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

SUBMISSION IN REPLY TO THE SUBMISSION OF LEWIS HOLDWAY

BY PETER O’CALLAGHAN QC
INDEPENDENT COMMISSIONER
INTRODUCTION:

This is my Reply to the Submission of Lewis Holdway dated 21 September 2012. My recollection was that this Submission was briefly published on the Committee website but was then withdrawn. The Submission was recently published on the Committee's website. I set out extracts from the Submission in italics and provide comments thereunder.

1. "For example, one of our clients who was suicidal after making his disclosure called Carelink for immediate help and was told to call back in four days time". (para 1.1A)

COMMENT:

I believe that this is a complaint made by “George” aka “Luke”, and was made by him in a complaint to the Medical Board against Professor Richard Ball. That complaint was dismissed by the Medical Board.

2. "Another whose child was in real and present danger from the paedophile priest was told she would have to wait until she got a letter from the Independent Commissioner". (para 1.1A)

COMMENT:

Without the child having been identified, I suspect this may be a reference to a complaint I received on 26 October 2006, when I was hospitalised. I referred the complaint to Maria Kirkwood (then of the Pastoral Response Office of the Archdiocese) and Ms Sue Sharkey of Carelink, who had previously seen the family. I received the complaint in October 2006 and the offending priest had
been placed on sick leave and did not return to the Parish thereafter. Further, the child whom I saw with his mother in January 2007 had gone to his grandparents' country home.

3. “Clients were asked to put their complaint in writing before any action could be taken. Clients who sometimes take many years to feel strong enough to speak of the assaults committed against them need an immediate face to face compassionate response from qualified professional. To be requested to put their complaint in writing can be a difficult task for those who it impacts include the inability to read and write and can also (albeit unintentionally) give a message they are not being taken seriously”. (para 1.1C)

COMMENT:

(a) The suggestion that in my role as Independent Commissioner I would not listen to a complaint unless it was put in writing is scurrilous nonsense. There have been occasions when I've met with victims who, understandably, were distressed in recounting the abuse they had suffered. In some circumstances I have invited them to write down what they have had difficulty in articulating ie. they might find it easier to write, than talk.

(b) Specifically, the Lewis Holdway Submission does not descend to an identification of a person who says that they were requested to write before they spoke. I repeat that the Committee has the capacity to inspect the files I have readily made available to see whether there is any
evidence to support the false and misconceived comments of Lewis Holdway. If Lewis Holdway has proof that I, as Independent Commissioner, have required the complaint to be put in writing “before any action could be taken” they can refer to the relevant file.

4. “Some of our clients were devastated to learn from non Church sources that the perpetrators in their cases had a track record of offending. For these clients it would have affirmed them greatly if such information had been transparent and provided by the Church when they made a report. (para 1.1D)

COMMENT:

I have difficulty in understanding what is here being alleged. The phrase “some of our clients” is shrouded in a mystery until, even by pseudonym, those clients are identified.

5. “Others have reported to us that they were told that there had been no other complaints about a particular offender and later found this information to be incorrect”. (para 1.1D)

COMMENT:

I suspect that this is a reference to complaints made by SL to a reporter of the Sydney Morning Sun at the time of the World Youth Day in 2008 in Sydney.

If I am correct about SL, I identified this allegation as false and so advised that reporter. I also wrote to Lewis Holdway complaining in chapter and verse that such complaints were false and misconceived. For them to include in a
Submission such an allegation when it has been demonstrated to be false is irresponsible and reflects the attitude of the firm of Lewis Holdway and its Principal, Paul Holdway. Mr Holdway is solicitor for, and a prominent member of, Melbourne Victims Collective, whose animus against the *Melbourne Response* generally, and the Independent Commissioner, which are well known, results in the making of false and damaging statements.

