

**ROYAL COMMISSION INTO INSTITUTIONAL  
RESPONSES TO CHILD SEXUAL ABUSE**

**Public Hearing  
(Day 35)**

Level 17, Governor Macquarie Tower  
Farrer Place, Sydney

On Thursday, 23 January 2014 at 10am

Before the Chair: Justice Peter McClellan AM  
Before Commissioners: Ms Helen Milroy  
Mr Andrew Murray

Counsel Assisting: Ms Gail Furness SC  
Mr Angus Stewart

1 <GERALD BURNS, on former oath: [10am]

2

3 <EXAMINATION BY MR ANDERSON CONTINUING:

4

5 MR ANDERSON: Q. Brother Burns, are you ready?

6 A. Yes.

7

8 Q. Yesterday I ended by asking you a question before we  
9 adjourned for the day. Just to remind you, I asked:

10 "I have to put to you that you did deny knowledge of any  
11 allegations against Ross Murrin back at that time?", and  
12 you said, "I can't accept that". What I want to take you  
13 to now are some other items that are in evidence to see if  
14 that assists your memory of discussions and what was  
15 discussed specifically by [DK] with you at the facilitation  
16 on 30 March 2010.

17

18 So if I could ask for Alexis Turton's statement at  
19 paragraph 89 to be shown, please. As that is being brought  
20 up, I will read what it says. It says:

21

22 *Brother Moraghan and Brother Burns both*  
23 *said that they had not been aware that*  
24 *Brother Murrin had been engaging in the*  
25 *behaviour that Mr [DK] had suffered. They*  
26 *said words to the effect of:*

27

28 *We are sorry your time in Cairns was so*  
29 *hard for you. We were not aware that*  
30 *Brother Ross was abusing you.*

31

32 A. That's correct.

33

34 Q. So you're saying that you would not characterise that  
35 the inappropriate behaviour, the behaviour by Ross Murrin  
36 that is referred to there by Alexis Turton, referred to  
37 anything else by - other than a reference to [DK]?

38 A. The statement here refers specifically to [DK].  
39 I didn't have any inkling of abuse of [DK] until 2010, or  
40 whenever this came up.

41

42 Q. Just so you're clear about what I'm really asking  
43 about, [DK] was not just talking about himself but your  
44 knowledge generally about Ross Murrin's behaviour?

45 A. I don't recall him asking me specifically about  
46 Ross Murrin's behaviour. I think I said yesterday that  
47 I was assuming at that session that he knew, and that he

1 knew I knew about Murrin's behaviour. He claims, you know,  
2 it was talked about among the boys at school. So I'm not  
3 sure whether that's addressing your point.  
4

5 At that session, on the morning of the mediation,  
6 I have no recollection of [DK] wanting to raise that issue  
7 as to whether I knew of Ross Murrin's behaviour to the  
8 other parties.  
9

10 Q. Yesterday you specifically denied it. Now you're  
11 saying you have no recollection?  
12

13 MR GRAY: The transcript doesn't bear that out, in my  
14 submission.  
15

16 MR ANDERSON: Q. I put to you yesterday: "I have to put  
17 to you that you did deny knowledge of any allegations  
18 against Ross Murrin back at that time", and you said,  
19 "I can't accept that". Do you accept --

20 A. I can't accept that at that session on the mediation  
21 morning, that I denied any knowledge of the other case of  
22 Ross Murrin dealing with those other two people. Now,  
23 I know that [DK's] recollection of that morning was at  
24 variance with mine in many ways, but that question - it  
25 would have been pointless for me to have denied it.  
26

27 Q. Let me take you to tab 68. This is an email from  
28 Alexis Turton to Peter Rodney, another brother who was at  
29 St Augustine's at the time. You will see in the third  
30 paragraph of that email, it begins:  
31

32 *It was a very moving discussion ranging*  
33 *over the story of the life of [DK] and his*  
34 *present situation. His concerns about*  
35 *people being aware of abuse at the time and*  
36 *not protecting children, were well and*  
37 *truly reviewed.*  
38

39 Do you see that there?

40 A. I see it. I wouldn't accept that as a true statement,  
41 for my case. To say the whole thing was "well and truly  
42 reviewed" - if he said there was reference made to it,  
43 there was discussion about some of his other concerns about  
44 how he was treated. But, again, to my memory, I don't  
45 believe that [DK] questioned me in any detail whatsoever  
46 about the other issue, the issue with the other boys.  
47 I don't know whether I'm getting confused here somewhere,

1 but I feel perfectly clear on that. I haven't seen --

2

3 Q. Well, if he's putting to you that you, as the  
4 principal, were not acting to protect children, he's  
5 raising, is he not, more generally what else did you know  
6 and what did you do?

7 A. I don't - are you wanting me to go back and tread all  
8 issues regarding the other case? Is that what you're  
9 asking?

10

11 Q. That's what [DK] was asking about. He was asking your  
12 knowledge of Ross Murrin and you denied having any  
13 knowledge of Ross Murrin having --

14 A. That is - if he said that, he was speaking  
15 incorrectly. I had plenty of knowledge of the case there  
16 and I think [DK] was totally aware that I had knowledge of  
17 it, because he made reference in his statement to the fact  
18 that it was known among quite a few of the boys. It would  
19 have been pointless my trying to hide it.

20

21 Q. Are you saying that at the facilitation there was  
22 discussion of that issue?

23 A. No, I'm not. I said yesterday, I think a couple of  
24 times, that my memory of the section of the conference that  
25 was directed to me, the main focus and the main thing  
26 I remember - he was questioning me about my failure, as he  
27 saw it, as a principal of not doing something about the  
28 issue of his marks deteriorating in semester 4. And, the  
29 other thing which I mentioned yesterday, for some reason or  
30 other he took exception to the fact of my having been given  
31 an award and then giving it back, which totally tossed me,  
32 actually.

33

34 Q. I might take you now to Michael Salmon's statement at  
35 paragraph 48. When that comes up, I want to draw your  
36 attention to paragraph (c) in particular. This is in the  
37 course of the discussion. This statement is by Michael  
38 Salmon, noting what was discussed at the facilitation where  
39 you and Brother Moraghan were a part. It reads:

40

41 *Either Brother Burns or Brother Moraghan or*  
42 *both said "I had no idea about the abuse" -*

43

44 this is the abuse by Ross Murrin -

45

46 *"I regret that it is your view that we knew*  
47 *about Brother Murrin's behaviour. I had no*

1           *idea that he was a risk. If I had known,*  
2           *I would have done something about it. I am*  
3           *shocked. I regret and am mortified that*  
4           *these things happened to you."*

5  
6           Now, do you see that there?

7           A.    Yes.

8  
9           Q.    Do you accept something like that was said, or that  
10          was said, at the facilitation?

11          A.    I need to tease that out a bit, because my first  
12          reading of it seems to confuse two issues. It says there,  
13          "I regret that it is your view that we knew about  
14          Brother Murrin's behaviour." To whom? If we're saying we  
15          had no knowledge of Murrin's behaviour to [DK] - totally  
16          correct. I didn't know about that until 2010. "If I had  
17          known, I would have done something about it." What I would  
18          have done I'm not sure, at this stage, off the cuff, but  
19          I had no reason to believe that [DK] was at risk of being  
20          abused by Murrin.

21  
22                I covered I thought fairly fully yesterday that after  
23          the - what I did at the time of the abuse of the other  
24          boys, which would be totally different to what I'd do  
25          today. I, perhaps naively, was left with the impression  
26          that Murrin was not a risk further, and I think I said  
27          yesterday a couple of times that I kept in regular contact  
28          with him to check on him.

29  
30                So I see two things - I'm not sure if that answers  
31          your question. If it refers to the fact as to whether or  
32          not I had any suspicion that [DK] was at risk, I had no  
33          knowledge of that. I had no knowledge that in actual fact  
34          there was an allegation until 2010.

35  
36          Q.    I'll let you answer that as fully as you wish. You  
37          see, you answered the part where you say you have already  
38          given answers yesterday. It also says that it was said:

39  
40                *I had no idea that he was a risk.*

41  
42          That's Brother Murrin.

43  
44                *If I had known, I would have done something*  
45                *about it.*

46  
47          Now, you were the one in the position to do something about

1 inappropriate behaviour, weren't you, as the school  
2 principal?

3 A. Yes.

4

5 Q. You would accept that statement was more likely to  
6 come from you than Brother Moraghan?

7 A. I suppose what I'm wondering about is whether you  
8 accept my statement that I had the belief, after talking to  
9 Murrin and also discussion with Claudius - I had the belief  
10 that, okay, something had happened, but I felt confident,  
11 again in my naivety in those days, that Murrin was not an  
12 ongoing risk. Now, certainly I had no idea that -  
13 I believed that no other kids were at risk and I had no  
14 idea certainly specifically about [DK].

15

16 Q. Brother Burns, I'm not asking you about the days back  
17 when you had the naivety to characterise inappropriate  
18 touching to two young boys as not bearing a sexual  
19 connotation. I'm not asking about that. I'm asking about  
20 on 30 March 2010 when you were being asked about what was  
21 done back then about Brother Murrin and Mr [DK] being told,  
22 I would suggest by you, "I had no idea that he was a risk.  
23 If I had known, I would have done something about it."

24 A. I'm not sure what I can add to what I've already said.

25

26 Q. So you did not raise anything about the incidents back  
27 then that you were aware of, where you accept they were  
28 inappropriate, by Brother Murrin; you just didn't  
29 characterise it as having a sexual connotation back then?

30 A. Are you referring to the session on the morning of the  
31 mediation, that I made no reference to it then?

32

33 Q. Yes.

34 A. I don't recall at all making a reference and I don't  
35 recall being asked questions by [DK] that would have  
36 elicited that sort of statement from me.

37

38 Q. I'm suggesting and really trying to draw your  
39 attention to these other items, that it was plain that  
40 these things were being discussed on that day and that you  
41 did not speak about your knowledge of any kind back in  
42 1981?

43 A. Again I don't know whether I can add to the fact that  
44 I have no memory of what happened in 1981 being the focal  
45 point of any comment or questioning from [DK] at that  
46 Saturday - sorry, at the mediation morning, and I would  
47 have to say, too, that if I had seen that statement

1 written, I would have queried the accuracy of it.

2

3 Q. Of Michael Salmon's statement here?

4 A. Well, I can't be answerable for what Michael Salmon  
5 said.

6

7 Q. What I might do is ask that his file note, which is at  
8 tab 61, be also brought to your attention. There are two  
9 dates on this note and I'll draw your attention to both.

10 The first is the note date, 30/03/10. Down at the bottom  
11 of the page, right at the bottom, it has 31/03/10, and the  
12 time stamp is 2:20pm. So they're the two dates on that  
13 form, but it is a reference to the pastoral meeting in  
14 Brisbane. I want to draw your attention --

15 A. Sorry, I'm not with you.

16

17 Q. I was just giving you an indication of the dates on  
18 this document, being around the time of the facilitation,  
19 30 March 2010. Do you recall that was the date you  
20 attended the facilitation in Brisbane for Mr [DK]?

21 A. Yes, I take that. I don't remember the date.

22

23 Q. You will see there it is a note - I'm not sure if  
24 you've seen this document?

25 A. No, I haven't.

26

27 Q. It says:

28

29 *The first meeting was attended by all the*  
30 *persons noted above ...*

31

32 and you're noted as one of those people:

33

34 *... and it was designed to allow [DK] the*  
35 *opportunity to air his issues directly with*  
36 *Brothers Moraghan and Burns concerning his*  
37 *suspicion that they knew of Murrin's*  
38 *inappropriate behaviour and did not act to*  
39 *protect [DK].*

40

41 Do you see that there?

42 A. Mmm.

43

44 Q. Then it goes on:

45

46 *The meeting also allowed the particular*  
47 *Brothers to respond which essentially was*

1           that at the time they had no knowledge of  
2           Murrin's unacceptable behaviour and nor did  
3           they accept that they should have known.  
4

5           A.    I think that's quite inaccurate.   Quite inaccurate.  
6

7           THE CHAIR:   Q.    Brother, I understand you say that  
8           Mr Salmon has made an inaccurate record, but it's made very  
9           proximate in time to when the meeting occurred; you  
10          understand that?

11          A.    I'm sorry, is this Mr Salmon's --  
12

13          THE CHAIR:   It's his note, isn't it?  
14

15          MR ANDERSON:   Yes, it's his file note.  
16

17          THE CHAIR:   Q.    It's his file note, you see, the sort of  
18          thing that a careful person does.

19          A.    I accept that, but I still say that is not true.  
20

21          Q.    Then is the difficulty you would have in accepting it  
22          that, if you did say it, it wouldn't be true?

23          A.    I'm not sure that if - are you saying if I accepted  
24          this note --  
25

26          Q.    No.  If in fact Mr Salmon - sorry.  Your difficulty in  
27          accepting that you said it is because, if you in fact did  
28          say it, it would not have been true?

29          A.    If I had said it, that I had no knowledge?  
30

31          Q.    Yes, that would not be true.

32          A.    It would not have been true.  At the meeting - because  
33          I did have knowledge, and I thought everybody else there  
34          did, too.  
35

36          Q.    So the fact of the matter is if Mr Salmon has got it  
37          right, you didn't tell the truth at the meeting; is that  
38          where we end up?

39          A.    I see that as creating one condition under which  
40          I might say that, no, I wasn't telling the truth.  
41

42          Q.    No, I'm just asking you.  You see, we have to decide  
43          whether Mr Salmon's note is an accurate record of what  
44          happened.  Counsel will be putting that submission to us in  
45          due course.  Now, if we accept that Mr Salmon's record is  
46          correct, does that mean that you didn't tell the truth at  
47          that meeting?

1 A. If his statement was correct, which I claim it's not,  
2 yes, it would have meant that I was denying something which  
3 I knew.

4  
5 THE CHAIR: Yes.

6  
7 MR ANDERSON: Q. Were you concerned, when you were  
8 contacted by Alexis Turton in regards to this facilitation,  
9 about your reputation or the Marist Brothers' reputation,  
10 given the allegations that [DK] was making?

11 A. No, that wasn't a factor. I was asked to - I was  
12 invited to attend because I was the principal there at the  
13 time and I wanted to contribute what I could to the  
14 meeting. I know that this whole issue reflects badly on  
15 the reputation of Marist Brothers, but that was not  
16 a factor in my thinking about that meeting.

17  
18 Q. What did you see your role as?

19 A. As I just said, I thought, as the principal of the  
20 college at the time when abuse was being claimed that  
21 happened then, that I might be a significant person to have  
22 present there.

23  
24 Q. Did you seek, during that time - because you had some  
25 notice before the actual facilitation - to reflect on all  
26 these matters?

27 A. I find it hard to believe that I wouldn't have  
28 reflected, but I don't remember any reflection, trying to  
29 come to conclusions on anything. I would have wondered  
30 about what the whole thing was going to be about.

31  
32 Q. And in wondering, you would have been able to speak to  
33 Alexis Turton about what it was all about; correct?

34 A. I could have, had I wished, but I don't believe I did,  
35 except to say what the whole, you know, general idea of it  
36 was. It was about this alleged abuse. I was the principal  
37 there at the time. Anything I could contribute.

38  
39 Q. Did you go to see Ross Murrin in prison with  
40 Alexis Turton?

41 A. I'm trying to think. I visited Ross Murrin when he  
42 was in Junee because I happened to be in Canberra at the  
43 time. I would be quite convinced that Turton was not there  
44 then. I did go to see him once in Long Bay when he came  
45 back. If you said to me that Turton wasn't there, I would  
46 agree with you. If you say he was there, I can't disagree  
47 because I'm not clear.

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Q. I'll see if I can help your memory. If I could ask for tab 37 to be brought up on the screen. You can see there that the letter is handwritten and it's from Ross Murrin up the top, from Silverwater. It begins, "Dear Alex", which you would recognise is how Alexis Turton is referred to by people. Do you see there in the opening paragraph:

*... I enjoyed seeing you and Gerry very much.*

A. Yes. As I said, I couldn't deny it. I just didn't have a clear memory. If you had said either way, if you showed proof, I would accept that.

Q. So on the basis of this, you accept that you've gone there with Alexis Turton at some point to visit Ross Murrin?

A. I do know that Alexis had seen Murrin at other times. I suppose on a technicality, this doesn't say that we were together at the one time. But I have no problem with the fact if I did go with Alexis. I don't see what the issue is.

Q. I'm asking what would have been the reason you would go and see Ross Murrin?

A. At the time I would have been interested, if he knew that this mediation was coming up - I would imagine I would have talked to him about the fact that I was going to be there, and there was no secret between me and Murrin about what he had told me in Cairns. I'm not sure what else you're looking for.

Q. At that time did you know that the allegations were being levelled against Ross Murrin by Mr [DK]?

A. I couldn't be totally clear on that. I know that I didn't hear about the [DK] business until 2010. Exactly what date it was I don't know. I suspect I probably would have known. And if Alexis knew by that stage, which I believe he did, he would have - he told me at some time around about then. I can't swear on the Bible that it was before 26 February. I can't swear on the Bible that it wasn't until after.

Q. But the fact that this letter is dated 26 February --

A. That's why I'm making that the focal point.

1 I couldn't swear that I knew before. I couldn't swear that  
2 I didn't know before. I'm not sure what I can add.

3

4 Q. You've not been taken to the rest of this document,  
5 but if we just go to the next aspect of it:

6

7 *Alex, I have thought about what we*  
8 *discussed yesterday. I still have no*  
9 *recollection of what we spoke about*  
10 *concerning [DK].*

11

12 So it's quite clear, you might think, from that letter that  
13 that was the focal point of the discussion?

14 A. As I say, if Alex and I went there together and Alex  
15 would have known about it then, it would be unreasonable to  
16 think we wouldn't have spoken about it. And I see he says  
17 he still has "no recollection of what we spoke about".

18

19 Q. I'm really interested in your recollection at this  
20 point. Do you not have a recollection of what was  
21 discussed between you and Ross Murrin and Alexis Turton on  
22 that day that there was the visit?

23 A. As I said, if I knew at the time and I went there with  
24 Alex, it would be quite unreasonable to think that we  
25 didn't discuss it. But if you ask me can I consciously  
26 place a statement and question that I asked, I don't  
27 remember. If you ask me about anything else we discussed  
28 at that meeting, the weather or anything else, I might  
29 remember the general thing, but I don't remember the  
30 particular fact of that. As I said, it would have been  
31 rather unreasonable to think that we didn't. And  
32 I suppose, okay, it was possibly - and again I can't swear  
33 to this - it's quite possible that was the reason we went  
34 together.

35

36 Q. You've seen here in this correspondence a reference to  
37 "Gerry", and you would accept that would be you?

38 A. Mmm-hmm.

39

40 Q. On 18 March 2010, you were interviewed by a lawyer  
41 about your knowledge of Ross Murrin, and yesterday you were  
42 taken to that transcript. Do you remember that interview?

43 A. The interview with Mr Monahan?

44

45 Q. Yes.

46 A. Yes.

47

1 Q. So in the lead-up to 30 March, you had not only cause  
2 to reflect on it but specific incidents and this discussion  
3 with Ross Murrin and also the discussion with the lawyer  
4 Patrick Monahan - they were opportunities for you to have  
5 some real interaction with the memory of what was occurring  
6 in 1981; correct?

7 A. My memory is that Mr Monahan asked me in great detail  
8 a whole lot of - to go through in several ways the issues  
9 that had happened in 1981. I can't name specific questions  
10 he asked now, but he asked me - he covered the ground in  
11 several ways at times. I quite accept that.

12  
13 Q. Your explanation for not telling [DK] about the things  
14 that you did know about in 1981 at the facilitation is  
15 simply that he did not ask those questions of you; that's  
16 your explanation?

17 A. I believe so, mmm.

18  
19 Q. When you say you "believe so" --

20 A. I think that that is true.

21  
22 Q. I've already put suggestions to you. I'm not going to  
23 go through that again. What I do want to say is: why is  
24 it responsibility of Mr [DK], at a facilitation of that  
25 kind, to not have you give your full explanation of your  
26 role as the principal and what you did know about  
27 Brother Murrin?

28 A. Because I thought the issue at that section of the  
29 mediation was what happened to Mr [DK], and my memory is  
30 quite clear that that was the bulk of what went on at the  
31 meeting. It was the bulk of the questions that he asked to  
32 Brother Moraghan; it was the subject of the questions and  
33 comments and accusations he made about me - what had  
34 happened to him and what hadn't happened to him and his  
35 recollections of a totally negative boarding experience.  
36 I wouldn't have expected him - if I'd gone there and if  
37 I thought, I wonder will he want to talk in any detail  
38 about the - certainly 1981 doings, I would have probably  
39 thought, no, the focus of this - that is not the focus of  
40 this mediation meeting. The mediation, I understood, was  
41 to do with the allegations of [DK] and what happened to him  
42 personally and the grievances he had. And I accepted what  
43 he said as a reason why he was not only happy to have  
44 myself and Andrew there, but he wanted Andrew and myself  
45 there.

