



Our Ref: PM.HOB.123423

22 October 2012

Private and confidential
 Attention Ms Emma Fenby
 Catholic Church Insurances
 Level 8
 485 La Trobe Street
 Melbourne VIC 3001

By courier

Dear Emma

Sutton claims - indemnity - contribution from Marist Brothers

1. An outline of the history of Sutton going back over material previously supplied to CCI is as follows:
 - (a) From viewing files, we can't establish with any certainty, but it seems likely that CCI had some doubts about prior knowledge which brought about Carroll & O'Dea commissioning a report from Carringtons Investigations Pty Ltd (**Carringtons**) in February 1997 covering the period when Sutton was a Brother from 1970 through to 1989. The report concluded that the Marist Brothers only became aware of Sutton's transgressions in 1989. In 1989 the transgressions were revealed by a Mrs Rolfe (Parish Counsellor) who informed the Superior of the Community at the time Br Hart. Upon receiving this information from BR Hart, Br Alman Dwyer the Provincial (May 1983-June 1989) concluded that a transgression had occurred. See page 9 of Carringtons' report dated 12 February 1997.
 - (b) The Carringtons' report consisted in fact two reports - one dated 12 February 1997 and another report dated 5 April 1997. You have copies of these reports - further copies are **attached**. The report dated 5 April 1997 obviously came about

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because CCI/Marist Brothers become aware of the existence of an Affidavit sworn by ex-Brother Dennis Doherty in civil proceedings involving the conduct of Sutton as early as 1973/1974 when Doherty and Sutton were both at a school in REDA. In this Affidavit Doherty said he told the Provincial of his suspicion in 1975.

(c) We highlight the following statements from the Carringtons' report:

(i) **Relevant to the withdrawal of Sutton from teaching duties in early 1987 and knowledge**

A statement from Brother Alwan Dwyer (Provincial from May 1983 to June 1989) dated 31 January 1997.

You will see in this statement that Alwan Dwyer says that in 1985 or 1986 when Sutton was at Lismore. Brother Alexis Turton, the Vice Provincial had advised him that Sister Julia had expressed some concerns about Sutton, the concerns related more to his poor relations with other members of the teaching staff and reference to him having favourites and giving special attention to several of the children which caused Sr. Julia some apprehension but there was no direct allegation of sexual impropriety.

Further in early 1987 he spoke to John Kelly, the director of Catholic Education Lismore Dioceses, about problems Greg was causing at Lismore. He thought the best solution would be to bring him out of there and have him come to him at Drummoyne where Alwan resided. The decision was taken by himself on Sutton's interpersonal problems and out of Alwan's sense of pastoral obligation at the same time. He was concerned about what Br. Alexis had confided to him but neither Br. Alexis or he had any proof of sexual impropriety other than what was told to Br. Alexis by Sr. Julia.

22 October 2012
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Br Alman goes on to say that Sr. Julia had not been a motivating factor in his removal of Sutton from the school in 1987. It was a decision he made based on Sutton's interpersonal problems with staff.

(ii) **Relevant to possible prior knowledge**

- A statement from Br John Mullins (aka Br Elston Mullins) who was at Innisfail in 1973. He was the Superior of the Brothers' house and the Principal of the School until 1973. According to Br Mullins there were no complaints in 1973 and no adverse comments about Sutton's behaviour.
- A statement from Br John Holdsworth who became the Superior and Principal of the School at **REDACTED** 1974-1975. Br Holdsworth stated there was nothing about Sutton's behaviour that caused him concern.
- A statement from Br Howard. He stated that during the term he was Provincial of the Order (Sept 1972 - Oct 1976) he heard nothing of an adverse nature concerning Sutton. Moreover he had absolutely no recollection of anything described in Denis' affidavit sworn 27 March 1997.

- (d) Following on from the Carringtons report, in about June 1997 it seems that the Brothers proposed that they contribute \$25,000 per claim and this seems to have been agreed to by CCI.

In regard to the alleged agreement, in 2010 CCI and ourselves carried out some enquiries to see how it came about. Basically all we had was a copy letter from CCI to Dunhill Madden Butler dated 27 January 1999 referring to a Sutton matters agreement that CCI would provide indemnity on the basis that the Brothers would contribute \$25,000 per claim for all existing or subsequent claims made by Sutton victims. Copy letter dated 5 May 2010 **attached**.

22 October 2012
Catholic Church Insurances

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- (e) In regard to prior knowledge, we also carried out a detailed investigation (see Suzi Craig memo dated 10 March 2010). A copy of this memo has previously been forwarded to you - further copy **attached**.
- (f) We then sent a letter to you dated 26 March 2010 on indemnity to be discussed in a meeting held at CCI's offices with Marita Wright and Joe Bucci - further copy **attached**.