6. *"We are aware of victims who are in dire need of professional therapy but are not provided it through the Church until they are found to be a victim according to the protocol; for some clients the process of making such a finding is long and stressful and they are required to fund their own counselling during this period.* (para 1F)

**COMMENT:**

This is nonsense. There are many instances where I have referred complainants to Carelink before deciding whether or not their complaint has been established. This was because there was an immediate need to provide counselling support. In my practice as Independent Commissioner, having found that a complainant is a victim of sexual abuse, I authorise and direct Carelink to reimburse the complainant for costs of counselling incurred after the date of first making a complaint to the Independent Commissioner.

7. *"Clients were confused about the role of the Independent Commissioner of the Melbourne Response, some thinking that he worked for them, not the Church;* (para 1H).
COMMENT:

I am aware that Lewis Holdway has acted for 18 complainants who have been dealt with under the *Melbourne Response*. In none of those cases can I see any evidence or confusion as to the role of the Independent Commissioner. In a lot of those cases I interviewed the complainant in the presence of a solicitor from Lewis Holdway.

8. "*Clients were not encouraged to seek independent legal advice*. (para 1.1)

COMMENT:

Obviously, that cannot apply to the clients for whom Lewis Holdway acted as referred to above. A lack of particularisation prevents any further response.

9. "*The families of clients were not offered support*" (para 1.1)

COMMENT:

I do not minimise the impact which the family of a victim of sexual abuse is subject to. I deny that these are consistently overlooked and no consideration is given to the psychological and financial burdens they bear. It is a frequent occurrence that Carelink provides counselling support to the spouse or partner of a victim. Once again, unless there is an identification of the persons who are referred to, it is impossible to make a meaningful response.

10. "*Multiple clients reported being questioned by the psychiatrist appointed to Carelink about their level activity, sexual experiences and preferences in cases*"
where we did not see the relevance of these questions to an assessment of their need for counselling to be funded by Carelink”.

**COMMENT:**

I have no reason to believe that victims are asked unnecessary questions. From my observations, which are necessarily limited because of client confidentiality, I am confident that Carelink provides fair and efficient counselling and support for victims. I am aware that the ubiquitous ‘George’ aka ‘Luke’ made such a complaint to the Medical Board, which complaint was dismissed.

11. *A client is reported to us that his siblings were contacted by the Independent Commissioner without his consent to see if his story ‘checked out’.*

**COMMENT:**

Generally, I investigate complaints inter alia by looking to sources of confirmation of the complaint. I do not need the consent of the complainant for this to occur, though I am very careful to obtain a victim’s consent prior to discussing his or her complaint with an associate of the complainant. For instance, I have refrained in some instances from discussing the complaint with others because the complainant wants to keep the complaint confidential.

I believe the above is a reference to a complainant in respect of whom I had made a preliminary finding that he had suffered sexual abuse, but the particulars of which he was to provide in discussions with psychiatrists and
others. This he declined to do. This victim had a website on which there was recorded his complaints and his interaction with some of his siblings. One of the siblings had written to a well known priest contesting the validity of the claims which the victim was making. That letter was passed on to me. I made enquiries of that sibling and others. In addition, I investigated and caused to be investigated a number of other persons whom the victim had said were aware of the abuse. I reported those investigations to Lewis Holdway and invited on a number of occasions for the victim to respond to and explain the inconsistencies. The victim has declined to do so and there the matter rests.

12. "Clients information was passed to separate organisations without their knowledge or consent".

COMMENT:

I take this to refer to a victim who had complained to the Independent Commissioner that he had been abused by a priest undoubtedly a church person within the meaning of the Terms and Conditions of my appointment. I found that the abuse had occurred and referred the victim to the Compensation Panel and he was awarded compensation. Sometime later the victim advised me of further aspects of the abuse but declined to take the matter further or discuss it with me. Instead, some time later the victim took a complaint to Towards Healing, and who, because the complaint was not within their jurisdiction, referred it to me. Eventually, I found the further complaints of abuse
were established and the victim was referred to the Compensation Panel and awarded further compensation.

13. "Clients were pressured to attend the Church authority internal hearing before their claim was accepted. Some clients have reported to us that they feel strongly pressured to submit to the internal hearing processes held by the Independent Commissioner and found the process to be traumatic and akin to a formal trial, such that they felt that they were the guilty party, not the perpetrator".