46  
47 Q. Are you ashamed that given the seniority of your

1 position in 1981, you were the school principal, you did  
2 not take better action against Ross Murrin at that time?  
3 A. Well, from today's perspective, very much so. And as  
4 I said I think in a couple of ways yesterday, my  
5 understanding, my awareness, the fact that there weren't  
6 procedures in place and that sort of thing, and the fact of  
7 my accepting Murrin's word - looking at it now, yes, I have  
8 a big regret about that. I have a big regret about the  
9 fact that our understanding of the whole issue of abuse in  
10 those days was not what it is now. Yes, I regret that was  
11 the situation. Now, that's one response.  
12

13 If you say do I regret that I didn't behave  
14 differently at the time, am I happy with what I did at the  
15 time in view of the environment at the time, I felt that  
16 I'd done the right thing.  
17

18 Q. When you say that, looking back on it, you have the  
19 regret, has that influenced you in any way to evade the  
20 questions of Mr [DK] or put it down to the fact that he  
21 failed to ask you the right questions on that day?

22 A. I think the implication of that is totally wrong.  
23 I didn't - I didn't have that as a motivation for my  
24 behaviour at the meeting.  
25

26 Q. Have you reflected on how it must make Mr [DK] feel,  
27 you being his principal, you being a senior member of the  
28 Marist Brothers, not detailing your knowledge of  
29 Ross Murrin at his facilitation and him learning afterwards  
30 of this knowledge you had, through this Royal Commission -  
31 have you reflected on how that has made him feel?

32 A. I'm sorry, I can't follow the convolution of that.  
33

34 Q. I'll break it down, and I apologise if that was  
35 a shocker of a question. I'll ask it again. In 1981, you  
36 were Mr [DK]'s school principal?

37 A. Correct.  
38

39 Q. You were a member of the Marist Brothers, and a senior  
40 member?

41 A. Correct.  
42

43 Q. He, seeking you specifically to come to his  
44 facilitation in 2010, obviously was indicating to you that  
45 your participation was important to him?

46 A. Correct. That's why I agreed to go, I suppose.  
47

1 Q. Your responses to him at the facilitation you would  
2 understand to have been important to him?

3 A. Yes.

4

5 Q. So have you reflected on the fact that what he was  
6 told at the facilitation was not the full knowledge you had  
7 about Ross Murrin back in 1981?

8 A. Yes, I accept that, because I wasn't asked about it.  
9 [DK]'s remembrance of that meeting is at variance with mine  
10 in many ways, but the only thing here is I don't remember  
11 him ever saying directly did I know about that, or even  
12 indirectly. He did make a - he claimed in his statement,  
13 if I remember rightly, not only that I was aware but that  
14 I condoned it, which I absolutely deny. And if he's  
15 referring to the time at which his abuse occurred,  
16 I wouldn't have known about the Ross Murrin incident then -  
17 sorry, sorry. If he's referring to 1981, at the time when  
18 he claims abuse against him, and he didn't mention the date  
19 but he claims it was early in the year, I wouldn't have  
20 known about the Ross Murrin incident then. That didn't  
21 come to light until July. If that answers your question  
22 I'm not sure.

23

24 Q. Did you expect Mr [DK]'s facilitation to be the end of  
25 the matter, given he signed a deed of release?

26 A. Well, yes, I did, because our very friendly  
27 interactions with him after that part of this meeting and  
28 the later email, of which you would be presumably aware -  
29 he reflected very positively on it, wanting to raise money  
30 to help other people and wanting to visit Brother Moraghan  
31 down in the Southern Highlands. We shook hands. That's  
32 why I was surprised to read in his statement also that it  
33 was never explained to him that "Burns and Moraghan" would  
34 not be at the second part, which I think is quite wrong.

35

36 Q. Did you feel relieved, given the way the day ended?

37 A. Did I feel relieved at the end of the day?

38

39 Q. Yes.

40 A. I felt happy at the end of that day because I had  
41 confidence in the Towards Healing process. I believed that  
42 the Towards Healing process had gone through. I was quite  
43 happy that we'd - it was done in two sections. Mr Bucci  
44 actually refers to what I was at as a conference, not  
45 a facilitation or mediation. I was pleased with the whole  
46 thing. I knew that in the afternoon, the private part -  
47 well, "private" may not be the right term; the part of the

1 meeting that I wouldn't be at - and I believe later  
2 Brother Turton would have said to me it went well, and that  
3 email from [DK] later - I think it was in early May; you  
4 would no doubt know that better than I - every indication  
5 there was that it was a very positive meeting, that he had  
6 his chance to say things. I think he actually says that he  
7 was pleased that I was there.

8  
9 I had explained to him why I did nothing about the  
10 decline in his marks, in the system that operated. I would  
11 only have taken up an issue like that if the subject master  
12 or the deputy or the teacher himself had brought that to my  
13 notice, because in the Queensland system at the time, the  
14 only thing I would have signed on that was a distribution  
15 list with no names on it.

16  
17 So I believed he was very happy. I was happy. And  
18 I was quite surprised when the issue came up again and  
19 I was quite surprised when I read his fuller statement with  
20 all the appendices, and again I disagree with some of those  
21 statements. So, yes, I was very happy at the end of the  
22 morning. I was happy I'd gone to it. I was happy when  
23 I left. And I was happy when Alexis, later on - I don't  
24 know when exactly; it would have been very soon after - he  
25 seemed to report to me a very positive outcome, which would  
26 have been consistent with that email that [DK] sent to him  
27 later.

28  
29 Q. You would appreciate that what he was told would have  
30 influenced how he felt about the facilitation? What he was  
31 told specifically by you and Brother Moraghan would have  
32 influenced the way he felt about the facilitation and the  
33 way it went; correct?

34 A. I don't follow the question. I think we changed  
35 direction.

36  
37 Q. You're talking about Mr [DK] going away from the  
38 facilitation and your impression was that it was a positive  
39 experience?

40 A. Yes, and we shook - he came out and shook hands, and  
41 I shook hands with his support person --

42  
43 Q. I'm sorry to cut you off. I'm not asking about all of  
44 those things. It's just accepting that you had the  
45 impression it was positive?

46 A. Yes, I'm illustrating how I came to that conclusion.  
47 And I spoke also to his support person, who was a legal

1 person who was a classmate of his, I think, at Cairns.  
2 I was very happy then. That's why I said I was surprised  
3 when the other things came up later on, and I recognised  
4 then that - well, I knew that I wasn't responsible for  
5 setting up the thing, and when I looked at some of his  
6 exchange of emails later, I could see the man was angry,  
7 worried, but that doesn't influence how I felt at the end  
8 of the mediation.

9  
10 Q. The impressions of how the mediation went are based,  
11 in part, on the answers that you gave on that day?

12 A. Well, yes, I would imagine so. If he was making  
13 a complaint about me, then afterwards he seemed very happy  
14 to talk to me. I believed I answered him honestly.  
15 I don't have any recall of him reacting negatively to what  
16 I said. I don't know that I can add anything to that.

17  
18 To take the opposite extreme, if you're asking did  
19 I think that my contribution to the meeting added to or  
20 contributed to his satisfaction, I believe, yes, it would  
21 have. I'm not sure what I can add.

22  
23 Q. And if you did not tell the truth on that day, your  
24 contribution now would be a negative one?

25 A. I think you're playing with semantics there. When you  
26 say if what I had said was untrue, you're saying that would  
27 have meant --

28  
29 Q. I'll ask the question again.

30 A. Would you have been saying that the satisfactory - my  
31 impression, or the impression of people as being happy with  
32 the morning, would have been falsely based?

33  
34 Q. Yes.

35 A. If I had not told the truth, certainly that part of  
36 the - and he would have known what answer was - you know,  
37 he didn't rely on me to inform him about the 1981 issue.  
38 As I said, he claims himself he knew about that. So if  
39 I had denied it, I would have been denying something that  
40 he was aware of, and I would have expected, the way he was  
41 that morning, he would have confronted me on that if he  
42 believed I was lying.

43  
44 Q. You're accepting that had Mr [DK] wanted to know  
45 generally about inappropriate behaviour by Ross Murrin at  
46 the school, that incident and what you did about it would  
47 have been something to talk about; you accept that?

1 A. Yes, if he'd asked me and I denied it, he would have  
2 known that I was telling an untruth because, as I say, he  
3 states openly himself in other places that he did know  
4 about it. I'm not sure what he would have done as a result  
5 of that. I imagine he would have confronted me very  
6 strongly at the time, and if it wasn't confronted, it would  
7 have reduced his satisfaction with the morning.

8  
9 Q. Where are you getting that Mr [DK] knew about this  
10 particular episode?

11 A. This particular episode being the 1981 one?

12  
13 Q. Yes, where do you get that --

14 A. Reading through statements - things he's said in his  
15 own statements.

16  
17 Q. To the Commission?

18 A. No. Well before that meeting, he had statements to  
19 say that - which surprised me - it was talked about among  
20 the boys, and also [Smith], in his statement to Porters,  
21 says that that, eventually, was one of the reasons he left  
22 the school.

23  
24 Q. Can I say he talks about what the boys knew. Mr [DK]  
25 did reveal what the boys at the school knew and would say,  
26 and their knowledge of Brother Ross Murrin. What he was  
27 interested in was you, as a person in authority, your  
28 knowledge of Ross Murrin?

29 A. Well, he knows that I interviewed him, I interviewed  
30 his father. He knew - he would have been aware that I had  
31 knowledge of the whole thing. I'm not sure whether that's  
32 answering your question. Would he have believed that not  
33 only did the kids know about it but that I would have known  
34 about it? Yes, that's what he's saying. And I think he  
35 actually says in his statement that he knows that  
36 I interviewed his father - not in this statement, in  
37 another one.

38  
39 Q. I want to suggest that Mr [DK] was not given that  
40 information by you and was not aware of your knowledge of  
41 Ross Murrin's inappropriate behaviour at the facilitation,  
42 which is why he wanted you there to answer his questions?

43 A. If I'm following what you say, I don't believe that's  
44 the case. I don't think - it would very much surprise me  
45 if [DK] maintained that the reason he wanted me there was  
46 to deal with the 1981 issue. My understanding very clearly  
47 was that it was issues that he had to deal with me for,

1 which he summarises later in various ways. I'm not sure  
2 what you're getting at there.

3  
4 Q. Let me put it this way: if Mr [DK] did not know that  
5 you had any knowledge of the 1981 incident, do you accept  
6 that the 1981 incident - we're talking about what you were  
7 interviewed about with Patrick Monahan, when he touched the  
8 two boys - if he did not know about your knowledge of that,  
9 do you accept that is the sort of thing that you should  
10 have talked to Mr [DK] about if he was asking about  
11 Ross Murrin's behaviour and your knowledge of it in  
12 a general way?

13 A. When you say if he didn't know about it, I've told you  
14 half a dozen times that I was aware that he knew about it.

15  
16 Q. I'm asking you on the basis that he did not know.

17 A. But I see that as a false basis, because he did know.

18  
19 Q. If it's a false basis, it will be shown to be so.  
20 Assume for a moment so you can answer the question, if  
21 Mr [DK] was there about your knowledge, as the school  
22 principal, about Ross Murrin's behaviour generally, not  
23 just with respect to Mr [DK], then you accept that's  
24 something that you should have told him about?

25 A. I find that hard to answer, because I did know, I was  
26 aware that he knew. So if you're saying to me what would  
27 I have done if I somehow found out he didn't know, I find  
28 it a bit hard to answer that because that wasn't the case.  
29 He did know, and I knew that he knew. And he probably knew  
30 that I knew that he knew. I'm sorry, I'm finding it hard  
31 to answer some of those questions that start off with  
32 a conditional clause.

33  
34 Q. Let's take the conditional clause out of it.  
35 Ross Murrin acted inappropriately in 1981; do you accept  
36 that?

37 A. Yes. And I've accepted that several times in my  
38 testimony.

39  
40 Q. If you were asked about Ross Murrin acting  
41 inappropriately, you would accept that would be an occasion  
42 you would have to talk about?

43 A. If Mr [DK] --

44  
45 Q. No, sorry. Take Mr [DK] out of it. I'm asking you  
46 if, at the facilitation - remove Mr [DK]'s knowledge - you  
47 were asked about Ross Murrin's inappropriate behaviour

1 generally, do you accept that's something you should have  
2 said was within your knowledge back in 1981?

3 A. If I was asked was I aware of what happened in 1981,  
4 if that became an issue at that mediation meeting - I find  
5 it hard to answer, because the circumstances were that he  
6 knew that I knew - sorry, I knew that he knew, and  
7 I haven't ever tried to think through what would have  
8 happened if the conditions were different.

9

10 Q. I'll just ask the question. I'm sorry that I keep  
11 having to ask around this issue, but I do want to know, do  
12 you accept that Ross Murrin's behaviour was inappropriate  
13 and if there was --

14 A. I've accepted that many times.

15

16 Q. -- a discussion about Ross Murrin's behaviour, that's  
17 one thing that was requiring discussion if there's ever  
18 a need for you to speak about what was your knowledge of  
19 Ross Murrin?

20 A. In any case where I've been asked about the 1981  
21 issue, whether it was with Mr Monahan or what I've been  
22 asked here, I've never denied knowledge of it.

23

24 Q. Would you volunteer, if you were asked about what was  
25 your knowledge of any inappropriate behaviour by  
26 Ross Murrin and what did you do about it - this would be an  
27 incident that you would have to volunteer?

28 A. No, I wouldn't have to volunteer. If the forum was  
29 such that the people asking the questions had the right to  
30 ask me, yes, as happens here, I'd fully and openly be happy  
31 to talk about it. But if it was a different - if somebody  
32 pulled me up in the street and said, "Tell me what happened  
33 in 1981", I'd tell them to go jump in the lake.

34

35 Q. But if it was the sort of forum where it should be  
36 discussed, you would accept it would need you to talk about  
37 it?

38 A. I would need to be convinced that the forum was  
39 correct.

40

41 Q. Mr [DK]'s facilitation was such a forum where it would  
42 be appropriate to discuss such a thing?

43 A. I think I'd put that differently and say had Mr [DK]  
44 raised the issue as being relevant to the matter of the  
45 morning, I would have acknowledged what had happened. But  
46 I don't believe he asked. And as I said several times,  
47 many times, it would have been pointless me denying it,

1 because I was aware that he knew.

2

3 Q. I simply suggest that you evaded the issue on the day;  
4 you denied any knowledge of inappropriate behaviour by  
5 Ross Murrin?

6 A. That is totally incorrect. I didn't. I certainly  
7 didn't deny it. I forget what the first part of your  
8 question was. I wanted to deny that, too.

9

10 Q. You can deny it. The question is there. I suggested  
11 to you that you evaded the issue on the day.

12 A. I don't believe I did.

13

14 Q. You denied any knowledge?

15 A. I don't believe I did evade the issue, and I certainly  
16 don't believe that I denied the knowledge. As I've said  
17 many times here, it would have been pointless to deny it,  
18 because I knew that he was aware.

19

20 Q. Are you concerned at all for your reputation by any of  
21 the answers that you gave at the facilitation to Mr [DK]?

22 A. No. No, in recalling the people who were there,  
23 I believe they would have accepted what I said. The only  
24 two things really that I was accused of there was the  
25 matter of the exam results and the award. Now, the more  
26 general things he was talking about, some of those things,  
27 I was - regret - I was saddened by some of the things he  
28 said about his boarding school experience. I was very  
29 saddened to think that it was on my watch that those things  
30 happened - all sorts of things. But my reputation -  
31 I don't see an outcome of that session having any effect,  
32 having any impact on my reputation, whatever that means.

33

34 Q. Can I ask this finally: is it a question of you don't  
35 recall Mr [DK] raising those things and you saying that you  
36 had no knowledge of Ross Murrin generally, did not know of  
37 his risk to children? Is it a question that you don't  
38 recall those things being discussed and you giving those  
39 answers, or are you simply saying that it did not happen?

40 A. I thought I'd answered that several times.

41

42 Q. I just want to be clear about what you say.

43 A. Well, I'm trying to work out how I can be clearer than  
44 what I have been on some of the other occasions. I don't  
45 have detailed, ball-by-ball memory of every question he  
46 asked. Had he asked a question about whether I knew about  
47 the 1981 thing, as I've said several times, I would have

1       been open about it. There was no point in not being open.  
2       Everybody at the meeting was aware.

3  
4               If you asked me to formulate exactly what were the  
5       questions he asked me about why I gave back the award,  
6       I would find it very difficult to say. "He asked this and  
7       he asked this and he asked this." It may be just my  
8       83-year-old memory that has lost some of those details, but  
9       that's the fact.

10  
11       Q.     But you are at one with the other witnesses, who say  
12       that you did not talk about the 1981 incident involving the  
13       two boys who were touched?

14       A.     Sorry, are you asking about Mr Salmon's statement?

15  
16       Q.     I'm asking --

17       A.     Are you asking whether I agree with --

18  
19       Q.     -- you agreed with that, that there was no mention by  
20       you about the 1981 incident, or anyone else for that  
21       matter, at the facilitation of Mr [DK]?

22       A.     You're obviously asking me to break this thing down in  
23       more detail, so I'll try to. As I've said, I can't  
24       remember ball by ball, blow by blow, every question that  
25       was asked and exactly the context in which it was asked.  
26       I don't remember his raising that issue specifically,  
27       asking me about what happened in 1981. I don't remember  
28       that. I've said before that I think I would have  
29       remembered it - had he asked me about it and had I denied  
30       it, it would have been a matter of conscience for me, to be  
31       quite honest. If you ask me that here, having put my hand  
32       on the Bible - I'm not sure what I can add. I'm getting  
33       quite confused, actually, about trying to see that question  
34       as being different from the other ones you've asked.

35  
36       Q.     I'm not trying to confuse you. I'm trying really to  
37       clarify your answers, whether it's an acceptance that that  
38       was not said or - whether certain things were said or  
39       whether certain things were not said. I want to know  
40       whether you can't recall or you specifically deny or accept  
41       something. Do you see what I'm asking?

42       A.     Yes, I think, to go back to what I said in my last  
43       response, I think some things are said at a meeting, at  
44       a forum, that you really remember, for various reasons.  
45       Other things that are said, that weren't the crux of the  
46       thing under discussion, you don't have such clear memory  
47       of. If there was some reason why it would have become

1 a matter of conscience for me, I believe I would really  
2 have remembered, in detail even.

3  
4 But at the level of detail you're asking, do  
5 I remember specifically him saying to me, "Do you remember  
6 what happened in 1981?", no, I don't remember him saying  
7 that to me. I think the context in which we were talking  
8 was such that I would have been surprised if he had. But  
9 if he had, I would have seen no point in denying it,  
10 because, as I've said several times, I was aware that he  
11 knew.

12  
13 Q. I should just ask this final question. If you at that  
14 time --

15 A. At which time?

16  
17 Q. At the facilitation - were unclear about whether he  
18 knew or not about your knowledge and he was inquiring about  
19 your knowledge, then it would have been necessary for you  
20 to talk about the 1981 incident?

21 A. Again, the conditional clause was an impossible  
22 condition, because you seem to be questioning there whether  
23 I actually knew. I did know, because I'd seen it in his  
24 statement.

25  
26 Q. I'm putting it conditional on the basis that if you're  
27 confused about it --

28 A. I wasn't confused about it. As I said, I was quite  
29 clear that he was aware.

30  
31 Q. He was asking about your knowledge.

32 A. I don't recall him asking about my knowledge of 1981.

33  
34 Q. If he was asking about your knowledge --

35 A. Well, I know that he didn't - sorry. If he had asked  
36 me, I would have seen no - I would not have denied it  
37 because I wouldn't have had any point in denying it,  
38 because I was aware that he was aware of that, and  
39 I wouldn't have suspected him of just trying to lead me on  
40 or something, no. It would have been - and if he'd asked  
41 me and I said no, it would have been a matter of conscience  
42 for me, and there's no way you can forget something like  
43 that, no more than if I told a lie here --

44  
45 THE CHAIR: Mr Anderson, I think we've explored the topic.

46  
47 Q. You've said a number of times that you knew that he

1 knew. I just want to make sure we have it clearly on the  
2 transcript, what was the source of your knowledge prior to  
3 that meeting that he knew?  
4 A. One of the main things would be the fact that he says  
5 in his statements that the kids all knew.  
6  
7 Q. Sorry?  
8 A. The boys --  
9  
10 Q. Says in what statement? Says in what statement?  
11 A. Well, he says it in statements. Now, when you say  
12 "what statement" --  
13  
14 Q. Well, what statement are you referring to?  
15 A. I'm probably - well, one of the statements is his  
16 statement which is part of the submission to I think this  
17 Commission.  
18  
19 Q. Yes. That's well after the meeting.  
20 A. Yes, yes.  
21  
22 Q. So what was the source of your knowledge, do you say,  
23 at that meeting, or prior to that meeting?  
24 A. I'm not sure.  
25  
26 Q. You're confident that he knew what you knew. What was  
27 your source?  
28 A. It may have been from discussion with Turton. It  
29 may - had that been the case, I'm obviously a bit confused  
30 about the dates of his first statement that I saw, and this  
31 was after the interview with Monahan. I'm finding it a bit  
32 hard to put those things together. But I see your point,  
33 that when I said before I saw it in his written statement,  
34 that that may not be accurate. But I was very aware of it,  
35 and he wasn't asking what did happen. I suspect, now that  
36 I come to think of it, when he was talking about us not  
37 protecting him, and so on - no, look, I'd better not say  
38 that because it's fuzzy.  
39  
40 THE CHAIR: Yes. Are you finished?  
41  
42 MR ANDERSON: Yes, I am, thank you.  
43  
44 THE CHAIR: Any questions from anyone else? Mr Gray?  
45  
46 MR GRAY: Yes, your Honour.  
47

1 <EXAMINATION BY MR GRAY:

2  
3 MR GRAY: Q. Brother Burns, we know from a lot of  
4 questions about this that the incident involving the two  
5 boys, where you spoke to first one boy and then the other  
6 and then spoke to Brother Murrin himself, was in about July  
7 1981.

