because the conduct about which I have complained of may constitute criminal conduct, I have a continuing and unfettered right to report the matter to the police. He has encouraged me to exercise that right. He has informed me that if I did wish to report the matter to the police, he would refer me to an appropriate police officer to deal with the complaint.
3. The Commissioner has explained to me that the police have powers which he does not have, including the power to issue search warrants and to arrest offenders, and that it is only through the police that the offender can be brought before a Court and punished for criminal conduct.
4. Aware of these matters I do not at this time wish to take my complaint to the police, and:
 - (a) I request the Commissioner to exercise the powers conferred upon him by the Archbishop to deal with my complaint; and
 - (b) I require the Commissioner to keep my identity confidential to the best of his ability and save as compelled by law.
5. I acknowledge that I can refer the complaint to the police at any time, and if I do so the Commissioner will take no further steps in relation to the complaint until the police investigation and any proceedings emanating therefrom have been completed.

Attachment 35

File note of Francis Moore, Business Manager of the Archdiocese, regarding meeting with the Independent Commissioner, Mr Ashton and Detective Inspector Tony Silva dated 21 September 2011

FILE NOTE – 21 September 2011

Meeting with Assistant Commissioner, Graham Ashton & Staff Officer, Detective Inspector, Tony Silva, on 21 September 2011

Also attending – Peter O'Callaghan QC

1. Mr Ashton advised of his appointment as the Assistant Commissioner and that at senior levels of the force the positions are in a state of flux with a current Acting Chief Commissioner and Acting Deputy Commissioner.
2. In his role as Assistant Commissioner for the Crime Department, Mr Ashton had reviewed the file dealing with police engagement with the Melbourne Response, but had not been able to locate on the file any record of police support. FM showed him the email from Charlie Morton of 9 February 2011 as a record of support from Victoria Police and referred to Para 3 of the Media Release of 15 February 2011.
3. Mr Ashton advised that his position was that the arrangements of the Archdiocese are for it and that he would publicly neither support or indicate a lack of support, endorse or dis-endorse our process.
4. FM outlined the discussions which had occurred commencing in late 2009 with Detective Inspector Glenn Davies, Superintendent Wendy Steedam and Deputy Commissioner Sir Ken Jones and how the concept of the protocol by Victoria Police and that they had in fact provided the initial draft.
5. Mr Ashton noted the as a result of direction from the Head of Crime Intelligence that Victoria Police were not longer in a position to enter into such agreements and this was acknowledged by FM and Peter O'Callaghan (POC).
6. POC advised of discussions which he has had over many years with Victoria Police and in particular with the Sexual Crimes Squad and of his recent discussions with John Langmore as the Acting Head to arrange a meeting with the new head, Paul Binyon.
7. Mr Ashton encouraged the keeping open the lines of communication between the Independent Commissioner and the Head of the Sexual Crimes Squad.
8. Mr Ashton advised that once the positions of Chief Commissioner and Deputy Commissioner have been filled, that he will be briefing the Chief Commissioner on the arrangements in place following which he may need to contact us again if there is any change in the position of the police.
9. POC explained the effect of the amendments to the Terms of Reference implemented this year and in particular highlighted the obligation if a complainant comes to the Independent Commissioner later decides to refer the complaint to Victoria Police, that he will advise the alleged offender when the complaint is received that he will not advise the offender that the complaint has been referred to the police for at least 4 weeks or such further period as is agreed with Victoria Police.
10. FM provided Messrs Ashton and Silva with a copy of the Terms of Appointment of the Independent Commissioner.
11. Mr Ashton advised that he will respond in writing confirming our discussions.

Attachment 36

Letter from Francis Moore to Mr Ashton
dated 4 October 2011



CATHOLIC ARCHDIOCESE OF MELBOURNE

4 October 2011

Mr Graham Ashton AM
Assistant Commissioner Crime
Victoria Police
Level 14, 412 St Kilda Road
MELBOURNE VIC 3004

Dear Mr Ashton

Thank you for your letter of 23 September and for the opportunity to meet with you and Detective Inspector, Tony Silva.

The position statement to which you refer was a media release approved by your Media and Corporate Communications Department on 9 February prior to the departure of former Deputy Commissioner, Sir Ken Jones.

While the discussions which led to the formulation of a protocol between Victoria Police, Independent Commissioner and the Archbishop of Melbourne were initiated by Victoria Police, they did not lead to an agreement being entered into between the parties and therefore rescission by you is unnecessary.

Victims are encouraged by the Independent Commissioner to report allegations of criminal conduct to Victoria Police. This is confirmed in the Terms of Appointment of the Independent Commissioner and in publicly available information about the Melbourne Response. Additionally, the Terms of Reference require, except where the alleged offender is deceased or the complaint has previously been reported to the Police and been resolved or no action has been taken by the Police in the two years proceeding the making of the complaint to the Independent Commissioner, that the Independent Commissioner provide a complainant with an information sheet containing this information and seeks an acknowledgment that the conduct may constitute criminal conduct and their continuing and unfettered right to report the matter to the Police.

When a complainant wishes to report a matter to the Police and requests the assistance of the Independent Commissioner to do so, the Independent Commissioner will refer the complainant to the Head of the Sexual Crimes Squad.

The Archdiocese and the Independent Commissioner support cooperation with Victoria Police and acknowledges your support for an ongoing professional relationship between us and the Officer in Charge of the Sexual Crimes Squad.

Yours sincerely

A handwritten signature in black ink, appearing to read "Francis Moore".

Francis Moore
Business Manager

Business Manager

James Goold House, 228 Victoria Parade, East Melbourne VIC 3002 Australia. PO Box 146, East Melbourne VIC 8002 Australia

Telephone: (03) 9926 5677 Facsimile: (03) 9639 2860 Email: francis.moore@cam.org.au

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