COMMENT:

Lewis Holdway (Mr Holdway was present as instructing solicitor) acted in the hearing of Case 9 and Case 17 as referred to in my Reply to the questions asked by Committee Member Mr Wakeling. In both those cases the complainant was represented by lawyers, and no complaint was made in the terms of what is asserted above. It will be noted that the cases referred to in my Wakeling Reply are the only cases prior to 30 June 2012 where there has been a confidential hearing.

14. "Minors were pressed to attend a Church authority internal hearing against their parents wishes". (para 1.2F)

COMMENT:

This is malicious nonsense, if, as I take it to be, it is a reference to me as the Independent Commissioner conducting investigations into complaints of sexual
abuse. I have only interviewed three minors in relation to their complaints of sexual abuse. In Case A, I met with the minor on two occasions in the presence of her parents. Case B, I met with the minor in the presence of her mother and her psychologist. Because the minor requested her mother to absent herself from the interview, this was done and I interviewed the minor in the presence of and with the cooperation of her psychologist. Case C, I interviewed the minor following consent being given to do so by his mother, who later participated in the interview.

15. "Please see Submissions of........................................ A number of our clients have reported this concern to us and have felt deeply uncomfortable yet obliged to go along with it if they wished their complaint to progress". (para 1.2G)

COMMENT:

I reject these allegations as false and malicious. I have again looked at the clients of Lewis Holdway with whom I have dealt and there is no suggestion the above remarks apply to them. If Lewis Holdway is speaking of 'clients' other than the clients whom they have represented in proceedings involving me, it is impossible to answer without having particulars of those 'clients'.

16. "The accused in a case actively sought support from Parishioners whilst the complaint progressed" (para 1.2H)

COMMENT:
It would not be unusual for an accused denying the complaint to seek support from Parishioners, or anyone else who might assist the alleged offender in exonerating himself or herself of the offence. Nonetheless, the case to which I believe reference is being made was unsuccessful.

17. "Clients were not told they could have a support person with them during interviews and meetings; clients have consistently complained about this (See ......................Submission for a specific example of this)" (para 1.2J)

COMMENT:

This is false. I have always told victims they could be accompanied by such persons as they wish, which can be verified by an inspection of my files.

18. "A client has reported to us that he was contacted by the Independent Commissioner for the express purpose of obtaining information about another victim's situation. It appeared to this client that the information was being sought so as to defend the Melbourne Response's dealings with that victim"

COMMENT:

Because Victim 1 referred to in paragraph 37 below had established contact and rapport with Victim 2 until he died, when false complaints were made by Victim 2's brother, I sought the details of Victim 1's contacts with Victim 2.

19. Clients were denied access to transcripts of their interviews with the Church authority" (para 1.2L)
COMMENT:

(a) Transcripts were being sought, after the offender had been convicted, and the Independent Commissioner had found the son and his mother had been the victim of sexual abuse within the meaning of the Terms. The Independent Commissioner also found that other members of that family, because of their proximity and in time and place to the abuse, were victims. This was duly reported to the Compensation Panel. The mother, who has signed an Application for Compensation, has not as yet pursued that application either on her own behalf or on behalf of her children other than the eldest son.

(b) The eldest son has not pursued an Application for Compensation. The mother has made a series of false and damaging statements about the Independent Commissioner and Carelink. Her solicitors were advised that the reasons for not providing the transcripts were because they were sought for a motive other than for information.

(c) Recently the son and the mother have authorised me to provide to the SANO Taskforce the transcript of my interview with the son of 31st January 2007, which was duly done.

20. "Clients experience significant time delays before resolution was reached, in some cases several years. The majority of our clients complain about time delays. The longest time recorded between complaint and settlement was 13
years. *We are aware of a number of clients whose cases are unresolved after more than 5 years*” (para 1.2M)

COMMENT:

This is news to me. Unless the clients are identified, even by pseudonym, it is impossible to provide a meaningful response.