8 A. That's correct, yes.

9  
10 Q. And we know from Mr [DK]'s statement, by which I mean  
11 his Towards Healing statement, which is at tab 24 of the  
12 bundle, that according to him, paragraph 9, the abuse of  
13 him by Brother Murrin was either at the end of 1980 or at  
14 the beginning of year 12, in 1981?

15 A. Yes.

16  
17 Q. Therefore, assuming those two sets of dates are right,  
18 as you said earlier this morning as at the time of  
19 Mr [DK]'s abuse, late 1980 or early 1981, you obviously  
20 didn't know, and could not have known, anything about the  
21 two boys, because that didn't happen until quite  
22 some months later?

23 A. That's correct.

24  
25 Q. While I'm on the subject of Mr [DK]'s Towards Healing  
26 statement at tab 24 of the bundle, could it be scrolled  
27 down to paragraph 12 and then paragraph 13. Brother Burns,  
28 this is Mr [DK]'s statement provided to Brother Alexis,  
29 basically, in support of his Towards Healing claim, being  
30 the claim that was the subject of the mediation or  
31 facilitation in March 2010. Do you see there in  
32 paragraph 12, Mr [DK] sets out what he says he heard about  
33 Brother Ross sexually abusing a grade 8 boy on a school  
34 camp and the boy's parents reporting it to the brothers.  
35 He says he remembers "finding out in front of the refectory  
36 before breakfast one morning". He says, "The whole school  
37 was talking about it." He says:

38  
39 *From memory, Brother Ross was removed as*  
40 *the Dorm master following this incident.*

41  
42 Then in paragraph 13, he says:

43  
44 *At the end of 1981, Brother Gerald -*

45  
46 that's you -  
47

1                   *and Brother Murrin were transferred.*

2  
3                   And he asserts:

4  
5                   *It was generally known amongst the boarders*  
6                   *that it was because of the Grade 8 boy's*  
7                   *parents complaining.*

8  
9                   Do you see all that?

10                  A.    I see all that, but it's quite wrong.

11  
12                  Q.    Nevertheless, is that material, those two paragraphs,  
13                  12 and 13, any part of what you had in mind when you said  
14                  that you were aware that [DK] knew about the 1981 incident  
15                  with the two boys?

16                  A.    I'm finding it difficult again to pinpoint a few  
17                  things there. Could you switch back to number 12 again?  
18                  Right. My first reaction to that was it was a distortion  
19                  of facts. As far as I knew then and as far as I've ever  
20                  known, there was no abuse of a grade 8 boy at a camp. That  
21                  would have been my first reaction to that. The assembly  
22                  outside the refectory before breakfast was the one at the  
23                  rialto of the college - that's where things were discussed.  
24                  What I'm finding a bit difficult is whether that would be  
25                  an example - and I'm not sure when this statement was made  
26                  or when I became aware of it.

27  
28                  Q.    That's partly what I want to ask you. The statement,  
29                  you can assume, was made in February 2010, that is, just  
30                  shortly before the mediation meeting, and I want to ask  
31                  you, in fact, whether you saw it somewhere around that  
32                  time - that is, before the mediation meeting?

33                  A.    I certainly felt at the mediation meeting that [DK]  
34                  knew about the 1981. Now, if you ask me chapter and verse,  
35                  as his Honour had questioned me, I'm finding it hard to say  
36                  exactly when I found that out and when I knew, but  
37                  I certainly had - it was my total awareness at the meeting  
38                  that he was aware of it.

39  
40                  Q.    I'm just trying to explore that a little bit. You did  
41                  say, when his Honour asked you about it, that you thought  
42                  you knew that, among other things, from having seen  
43                  something in his - what you called his statement or a  
44                  statement?

45                  A.    Yes.

46  
47                  Q.    What I'm asking, for the moment, is could this be

1 a statement, or the statement, that you saw prior to the  
2 mediation which contributed to you having that state of  
3 mind, that is, because of what is contained in paragraphs  
4 12 and 13, even though, on your account, what is contained  
5 in paragraphs 12 and 13 is not entirely right?

6 A. I'm not clear on when I saw the first statement from  
7 [DK].  
8

9 MR GRAY: Is it possible for a hard copy of the statement  
10 to be made available to Brother Burns?  
11

12 THE WITNESS: I may have it here. Yes, I have it.  
13

14 MR GRAY: Q. It's a five-page statement. Is that the  
15 one? It has 38 paragraphs altogether.

16 A. Yes. Maybe I'd better get the other one just to  
17 check. Thank you.  
18

19 Q. Just take a moment to have a look at it and see if you  
20 can remember whether you had seen this by the time of the  
21 mediation or facilitation?

22 A. I'm sorry, I can't - I believe that I - in my mind,  
23 I believe that I had seen a statement - I believe that  
24 I went to the mediation having seen something in writing,  
25 or whatever, but I'm not clear on it. But I am clear in  
26 the fact that I certainly knew that he was aware of it.  
27

28 Q. On a related topic, could we have tab 61, please, of  
29 the bundle, which is Mr Salmon's file note. If we could  
30 scroll down a little bit, please. Brother, you were asked  
31 a number of questions about this note, which is one made by  
32 Mr Salmon, we assume shortly after the day of the meeting.  
33 I just want to take you to the two paragraphs in particular  
34 that we are concerned with today and ask you about two  
35 aspects of them.  
36

37 In the third paragraph, beginning, "The first  
38 meeting", Mr Salmon says:  
39

40 *The first meeting was attended by all the*  
41 *persons noted above, and it was designed to*  
42 *allow [DK] the opportunity to air his*  
43 *issues directly with Brothers Moraghan and*  
44 *Burns concerning his suspicion that they*  
45 *knew of Murrin's inappropriate behaviour*  
46 *and did not act to protect [DK].*  
47

1 Pausing there, what Mr Salmon's note in that paragraph does  
2 not say is which inappropriate behaviour. Do you see that?

3 A. Mmm-hmm.

4  
5 Q. If Mr Salmon's note - and I'm asking this  
6 hypothetically - is referring to his suspicion that they  
7 knew of Murrin's inappropriate behaviour concerning [DK],  
8 then that would be one thing. If his note is meant to mean  
9 his suspicion that they knew of Murrin's inappropriate  
10 behaviour apropos someone else, that would be different.  
11 Do you see the difference?

12 A. I see the first point, that the misbehaviour being  
13 referred to was a misbehaviour towards [DK], not 1981. The  
14 second point --

15  
16 Q. Just pausing there, you did not know of any  
17 inappropriate behaviour by Murrin towards [DK] at any stage  
18 in the 1980s, until much later?

19 A. None at all, none at all.

20  
21 Q. At the meeting, when [DK] spoke at some length in the  
22 first session where you and Brother Moraghan were present,  
23 I think you've told the Commission that your recollection  
24 is that what he was talking about was himself, his  
25 experience and what happened to him?

26 A. That's correct.

27  
28 Q. Is it right to say - I'm asking this as an inquiry -  
29 that he asked whether you knew about or had any suspicion  
30 of any behaviour by Murrin towards him?

31 A. It would be right to say that I had no suspicion of  
32 that.

33  
34 Q. Do you recall whether he asked you whether you  
35 suspected Murrin in relation to himself?

36 A. I don't recall specifically his saying that at the  
37 meeting, but - mmm.

38  
39 Q. Moving to the next paragraph, Mr Salmon's note says:

40  
41 *The meeting also allowed the particular*  
42 *Brothers to respond which essentially was*  
43 *that at the time they had no knowledge of*  
44 *Murrin's unacceptable behaviour and nor did*  
45 *they accept that they should have known.*

46  
47 If the reference to "Murrin's unacceptable" --

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THE CHAIR: Mr Gray, the brother has denied saying this. I'm not sure the foundation for your question.

MR GRAY: I'm trying to --

THE CHAIR: He says this is not an accurate record of what happened. I'm not going to stop you asking the question, but the foundation for it seems to fly at odds with what he has actually said in his evidence.

MR GRAY: I'm simply asking questions, your Honour. I'm not putting a proposition.

THE CHAIR: The foundation for the question is at odds with what he has said in his evidence. I'm not going to stop you.

MR GRAY: I understand that. I appreciate that.

THE WITNESS: Do I have any right to respond to that?

THE CHAIR: Well, through Mr Gray.

MR GRAY: Q. I'll ask the question that I had in mind, but, brother, if you need to add something, please do. At the time - that is, in the whole year 1981 - it's right, isn't it, that you had no knowledge of Murrin's unacceptable behaviour vis-a-vis [DK]?

A. That's correct, and I didn't think that I had been specifically asked about this clause before. I thought it was a later one of Mr Salmon's. But, no - and I'm quite clear that I had no knowledge of it until - and I've said this a couple of times - early 2010 sometime when the issue was raised.

Q. At the meeting, did you actually say - which this note, on one interpretation of it, says you did - did you say, that at the time - that is, 1981 - you had no knowledge of Murrin's unacceptable behaviour towards [DK]? Do you remember that being said by you at the meeting?

A. I don't remember it having been said. But, again, if the question was asked or the issue raised - I went to the meeting believing that [DK] was making an allegation, accepting that he did not make that allegation at the time in 1981. I went to the meeting believing that this was a recent allegation by him and that he - that I would have

1           been aware of that at this meeting, that I hadn't been  
2           informed before early 2010.

3

4           Q.    Thank you. I had only one other topic to raise with  
5           you. It concerns something that you were asked about  
6           yesterday. Do you remember a series of questions,  
7           including some from his Honour, about inappropriate  
8           touching, on the one hand, eg, chest and stomach, and  
9           genital touching on the other hand? Do you remember that  
10          territory?

11          A.    Yes.

12

13          Q.    In 1981 in relation to the two boys, they told you  
14          that Brother Murrin had touched them on the chest and  
15          stomach?

16          A.    Yes.

17

18          Q.    You asked them if he had touched them on the genitals  
19          and they said no.

20          A.    Mmm.

21

22          Q.    And you asked Brother Murrin the same question, and he  
23          also said no?

24          A.    Yes.

25

26          Q.    At that time - that is, in the middle of 1981 - in  
27          your personal experience, had you had any other experience  
28          of an accusation being made of genital touching by  
29          a brother, for example?

30          A.    No.

31

32          Q.    You said - and I'm paraphrasing slightly - that  
33          whereas touching of the chest and stomach as at 1981 you  
34          would have seen, or did see, as inappropriate, a touching  
35          of the genitals, had such a thing happened and had you been  
36          told about it, you would have seen as a moral failure. Do  
37          you remember saying that?

38          A.    Yes.

39

40          Q.    Of course, you were not told that in 1981; you were  
41          not confronting an actual accusation of any genital  
42          touching. Correct?

43          A.    Yes.

44

45          Q.    As at 1981, did you even turn your mind at all to the  
46          question of whether genital touching, at least even  
47          hypothetically, if it occurred, would or might be criminal

1 in nature?  
2 A. At that time, no, I wouldn't have - it wouldn't have  
3 been in my thinking then. Certainly different now. But  
4 then, no.  
5  
6 MR GRAY: No further questions, your Honour.  
7  
8 THE CHAIR: Yes, Mr Stewart.  
9  
10 MR STEWART: I have nothing further for the witness,  
11 your Honour.  
12  
13 THE CHAIR: Thank you. You may step down. You are  
14 excused. We'll take the short adjournment.  
15  
16 **<THE WITNESS WITHDREW**  
17  
18 **SHORT ADJOURNMENT**  
19  
20 THE CHAIR: Yes, Mr Stewart.  
21  
22 MR STEWART: Thank you, your Honour. I call  
23 Brother Andrew Moraghan.  
24  
25 **<ANDREW THOMAS MORAGHAN, sworn: [11.55am]**  
26  
27 **<EXAMINATION BY MR STEWART:**  
28  
29 MR STEWART: Q. Brother Moraghan, will you state your  
30 full names and occupation?  
31 A. My name is Andrew Thomas Moraghan and I am retired.  
32  
33 Q. Brother Moraghan, the Royal Commission has been  
34 furnished with a statement by you dated 4 December 2013.  
35 Do you have a copy of that statement?  
36 A. I do.  
37  
38 Q. Are there any corrections you wish to make to that  
39 statement?  
40 A. There are no corrections I wish to make to that  
41 statement.  
42  
43 Q. Do you confirm that it is true and correct?  
44 A. I do confirm that.  
45  
46 MR STEWART: I tender the statement, your Honour.  
47

1 THE CHAIR: It will be exhibit 4-62.

2

3 **EXHIBIT #4-62 STATEMENT OF ANDREW THOMAS MORAGHAN,**  
4 **DATED 4/12/2013**

5

6 MR STEWART: Q. Brother Moraghan, you joined the Sydney  
7 province of the Marist Brothers in 1966; is that right?

8 A. That's correct.

9

10 Q. And that would have made you approximately 20 years  
11 old at that time?

12 A. Yes.

13

14 Q. Thereafter you did some training and you held teaching  
15 positions through until 1978; is that correct?

16 A. That's correct, yes.

17

18 Q. And from 1979 to 1984, you were a science, mathematics  
19 and religious education teacher and served as a dormitory  
20 master at St Augustine's College in Cairns; is that right?

21 A. It is.

22

23 Q. At that time, you were aged in the range 33 to  
24 38 years; would that be right?

25 A. Yes, that would be right.

26

27 Q. Thereafter you did further training and you took  
28 further teaching positions in other institutions; is that  
29 correct?

30 A. It is.

31

32 Q. Since 2012 you have been engaged as a carer of retired  
33 brothers at St Gregory's in Campbelltown; is that right?

34 A. That is correct, yes.

35

36 Q. And that's a Marist Brothers facility or institution,  
37 is it?

38 A. The school at St Gregory's is a Marist Brothers  
39 school, yes.

40

41 Q. Where were you at school yourself, Brother Moraghan?

42 A. Did you say where was I at school?

43

44 Q. Yes.

45 A. I was at Marist Brothers high school at Darlinghurst  
46 from third class through to intermediate, and then  
47 I finished the end of my secondary schooling at Mittagong,

1 the juniorate at Mittagong.  
2  
3 Q. Brother Moraghan, you attended the facilitation or  
4 mediation in the case of [DK]; is that right?  
5 A. I did.  
6  
7 Q. Did you hear or see or read the testimony of  
8 Brother Burns yesterday and today?  
9 A. Did you say did I read it?  
10  
11 Q. Did you see it or read it or hear it?  
12 A. No, I did not.  
13  
14 Q. You are aware, I take it, that in June or July 1981  
15 there was an incident at St Augustine's involving  
16 allegations of Brother Murrin having inappropriately  
17 touched two boys in the dormitory; are you aware of that?  
18 A. I'm only aware of one of them, the one relating to  
19 [DK].  
20  
21 Q. You're not aware, even now, today as you sit here,  
22 that there was an incident in July 1981 where it was  
23 accepted even by Brother Murrin that he had inappropriately  
24 touched boys in the dormitory on their stomachs and chests?  
25 A. I'm not aware of any of those details.  
26  
27 Q. I'm not asking about the details. I'm just asking at  
28 this stage are you aware that there was such an incident?  
29 A. The answer is yes, I am aware of that, but I've only  
30 become aware of it recently in the process of this Royal  
31 Commission.  
32  
33 Q. So is it the case that in 2010, at the mediation in  
34 the case of [DK], you were not aware of that incident, in  
35 other words, the 1981 incident that I've referred to?  
36 A. The only incident that I was aware of at that  
37 mediation was the one involving Ross and [DK].  
38  
39 Q. And at that time, then, at the mediation in 2010, were  
40 you aware of any other allegations of sexual abuse or  
41 inappropriate behaviour by Ross Murrin at St Augustine's  
42 College?  
43 A. No, I was not.  
44  
45 Q. How many brothers, approximately, were there at the  
46 college at St Augustine's at the time you were there?  
47 A. I would say there would be about a dozen.

1  
2 Q. Did you dine together regularly?  
3 A. We did.  
4  
5 Q. Would that be three times a day?  
6 A. Three times a day, yes.  
7  
8 Q. In other words, there was a common dining facility?  
9 A. There was.  
10  
11 Q. I take it that was a close community of brothers, was  
12 it?  
13 A. I would say that it was a close community of brothers,  
14 yes.  
15  
16 Q. At that time are you saying you were not aware even of  
17 rumours of Brother Ross Murrin having inappropriately  
18 behaved towards boys at the school?  
19 A. I would say I was completely unaware of any rumours of  
20 Ross's misbehaviour.  
21  
22 Q. At that time, in other words when you were at the  
23 school at the end of the 1970s and early 1980s and when  
24 [DK] was also at the school, were you aware that [DK] and  
25 Brother Ross Murrin were close?  
26 A. Oh, I think the answer to that would be yes.  
27  
28 Q. If tab 41 of the tender bundle in the case of [DK]  
29 could be brought up, please. This is a letter, as you see,  
30 from Ross Murrin in prison, dated 1 March, and it's  
31 addressed to, "Dear Alex", being Brother Alexis Turton.  
32 Have you seen this letter prior to today?  
33 A. I have.  
34  
35 Q. Did you see it prior to or at the mediation?  
36 A. I don't remember that.  
37  
38 Q. You'll see that in the letter, if it could be scrolled  
39 down to the paragraph starting, "I also vaguely", there is  
40 a paragraph where Ross Murrin says:  
41  
42 *I also vaguely remember Andrew -*  
43  
44 *that would be you -*  
45  
46 *coming to my dorm looking for [DK], annoyed*  
47 *that he was not where he was supposed to be*

1                   *and had not asked permission. I also have*  
2                   *a vague memory of when I said sorry ...*

3  
4           It seems to say "I said sorry to me".

5  
6                   *... he told me he was not angry at all with*  
7                   *me just with [DK].*

8  
9           Was there such an incident involving you, in other words,  
10           where you came upon [DK] in Ross Murrin's room?

11  
12           MR GRAY: I object to that. Ross Murrin's "dorm".

13  
14           MR STEWART: Q. Yes, Ross Murrin's dorm.

15           A. I can honestly say that I do not remember at any time  
16           going into Ross's dormitory and finding Ross and [DK] in  
17           that dormitory, even though it would appear from what Ross  
18           has written here that he recalls it. I can only say that  
19           I do not recall ever such an occasion happening.

20  
21           THE CHAIR: Q. The reference to dormitory - what  
22           facility was his "dorm"?

23           A. The dormitory would be a room approximately this size  
24           and it would have any number of beds arranged in lines, and  
25           there would be maybe a toilet and bathroom block at one  
26           end, from what I can remember. I can't remember that  
27           dormitory all that well.

28  
29           Q. And I assume [DK] was not a member of his dormitory?

30           A. At the time, I think [DK] was a member of my  
31           dormitory, which would make it year 10, and I think  
32           Brother Ross looked after what would have been year 8  
33           students, year 8 boarders.

34  
35           Q. How many boys were there in the whole school?

36           A. In the whole school, I wouldn't know exactly how many,  
37           but I would hazard a guess and say between 800 and 900.

38  
39           MR STEWART: Q. Brother Moraghan, at the time you  
40           attended the mediation, what was your understanding of why  
41           you were attending?

42           A. I believed that, from what Brother Alexis had told me,  
43           it was an opportunity for [DK] to speak to myself and  
44           a couple of other brothers, that he wanted to find out why  
45           it was that things happened, and that he was going to ask  
46           questions; we were going to be given the opportunity to  
47           respond to them.

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Q. What things do you mean when you say "things happened"? What are you referring to?

A. Maybe I didn't know exactly what the nature of the whole thing was until [DK] itemised what it was that he wished to talk about.

Q. I'll come back to that in a moment. Who asked you to attend the mediation?

A. I was asked to attend the mediation by Brother Alexis.

Q. Do you recall him having explained to you why you should attend the mediation?

A. In as much as that I was a teacher of [DK]'s and that he would have been in my dormitory when he was in year 10, and that there were some allegations that [DK] - if not allegations, there were some points that he wished to raise with myself and a couple of other brothers that were there while he was at St Augustine's.

Q. Did Brother Alexis inform you in any way what the nature of those points, as you put it, was?

A. I think I must have had some idea that it was sexual misbehaviour, but I don't recall the details other than that.

Q. Clearly you had been asked to attend. What, in your mind, was the connection between the purpose of your attending and the sexual misbehaviour that you refer to?

A. I really don't know how to answer that question. I would have to admit that I don't recall the details fully about when a whole lot of things were said and by whom, and just the details of them.