The outcome of that meeting was:

- That CCI (Joe Bucci) would:
 - (i) interview Paul Reynolds formerly Claims Manager of CCI to see if he could recall how the agreement came about and whether or not it was formally documented.
 - (ii) seek out and find the ACV ADC, ADA and ADS files to see if information on these files contained anything that could clarify how the agreement came about and the proposed extent of the agreement.
 - (iii) speak to Paul Gamble about his knowledge of the agreement.
 - (iv) check what settlements had not collected the \$25,000 from the Marist Brothers.
- Monahan + Rowell were to:
 - (v) find out from the Marist Brothers where Sutton was now.
 - (vi) brief Ian Whitehead to locate and interview Dennis Doherty about his Affidavit sworn 27 March 1997.

Joe Bucci reported that Paul Reynolds had no recollection.

22 October 2012
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Paul Gamble had no clear recollection and had destroyed files which might have prompted his memory.

We are not sure if Joe located the files or checked settlements where \$25,000 was owing. He did tell us that the files of ACV ACU and ADC mention contribution but did not give background to the agreement. Copy email from CCI dated 9 April 2010 **attached**.

We requested information from Br Alexis Turton on the whereabouts of Sutton and were informed that he did not know and he understood Sutton did not want to be contacted.

We engaged Ian Whitehead who located and interviewed Denis Doherty. Dennis Doherty was asked in particular to expand upon his sworn statement that in 1975 he had approached the Provincial Brother Charles Howard with his suspicions.

- (g) On 27 May 2010 we received a report from Ian Whitehead a copy of which was forwarded to you and discussed with Joe Bucci. Further copy of report **attached**.

Ian Whitehead's oral comments about Dennis Doherty were that he was "weird" and unreliable. Comparing the information contained in the Affidavit with the information he gave Ian Whitehead does show a number of inconsistencies which strongly indicated that Doherty would not be a reliable witness. Memo **attached**.

- (h) Accordingly the path chosen by CCI at that time was that at some stage CCI and ourselves would arrange to have a meeting with Carroll & O'Dea's Howard Harrison in which we would propose that their contribution of \$25,000 be increased on the basis that as the agreement to contribute \$25,000 was meant, more likely, to have only applied to claims then known or possibly likely to arise out of the criminal process against Sutton and not cover claims that have happened since, in particular the claims involving Marist Brothers in Canberra.

22 October 2012
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Copy letter from Monahan + Rowell dated 5 May 2010 along those lines is
attached.

2. **Subsequent information**

Following the decision to meet with Howard Harrison and seek an increase, in about April 2011 we received from Carroll & O'Dea some long awaited documents from the Christian Brothers files. According to Carroll and O'Dea the complete files are not available. Some files have been misplaced or lost, some possibly with the Police or the Department of Prosecutions. They had made numerous searches and enquiries.

The documents included the Carrington report, some extradition documents and (of interest) a record of interview between Detective Sergeant Wayne John Magann of the Moree Patrol NSW on 1 August 1996 with the prisoner Sutton concerning sexual assault offences. On page 4 there is a reference to his various teaching jobs.

Sutton confirms that he was at:

- (a) **REDACTED** 1973-1974;
- (b) Mosman Marist Brothers 1976-1977;
- (c) Eastwood Marist Brothers 1978-1979;
- (d) Canberra 1980-1982;
- (e) Campbelltown (Ruse) 1983-1984;
- (f) then transferred to Lismore in 1985 and remained there as a teacher until 1987
- (g) from Easter 1987 he performed a non-teaching role at the Provincial house at the Marist Brothers at Drummoyne and was in residence there until 1988.
- (h) in 1988 he move into a home in Mary Street, Hunters Hill and remained in a non-teaching role.

22 October 2012
Catholic Church Insurances

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- (i) in 1989 he went to Chicago
- (j) in September 1989 he went to Toronto Canada for the purpose of being assessed whether he should be admitted into a form of rehabilitation
- (k) in November 1989 until June 1990 he spent 7 months in a treatment centre in Toronto, Canada.
- (l) from June 1990 he returned to Chicago and attended University for a further 2 years as well as an aftercare program
- (m) left the Marist Brothers order in July 1991.

Copy of the record of interview is **attached**.

On page 66 of the transcript, Sutton answered the question as to why he left Lismore at Easter 1987. He says he asked to be moved from the school because of his problem with children and he sought permission to be removed from the Provincial at the time [Alman Dwyer].

You will appreciate that with that answer Alwan's reason for taking Sutton out of the Lismore school in 1987 may not be correct and that the Marist Brothers' knowledge of Sutton's behaviour goes back to Easter 1987 and not 1989 as found by the Carringtons' report.

As far as the level of claims is concerned nothing will turn on the discrepancy in 1987 and not 1989 as no offences occur after Easter 1987 at Lismore. However we query the effects on CCIs insurance position. We assume that the Marist Brothers probably notified Sutton's conduct under the ETL 1991-1994 policies but need to go over this with you and also see if we can take advantage of this discrepancy in any discussions with Howard.

Note a memo of the Canberra Marist Brothers' settled claims is **attached**.

22 October 2012
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Yours sincerely

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