21. "*The process becomes unnecessarily legalistic, the burden of proof in practice was ‘beyond reasonable doubt’.*” (para 1.2N)

COMMENT:

This is quite incorrect. Whilst I have been satisfied beyond reasonable doubt in many cases where sexual abuse has occurred, if I am satisfied on the balance of probabilities that sexual abuse has occurred, the victim is entitled to be referred to Carelink, obtain compensation and so on. I do not understand the criticism. I have found almost all of the complaints coming before me have been established ie. in the overwhelming majority of cases the burden of proof has been satisfied.

22. "*Melbourne Response in the first instance requires a victim to submit to a taped recorded interview with a QC which is traumatising and inappropriate.*” (para 1.2M)

COMMENT:
I have reviewed the cases in which Lewis Holdway has acted for victims, and interviews have been conducted with those victims typically in the presence of a solicitor from Lewis Holdway. It has never been suggested that my tape recording of interviews is traumatising and inappropriate. It beggars belief that this could be so. For many years now, it has been mandatory upon entities such as the Police to record their conversations with complainants, respondents and witnesses. Is it seriously suggested that as Independent Commissioner, rather than requesting the consent of an interviewee to be tape recorded, that I record what the interviewee said in laborious and often deficient longhand.

23. "Clients were refused pastoral care in meetings when requested" (para 1.2O)

COMMENT:

However tedious it is to repeat, unless there is an identification of persons who were allegedly refused, a reply is impossible.

25 "Clients were refused psychological care" (para 1.2P)

COMMENT:

I refer to my comment to paragraph 24.

26. "Clients were refused reimbursement for medical expenses which arose as a result of their injuries". (para 1.2Q)

COMMENT:
Because the Lewis Holdway Submission was published on the Committee's website at an earlier date, albeit briefly, I know this is a reference to a victim of sexual abuse, but not child sexual abuse, and whose evidence mistakenly given at a hearing of the Committee has been ruled as inadmissible. Further, it is not the fact that that person was refused reimbursement for medical expenses resulting from the sexual abuse.

27. "Their complaints were not properly investigated by the Church authority resulting in the alleged perpetrator remaining in Ministry". (para 1.3A)

**COMMENT:**

I presume that the 'Church authority' so frequently referred to above means the Independent Commissioner. I repeat, as I have stated elsewhere, that offenders have had their faculties removed and no longer acted as priests consequent upon my recommendation. Significantly, whilst protected by Parliamentary privilege, Lewis Holdway do not identify such perpetrators.

28. "Clients were not informed of their right to report to the Police at the outset or part way through their process". (para 3A)

**COMMENT:**

This is wrong. For example, 'George' aka 'Luke' was informed immediately of his right to report to the Police, and did so.

29. "Clients were discouraged from making a Police report".
COMMENT:

Nonsense. There is no evidence that this is so, but copious evidence to the contrary.

30. “Clients were told their complaint was not a crime”. (para 3C)

COMMENT:

This assertion reflects the cooperation between Melbourne Victims Collective, Helen Last and others, and Glenn Davies, who besmirch the Independent Commissioner. I do not waste the Committee's time by repeating again the response I made to such allegations in my response to the Police Submission and to the Davies Submission.

31. "Clients were not encouraged to seek independent legal advice". (para 3D)

COMMENT:

This is again denied.

31. “Clients reports to the Church authority were used to try to discredit them in the criminal proceedings against the perpetrator”.

COMMENT:

This again is malicious nonsense, and is dealt with in relation to the reference to ‘Luke’ below. But note that in distinction to the singular alleged position of ‘Luke’, ‘clients’ are now in plural.
32. "Clients experience bias when they were the first complainant with the apparent presumption that if there were no other reported victims of that offender then the first reporting victim was not believed unless the Priest or Brother confessed".

COMMENT:

I utterly reject this.

33. "Clients were effectively required to prove their complaint beyond reasonable doubt rather than on the balance of probabilities".