Q. Brother Moraghan, perhaps we can address it like this: it's probably fair to say that generally one doesn't just attend a meeting on request without knowing why, and what I'm driving at is why did you attend the meeting?

A. I attended the meeting because Brother Alexis had asked me to, because [DK] may have made allegations against Ross Murrin with inappropriate behaviour.

Q. And why would that involve you being at the meeting?

A. Because at some stage [DK] was in my dormitory and [DK] was also in a class of mine and I had some knowledge of [DK] outside of a classroom.

1 Q. Brother Moraghan, before the mediation itself, was  
2 there any form of discussion or meeting involving you and  
3 Brother Alexis Turton and Brother Gerald Burns in  
4 preparation for the mediation?

5 A. No, there was not.

6

7 Q. So do I understand from you that when the mediation  
8 started, you had no concept of what your involvement might  
9 be other than what you've said in your last few answers;  
10 there's nothing more to it than that?

11 A. I think that's correct.

12

13 Q. You said that [DK] raised a number of points. To the  
14 best of your recollection, dealing with each in turn,  
15 although not necessarily in any particular order, what were  
16 those points?

17 A. I think the first major one was that I had condoned  
18 knowingly that Ross had interfered with him while he was  
19 a boarder at St Augustine's College while I was there; that  
20 I had walked into a dormitory at one stage where he and  
21 Ross were, not only on one occasion but on a number of  
22 different occasions; and that I knew that something  
23 untoward had happened and didn't do anything about it.

24

25 Q. So that's specifically in relation to [DK] himself?

26 A. That's correct.

27

28 Q. And your involvement with that. You said he raised  
29 a number of points. What's another point that he raised?

30 A. He thought that because I knew that Ross had  
31 interfered with him, that I treated him differently both in  
32 a classroom and as a senior boarder. At this stage I think  
33 [DK] would have been in year 12. And he believed that  
34 because I knew that he and Ross had inappropriate  
35 behaviour, I was somehow punishing him, for example, by not  
36 ever putting him in charge of a table in the dormitory -  
37 sorry, in the dining room, where traditionally senior boys  
38 were placed in charge of a table that was composed of  
39 a number of boys from year 8 through to year 12. [DK]  
40 thought that that was an incident that showed that I was  
41 penalising him for that behaviour with Ross.

42

43 Q. So we'll refer to that, perhaps, as treating him  
44 differently or penalising him. Was there another point  
45 that he asserted?

46 A. I can't recall anything immediately.

47

1 Q. Was there anything particularly in relation to  
2 Brother Burns that [DK] raised?  
3 A. I beg your pardon?  
4  
5 Q. Was there anything in particular with regard to  
6 Brother Burns that [DK] raised; in other words, it wasn't  
7 only you who had been asked to the meeting, Brother Burns  
8 had also been asked?  
9 A. That's correct.  
10  
11 Q. These two points that you refer to are assertions or  
12 allegations with regard to you. Did [DK] raise anything  
13 with regard to or concerning Brother Burns?  
14 A. He would have. At the moment I'm unable to recall  
15 exactly or even vaguely what it was that he'd said about  
16 Brother Burns.  
17  
18 Q. Did [DK] assert that either you or Brother Burns knew  
19 of Ross Murrin's inappropriate behaviour towards boys more  
20 generally, in other words, not just specifically him?  
21 A. No, I don't remember that.  
22  
23 Q. You say you don't remember it. Are you saying that as  
24 a point of - that you don't remember it or that you could  
25 say with confidence that that was not said? Do you see the  
26 distinction? In other words, it could have been said, but  
27 you don't remember; or, no, it wasn't said, because, had it  
28 been said, you would have remembered it?  
29 A. No, I don't remember it being said.  
30  
31 Q. To your recollection, did [DK] ask whether  
32 Brother Burns had knowledge of Ross Murrin's inappropriate  
33 behaviour towards other boys - "had knowledge", that is, at  
34 the time back in 1981?  
35 A. No, I don't recall that it was brought up at any stage  
36 that it was dealing with anyone else except [DK].  
37  
38 Q. In relation to the first point that you raised --  
39  
40 THE CHAIR: Could I just pause there for a moment.  
41  
42 Q. By the time you went to this Towards Healing  
43 mediation, there was, of course, knowledge about, in  
44 a general sense, the sexual activities of the brother,  
45 wasn't there?  
46 A. Yes, your Honour.  
47

1 Q. And by that point in time, it would have occurred to  
2 everyone that his activities may have extended beyond the  
3 matters for which he was charged; correct?  
4 A. That's true.  
5  
6 Q. It would seem likely that in that context someone  
7 would ask what did you, the managers of the school, observe  
8 in relation to his conduct while he was in your school; do  
9 you agree?  
10 A. Did you say that I was the manager of the school?  
11  
12 Q. No, "the managers". You are a dormitory master; you  
13 have teaching responsibilities - you are one of the  
14 managers in the school.  
15 A. That's right.  
16  
17 Q. It's very likely, isn't it, that once the activities  
18 of the brother were known, people like yourself, with  
19 management roles in the school, would be asked, "What did  
20 you observe, what did you know about his activities  
21 generally?"; do you agree?  
22 A. I agree.  
23  
24 Q. And it would not have been surprising if [DK] had  
25 asked questions about "What did you know", in a general  
26 sense, about the brother's activities; would you agree?  
27 A. I agree.  
28  
29 Q. Yet you say he never did that?  
30 A. I'm a little confused. Are you saying that [DK] would  
31 have asked me did I know of Brother Ross's --  
32  
33 Q. [DK] would have asked both you and the headmaster at  
34 the time, "What did you know about what was going on  
35 generally in the school with the brother?", or something  
36 like that. It would be a totally normal human reaction to  
37 say, "What did you people know about what this man was  
38 doing?", and I thought you had agreed with that  
39 proposition?  
40 A. I can remember that [DK] asked us or --  
41  
42 Q. No, I wonder if you could attend to my question. It  
43 would be a perfectly rational thing for someone to do to  
44 ask both of you, "What did you generally observe or know  
45 about the brother's behaviour while he was at your  
46 school?"; correct?  
47 A. I see no other answer except yes.

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Q. Yes. It would be surprising, indeed, if he didn't ask both of you at that meeting, "What did you know generally or observe generally about his behaviour?", wouldn't it?

A. I don't believe that he asked that question that you're framing now.

Q. All I can say to you is that I would have thought that would be very surprising if he didn't ask a question along those lines, but you say he didn't?

A. I don't believe that he asked a question the same way that you did then. I would have to say that what I believe that he asked was, "How come you didn't know that Ross Murrin was misbehaving with regards to myself? How come you didn't know?" And I had to simply honestly say that I didn't know, and I didn't know until 2008, when Brother Ross was charged with a number of offences, that that was the case. I didn't know, in all of the years that I'd known Ross, that there was any misbehaviour on his part until 2008.

MR STEWART: Q. Brother Moraghan, I showed you where, in the letter, Brother Murrin said that he could, as he put it, vaguely recollect a particular incident, and he gave some details, in his dorm, and [DK] also has spoken of that and, you say, raised it in the mediation. What was your response to [DK] in the mediation when he raised that incident?

A. I would have to say that all I can say is that I did not remember going into that dormitory of Brother Ross's when he and Brother Ross were supposed to have been there.

Q. So in the mediation you said you did not remember, and is that also what you say now, in other words, that you do not remember that incident?

A. That's correct.

Q. In your career as a teacher, Brother Moraghan, did you ever face a circumstance where a student's grades deteriorated sharply and apparently without explanation?

A. I'm sure I would have been in a situation where that happened, where a student didn't perform as well as he had in the past.

Q. Whilst you were still a teacher, were you aware that of the many possible causes of that, trauma resulting from sexual abuse could be one of the causes?

1 A. I would be aware that there would be different reasons  
2 for a student not performing as well as he had in  
3 a previous term, but I don't think I would have  
4 immediately - I don't think I would have imagined that  
5 sexual misbehaviour would have been one of those reasons  
6 that caused a student to perform badly.

7  
8 Q. The term I used was "sexual abuse", which is the one  
9 I intended to use, rather than the broader one, "sexual  
10 misbehaviour", which you used, so would you answer the  
11 question in relation to that, in other words, were you  
12 aware that sexual abuse of that student could have been one  
13 of the causes?

14 A. No, I was not.

15  
16 Q. Did you ever notice, whilst you were teaching [DK],  
17 a marked drop in his grades?

18 A. No, I did not.

19  
20 MR STEWART: I have nothing further for this witness,  
21 your Honour.

22  
23 THE CHAIR: Q. Two matters. At the meeting that you  
24 attended with [DK] and Brother Burns, Mr Salmon has given  
25 an account of that meeting.

26  
27 THE CHAIR: Mr Stewart, I think you should put this to  
28 Brother Moraghan.

29  
30 MR STEWART: Yes, your Honour.

31  
32 Q. Firstly, if one could have Mr Salmon's statement  
33 brought up at page 11. That is Ringtail page 0011. At  
34 paragraph 48. That is exhibit 4-59. You will see in  
35 subparagraph (b), at the mediation:

36  
37 *Mr [DK] told his story and explained his*  
38 *issues, using his notes. Mr [DK] spoke for*  
39 *an extended period of time ...*

40  
41 Do you agree with that, that he spoke for an extended  
42 period of time?

43 A. I don't recall it being an extended period of time.

44  
45 Q. Very well.

46 A. Under the circumstances, I don't know what "extended  
47 period of time" really means. I don't think he spoke too

1 long or kept on going over the same things, if that's what  
2 that means.

3

4 Q. Mr Salmon goes on. He says:

5

6 *... probably for at least an hour.*

7

8 A. I'm really unable to say how long he spoke, but it  
9 didn't seem to me to be either too short or too long.

10

11 Q. Then in the next sentence, Mr Salmon says:

12

13 *During this time, his primary concern*  
14 *appeared to be with the behaviour of the*  
15 *two Brothers who were present rather than*  
16 *Brother Murrin.*

17

18 Would you agree with that?

19

20 A. Yes, that would be right.

21

22 Q. Then Mr Salmon says that [DK] said words to the  
23 effect:

24

25 *"You must have known about the behaviour of*  
26 *Brother Murrin. You did not provide him*  
27 *with enough support. You did not help him*  
28 *and you did not help me."*

29

30 Is that right?

31

32 A. I believe that he said something that came across as  
33 what is written there. I don't know if they were the exact  
34 words, but it would seem as though that was the case.

35

36 Q. In paragraph (c), Mr Salmon says:

37

38 *Either Brother Burns or Brother Moraghan or*  
39 *both said "I had no idea about the abuse.*  
40 *I regret that it is your view that we knew*  
41 *about Brother Murrin's behaviour. I had no*  
42 *idea that he was a risk. If I had known,*  
43 *I would have done something about it. I am*  
44 *shocked. I regret and am mortified that*  
45 *these things happened to you."*

46

47 Is that right?

48

49 A. Once again, I can't say that they were the exact words  
50 that either of us said, but that's the general impact of

1 what we said, yes.

2

3 Q. Then there is a file note of Michael Salmon, which is  
4 at tab 61. Perhaps that can be brought up. If we can  
5 scroll down slightly so we can see the first few  
6 paragraphs. You will see the paragraph, which starts, "The  
7 first meeting was attended". Do you see that?

8 A. Yes, I do.

9

10 Q. Mr Salmon, after the meeting, recorded this:

11

12 *[It] was attended by all the persons noted*  
13 *above -*

14

15 including you -

16

17 *and it was designed to allow [DK] to air*  
18 *his issues directly with Brothers Moraghan*  
19 *and Burns concerning his suspicion that*  
20 *they knew of Murrin's inappropriate*  
21 *behaviour and did not act to protect [DK].*

22

23 Is that a fair record, would you say, by Mr Salmon of the  
24 purpose for the meeting?

25 A. I'm not quite sure - I'm not quite sure of who it was  
26 that would have said that, I must admit, but I believe that  
27 that could be the case.

28

29 Q. Insofar as [DK] raised his suspicion that you and  
30 Brother Burns knew of Murrin's inappropriate behaviour, was  
31 that inappropriate behaviour towards the boys generally or  
32 only towards [DK] himself?

33 A. I believe it was only towards [DK] himself.

34

35 Q. The next paragraph:

36

37 *The meeting also allowed the particular*  
38 *Brothers to respond which essentially was*  
39 *that at the time they had no knowledge of*  
40 *Murrin's unacceptable behaviour and nor did*  
41 *they accept that they should have known.*

42

43 Is that a fair record?

44 A. Which part of this is it? I can't see it.

45

46 Q. It's currently the second paragraph from the end of  
47 what you can see on the screen:

1  
2           *The meeting also allowed the particular*  
3           *Brothers to respond ...*

4  
5 Do you see that paragraph?

6 A. I see that.

7  
8 Q. Do you agree with that?

9 A. Yes.

10  
11 MR STEWART: Your Honour, I believe those are the  
12 references to Mr Salmon's record of what happened.

13  
14 THE CHAIR: Thank you.

15  
16 Q. Brother, by 1981 you had qualified as a teacher of  
17 science, I think; is that right?

18 A. Maths and science.

19  
20 Q. And you had been teaching for some years and you had  
21 been entrusted with the responsibility of a dormitory  
22 master at St Augustine's; correct?

23 A. That's correct, your Honour.

24  
25 Q. In 1981 how did you perceive an allegation, if you had  
26 received it, that a brother had touched the genitals of  
27 a boy without there being any justification in the sense of  
28 medical or other reason? What was your view about that?

29 A. I think my first response would have been shock.  
30 I must admit that it wouldn't have seemed common or the  
31 usual sort of thing that happened, that --

32  
33 Q. I'm really interested in the character. How would you  
34 characterise that conduct?

35 A. Oh, how would I characterise that conduct?

36  
37 Q. Yes.

38 A. Looking at it from here --

39  
40 Q. No, I'm asking you back then. By then, I think you  
41 were in your late 30s, and, as we've discussed, you'd been  
42 qualified as a teacher, you'd been teaching for a number  
43 of years, and you now had the trust of the parents to look  
44 after boys in a dormitory. How would you have  
45 characterised a brother touching the genitals of a pupil  
46 back in 1981?

47 A. I would think it would be a gross act of

1       irresponsibility, not respecting the person that was  
2       offended, almost - I wouldn't say that it - I would say  
3       that the person - I use the word "perverted", but I don't  
4       mean it as strongly as I might today, but I don't think  
5       that I would have considered it in any way acceptable or as  
6       a standard that I would have stood by and accepted.

7  
8       Q.    Would you have seen it as a crime?

9       A.    I don't know the answer to that question, as to  
10       exactly how I would have thought of that at the time,  
11       because as far as I was concerned, it would have been  
12       something completely unusual and out of common practice, so  
13       to speak.

14  
15       Q.    Let's assume that a brother touched the genitals of  
16       a female pupil, not that there were any at that school.  
17       Would you see that as a crime?

18       A.    I would have considered it the same as what I would  
19       have considered it if it had been a boy.

20  
21       Q.    So would you have seen it as a crime?

22       A.    I would see it as a crime.

23  
24       Q.    Then I take it you would have seen a brother touching  
25       a boy's genitals as a crime; is that right?

26       A.    That is correct.

27  
28       **<EXAMINATION BY MR ANDERSON:**

29  
30       MR ANDERSON:   Q.    Brother, my name is Andrew Anderson.  
31       I represent [DK] and [DL] in these proceedings. You were  
32       asked by counsel assisting just a few moments ago:

33  
34               *Insofar as [DK] raised his suspicion that*  
35               *you and Brother Burns knew of Murrin's*  
36               *inappropriate behaviour, was that*  
37               *inappropriate behaviour towards the boys*  
38               *generally or only towards [DK] himself*

39  
40       And you responded, "I believe it was only towards [DK]  
41       himself". Do you remember that question and that answer?

42       A.    I do.

43  
44       Q.    I want to draw your attention to paragraph 30(g) of  
45       your statement. It might be brought up on the screen.  
46       When you say, "I believe it was only towards [DK] himself",  
47       that's going from your recollection today, in the answer to

1 counsel assisting earlier?

2 A. Could you repeat the question, please?

3

4 Q. Your answer to counsel assisting that you believe that  
5 it was only towards [DK] himself - that's going from your  
6 recollection today; is that correct?

7 A. Yes.

8

9 Q. You can see up on the screen here at paragraph (g):

10

11 *Mr [DK] also maintained that I knew that he*  
12 *was being abused and that somehow as*  
13 *a result of this, or to punish him in some*  
14 *way, I had treated him harshly at school.*

15

16 You say:

17

18 *I responded by saying that "at no time*  
19 *while I was at St Augustine's did I know*  
20 *about Brother Ross's behaviour. I was not*  
21 *aware of his behaviour until 2008 when*  
22 *charges were laid against him."*

23

24 Do you see what you say was your answer?

25

26 A. Yes, that's correct.

27

28 Q. That answer is essentially a general answer to your  
29 knowledge about Ross Murrin; correct?

30

31 A. A general answer?

32

33 Q. Well, in this way, the 2008 charges had nothing to do  
34 with [DK]; correct?

35

36 A. Correct.

37

38 Q. So what you're saying there in your answer was  
39 a response about the first time you knew about this  
40 behaviour that was the subject of this facilitation was in  
41 2008, when he was charged in relation to some other person?

42

43 A. I didn't know about his behaviour at St Augustine's in  
44 2008.

45

46 Q. No, no. The way that you've constructed your answer  
47 is to answer your knowledge of Ross's behaviour generally.

48

49 *I was not aware of his behaviour until 2008*  
50 *when charges were laid against him.*

51

1 A. I see. I was not aware of any sexual misconduct of  
2 Ross's at any place, with any person, until 2008.

3

4 Q. That's why you say you gave that answer?

5 A. That's right.

6

7 Q. Because that's the case, and it really goes back to  
8 what you were asked earlier, that this is the natural way  
9 to talk about these things - you've responded generally  
10 about your knowledge, because that's really what the  
11 facilitation was about, was dealing with the knowledge that  
12 people had about Ross Murrin back at St Augustine's, and  
13 this was your answer, you say, to [DK]; correct?

14 A. Correct.

15

16 MR ANDERSON: Those are the questions I have, thank you.

17

18 THE CHAIR: Yes. Mr Gray?

19

20 MR GRAY: I have one question, your Honour.

21

22 <EXAMINATION BY MR GRAY:

23

24 MR GRAY: Q. If we could have tab 61, please,  
25 Mr Salmon's file note. Brother, you were asked a couple of  
26 questions about this file note, which is one made by  
27 Mr Salmon shortly after the mediation meeting. When you  
28 answered a question about the third paragraph, the one  
29 beginning, "The first meeting was attended", you made clear  
30 that Murrin's inappropriate behaviour referred to in the  
31 second line of that paragraph, as you understood it in your  
32 recollection, was inappropriate behaviour with relation to  
33 [DK] himself. Do you remember saying that a while ago?

34 A. I do.

35

36 Q. I just want to ask you, in the next paragraph, when  
37 Mr Salmon says that the brothers' response "essentially  
38 was that at the time they had no knowledge of Murrin's  
39 unacceptable behaviour", and you said that that paragraph  
40 was a reasonable summary, was the response by you that at  
41 the time you had no knowledge of Murrin's unacceptable  
42 behaviour also, as with the previous paragraph, a reference  
43 to unacceptable behaviour concerning [DK] himself?

44 A. Could you rephrase the last part of that again,  
45 please?

46

47 Q. Yes. In the paragraph before, you have told the

1 Commission today that the inappropriate behaviour of Murrin  
2 referred to as being something that [DK] had suspicion  
3 about was suspicion about inappropriate behaviour  
4 concerning [DK]. Do you remember saying that today?

5 A. Yes.

6  
7 Q. My question simply is: does the same also apply or  
8 not in the next paragraph, in relation to the phrase  
9 "Murrin's unacceptable behaviour"?

10 A. That's correct.

11  
12 MR GRAY: Thank you.

13  
14 THE CHAIR: Q. Brother, there is just one other matter  
15 that the Commissioners would like to discuss. You  
16 described the dormitory. Where did the dormitory master  
17 sleep relative to the boys?

18 A. I can't be sure where the dormitory supervisor slept  
19 in Ross's dormitory. It most certainly wasn't in the main  
20 body of the dormitory - it was a separate room. In many of  
21 the other dormitories, it was attached to the end of the  
22 dormitory, had a door into the dormitory, but it also had  
23 access from a hallway outside the dormitory, so you could  
24 access the supervisor's room either from the hallway and,  
25 in most cases, from the dormitory itself.

26  
27 Q. Were boys allowed into the supervisor's bedroom?

28 A. As far as I know, the room that the brother or the  
29 supervisor had as his bedroom was usually an office and  
30 a bedroom with a shower area attached. It would not be  
31 usual practice, as far as I can recall, that a student  
32 would ever be allowed into the brother's bedroom, but quite  
33 often they would be in the office if something had to be  
34 dealt with, any boarding matters had to be dealt with.  
35 Sometimes a brother or a supervisor would have a table  
36 outside the bedroom, not within the bedroom but without it,  
37 in the dormitory itself, where any of those matters were  
38 taken care of.

39  
40 Q. So boys should not have been in the supervisor's  
41 bedroom; is that what you're saying?

42 A. I'd say they wouldn't be where the bed was, yes, and  
43 the bedroom in that case - I'd say they shouldn't be in the  
44 bedroom, no.

45  
46 Q. Was that a rule?

47 A. It wouldn't have been written down anywhere, but

1 I would imagine that it would be taken for granted that  
2 that's not the sort of proper behaviour, to have someone in  
3 a room. It would be inappropriate.

4  
5 THE CHAIR: Mr Gray, do you have any questions from that?  
6

7 MR GRAY: No.  
8

9 THE CHAIR: Yes, Mr Stewart.  
10

11 MR STEWART: Your Honour, I have one matter arising, again  
12 in relation to this file note at tab 61, which is still on  
13 the screen.

14  
15 <EXAMINATION BY MR STEWART:  
16

17 MR STEWART: Q. In that paragraph beginning, "The first  
18 meeting was attended", which we've looked at already, it  
19 says:

20  
21 *... it was designed to allow [DK] the*  
22 *opportunity to air his issues directly with*  
23 *Brothers Moraghan and Burns concerning his*  
24 *suspicion that they knew of Murrin's*  
25 *inappropriate behaviour and did not act to*  
26 *protect [DK].*  
27

28 You will be aware that [DK] has raised a complaint in  
29 relation to only one act of inappropriate behaviour, one  
30 incident.

31 A. That's right.

32  
33 Q. And you're not aware of any others?

34 A. I'm not aware of any others.  
35

36 Q. And none have been raised. I take it no others were  
37 raised in the mediation?

38 A. No.  
39

40 Q. Of course, after that inappropriate behaviour had  
41 taken place, it was too late to act to protect it; you  
42 would accept that?

43 A. Too late to act - the last part, sorry?  
44

45 Q. Sorry, to prevent it.

46 A. Yes, that would be right.  
47

1 Q. Or to protect [DK] from it?  
2 A. To protect [DK] from it?  
3  
4 Q. From the behaviour. It's just a question of logic.  
5 In other words, the behaviour has already taken place.  
6 A. Yes, that's correct.  
7  
8 Q. Knowledge of that behaviour by you and Brother Burns  
9 could not protect [DK] from the behaviour that has already  
10 taken place?  
11 A. Correct.  
12  
13 Q. I suggest, then, that if this file note is correct,  
14 logically it must be read as referring to other  
15 inappropriate behaviour, not the inappropriate behaviour  
16 with regard to [DK], and I'm giving you the opportunity to  
17 respond to that?  
18 A. No, I knew nothing of any misbehaviour between Ross  
19 and [DK] or Ross and any other person while I was at  
20 St Augustine's College in Cairns.  
21  
22 Q. What this is directed at is what was raised in the  
23 mediation, and I'm suggesting that what was raised with you  
24 and Brother Burns in the mediation was not only the  
25 incident of inappropriate behaviour in relation to [DK],  
26 but your and Brother Burns's knowledge of inappropriate  
27 behaviour by Brother Murrin towards other boys?  
28 A. No, I don't recall that at all.  
29  
30 MR STEWART: Thank you.  
31  
32 THE CHAIR: Yes, thank you, brother, you may step down.  
33 You're excused.  
34  
35 <THE WITNESS WITHDREW  
36  
37 MR STEWART: Your Honour, I call Patrick Monahan.  
38  
39 <PATRICK JOHN MONAHAN, sworn: [12.50pm]  
40  
41 <EXAMINATION BY MR STEWART:  
42  
43 MR STEWART: Q. Mr Monahan, will you state your full  
44 names and occupation?  
45 A. Patrick John Monahan. Solicitor.  
46  
47 Q. Mr Monahan, there are three statements before the

1 Commission from you, or furnished to the Commission - two  
2 in the [DG] case and one in the [DK] case; is that right?

3 A. Yes, I believe so.  
4

5 Q. If I can take them in the following order, firstly, in  
6 the [DG] case, there is a statement dated 29 November 2013?

7 A. Can I just say, I was told that I was not required in  
8 regard to the [DG] case. So I'm obviously happy to answer  
9 questions, but I haven't prepared myself to do so, so I'm  
10 not sure what it is you want to go through with me on that,  
11 but I'll try to answer to the best of my ability.  
12

13 Q. Thank you, Mr Monahan. All will be revealed  
14 shortly --  
15

16 THE CHAIR: Mr Stewart, if you're going to ask him if the  
17 statement is correct, I think it would only be fair that,  
18 before he is required to answer that question, he has  
19 a chance to read it again. I think we will take the  
20 luncheon adjournment. Then you can take a look at the  
21 statement and we will deal with it after lunch.  
22

23 **LUNCHEON ADJOURNMENT**  
24  
25  
26  
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28  
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47

1           **UPON RESUMPTION**

2

3           MR STEWART:   Q.   Mr Monahan, have you had a chance to  
4           have a look at the two statements in the [DG] case?

5           A.   Yes, I have, thank you.

6

7           Q.   Dealing first with the one of 29 November 2013, are  
8           there any corrections you would like to make to that  
9           statement?

10          A.   No.

11

12          Q.   Is it true and correct?

13          A.   Yes.

14

15          MR STEWART:   I tender that statement.

16

17           **EXHIBIT #4-63 STATEMENT OF PATRICK JOHN MONAHAN IN RELATION**  
18           **TO [DG], DATED 29/11/2013**

19

20          MR STEWART:   Q.   Then there is a later statement,  
21          17 December 2013?

22          A.   Yes.

23

24          Q.   Are there any corrections you wish to make to that  
25          statement?

26          A.   No.

27

28          Q.   Is it true and correct?

29          A.   To the best of my knowledge and belief, yes. The only  
30          thing I would say about that one is that I did that in  
31          a terrible rush early one morning when I received a call  
32          asking me to provide that so that it could be submitted to  
33          the Commission during that morning, but I believe that the  
34          contents are entirely correct.

35

36          MR STEWART:   I tender that statement.

37

38           **EXHIBIT #4-64 STATEMENT OF PATRICK JOHN MONAHAN IN RELATION**  
39           **TO [DG], DATED 17/12/2013**

40

41          MR STEWART:   Q.   In relation to that statement,  
42          Mr Monahan, you annexed at A two draft apologies, one which  
43          is a general apology and one which is a family apology?

44          A.   Yes.

45

46          Q.   Those were, as I understand your evidence, presented  
47          as having been drafted on behalf of Mr [DG] and presented

1 to you and others at the mediation; is that right?  
2 A. Yes, they were given to Brother Alexis Turton at the  
3 mediation by his lawyers.  
4  
5 Q. Are you aware now, as the evidence has been, that the  
6 request for a general apology arose because [DK] [sic] was  
7 affronted by positive statements that had been attributed  
8 to the Marist Brothers and reported in the press at the  
9 time of Brother Foster's death?  
10 A. I wasn't aware of that. You are talking about [DG],  
11 I think, and I wasn't aware of that, no.  
12  
13 Q. I am sorry, I am talking about [DG]. Thank you for  
14 the correction.  
15 A. Yes, but that would make sense.  
16  
17 Q. So that was the context in which a general apology was  
18 sought; do you accept that?  
19 A. Yes, and they wanted it published in the press, I am  
20 reminded by reading the papers over the lunchtime break.  
21  
22 Q. The family apology was obviously intended to be  
23 a private apology?  
24 A. Yes.  
25  
26 Q. If I can take you to Karen Mole's note of the  
27 mediation, which is at tab 59C of the [DG] tender bundle.  
28 You have had an opportunity to have a quick look at this  
29 also over lunch, I think?  
30 A. Yes, I have, thank you.  
31  
32 Q. Let me clarify, Karen Mole was the person there from  
33 CCI; is that right?  
34 A. Yes, she was. She was the person instructing me in  
35 the case.  
36  
37 Q. The reference in that note to "PJM" is obviously to  
38 you; is that right?  
39 A. I would assume so, yes.  
40  
41 Q. In attending that mediation, were you representing, as  
42 you did in the [DK] mediation, CCI and also to protect the  
43 interests of the Marist Brothers?  
44 A. Yes. The only thing I would say is it wasn't  
45 a mediation; it was a settlement conference.  
46  
47 Q. You will see at the foot of that first page, just

1 above where it says "PJM", if we can scroll up a little  
2 bit, we can see that that is a recording, or a note, at  
3 least, of what it is said that "MD" had said. It was  
4 accepted by other witnesses previously that that reference  
5 to "MD" is an error; it should be "MB", for Michael Byrne,  
6 as in the rest of the document it's always "MB".

7 A. Yes, that sounds correct to me.

8  
9 Q. So Michael Byrne, the barrister, said various things,  
10 including what is now at the bottom of the screen:

11  
12 *More public apology in general terms*  
13 *similar to what has been given in -*

14  
15 it looks like it says "door" -

16  
17 *and a pro forma was provided for*  
18 *a newspaper statement.*

19  
20 That would be a reference to the pro forma annexure A to  
21 your statement; is that right?

22 A. That would make sense, yes.

23  
24 Q. Then it is noted that you replied:

25  
26 *Some concerns raised at this.*

27  
28 Do you recall what those concerns were?

29 A. I don't specifically recall much about this settlement  
30 conference; it's 11 or 12 years ago, but I would obviously  
31 have taken instructions from both Karen Mole and  
32 Brother Alexis Turton of the Marist Brothers about it, and  
33 I think one could imagine what the concerns would be about  
34 putting a public apology like that in the newspaper, as  
35 distinct from providing a private apology to the victim and  
36 his family. So I don't know what they were, but I could  
37 just imagine what they might be.

38  
39 Q. What would you imagine them to be?

40 A. Concerns about broad publicity; concerns about whether  
41 this would ultimately really be helpful to the healing of  
42 the victim and his family; possibly concerns that other  
43 claims would arise. All of those sorts of matters, I would  
44 imagine, would have cropped up in discussion.

45  
46 Q. I will come back to those in a moment. If one goes to  
47 the second page, also at the foot of the page, adjacent

1 again to your initials there is something in relation to  
2 a family apology. It says "can be done with some  
3 tweaking". In relation to a public apology, it says "can't  
4 be done for various reasons".

5 A. Mmm.

6  
7 Q. You have expressed already what you imagine now the  
8 reasons might be. Looking at this and seeing that at the  
9 time, you apparently said that there were reasons that it  
10 "can't be done", do you remember what reasons there were at  
11 that time present to your mind?

12 A. I don't specifically, but I would guess that they  
13 would be along the lines of the ones that I have speculated  
14 about.

15  
16 Q. One of those, of course, perhaps to put it in slightly  
17 different words to how you put it, would be reputational  
18 damage to the Marist Brothers?

19 A. Yes, you could put it in those terms. That was never  
20 a major focus of what motivated us, but it would certainly  
21 be one factor; you would have to accept that.

22  
23 Q. What did motivate you in declining the public apology?

24 A. Well, I'm guessing now based on the best recollection  
25 I can come up with, and I think I put forward three  
26 suggestions. I think those would have been the things that  
27 would have motivated me.

28  
29 Q. So on what basis do you say that the one which is the  
30 first one you identified, and which I characterised as  
31 reputational damage - on what basis do you say that was  
32 not, to use your words, a "major focus of what motivated  
33 us"?

34 A. Look, we're playing a bit with words here. I really  
35 just can't say anything more about that. It's just that we  
36 wouldn't put the reputation of the church authority in  
37 question ahead of other interests. That's what I would be  
38 saying. So you wouldn't deny that it was a factor, because  
39 it would have to be in people's minds, but it could not be  
40 the primary factor.

41  
42 Q. If one now goes to page 3 of the note, you will see MB  
43 says:

44  
45 *Still wants the public injury addressed via*  
46 *the draft statement.*  
47

1 A. Yes.

2

3 Q. It is noted that you responded:

4

5 *We can't see the benefit of such a general*  
6 *statement and will do more harm than good,*  
7 *but we will not close our minds.*

8

9 You have identified the reputational harm. What other harm  
10 are you referring to?

11 A. I think the potential harm to the victim himself and  
12 his family and perhaps other people in a similar situation.

13

14 Q. If the victim is specifically seeking an erroneous  
15 portrayal of Brother Foster to be corrected in the public  
16 arena, what harm is it that you are identifying that the  
17 victim might suffer if that was done?

18 A. I suspect - and I'm really not certain about this  
19 because I can't remember the facts, so I am speculating  
20 a bit, but I suspect that we would have had a much broader  
21 discussion than what is written down on these three lines  
22 on this document about whether it really was a good idea  
23 and whether it was to his benefit, and it was obviously our  
24 impression or our view at the time that it wasn't to the  
25 benefit of our clients.

26

27 THE CHAIR: Q. You said, when you spoke earlier to  
28 Mr Stewart, that there were three reasons. One you have  
29 accepted was part of the equation, reputational damage?

30 A. Mmm.

31

32 Q. Another was possible claims from other people?

33 A. Yes.

34

35 Q. Why would that be a motivating factor when a man is  
36 asking for a public apology? If claims could rightly be  
37 brought, shouldn't they be brought?

38 A. Well, that's a matter of opinion, I suppose, but  
39 representing the party that I was representing at that  
40 settlement conference, I don't think one would regard it as  
41 desirable.

42

43 Q. In the interests of the Marist Brothers?

44 A. Yes, on that topic, yes.

45

46 Q. So was part of the motivation to protect the Marist  
47 Brothers in face of the fact that this man wanted the

1 impression that had been created publicly about his abuser  
2 modified or put straight; is that the position?

3 A. You would have to say yes to that, yes.  
4

5 MR STEWART: Q. Can I take you to tab 45 in that bundle,  
6 if that can be pulled up. You will see that this is an  
7 email from - the name at the top is misleading. If we go  
8 down a bit further, you will see it is from Michael Hill,  
9 the then provincial of the Marist Brothers?

10 A. Yes.  
11

12 Q. If we go back up again, you will see that he is  
13 dealing with this issue, and immediately below where you  
14 see the address "provincial@fms", it says:

15  
16 *I hope that we can proceed with this matter*  
17 *discreetly and appropriately.*  
18

19 You will see the last sentence of that paragraph:

20  
21 *However I will instruct our solicitors to*  
22 *negotiate as best they can to keep it all*  
23 *out of the public eye.*  
24

25 A. Mmm.  
26

27 Q. Were those instructions that you were given?

28 A. I don't specifically remember that, but I would be  
29 confident that this letter would have been provided to me  
30 with my instructions, so, yes, I would have had it.  
31

32 Q. With regard to the harm to the reputation of the  
33 Marist Brothers, I take it you would accept that the church  
34 authority should be prepared to wear some reputational  
35 damage for the good of the victim?

36 A. Yes.  
37

38 Q. Thank you. If I can now move to the [DK] case, and  
39 your statement in that case is dated 29 November 2013. Do  
40 you have a copy of that?

41 A. I don't have it in front of me, but I have read it  
42 this morning.  
43

44 Q. Are there any corrections you wish to make to it?

45 A. No.  
46

47 Q. Do you confirm that it is true and correct?

1 A. Yes, I do.

2  
3 MR STEWART: I tender that statement.

4  
5 **EXHIBIT #4-65 STATEMENT OF PATRICK JOHN MONAHAN IN RELATION**  
6 **TO [DK], DATED 29/11/2013**

7  
8 MR STEWART: Q. In that statement, in attending the [DK]  
9 mediation, as it was, or facilitation in this case, you did  
10 so for CCI and to protect the interests of the Marist  
11 Brothers; is that right?

12 A. Yes, I did.

13  
14 Q. What were your instructions, or what was your  
15 understanding as to CCI's interests that you were to  
16 represent? What was CCI's interest in that facilitation?

17 A. CCI is my ultimate client, the client by whom  
18 I receive instructions in many of these matters, and they  
19 are the insurer of the religious authority in question.  
20 They have obligations under the insurance policy to  
21 indemnify the religious authority against the settlement  
22 that's negotiated, so their interests in that sense arise  
23 from the insurance policy.

24  
25 Q. Immediately preceding the mediation and under some  
26 constraint of time, you investigated the question of  
27 indemnity and the conclusion ultimately was that the  
28 Marist Brothers were covered for this claim or these  
29 claims; is that right?

30 A. That is correct.

31  
32 Q. So given that, perhaps you can be more precise: in  
33 the mediation itself, what were the interests of CCI? Were  
34 the interests of CCI to minimise its financial or legal  
35 liability for the claim?

36 A. Look, I wouldn't categorise it like that. I can  
37 understand exactly why you would ask that question.  
38 I mean, they are a commercial insurer with their own  
39 obligations to reinsurers, to stakeholders and to APRA, so  
40 they are obliged to behave in that fashion.

41  
42 On the other side of that coin, their stakeholders are  
43 ultimately the church in Australia. I have dealt with many  
44 insurers in my 25 years of practice here in Australia, and  
45 CCI behaves very differently to other insurers. They take  
46 a very church-focused view; they take a very pastoral view.

1           So, yes, on one side, you would say logically they are  
2 trying to minimise their exposure; but on the other hand,  
3 they take a very broad view of their role. They have  
4 duties of the utmost good faith to their clients, and so it  
5 is not just a matter of going in there and doing the  
6 cheapest deal that you can do.

7  
8           To be absolutely honest with you, there are many  
9 settlements that they have authorised me to make in the  
10 past where legally they are very hard to justify, and there  
11 are aspects of this particular case that one could point to  
12 in that respect as well, which might lead you to feel that  
13 the settlement payment that they ultimately authorised was  
14 certainly reasonable and perhaps generous.

15  
16 Q.   So are you saying that CCI's interests are then, as  
17 I understand it, a combination of or a balance between both  
18 the question of financial liability or quantum and the  
19 broader pastoral interests to which the Marist Brothers are  
20 committed?

21 A.   Yes, I would say that. And I wouldn't only say that  
22 about Catholic Church Insurances. As I say, I act for many  
23 insurers, and part of their obligation is to take account  
24 of broader issues relating to their insureds. I act for  
25 the insurers of solicitors in Victoria and in New South  
26 Wales, and the reputation of the solicitor is a very big  
27 part of the way we are instructed to conduct that claim.  
28 So in every insurance case, you have a multiplicity of  
29 these interests, and CCI is different only in that they  
30 give greater prominence to the broader interests than most  
31 other commercial insurers I have ever worked for.

32  
33 Q.   You have done a number of Towards Healing mediations  
34 or facilitations over the years, have you?

35 A.   I have. I started doing them in 2001. The [DG] one  
36 was one of the first that I did.

37  
38 Q.   Are you able to estimate how many you have done over  
39 the years?

40 A.   I would be guessing, but it would be over 50, I would  
41 think.

42  
43 Q.   Those would all be for CCI?

44 A.   On occasions I have been instructed directly by  
45 a religious authority where they don't have insurance. Not  
46 every religious authority in the Catholic Church is insured  
47 by Catholic Church Insurances, and some of them, in some

1 circumstances, are not covered.

2

3 Q. So you would be aware that those church authorities  
4 that have committed to the Towards Healing protocol, their  
5 interest in such a facilitation is to achieve - and  
6 I paraphrase - justice and compassion in addressing the  
7 needs of the victim?

8 A. Yes.

9

10 Q. Do I understand your evidence, then, to be that your  
11 instructions for CCI were to support that, too?

12 A. Yes.

13

14 Q. The mediation, as I understand it, was broken into  
15 what one might term a pastoral session and then a financial  
16 session; would that be a fair characterisation?

17 A. Yes, I think it would.

18

19 Q. I understand that you and Mr Bucci from CCI attended  
20 the pastoral session in order to avoid [DK] having to  
21 repeat his account of his complaint and what had happened  
22 to him?

23 A. Yes. The way that happened is that he specifically  
24 asked for that in advance, and we changed our plans, our  
25 travel plans, so that we could accommodate that, and we  
26 attended it as observers and sat in the back. But it was  
27 at his request for that reason that you gave, that he  
28 didn't want to have to repeat it; he wanted the insurer and  
29 the insurer's solicitor to listen to it so that we could  
30 take into account what came out of there, which is very,  
31 very helpful, and that's what we did.

32

33 Q. You have characterised it as an observer role.  
34 I suppose it could also, then, be characterised as  
35 a listening and learning role?

36 A. Yes, I think that's a good way of categorising it.  
37 Thank you.

38

39 Q. The Truth, Justice and Healing Council submission to  
40 the Commission is in the general tender bundle,  
41 exhibit 4-1, at tab A, page 130. You will see in  
42 paragraph 62 - I will just read to you from the previous  
43 page, which says:

44

45 *CCI supports and seeks to facilitate the*  
46 *pastoral nature of Towards Healing.*

47

1 You have essentially confirmed that. In 62, it says:

2

3 *CCI supports the inclusion of one or more*  
4 *pastoral sessions, usually early in the*  
5 *process, but does not involve itself in*  
6 *these sessions ...*

7

8 As I understand it, that's your experience, is it?

9 A. I haven't read this document before. It is my  
10 experience that frequently we do involve ourselves in the  
11 pastoral session, but that is always subject to what is  
12 requested by the victim and his representative. If I can  
13 just speak for myself rather than CCI, because I'm not here  
14 to represent CCI, I haven't read this submission, I don't  
15 have instructions to speak for CCI, but for myself, I find  
16 it very valuable to participate in those pastoral sessions  
17 and pick up what comes out of that. It is often very  
18 beneficial and it often results in an increase in an offer  
19 to the victim beyond what one might have thought of before  
20 that, because one forms refined impressions. But it is  
21 certainly not something that is ever forced on the victim.  
22 It is only if the victim wants it that that is done.