COMMENT:

I repeat my comment in paragraph 21.

CASE STUDIES

The saga of ‘Luke’ aka ‘George’ is set out again under Case Studies (para 3).

I have dealt with the allegations made by ‘Luke’ ('George') at para 54-63 of my Reply to the Police Submission. For convenience, I set out hereunder my redacted letter to Lewis Holdway of 1 February 2008, which disposes of the false and misconceived allegations against me reflecting the malevolence and bias of Melbourne Victims Collective.

Dear Ms Baker/Mr Holdway

Re: George

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. Use of the transcript of your interview with George 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 George 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 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 Jabara's 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 Jabara 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 Jabara 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. 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. 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. 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. 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:

Question: 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...
Question: 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 “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
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”.

(Subsequently, ‘George’ applied for, and was awarded, maximum compensation).

34. “Many clients experience significant confusion about the role of the Independent Commissioner and the complaint process. Some clients, for example, felt that the Independent Commissioner was meant to be working for them as victims”.

(para 5.1)
COMMENT:

(a) I reject the above and other comments asserting confusion. I do not know what clients are being referred to as so afflicted. Certainly Lewis Holdway should not have been confused because from the very beginning, they were well aware of my role and position as Independent Commissioner.

(b) I have gone to the file of the first victim that Lewis Holdway (then Lewis Hutchinson) acted for. On 7 October 1996, Mr Holdway wrote to the Vicar General (then Monsignor Denis Hart) stating inter alia:

"We write to you to formally request your agreement to participate in a mediation conference to resolve Mr M’s allegations against the Archdiocese”.

(c) On 15 October 1996, the solicitors for the Archdiocese responded to that letter stating inter alia:

"From your letters, it is unclear against whom your client seeks to make a claim. The basis of any such claim is also unclear. A mediation would therefore be premature.

You or your client may however be aware of recent comments made by Archbishop Pell on the issue of sexual abuse by priests. A range of measures will be announced in the near future. It may be that one or more of these measures will be of interest to your client.”
(d) On 30 October 1996, the Vicar General wrote to Mr Holdway stating:

"Thank you for your letter of 29 October concerning Mr M. I enclose a brochure on the revised procedure of the Archdiocese of Melbourne for dealing with allegations of sexual abuse. I believe that the appropriate action would be for you to contact the Independent Commissioner on 9221 6190 as outlined in the brochure....."

(e) On 8 November 1996, Mr Holdway wrote to the Independent Commissioner:

"We refer to the above matter and our discussions on 4 November 1996. We appreciate your prompt response to our enquiries.

We confirm that we act on behalf of Mr M.

We confirm that you will investigate the matter to establish in your own mind the nature and extent of the abuse following which you may report this matter to the Panel who will consider an ex gratia payment of compensation. We enclose on a 'without prejudice' basis documents setting out the factual background and the effects of the abuse upon Mr M...."

(f) On 18 November 1996, I interviewed Mr M together with his wife and his solicitor. I wrote to Mr Holdway on 21 November 1996:
"I refer to our meeting on Monday last and I confirm that I am satisfied that I am satisfied that your client Mr M was a victim of sexual abuse by Fr Gannon in the circumstances described in the Police Statements made by Mr M.

I have accordingly further decided to refer Mr M to Carelink as a person appropriate to receive support. I understand that Mr M will continue to contact Professor Ball or other appropriate persons at Carelink...."

On 6 April 1997, Mr M made Application for Compensation which was paid to him on 5 August 1997.

36. I have looked at the file relating to the last occasion I have dealt with a client acted for by Lewis Holdway. I set out a letter which I wrote on 16 May 2012 to the victim (care of Lewis Holdway Lawyers), in which I stated inter alia:

"I refer to the conference I had with you and your solicitor Mr Paul Holdway on Friday 11 May. As arranged, I enclose a copy of the transcript of that conference which I have not checked for spelling or other errors.

I confirm that I am the Independent Commissioner appointed by the Archdiocese of Melbourne to inquire into allegations of sexual abuse by priests religious and lay persons within the control of the Archdiocese of Melbourne.