23

24 Q. That perhaps all turns on the meaning of the word  
25 "involve".

26 A. I see, yes.

27

28 Q. In other words, it does not actively involve itself.  
29 The involvement you would speak of would be the  
30 observer-type involvement you spoke about in relation to  
31 [DK]?

32 A. Yes. Clarifying things, whatever. But we try not to  
33 say very much in that session.

34

35 Q. Perhaps one can go to paragraph 66:

36

37 *CCI strongly supports the Towards Healing*  
38 *process and has confidence in its integrity*  
39 *and fairness. It is also mindful of not*  
40 *encroaching on the pastoral aspect of the*  
41 *process.*

42

43 I take it you would accept that?

44 A. Absolutely.

45

46 Q. You know who Mr Michael Salmon is, I take it?

47 A. Yes, I do.

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Q. Have you worked with him in a number of mediations and facilitations over time?

A. Some, but I wouldn't say many. But there have been some.

Q. What is that - a handful?

A. Yes, a handful, sorry.

Q. If we can have Mr Salmon's statement in the case of [DK] on the screen, at page 13 what Mr Salmon is dealing with here is what happened in the pastoral session of the facilitation in the [DK] case?

A. Yes.

Q. If we go down to subparagraph (d), Mr Salmon says:

*At no time during the mediation did Mr Monahan tell Mr [DK] to "hurry up".*

I understand from your statement you agree with that?

A. Very much so.

Q.

*I do recall Mr Monahan saying at one point "we have covered this", when Mr [DK] repeated a point that he had already made. I recall thinking that the comment was a bit sharp.*

Just prior to asking you to comment on that, I would like also to show you what Brother Burns says in this regard. If we can have a look at Brother Burns's statement, also in the [DK] case, at page 6, paragraph 41(a), he also says:

*I do not recall Mr Monahan telling Mr [DK] to "hurry up" ...*

And then he says:

*I recall that Mr Monahan was trying to keep the conversation on track and was directing the conversation so that the same issue was not brought up multiple times. For example, I remember Mr Monahan at one stage saying forcefully, words to the effect of, "well, let's not go over that again", when*

1           *the same issue had been discussed a number*  
2           *of times.*

3  
4           Your statement, as I read it, doesn't address these issues,  
5           or doesn't address directly what has been said in these  
6           statements --

7           A.   Well, they weren't in Mr [DK]'s statement, so that was  
8           why I didn't address them.

9  
10          Q.   Yes.  I make no criticism of that.

11          A.   Yes.

12  
13          Q.   But given that it is not in your statement, I am now  
14          asking what is your response to what Mr Salmon and  
15          Brother Burns say that you said at that part of the  
16          session?

17          A.   Look, I have obviously read these and thought  
18          carefully about them since I first saw them.  I was very  
19          disappointed when I read particularly what Michael Salmon  
20          had said, the words that he chose to use.  I can't claim  
21          that I can remember every word that was said during that  
22          session.

23  
24                My recollection is that I was observing,  
25                fundamentally.  I wasn't participating greatly.  The  
26                session went on for a long time.  It was directed  
27                fundamentally between [DK] and the Marist Brothers who were  
28                there.

29  
30                I don't remember saying either of these things that  
31                either Michael Salmon or Brother Gerard Burns remembers me  
32                saying, so I do not recall saying that and I'm surprised to  
33                read them saying that, but I don't sit here and suggest  
34                that I can remember every word that I said.  You know,  
35                maybe I did make some statements during that session, but  
36                they would have been very limited and I don't believe  
37                I would have said these things.

38  
39                And it's not the style that I try to bring to these  
40                mediations.  They are very different to other types of  
41                legal work that one is involved in, and the interest of the  
42                victim is paramount in your mind throughout, and not doing  
43                any harm, not offending them any further.  So I hope  
44                I didn't say these things.  If I did, I'm terribly sorry.

45  
46          Q.   I take it from that that you would accept that if you  
47          did intervene in the way reported, then it is something you

1 shouldn't have done, given your role?

2 A. Oh, look, I just can't remember the precise way things  
3 went. It was a very intense session. Mr [DK] came along  
4 with a lot of documents and a lot of materials, and he was  
5 vigorously pursuing various things. So exactly what was  
6 appropriate in that situation is hard to remember right  
7 now, but I certainly hope I didn't use words forcefully or  
8 that I didn't - I forget what Mr Salmon's words were - that  
9 I didn't speak in a sharp tone; I would hope not.

10  
11 Q. Mr Monahan, you said that the session went on for some  
12 time and a lot was addressed specifically between [DK] and  
13 the brothers present. Clearly, at the centre of that was  
14 the behaviour of the offending brother, Ross Murrin. Do  
15 you recall what offending behaviour was raised by [DK]?

16 A. I can't remember that, exactly what was said. I know  
17 what the offending behaviour was, because I have read all  
18 the documents, but I can't remember that. My recollection  
19 actually is that his focus was more on Brother Gerard and  
20 Brother Andrew and his criticisms of them, which he  
21 ventilated quite thoroughly. And fair enough. He has  
22 perfect right to do so.

23  
24 Q. Underlying that criticism was, as I understand it,  
25 what he regarded their knowledge of Brother Murrin's  
26 behaviour to have been back at the time in 1981?

27 A. Yes, look, he was putting together facts. If you read  
28 his statement, the facts were actually quite limited, and  
29 he was putting onto those facts his own interpretation, and  
30 it is perfectly understandable from a person in his  
31 position. But I was just thinking, listening outside to  
32 Brother Andrew's questioning, if you read what is in the  
33 witness statement about Brother Andrew, it is extremely  
34 limited, and from that [DK] effectively was challenging  
35 Brother Andrew by suggesting to him that he basically knew  
36 what was going on and he was there to patrol and control  
37 Brother Ross Murrin, and Brother Andrew doesn't accept  
38 that. So, you know, that was the sort of session it was.

39  
40 The facts were actually quite limited. What [DK]  
41 interpreted out of them - and I'm not at all critical of  
42 him; I understand the difficult position that he was in,  
43 but it went quite some distance from the facts, and  
44 Brother Andrew and Brother Gerard Burns had a difficult  
45 session to deal with.

46  
47 Q. You said that [DK] effectively was challenging

1 Brother Andrew by suggesting to him that he basically knew  
2 what was going on?

3 A. Yes, I think so.  
4

5 Q. "What was going on", you understand was  
6 Brother Murrin's activities in relation to boys at the  
7 school?

8 A. Yes, I suppose you could summarise it like that. The  
9 fact that he had was one occasion when [DK] says  
10 Brother Andrew saw him in Brother Murrin's room and became  
11 angry, and I think, from that, in [DK]'s mind, he reached  
12 the conclusion that Brother Andrew knew something about  
13 Brother Ross's behaviour and wasn't taking appropriate  
14 steps to protect him.  
15

16 Q. Well, another fact that he had was his knowledge of  
17 the rumours with regard to Brother Murrin's misconduct?

18 A. Did those rumours not come up later, if I may ask?  
19

20 Q. In his contact report statement prior to the  
21 mediation, in paragraphs 12 and 13 he speaks about general  
22 rumours circulating in the school with regard to at least  
23 one other incident, in other words, not an incident  
24 involving himself.

25 A. You are talking about Mr [DK] saying that in his  
26 statement?  
27

28 Q. Yes.

29 A. Okay. I had thought that that was - he was talking  
30 about things that happened in the latter part of 1981.  
31 That was my reading of that. But you may be correct. You  
32 would know better than I do.  
33

34 Q. I'm not distinguishing between different times in  
35 1981. It may have been in later times than 1981. That's  
36 not the point. I will return to this, that the activities  
37 of Brother Murrin that [DK] said he thought that  
38 Brother Moraghan and/or Brother Burns had knowledge of were  
39 activities involving misconduct or abuse in relation to  
40 other boys, not only himself?

41 A. I can't comment on that. I think the documents speak  
42 for themselves, particularly when they are properly  
43 analysed with reference to dates.  
44

45 Q. I'm not asking you to comment. I am asking you what  
46 is your recollection?

47 A. I can't remember that coming up in that detail.

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Q. In relation to the financial negotiation part of the session, did you advise or express a view to your client as to what an appropriate level of settlement would be?

A. Yes, I had written a report before the mediation and I had made a recommendation, yes.

Q. What were your reference points in advising on what an appropriate level of settlement would be?

A. Oh, that is a really difficult question, and I could probably speak for an hour about that, because it is an issue that we battle with all the time.

THE CHAIR: Q. Mr Monahan, I appreciate its difficulty, but it is a matter of significance, real significance, for us. You understand why?

A. Sure. Okay.

Q. So we will have to ask you slowly to do your best to tell us?

A. Certainly. Thank you. I didn't mean to suggest that I wouldn't do that. I apologise.

The fundamental issue is assessing the extent of the psychiatric injury which the victim has suffered. The attempt is to focus the settlement payment on that. One has to take account of the extent of the actual abuse in each case, but that is a secondary criteria.

Then one has to look at issues relating to legal liability as well, to see what level of risk the case would otherwise present if it was not settled, and balance all of those factors. And it is very difficult.

The other thing that we try to do at these Towards Healing mediations is also to try to identify with the victim, in the course of negotiations, what would help them, what they are looking for, and try to craft the settlement so that it is responding to their needs, where that can be done.

Q. Could I just understand - on the legal liability question, what are the factors that you take into account when considering that question? I appreciate, and I would ask you to comment upon, whether there are different factors depending upon where the abuser is to be found in the whole of the church structure. Do you understand?

1 A. No, I don't understand that last bit.

2

3 Q. Well, I understand some of the complexities if it  
4 happens to be a diocesan priest, for example.

5 A. Oh, I see, yes.

6

7 Q. If it is a brother of an order teaching in a school or  
8 in some other function. Can you help me? What are the  
9 factors that you see as relevant to the question of legal  
10 liability?

11 A. It is complex, as you say, and there are a number of  
12 factors depending upon the facts of each case. One has  
13 cases ranging from a priest in a diocese, to a brother or  
14 a sister of a religious order, to an employed teacher or  
15 even a volunteer. So there can be all sorts of different  
16 factors that arise in individual cases.

17

18 I suppose commonly what you are looking at is whether  
19 those in authority had any earlier knowledge of  
20 inappropriate behaviour by that individual, or else whether  
21 there is systemically or systematically something which  
22 they could have done to prevent or minimise the harm which  
23 they did not do.

24

25 If I was picking the two major things, that would be  
26 what I would point to.

27

28 Q. So in terms of vicarious liability - and don't  
29 misunderstand me; I appreciate the complexities of this --

30 A. Yes.

31

32 Q. -- a brother teaching in a school, what  
33 responsibility, assuming no prior knowledge, is accepted  
34 that the school had if a teacher abuses?

35 A. If an employed teacher or a brother?

36

37 Q. Well, start with a brother.

38 A. Yes. Gee, these are massive, complicated legal  
39 questions. I'm hesitant to give just a simple comment.  
40 But if that was the only --

41

42 Q. I'm not so much seeking a comment. I would like to  
43 know, given that you are giving the advice, what are the  
44 factors that influence the advice you give?

45 A. The two that I have mentioned are probably the ones  
46 that influence my advice the most - prior knowledge or  
47 systemic failure. But if there is neither of those two and

1 there is simply an allegation that, let's say, a religious  
2 brother teaching at a school has abused the child, I would  
3 identify that as a case where the victim would have  
4 difficulty in establishing a legal liability.

5  
6 Q. Because the order would not accept vicarious liability  
7 for the actions of the brother; is that right?

8 A. I don't think it is a matter of whether the order  
9 would accept it; it is a matter of what the law says.  
10 You've read the *Lepore* case. I think there are  
11 six judgments. You can spend a month trying to analyse  
12 them and balance them, but I don't think it supports  
13 a conclusion of vicarious liability in the very simple case  
14 that we are talking about now.

15  
16 Q. So that is the advice that you would give?

17 A. Yes.

18  
19 Q. Would it be the same advice if it is an employed  
20 teacher?

21 A. An employed teacher - yes, it would be the same  
22 advice, based on *Lepore*.

23  
24 Q. So you would give that advice? If the school didn't  
25 know and there was no identifiable failure in its  
26 processes, you would advise no legal liability?

27 A. I don't think I would ever be as absolute as that,  
28 because there is a lot of imponderables about what *Lepore*  
29 actually says and where the actual facts of that case end.  
30 So I would hate what I am saying now, which could be taken  
31 as a bit glib and simplistic, to represent a really  
32 thoughtful view that I hold. I would never say there is no  
33 legal liability. I would say that the plaintiff will have  
34 great difficulty in establishing a legal liability.

35  
36 Q. What about the diocesan priests?

37 A. A diocesan priest - those same issues would apply.

38  
39 Q. And what advice would you give?

40 A. Again, I would be looking to see whether there is  
41 evidence of prior knowledge or systemic or systematic  
42 failure which has either created or exacerbated the risk.  
43 But in the absence of those two, I think my advice would  
44 again be that it would be difficult for this victim to  
45 establish a legal liability.

46  
47 Q. In your experience, does that influence the extent of

1 the offer which the insurer is prepared to make?

2 A. Yes, it does.

3

4 Q. No doubt you have had discussions about these complex  
5 issues both with the insurer and with senior members of the  
6 church; is that right?

7 A. Senior members of the church less so, but with the  
8 insurer, yes.

9

10 Q. Has there ever been a discussion which goes beyond the  
11 confines of the law and talks about the responsibility of  
12 the church to people who come to it as parishioners or  
13 whose children come to church schools?

14 A. Absolutely. And, if I may say so, I feel that that is  
15 at the heart of the way Catholic Church Insurances responds  
16 to these matters. I have dealt with other commercial  
17 insurers of other non-Catholic organisations. In most  
18 cases, on similar facts, they would simply deny indemnity  
19 and deny that there was any legal liability and they would  
20 make no settlement offer at all. My experience with  
21 Catholic Church Insurances is that they do take a very  
22 strong account of what you just said there - the broader  
23 pastoral issues.

24

25 Q. I'm really interested in the money at this stage. Are  
26 you saying that they would offer money in circumstances  
27 where the strong advice would be there is not legal  
28 liability?

29 A. Well, I do repeat, I would never give strong advice  
30 that there is not legal liability. I would put it that the  
31 victim would have difficulties in establishing a legal  
32 liability, and I would put this case of [DK] in that  
33 category.

34

35 Q. Now, if there is a clear case of legal liability, no  
36 doubt you give advice to that effect?

37 A. Yes.

38

39 Q. In those circumstances, is the insurer prepared to pay  
40 common law damages equivalent under the Towards Healing  
41 process?

42 A. Under the Towards Healing process - look, less and  
43 less cases that I personally deal with over recent years  
44 have been going through Towards Healing. Most cases that  
45 would fall into that category - you end up dealing with  
46 them as legal cases with the lawyers on the other side.

47

1 Q. In those negotiations, are you instructed to negotiate  
2 what would be the proper common law lump sum damages?  
3 A. Yes, I am, and I am also negotiating with a lawyer  
4 paid by the victim to do the same, and so I would expect no  
5 less.  
6  
7 Q. So that would include loss of income?  
8 A. Yes, in appropriate cases.  
9  
10 Q. And general damages for pain and suffering?  
11 A. Yes.  
12  
13 Q. And medical expenses?  
14 A. Yes.  
15  
16 Q. Both past and prospective, future?  
17 A. Yes.  
18  
19 Q. Do I assume that, as a consequence, some of the  
20 settlements have been for very significant sums of money?  
21 A. Yes.  
22  
23 Q. Of what order?  
24 A. Into multiple hundreds of thousands of dollars, in my  
25 own experience.  
26  
27 Q. Millions?  
28 A. No, not in my experience.  
29  
30 Q. Yes. I think we're ultimately going to access all of  
31 the relevant records, so don't be troubled; we will be able  
32 to identify from the records --  
33 A. That would be good, because that would give you the  
34 proper statistical base to do that. I can only talk about  
35 my own experience.  
36  
37 MR STEWART: Q. Mr Monahan, you will be aware, I take  
38 it, that Towards Healing provides for the possibility of  
39 financial payments regardless of legal liability?  
40 A. I think it uses the word "reparation".  
41  
42 Q. Yes, that would be a financial payment?  
43 A. Yes.  
44  
45 Q. Regardless of legal liability?  
46 A. Yes.  
47

1 Q. For that reason, I'm struggling to understand - and  
2 perhaps you can assist the Commission - what the relevance  
3 is of a consideration of legal liability or, as you put it,  
4 level of risk in the Towards Healing process in arriving at  
5 a proper settlement amount?

6 A. I think the question you raise is obviously  
7 fundamental to what this Commission is all about, because  
8 I just have to acknowledge that there is a tension between  
9 a provision like that and the involvement of an insurer in  
10 assisting in the negotiation of the settlement or  
11 negotiating the settlement. I think that's probably going  
12 to be something that will come very helpfully out of the  
13 conclusions of this Commission, because there is a tension  
14 between those two.

15  
16 The insurer is only obliged, only in fact entitled, to  
17 indemnify the religious authority if it is satisfied that  
18 there is a legal liability or the risk of a legal  
19 liability. So those two sit side by side uncomfortably,  
20 I absolutely acknowledge that.

21  
22 Q. At the commencement of the financial part of the  
23 mediation or facilitation, you, on behalf of CCI and the  
24 Marist Brothers, made it plain that three offers would be  
25 made during the process, and that's all; is that right?

26 A. I believe that I did do that. It is something that we  
27 do on occasions. It was suggested to me some years ago by  
28 a particular mediator, and I felt it was a nice, engaging  
29 way to conduct negotiations with victims, particularly in  
30 circumstances where they might otherwise feel unempowered.

31  
32 Q. What I wish to explore with you is does that not do  
33 the reverse; in other words, why is it that that might  
34 assist victims in not feeling unempowered? I know there  
35 are a lot of negatives there.

36 A. Yes, I understand what you are saying. I think that  
37 we do go by this motto, "Do no harm". I think if I was  
38 a victim and I came along to a mediation with the church  
39 authority and they slammed one offer down on the table and  
40 said, "We've assessed this. That's what we're offering  
41 you. Take it or leave it. Like it or go home", I would be  
42 very offended by that and it would do me further harm. So  
43 that's the first thing.

44  
45 The second point I would make is that I act for  
46 defendants, and I always have for the last 25 years. You  
47 don't often come across a plaintiff's lawyer who will make

1 the first offer. They always want the defendant to put  
2 something on the table, almost just to get discussions  
3 going.  
4

5 The way I look at this, and the mediator who put the  
6 suggestion forward to me, his thinking was too, was, okay,  
7 you put an offer on the table; then you get the response  
8 from the victim, which tells you what they are actually  
9 doing, what they are thinking about. In this case, it was  
10 very helpful, because Mr [DK] had done a lot of  
11 calculations and a lot of work about what he thought was  
12 a reasonable amount that he needed to educate two children,  
13 and he put that on the table as his first offer.  
14

15 That gave us a fantastic framework to negotiate with  
16 him, as we then did through another offer, a response and  
17 then putting a position that we were prepared to go to at  
18 that facilitation. It gave us a wonderful way of engaging  
19 with him, hearing what he had to say and finally crafting  
20 an offer that responded to what he was looking for.  
21

22 His friend, who was the barrister - he wanted his fees  
23 paid. We asked him what they were. He told us what they  
24 were and we accepted that. He wanted counselling. We came  
25 to a figure of \$5,000. He was happy with that. We  
26 accepted that.  
27

28 Then we eventually, after this negotiating process,  
29 offered an amount on top of that of \$80,000, which worked  
30 out as the costs, which we'd worked out on all the figures  
31 he had come up with, of school fees for his son from  
32 I think grade 5 to year 12, or something.  
33

34 That's what I mean by going through this process.  
35 I know it sounds crazy from an ordinary negotiating  
36 viewpoint, but that's what the thinking is behind it from  
37 our point of view.  
38

39 Q. Mr Monahan, there aren't two alternatives, one being  
40 one offer, take it or leave it, and the other being  
41 a process of three offers. There are many alternatives,  
42 one of which would be the more conventional process of,  
43 when one starts out, one doesn't know how many offers one  
44 will make; it will depend how things go. Why is that  
45 excluded?

46 A. Look, it's not excluded. I didn't mean to make it  
47 sound that way and it certainly is not. At the beginning

1 of the negotiating process, I have a chat with the lawyer  
2 representing the other party and make that suggestion. It  
3 is not saying there will only be three offers, but it's  
4 saying, "Look, this is the process that we have in mind",  
5 and I often explain it in a similar way to the way I have  
6 just done, but it certainly wouldn't exclude the  
7 possibility of negotiating beyond that, and we would  
8 frequently do that.

9  
10 Q. Do you understand that a victim might perceive that  
11 approach, one which has a statement made upfront that the  
12 church authority will make only three offers, as reducing  
13 this part of the facilitation to a hard-nosed commercial  
14 bargain rather than a just and compassionate process to  
15 arrive at a proper assessment of the victim's needs?

16 A. All I can say is I would certainly hope not. If I can  
17 observe, too, that having experienced many of these, it  
18 would be very difficult to come up with a much better way.  
19 You can't negotiate forever.

20  
21 One of the fundamental principles of negotiation is  
22 that at a certain point you have to reach the end, and  
23 people have to be told that, and then it's up to them.  
24 That's just a fact of negotiating life.

25  
26 But certainly we try very hard - I personally try very  
27 hard - not to be dismissive or demanding or imperious about  
28 the way in which we do any of these things. Quite the  
29 opposite.

30  
31 Q. In this particular instance, on the CCI/Marist  
32 Brothers side, a deed of release was required.

33 A. Yes.

34  
35 Q. That's standard practice, as I understand it?

36 A. Yes. You wouldn't find any insurer on the planet who  
37 would be settling without deeds of release, I think.

38  
39 Q. I understand that in relation to a negotiation and  
40 settlement of a legal liability claim, but why is that so  
41 in relation to a Towards Healing reparation claim?

42 A. We go back to the point that I made a while ago and  
43 a complete acknowledgment that I would give to this  
44 Commission from my own experience that there is an absolute  
45 tension between those two.

46  
47 When they drafted that way back in 1996, I think what

1 they were envisaging was payments for counselling or  
2 payments for particular requirements, in other words,  
3 a comparatively modest payment. But if you are paying, as  
4 in this case, \$88,000 to somebody, and there is an insurer  
5 funding the settlement, which has its own commercial  
6 obligations and it has reinsurers sitting above it and APRA  
7 monitoring it, it just has to be like that.

8  
9 If this Commission can come up with some other system  
10 that doesn't contain that tension, I think that would be  
11 absolutely wonderful.

12  
13 Q. The Truth, Justice and Healing Council submission to  
14 this Commission says that the requirement of a deed of  
15 release arises from the requirements of reinsurers. To  
16 your knowledge, is that a requirement of reinsurers?

17 A. Look, I'm just surprised. I haven't read that myself.  
18 I'm surprised to hear it put that way. The reinsurers  
19 would absolutely insist on it, but it would be taken as  
20 read. It is not as if they would have issued a direction  
21 in cases like this. For CCI to make a claim on its  
22 reinsurers, it has to establish that it has extinguished  
23 the legal liability which is at the heart of the claim.  
24 Otherwise, why would the reinsurer meet its obligations  
25 under the reinsurance contract?

26  
27 Q. Well, that's the point, really, isn't it? In the  
28 Towards Healing process, is the legal claim at the heart of  
29 the claim? What I suggest is that the Towards Healing  
30 document would say it is not.

31 A. That's the tension that I have conceded many, many  
32 times and I wish we could find a way around it.

33  
34 Q. Because to put it differently, why should it be that  
35 a Towards Healing process which arrives at a just and  
36 compassionate response addressing the needs of the victim  
37 should exclude the assertion of a legal liability if there  
38 is one?

39 A. Sorry? I don't understand that.

40  
41 THE CHAIR: Mr Stewart, we fully understand what  
42 Mr Monahan is saying and his appreciation of the tension  
43 that appears clearly to be involved in an insurer funding  
44 and applying, as it must, its obligations to the Towards  
45 Healing process. I think the tension is plain. Our task  
46 is going to be to try to find a way forward. And we know  
47 that the bishops conference, through Mr Sullivan, has

1 publicly expressed a view about this. We have had a senior  
2 member of the Anglican Church do the same.

3  
4 Q. And, Mr Monahan, you will forgive me for saying it, we  
5 will talk to many other people about exactly the same  
6 issue.

7 A. Yes.

8  
9 MR STEWART: Q. Moving back to this specific case of  
10 [DK], I take it that at the time of the facilitation, you  
11 knew that Michael Salmon was the New South Wales  
12 professional standards officer?

13 A. I did.

14  
15 Q. You're aware, of course, that several times from May  
16 2013 and thereafter, [DK] wrote to you and asked you to  
17 answer the question, which was were you aware at the time  
18 of the facilitation that Michael Salmon was the New South  
19 Wales professional standards director?

20 A. Yes.

21  
22 Q. And you didn't answer him?

23 A. No.

24  
25 Q. Why?

26 A. Much to my considerable embarrassment, my file had  
27 been misfiled and we couldn't find it. My statement will  
28 tell you the date that we actually did find the file. But  
29 I was not going to get involved - sorry, let me change  
30 that. It would not have been appropriate for me to respond  
31 without checking my file, because I couldn't remember the  
32 facts.

33  
34 And I'm very glad, now, that I didn't have a guess  
35 without looking at my file, because there is actually quite  
36 a complicated story behind that and I needed to remind  
37 myself from my file what had happened.

38  
39 He was basically, in his emails, stating to me that  
40 both Brother Alexis Turton and Michael Salmon had lied to  
41 him about this, and he was effectively asking me to,  
42 I suppose, assist him in making that case. I wanted to go  
43 back and check what my file said, and I'm very glad that  
44 I did that, because I was reminded that right at the very  
45 beginning, this issue was raised by Joe Bucci with  
46 Brother Alexis, and Joe Bucci was told that the issue had  
47 been dealt with between Brother Alexis and [DK] and that

1 there was no issue of conflict to worry about. I had  
2 recorded that statement in my report to CCI.

3  
4 None of that I could remember when I just got an email  
5 from [DK]. Obviously, the tone and tenor of his emails  
6 made it very clear that he was angry and this wasn't just  
7 going to be a matter of answering one email and that being  
8 the end of the issue. I needed to be sure of my facts  
9 before I responded to him. And then, before the file was  
10 found, it turned out that he now had engaged Maurice  
11 Blackburn Cashman as his lawyers and I should deal with  
12 them, and they have never approached me to do any such  
13 thing.

14  
15 Q. Mr Monahan, I can take you to all the correspondence  
16 and we can go through it. I am trying to avoid that in the  
17 interests of time. The fact of the matter is that [DK]  
18 asked you directly a simple question, did you have the  
19 particular knowledge at a particular time; that's right?  
20 He didn't ask you any other question?

21 A. Well, he did ask me a few different questions, but  
22 I know exactly what you are referring to. At one point, he  
23 said, "This is the simple point I want to ask you", and he  
24 put it just as you have, and I could have answered that and  
25 said yes. I chose not to, for the reasons I have given  
26 you.

27  
28 Q. I can come back and demonstrate to you that there  
29 weren't any other questions. Leaving that aside, dealing  
30 with the specific question, one of the reasons you didn't  
31 give an answer, you said, is because you needed to retrieve  
32 your file and that took some time. But you didn't need to  
33 retrieve your file to know the answer to that question, did  
34 you?

35 A. No, I didn't, but in my mind - and I would stick to  
36 this to this day - it was important, before I engaged in  
37 what would have been an ongoing process of communication  
38 with [DK], that I check the facts and that I remember what  
39 actually did happen.

40  
41 Q. The one fact that he asked about, you didn't need to  
42 check?

43 A. You are absolutely right, I could have gone back and  
44 just said yes to that, and that could have been the end of  
45 it. My judgment was that that would not have been a wise  
46 or appropriate thing to do.

47

1 Q. Your words earlier were that it would not have been  
2 appropriate to respond. I suggest that justice and  
3 compassion to the victim means that it would have been  
4 appropriate to respond quickly and simply to the  
5 straightforward question that he asked?

6 A. I can accept that being put to me as a proposition.  
7 I took a different view.

8

9 MR STEWART: Nothing further for this witness.

10

11 MR ANDERSON: I have no questions.

12

13 MR ATTIWILL: I have no questions.

14

15 <EXAMINATION BY MR GRAY:

16

17 MR GRAY: Q. Mr Monahan, you said quite early in your  
18 evidence this afternoon, in an answer, something close to  
19 this, that these mediations - meaning, I think, Towards  
20 Healing mediations --

21 A. Yes.

22

23 Q. -- are very different from other legal work that one  
24 is involved in?

25 A. Yes.

26

27 Q. Did you in fact mean that Towards Healing mediations  
28 or facilitations are different from, among other things,  
29 other mediations that aren't Towards Healing?

30 A. Yes. I'm comparing them to a more classic legal  
31 mediation that one would have.

32

33 Q. What are the sorts of ways in which a Towards Healing  
34 mediation or facilitation, in your view or your experience,  
35 differs from other more traditional mediations?

36 A. Well, the first one is that the primary focus is on  
37 the wellbeing of the victim and treating the victim  
38 respectfully and courteously and doing no harm to the  
39 victim.

40

41 The second thing is that even the way one debates the  
42 case and negotiates is very different, because in a classic  
43 adversarial mediation, one can be quite vigorous in the way  
44 in which one might present something. We certainly don't  
45 do that in Towards Healing mediations.

46

47 Q. Secondly, it may be that your answer to this is clear

1 enough already on the transcript, in which case I apologise  
2 to you and the Commission, but can I ask you this: as to  
3 the mediation in the [DK] case, at that meeting, to your  
4 recollection, did [DK] say anything to the effect of  
5 accusing either Brother Burns or Brother Moraghan of having  
6 been aware in 1981 of sexual abuse or misconduct by Murrin  
7 in relation to other boys as distinct from in relation to  
8 [DK] himself?

9 A. I don't remember him saying that.

10  
11 Q. Thirdly, you mentioned in the course of one of your  
12 answers the amount of money that finished up being the  
13 settlement figure in this matter, namely, \$88,000,  
14 comprised of \$3,000 for legal fees, \$5,000 for counselling  
15 and then \$80,000, as it were, on top of those two figures?

16 A. Yes.

17  
18 Q. I wonder if the witness could be shown tab 21 of the  
19 tender bundle. This is a file note of the solicitor,  
20 Howard Harrison, about a month or six weeks before the  
21 mediation in the [DK] matter. According to the note,  
22 Mr [DK] had had a visit from Jason Parkinson, and I think  
23 you know who Jason Parkinson is?

24 A. Yes, I do.

25  
26 Q. Who is he, in a nutshell?

27 A. He is a lawyer who runs a practice called Porters  
28 Lawyers, originally out of Canberra.

29  
30 Q. He represents many victims?

31 A. He does now represent many victims of sexual abuse.

32  
33 Q. According to this note, Mr Parkinson had indicated to  
34 [DK] that he, Mr Parkinson, could get him \$200,000 or  
35 thereabouts, but between 30 per cent and 50 per cent would  
36 go on legal costs.

37 A. Yes.

38  
39 Q. First of all, what is your view, if any, as to whether  
40 Mr Parkinson's expectation that [DK] might get \$200,000 in  
41 some way was right or not?

42 A. Okay. I have seen elsewhere that the words actually  
43 used by [DK] were "in the vicinity of up to \$200,000" -  
44 that's what I read somewhere else - which is quite  
45 different to saying, "I can get you \$200,000".

46  
47 The second thing is that I don't think any lawyer

1 acting responsibly can estimate a recovery like this  
2 without, at the very least, seeing a psychiatric report  
3 and, secondly, without doing some investigation as to how  
4 you are going to present the case to advantage. So I find  
5 it surprising if that statement was made, but I don't know  
6 whether it was or it was not. I make no comment adverse to  
7 Jason Parkinson.

8  
9 Q. Of course. On the assumption that this is what he  
10 said in relation to costs, on that scenario of \$200,000,  
11 between \$60,000 and \$100,000 would go on legal costs?

12 A. Yes.

13  
14 Q. In the case of the settlement that in fact was  
15 reached, Mr [DK] received \$80,000 plus two other amounts,  
16 one of which, the \$5,000, was for him to use for  
17 counselling if he wished?

18 A. That's correct.

19  
20 Q. That result was achieved within a matter of a couple  
21 of months, or a few months, of his bringing the complaint?

22 A. Yes, that's right.

23  
24 Q. If the matter had proceeded via a plaintiff's lawyer  
25 in the traditional way, how long do you estimate it might  
26 have taken to arrive at a finish line?

27 A. Look, I did read elsewhere in the papers last night,  
28 when I was going through them, that there was reference to  
29 Mr Parkinson having told [DK] that it would take 18 months,  
30 and that would accord with my own experience of dealing  
31 with Mr Parkinson in other matters. If there was  
32 litigation, it could be as long as a piece of string,  
33 I suppose; it just depends how quickly one can work through  
34 the processes.

35  
36 THE CHAIR: Mr Gray, I'm not sure I understand the memo.  
37 Who has had the visit from Jason Parkinson?

38  
39 MR GRAY: As I read it, Mr [DK] has had the visit.  
40 I think there is other material in the tender bundle.

41  
42 THE CHAIR: Is there? On its face, that is not plain.

43  
44 THE WITNESS: It is clear from other documents, if I may  
45 say so, your Honour.

46  
47 THE CHAIR: So this is a recording, a communication, that

1 has come from [DK], is it, as to what he was told by  
2 Jason Parkinson?

3

4 MR STEWART: Yes. It is fourth-hand, your Honour.  
5 It is Jason Parkinson to [DK] to Brother Alexis to  
6 Howard Harrison.

7

8 THE WITNESS: Yes, absolutely.

9

10 THE CHAIR: Yes, okay.

11

12 MR GRAY: I'm sorry, your Honour, just to pick that up,  
13 tab 23, if we could have that, I suspect may be what  
14 Mr Monahan has in mind. This is an email from [DK] to  
15 Brother Alexis, with some bullet points. The third of  
16 those bullet points is relevant, it seems.

17

18 THE CHAIR: Yes, very well.

19

20 MR GRAY: Q. Is that what you had in mind?

21 A. It is the one where I've got the words "in the  
22 vicinity of up to 200,000", but there is actually something  
23 else that I saw.

24

25 THE CHAIR: Q. There is no reference to costs there, is  
26 there?

27 A. No, but there is something else, which I think is  
28 a note of Brother Alexis's, which made that observation,  
29 but I wouldn't know where it is, sorry.

30

31 MR GRAY: Q. The last matter, Mr Monahan. A question  
32 was put to you just near the end of your evidence, which  
33 was approximately in these terms. The question was:

34

35 *The Truth, Justice and Healing Council*  
36 *submission to this Commission says that the*  
37 *requirement of a deed of release arises*  
38 *from the requirements of reinsurers.*

39

40 Do you remember a question substantially to that effect?

41 A. Yes, I do.

42

43 Q. You gave an answer, which was some element of surprise  
44 on your part - I don't mean to quote you precisely. That  
45 submission is in fact in slightly different terms, and  
46 I just want to draw it to your attention to see what you  
47 would say about what the submission actually says.

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It is in the general tender bundle at tab A. It is at paragraph 70, page 130. You will see that paragraph 70 is expressed in similar but slightly different terms?

A. Yes, I see it. Thank you.

Q. It says:

*Mainly in order to satisfy its reinsurer ...*

et cetera?

A. Yes.

Q. Do you have any comment on what the submission actually says, or any different response?

A. I have never even had to talk to the CCI about this issue. I mean, if you are paying a significant amount over on a settlement, any insurer must obtain a deed of release which extinguishes the legal liability for its own purposes.

On a secondary level, absolutely your insurers would slaughter you if you were an insurer who was settling cases by substantial payments without getting a deed of release. That amounts then to, what, an ex gratia payment, which you cannot recover from your reinsurers. So yes.

MR GRAY: Thank you, Mr Monahan.

MR STEWART: I have nothing further for this witness, your Honour.

THE CHAIR: Thank you, Mr Monahan. You are excused.

**<THE WITNESS WITHDREW**

MR STEWART: I call Jeffrey Crowe.

**<JEFFREY JOHN CROWE, sworn: [3.15pm]**

**<EXAMINATION BY MR STEWART:**

MR STEWART: Q. Brother Crowe, will you state your full names and occupation?

A. My name is Jeffrey John Crowe. I am a Marist Brother and currently the Provincial Leader of the Marist Brothers

1 of the Province of Australia.

2

3 Q. There is a statement dated 29 November 2013 by you,  
4 submitted in both the [DG] and [DK] cases. As I understand  
5 it, it is the identical statement; is that correct?

6 A. That is correct.

7

8 Q. Do you have any corrections you would wish to make to  
9 that statement?

10 A. Yes, I would like to make a correction to number 18 on  
11 page 3. In the light of a question directed by counsel  
12 assisting to Mr Salmon yesterday, I realised that there was  
13 some ambiguity around number 18. So I would like to say --

14

15 Q. Just one moment, Brother Crowe. We will just call it  
16 up. Yes, thank you, can you explain where the ambiguity is  
17 that you would like to correct?

18 A. It says:

19

20 *In or around November 2009, I implemented*  
21 *changes ...*

22

23 That was when I had the capacity of the Provincial of  
24 Sydney Province, and so it would be:

25

26 *... implemented changes in the way in which*  
27 *the Marist Brothers [of Sydney Province]*  
28 *and the NSW Professional Standards Office*  
29 *(PSO) would operate ...*

30

31 Sydney Province at the time included New South Wales,  
32 Queensland and ACT, and it was saying there that the  
33 affairs, then, of the Marist Brothers in those States and  
34 Territories would be coordinated through the New South  
35 Wales Professional Standards Office.

36

37 But in terms of the current arrangements, as the  
38 Province of Australia, we deal with the relevant State  
39 Professional Standards Office. So if it was in Western  
40 Australia, it would be the West Australian Professional  
41 Standards, and so on.

42

43 Q. Brother Crowe, do I understand you correctly that this  
44 would be rendered accurate by the insertion in the first  
45 line, immediately before the words "Marist Brothers", of  
46 the words "Sydney Province of the"?

47 A. That is correct.

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Q. With that amendment, do you confirm this statement as being true and correct?

A. I do.

MR STEWART: I tender the statement.

**EXHIBIT #4-66 STATEMENT OF JEFFREY JOHN CROWE IN RELATION TO [DG] AND [DK], DATED 29/11/2013**

MR STEWART: Q. With regard to your professional background, Brother Crowe, which is dealt with at paragraph 7 onwards in the statement, if I might just summarise it, you joined the Marist Brothers in 1963, which would have been at the age of approximately 17; would that be right?

A. That is correct.

Q. Between 1969 and 1980 you held a variety of teaching positions?

A. That is correct.

Q. Between 1981 and 2007 you held various leadership and training roles in the Marist Brothers?

A. That is correct.

Q. From 2007 to date you have been the provincial - initially the provincial in respect of the New South Wales Province and subsequently in respect of the Australian Province?

A. Provincial of Sydney Province, as it was called; that's correct.

Q. I beg your pardon. I stand corrected. Thank you. In October 2007 you were appointed the Provincial of the Marist Brothers Sydney Province, and that then covered Queensland, the ACT and the majority of New South Wales; is that right?

A. That is correct.

Q. The other province at that time was the Melbourne Province, which covered Victoria, South Australia, Western Australia, the Northern Territory and south-western New South Wales?

A. That is correct.

Q. The provincial is both the canonical leader and the

1 civil leader of the religious institution?

2 A. That is correct.

3

4 Q. The Sydney and Melbourne Provinces were amalgamated  
5 into a new province known as the Australian Province with  
6 effect from 8 December 2012; is that right?

7 A. That is correct.

8

9 Q. The Australian Province also includes some works  
10 outside Australia, for example, in Cambodia and East Timor?

11 A. That is correct.

12

13 Q. On 8 December 2012 you became the first Provincial of  
14 the Marist Brothers Australian Province, and that's an  
15 appointment for a period of three years?

16 A. That's correct.

17

18 Q. In paragraphs 12 and 13, you deal with numbers of  
19 institutions and also numbers of Marist Brothers in  
20 Australia. At paragraph 13, you say:

21

22 *Since 1948, there have been some 1,046*  
23 *Marist Brothers in Australia. Currently,*  
24 *there are some 234 Marist Brothers in the*  
25 *Australian Province.*

26

27 Is that right?

28 A. There has been at least one death since that was  
29 written. That is correct.

30

31 Q. So currently 233?

32 A. I think so.

33

34 Q. Approximately. Brother Turton gave evidence that, by  
35 his recollection, the maximum number of Marist Brothers in  
36 the Sydney Province reached its peak in about 1965 at 444?

37 A. That's correct.

38

39 Q. Do you agree with that?

40 A. That's correct.

41

42 Q. Do you know what was the maximum number in Australia,  
43 in other words, across both the Sydney and Melbourne  
44 Provinces?

45 A. I believe that the maximum number in Melbourne -  
46 I haven't checked this, but I believe it was around about  
47 220, so that we are looking that, at one time, there would

1 have been 660, of that order.

2

3 Q. And now there are 234, as you say - less than half  
4 that number. Obviously the numbers are declining. Would  
5 you give the Commission an insight - and I am asking you to  
6 deal with this briefly - into your understanding of why  
7 that is?