I confirm my finding that you were the victim of sexual abuse from Fr BR substantially in the circumstances described by you in your cogent and
comprehensive statement which you verified at the conference as being true and correct...."

Subsequently, that victim was awarded compensation.

37. "Many of our clients were confused about the role and the powers of the Independent Commissioner. Some of them reported feeling upset about the Independent Commissioners intervention into their personal lives. For example one of our clients described the shock that he felt when the Independent Commissioner made unsolicited inquiries of his new Pastoral Priest..., and also when he received a ‘cold call’ from another victim who had been given his contact details by Mr O'Callaghan”.

COMMENT:

(a) This is the victim also referred to in paragraph 18 above. In my interview with Victim 1, I told him that I had been contacted by another victim (Victim 2) of the same Priest. On 3 February 2005, I wrote to him stating inter alia:

"In the meantime I advise you that Victim 2's telephone number is

He is certainly anxious that you contact him so as he put it ‘I can support him’. In that context I asked did he mean that he had knowledge of events relating to Victim 1, to which he replied in the negative but emphasised that he was anxious to provide morale support. Naturally I have only informed Victim 2 of the bare fact that you have met with and
made a complaint in respect of PJ. I provided no other detail because what you have told me is and remains confidential.”

Whether Victim 2 contacted Victim 1 or it was the other way round, whether who made the first call I am unaware but I do know that Victim 1 gave great support and assistance to Victim 2. Victim 1 wrote to me in March 2005 stating inter alia:

“Yesterday I met with my old friend from school (Victim 2). I have not seen him for more than 30 years and I was shocked to find him in such desperate need of ongoing care....”

Thereafter until Victim 2 died, Victim 1 continued to provide him with great assistance and support for which he deserves the greatest credit.

(b) In 2009, Lewis Holdway wrote to me stating inter alia:

“Victim 2 is aware that you made recent and unexpected contact with Fr D in October 2009 regarding his case. Victim 1 instructs that he found this contact to be highly intrusive. He considers Fr K to be a pastoral friend and confidant and does not appreciate his integrity being questioned in this way.”

I replied: “I was aware of Fr D’s involvement because of the references in the contact report forwarded to me. My purpose for ringing Fr D was to discuss matters generally with him, to understand his knowledge and involvement and to propose that he might be the intermediary in respect
of a proposal for resolution of this matter. However, upon reflection, I considered in the circumstances this was not practicable. In no way did I question Victim 1's integrity and I believe I conveyed to Fr D my desire to resolve Victim 1's problems and the sympathy I held and continue to hold for him.

38. "We also believe that all of Mr O'Callaghan's (the Commissioner of the Melbourne Response,) records and records of the Archdiocese should be made available to the Committee and the police for perusal so that if there is any intentional cover up of either offending priests, or their Superiors, failure to remove them or reassigning them, then this can be identified and addressed". (para 7)

COMMENT:

There would be little doubt that this request was based upon the assumption that my records would support the outlandish false and malicious criticisms which Lewis Holdway and Melbourne Victims Collective have made. It is ironic and unfortunate that the Committee has not seen fit to have its members personally inspect the files. I have in various Submissions referred to the files, which contradict the criticisms made of the Independent Commissioner. I stress again the importance of referring to contemporaneous documentation.

CONCLUSION:

The Lewis Holdway Submission first published as long ago as September 2012, and then withdrawn, reflects the approach taken by inter alia the Police
Submission and Ashton, Helen Last, and others who make blanket and unparticularised criticisms without any particularisation or identification of the relevant persons concerned. Such an approach would be “laughed out of Court” in any responsible Tribunal, and this should be the reaction of this Parliamentary Committee.

The fact remains that notwithstanding the plethora of unparticularised accusations and criticisms, there has not been instanced a complaint by a person who has gone through the Melbourne process detailing dissatisfaction, which if I had been confronted with it, I could deal with it.

Peter J O’Callaghan QC

31st July 2013