8 A. I believe that there are social, cultural, religious  
9 reasons for that. One that is very clear and evident is  
10 that with State aid to non-government schools and the  
11 possibility, therefore, of paid employment at a parity  
12 basis of teachers who were not religious, then the  
13 functional place of religious within the Catholic education  
14 system changed dramatically.

15

16 Secondly, in terms of the cultural factors, I think  
17 that with the 1960s especially, there was a very big  
18 cultural shift in terms of individual freedom, in terms of  
19 people wanting to make a life for themselves in very  
20 different ways, and a whole - if I could put it another  
21 way, what was a little bit like a tribal mentality in the  
22 wider Catholic community, that that started to break down  
23 as a tight Catholic community.

24

25 Inside of that as well was a whole level of values,  
26 I think. I mean, that was the era, in the 1960s, where you  
27 started to get a questioning, serious questioning, of the  
28 place of God and the place of Christianity in our society  
29 in Australia, and so this was environment in which people  
30 were growing up. So less people would have been motivated  
31 by faith in that same sort of way. That would have been  
32 not just the young people themselves, but the families were  
33 changing, I think, in terms of their support of people  
34 entertaining a very different way of life. And that has  
35 continued.

36

37 Q. Thank you, Brother Crowe. That gives very useful  
38 insight. How many Marist Brothers take their vows each  
39 year now in Australia, or from year to year?

40 A. In the last 20 years, I think there has only been  
41 three or four.

42

43 Q. And in the last five years?

44 A. In the last five years, one. One would have made his  
45 first vows and one made his final vows. We have a system -  
46 I could explain a little bit more, if you wanted.

47

1 Q. Let's not go there now, Brother Crowe. You talk about  
2 the schools and other institutions operated and  
3 administered by the Marist Brothers, drawing a distinction  
4 between "operated" and "administered". Can you explain  
5 that difference?

6 A. Yes. We have a number of colleges that we own the  
7 land and we own the college which is on the land, and in  
8 that sense we operate the college.  
9

10 In other situations, which is by far the bulk of the  
11 institutions which bear the name "Marist", the land and the  
12 college is owned by the parish or the diocese; it depends,  
13 in different situations. In a lot of those situations, we  
14 actually started the school, it was nothing, as in the case  
15 of St Augustine's College in Cairns - it was a swamp. The  
16 brothers and the families built the place. But it is  
17 diocesan in terms of the land, and so on, there. So we  
18 administer on behalf of. It has had quite a complex  
19 history, and it only changed very clearly in the mid 1980s  
20 with the development of Catholic Education Offices and the  
21 naming of the Catholic Education Offices as the employer of  
22 people. Prior to that, it's very grey as to whose  
23 responsibility certain things are.  
24

25 Q. Brother Crowe, how many children - by which I mean of  
26 school-going age - are presently in institutions operated  
27 or administered by the Marist Brothers?

28 A. Our best estimate on that would be about 40,000. That  
29 would be - that is operated or administered, together.  
30

31 Q. Has that figure changed over time? In other words,  
32 has it been getting more or less or --

33 A. Yes, it has been increasing.  
34

35 Q. Can you give us a sense of that?

36 A. My guess is that it has been fluctuating, but it also  
37 depends on - we've had schools which we have withdrawn  
38 from, and so it is a little bit hard to estimate that, but  
39 my guess is that in the 1950s it would have been about  
40 20,000. I really couldn't be held to an answer on that  
41 one.  
42

43 Q. In the paragraph that you corrected, paragraph 18, you  
44 then refer to the document which, in a sense, implemented  
45 the changes in the Sydney Province. The document is at  
46 tab 5A. That document provides - or its effect, am  
47 I right - is that once a complaint is identified as

1 a Towards Healing complaint, it should then be case-managed  
2 and handled by the New South Wales PSO; is that right?

3 A. That is correct.  
4

5 Q. So you would accept that in the case of [DK], once he  
6 had indicated that he wanted a Towards Healing process,  
7 under that document, it should have been referred for case  
8 management and administration to the New South Wales PSO?

9 A. My understanding is that there were discussions  
10 between Brother Alexis and Michael Salmon in regard to this  
11 particular case from very early on, and as to what the  
12 nature of the case was and to how it was to be dealt with.  
13

14 Q. Yes, indeed, there were. But that doesn't address my  
15 question, which was do you accept that in the case of [DK],  
16 once he had indicated that he wanted a Towards Healing  
17 process, under this document, it should have been referred  
18 for case management and administration to the New South  
19 Wales PSO?

20 A. I believe that - yes, in a short answer, yes, but I do  
21 believe, as Mr Salmon said yesterday, there were some  
22 flexible discussions around that as to who was to do what.  
23

24 Q. If we take a look at the document at paragraph 2(e),  
25 which is on the second page, you will see it is under the  
26 heading "Looking to the Future". It says, starting in the  
27 second sentence:

28  
29 *NSW PSO is prepared to take on the*  
30 *management of cases other than those that*  
31 *become court matters under the control of*  
32 *Greg Walsh ...*  
33

34 Now, will you explain, who is the Greg Walsh referred to  
35 there?

36 A. Greg Walsh is a solicitor in Sydney who represents  
37 individual brothers when they are charged.  
38

39 THE CHAIR: He is a well-known criminal solicitor in  
40 Sydney.  
41

42 MR STEWART: Q. And matters that become court matters  
43 under the control of Greg Walsh, are those then --

44 A. They would be criminal cases against individual  
45 brothers.  
46

47 Q. In paragraphs 4(b), 6 and 12 - I can take you to each

1 of them, but it is a simple question, you probably don't  
2 need to look at it - in each of those paragraphs there is  
3 reference to the "Canberra situation". What is that  
4 a reference to?

5 A. One of the saddest pieces of history of Marist  
6 Brothers in Australia. It refers to a number of incidences  
7 of sexual abuse by one brother, especially one brother, in  
8 Marist College Canberra. It started to come to light  
9 I think in 2007, and there have been a number of - very,  
10 very sadly, a number of victims, I think over 40.

11  
12 Q. Perhaps we can just look at those paragraphs, starting  
13 at paragraph 4(b). So that talks about media and PR:

14  
15 *Apart from the special situation in*  
16 *Canberra at the moment PR and contact with*  
17 *the media will be organised by the*  
18 *PSO Officer.*

19  
20 So someone else was handling PR and media in relation to  
21 the Canberra situation; is that right?

22 A. I haven't looked at this particular sheet for a long  
23 time. It is more the - who does the - I might be jumping  
24 down their --

25  
26 Q. It is saying quite simply that there --

27 A. There were some difficulties, in terms of some human  
28 relations in Canberra, as to who was to do what, and there  
29 was a particular difficulty at one stage between  
30 Brother Alexis, as the professional standards person, and  
31 Mr Parkinson, and so in the interests of the victims, in  
32 the interests of communicating, of having somebody on the  
33 spot there who could communicate well with everybody, that  
34 was the intention behind that sort of statement there. So  
35 that it wasn't - we didn't want to have anything there  
36 which was provocative or difficult for either the victims  
37 or our relationship with lawyers and so on.

38  
39 Q. So who was handling the PR and media in relation to  
40 the Canberra situation, if not --

41 A. Well, it would have been coming back to myself in  
42 terms of speaking, as I did, to various people.

43  
44 Q. The next one is in paragraph 12, at the foot of that  
45 page. We have here a paragraph dealing specifically with  
46 the Canberra situation:

1           *The various issues arising out of the*  
2           *current Canberra situation will be managed*  
3           *by the Provincial and our Marist lawyers*  
4           *Carroll and O'Dea.*

5  
6           That's Mr Harrison; is that right?

7           A.    That is correct.

8  
9           Q.    And:

10  
11           *The Marist Professional Standards Officer*  
12           *is available where he is able to provide*  
13           *information and fails.*

14  
15           What is your understanding as to the reason behind the  
16           particular provision and the policy dealing with --

17           A.    I just mentioned to you that we felt that there had  
18           been a difficulty in the relationship between  
19           Brother Alexis and the lawyer who was representing a lot of  
20           the victims in Canberra, and so that was a decision that  
21           was taken, to have another conduit, another contact point,  
22           other than Brother Alexis, for the Canberra cases.

23  
24           Q.    I think I overlooked paragraph 6, if we can go back  
25           up:

26  
27           *The Marist PSO Director will continue to*  
28           *liaise with the Catholic Church Insurance*  
29           *and their lawyers Monahan and Rowell.*  
30           *During the current special Canberra*  
31           *situation the liaison will be carried out*  
32           *largely by the Marist lawyers Carroll and*  
33           *O'Dea in consultation ...*

34  
35           Now, you will have seen, Brother Crowe, that three separate  
36           firms of lawyers are recorded in this document - Greg  
37           Walsh, Carroll & O'Dea, and what was then Monahan and  
38           Rowell. Do you accept, of course, that that really  
39           enshrines the role of lawyers in the policy document of the  
40           Marist Brothers?

41           A.    Could I correct something there? This is not a policy  
42           document. This is a statement of notes relating to our  
43           intentions as to how we were going to do things, rather  
44           than a strict policy document. But it did set out some  
45           very clear guidelines for us in terms of how we wanted to  
46           operate.

1 Q. You say in your statement at paragraph 18 that it is  
2 the document describing the new arrangements?

3 A. That's correct.  
4

5 Q. That's what it is?

6 A. That's correct.  
7

8 Q. So in the document which describes the arrangements,  
9 the role of identified lawyers is enshrined?

10 A. I'm quite happy to speak for the lawyers situation  
11 there. I mean, the Carroll & O'Dea firm listed here  
12 represents the Marist Brothers, the trustees of the Marist  
13 Brothers. It is normal practice, then, if an individual  
14 brother stands accused of a criminal act, then he would  
15 need personal representation, and there could be  
16 a difference at some stage in any particular case -  
17 a difference, a conflict of interest, even, between the  
18 individual and the trustees of the brothers. So that's why  
19 they are two separate situations there.  
20

21 In the case of the CCI lawyers, I thought that  
22 Mr Monahan before had explained something of the  
23 relationship on certain cases.  
24

25 Q. So if it was to be asserted that the Marist Brothers  
26 only get lawyers involved when there are claims of sexual  
27 abuse once the victims have got lawyers involved, that  
28 wouldn't be a truthful assertion?

29 A. No, we - I would be in contact with - especially with  
30 Carroll & O'Dea on a regular basis, just by way of advice,  
31 and also because the relevant representative of Carroll &  
32 O'Dea, Mr Howard Harrison, is a member of our professional  
33 standards advisory committee anyway.  
34

35 Q. I take it in relation to or arising out of the  
36 potential conflict of interest situation that you  
37 mentioned, Mr Greg Walsh is not on a retainer to the Marist  
38 Brothers?

39 A. No, no, he is not.  
40

41 Q. But the Marist Brothers have identified him as the  
42 person who would be appointed to represent accused  
43 brothers?

44 A. Well, as I said, this document is from 2009, and so it  
45 was referring to what was the Sydney Province and it was  
46 looking largely at cases in New South Wales. It would not  
47 apply outside of New South Wales.

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Q. Well, let's deal with that period when this applied. The position then, as I understand it, is in the event that a brother is accused of a crime, including sexual abuse, then that brother is referred to Greg Walsh as being the solicitor who will act for the brother?

A. It was. But we are reviewing all the time our situations there. But normally it has been, in the past, Greg Walsh; that's correct.

Q. It was at that time?

A. That's correct.

Q. Who paid Mr Walsh's fees in representing individual Marist Brothers?

A. The Marist Brothers did.

Q. At tab 75B, if it can be brought up, is the Marist Brothers Child Protection Policy. This, as I understand it from its terms, was introduced with effect from 6 June 2013 - that is in the bottom right-hand corner of the first page?

A. That is correct.

Q. Was there a previous specific child protection policy which this policy then superseded?

A. I want to make a distinction here between Marist ministries and the Marist Brothers. Each Marist ministry institution, since the beginnings of the 1990s, has developed their own institution policy with respect to child protection, following on from various State legislation and in full compliance, therefore, with their own obligations for registration and accreditation purposes. So that while it is true that the province did not have a child protection policy as such during that period, each institution had its own and was accredited and registered on the basis of having that. So Marist ministries, separately, would have all had that in place.

We decided in 2011, I think, that it was very appropriate that the province as a province had a full child protection policy. We had had various policies of the past, especially in the early 1990s, both Sydney and Melbourne provinces had those, and they have been presented to the Commission. So they were policies that were in force.

1           And then, after that, you had both the Towards Healing  
2 protocol and the Integrity in Ministry statement, which  
3 were also, therefore - we were signatories to those and  
4 provided that sort of obligations on ourselves of what we  
5 had to comply to.

6  
7           This particular document tries to integrate a lot of  
8 those sorts of things there and to indicate also something  
9 about how we are doing particular actions to comply with  
10 those more general policies.

11  
12 Q.   Were consultants employed by the Marist Brothers for  
13 the purpose of developing this policy?

14 A.   Consultants in the sense of - well, we have the  
15 professional standards advisory committee, and that is  
16 a committee composed of very competent people within the  
17 profession, half of them women, also engaged in the - most  
18 of them also engaged in a general area around the whole  
19 area of care of children.

20  
21           The policy was also submitted to our people overseas  
22 to examine and compare with similar policies, and as I said  
23 there, one of the things that was a bit of a guideline for  
24 us there was the Irish safeguarding children policies. But  
25 then we also were using as our standard some of the other  
26 policies of similar groups to our own.

27  
28 Q.   So the professional standards advisory committee was  
29 the source of professional assistance in developing this  
30 policy; would that be right?

31 A.   More of the advice in terms of picking out areas that  
32 needed to be more precise or where they felt that coverage  
33 wasn't sufficient.

34  
35 Q.   The policy is, of course, only six or seven months  
36 old. Has there been any review yet with regard to its  
37 implementation?

38 A.   No.

39  
40 Q.   Brother Crowe, you have spoken about or made reference  
41 to Marists overseas, and you have also explained about what  
42 were the Sydney and Melbourne Provinces and now the  
43 Australian Province. Would you explain in brief terms if  
44 you can what the structures of governance of the Marist  
45 Brothers are?

46 A.   Okay. We use the term "province". "Province" is the  
47 name that we use for the local area of governance. Each

1 local area is under the leadership of what we call the  
2 major superior, in canonical terms. So in this, we are  
3 very different to the whole structure of bishops and  
4 priests, and so on.

5  
6 Our unit, as I said, under the leadership of the  
7 provincial, has its own rights and responsibilities. We  
8 also have an institute leader, an international leader, who  
9 is what we call the superior general, and we have a set of  
10 constitutions which delineate what are the responsibilities  
11 of the different levels of government. But I would  
12 highlight those two in particular. So there is the general  
13 government led by the superior general, and then the  
14 provincial and the provincial government. Yes.

15  
16 We operate on the principle of subsidiarity, which  
17 means that you take decisions at the lowest possible level.

18  
19 Q. Well, insofar as the province is concerned, at the  
20 head of it, as I understand, from what you have said, is  
21 the provincial?

22 A. That is correct.

23  
24 Q. What structures are there to assist the provincial or  
25 to guide or give rules to the provincial?

26 A. The provincial has responsibilities, as I said there  
27 before, as far as the brothers are concerned, in a special  
28 way for the brothers and the brothers' life and the  
29 observance of our constitutions and for dealing with other  
30 church authorities. But also the provincial, in  
31 Australia - we would use the term that he is the head  
32 trustee of the Marist Brothers, in civil terms.

33  
34 So that we have a provincial council made up at the  
35 moment of six - there are six elected people to that. They  
36 are all brothers. They govern and animate the province  
37 with me. So they are my leadership team and they, with me,  
38 share some decisions. They advise me. Also, there are  
39 some collegial decisions that only - have to be taken  
40 together. They are all named in the constitutions of the  
41 Marist Brothers.

42  
43 As trustees, it is the same sort of thing. So when we  
44 sit also as trustees, we have our civil responsibilities.

45  
46 Q. And who has the responsibility to, if I can put it  
47 like this, control the gate to entry to becoming a brother?

1 A. It is largely the provincial himself. The provincial  
2 is the one who accepts people into the novitiate and  
3 accepts people for vows on the advice of the council, in  
4 the latter case.

5  
6 Q. How is it, or in what circumstances, that someone may  
7 become no longer a brother?

8 A. Do you mean of his own choice or somebody else - if  
9 the council decides to --

10  
11 Q. I am dealing with both situations. In other words, if  
12 voluntarily someone chooses not to be a brother, what has  
13 to be done. But also, pursuant to some discipline or other  
14 reason, if someone is to be removed from being a brother,  
15 how does that occur?

16 A. Well, the brother is always free to move for what we  
17 call dispensation from vows. That process begins locally,  
18 but it does go to the superior general and then on to the  
19 Vatican in some cases. That person, in a sense, simply  
20 needs to say that he no longer wishes to live as a brother,  
21 and he can give reasons for that. And then that comes -  
22 well, he has to write that letter to the superior general.

23  
24 From my side, I have an obligation to write a bit of  
25 a report as to how I've helped the person to discern - that  
26 is the word that is used - to discern whether this is an  
27 appropriate action to be taking at this particular moment  
28 and the assistance that I have given that person to come to  
29 this decision, to come to this point.

30  
31 Q. Would there be any circumstances in which the superior  
32 general would not tick off on or approve someone's request  
33 to be dispensed from vows?

34 A. I mean, if a person wanted to go out the door, they  
35 could, any time. It is just a question of in what  
36 relationship you want to leave, whether you want to leave  
37 on good terms or whether you wouldn't want to leave on good  
38 terms. If people want to leave on good terms, they would  
39 try to do it. And then there are some canonical things in  
40 the background as to whether that person later on wanted to  
41 be married. If a person is under vows, then, in the  
42 Catholic Church, his marriage vows would be invalid. They  
43 would be legal, obviously, in civil law, but they would not  
44 be valid canonically.

45  
46 Q. Dealing now with the, as it were, involuntary removal,  
47 can you explain that?

1 A. Okay. That is what is called technically "dismissal",  
2 from our point of view. "Dismissal". And I have just been  
3 preparing the documents coming to the Commission in  
4 relation to research that we were requested to get ready  
5 before Christmas, so this is all detailed there.

6  
7 But the short of it is, again, that this is at the  
8 initiative of the provincial and his local council, who  
9 would decide on a particular matter, according to canon  
10 law, that this person should no longer be a brother. So  
11 you prepare the documentation here and then you have to  
12 send it to Rome.

13  
14 They also assess whether it is a good thing and then  
15 they would present it to the Vatican and it becomes quite  
16 a - in the case of the dismissal, it is - there are more  
17 legal things involved, obviously, because it could be, as  
18 you said, an involuntary dismissal. So that person has  
19 their rights to be considered in that situation.

20  
21 In this particular - in the case of sexual abuse,  
22 there is a statute of limitations - they give it  
23 a different name - in terms of an argument for dismissal.  
24 The statute of limitations is 20 years after the victim  
25 turns 18. That's for canonical dismissal, to be able to be  
26 used in the canonical argument for the dismissal of  
27 somebody.

28  
29 But there are other criteria which are - in terms of  
30 the scandal, which is the word that is used, and whether  
31 the person - yes. So they are the two big arguments,  
32 whether the person has committed crimes and whether it's  
33 a matter of public scandal.

34  
35 Q. These matters that you are referring to now are  
36 presumably recorded in some document or instrument. What  
37 is that? What is the document or instrument which sets  
38 this out?

39 A. Well, the basic document is canon law. So the canon  
40 law determines the crimes, if you like, or the things that  
41 a person could be dismissed for and the procedures that  
42 have to be followed.

43  
44 Q. Does canon law also then deal with, insofar as  
45 procedures are concerned, the structures of the Marist  
46 Brothers?

47 A. Yes.

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Q. You mentioned the --  
A. Constitution.

Q. -- provincial and the provincial council?  
A. That's correct. As I said before, we are guided by the Marist Brothers constitutions, and the constitutions have to be consistent with canon law, and the constitutions include references to canon law as appropriate.

THE CHAIR: Q. The concept of public scandal - is that literal or are we talking about the quality of the illegal act? In other words, is it measured by whether it is widely known or is it measured by the severity of the crime?

A. Well, I'm not a canon lawyer either, your Honour, but my understanding would be that public - the use of the word "public" refers to its knowledge, being widely known.

Q. So does that mean that not all crimes, but particularly if the crime wasn't given publicity, then the public scandal criteria wouldn't be satisfied?

A. That's correct I think, your Honour, yes. In the relevant canon, it does talk about when a superior needs to exercise their judgment as to whether there would be a dismissal or whether they believe that, under certain circumstances, the person has a genuine desire to continue to live under the vows and that that is not going to be a source of public scandal. Yes, so there are certain provisions that are there, which mean that it is not an automatic dismissal. And it is the same for the priests. It is under the same canon.

Q. Yes. You understand that in the area of sexual offending, the courts are often very careful with the publicity that is given to those matters. But we will have to look at that.

A. Yes.

MR STEWART: Is this an appropriate time, your Honour?

THE CHAIR: Yes, very well. 10 o'clock in the morning.

**AT 4PM THE COMMISSION WAS ADJOURNED  
TO FRIDAY, 24 JANUARY 2014 AT 10AM**

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