

DEPARTMENT OF
JUSTICE
ON

15 DEC 2004

CLERK OF THE COURT

*only paras
1, 2, 10*

**IN THE SUPREME COURT OF
NEW SOUTH WALES
SYDNEY REGISTRY
COMMON LAW DIVISION**

FILE NO: 20308 of 2004

On *14* December 2004, I, **BRIAN ERNEST RAYNER**, of 133 Liverpool Street, Sydney in the State of New South Wales, Roman Catholic Priest, say on oath:

AFFIDAVIT

Deponent: Brian Ernest Rayner
Sworn: 14 December 2004

Filed for the First and Second
Defendant

JOHN ANDREW ELLIS
Plaintiff

**HIS EMINENCE CARDINAL
GEORGE PELL, ARCHBISHOP
OF SYDNEY**
First Defendant

**THE TRUSTEES OF THE ROMAN
CATHOLIC CHURCH FOR THE
ARCHDIOCESE OF SYDNEY**
Second Defendant

REVEREND AIDAN DUGGAN OSB
Third Defendant

CORRS CHAMBERS WESTGARTH
Lawyers
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Tel: (02) 9210 6500
Fax: (02) 9210 6511
Ref: PRM:JD:9009351

- 1 I am a Catholic Priest. I was ordained Priest for the Archdiocese of Sydney in 1973. Until May 2003, I was a full-time Principal Chaplain to the Royal Australian Navy. In May 2003, I was appointed as Vicar-General and Chancellor of the Archdiocese of Sydney by the Cardinal Archbishop of Sydney. I still hold both of those offices.
- 2 In these capacities, I have the conduct of this matter on behalf of the Second Defendant.
- 3 To the best of my knowledge and belief, neither the First nor Second Defendants personally holds any documents in relation to the Plaintiff or the Third Defendant. However, the First Defendant is, in his capacity as the head of the Archdiocese, able to access documents and records held by the Archdiocese. All records and documents referred to in and attached to this affidavit were in the possession of or resulted from inquiries by the Archdiocese.

Brian Rayner

Donna

4 I have read the Plaintiff's Statement of Claim filed in these proceedings which was
received at the Polding Centre on 1 September 2004 (**Statement of Claim**).

5 I understand from the Statement of Claim that the Plaintiff alleges that he was sexually
abused by the Third Defendant between 1975 and 1986. I also understand from the
Statement of Claim that the Plaintiff asserts that these allegations are said to have occurred
in private and that there are no independent witnesses.

6 According to the Official Directory of the Catholic Church in Australia and New Zealand
(1975), two priests were resident at the Parish of Christ the King at Bass Hill (Parish),
namely, Father Aidan Duggan OSB and Father J Farrar DSocSc PP. The official Directory
was not published in the years 1976, 1977, 1978 and 1979. I annexe hereto and mark
"BER 1", a copy of a page from the Official Directory (1975).

7 On 23 September 2004, my assistant, Mr Dominic Cudmore instructed Ms Pauline
Garland, the Archdiocesan Archivist, to confirm which priests held appointments at the
Parish between 1974 and 1979. Ms Garland informed my assistant by email on the same
day that Father John Carl Farrar was at Bass Hill between 1971 and 1975 and Father John
O'Neill was at Bass Hill in 1975. The records also show that Father Farrar died on 24
September 1998 aged 76 years.

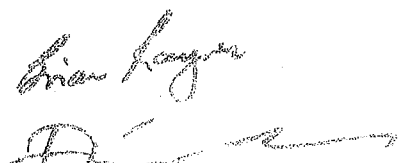
8 To the best of my knowledge there are no other official documents held by the First or
Second Defendants that record priests resident at the Parish between the years 1975 and
1979.

9 On 5 October 2004, I was notified that the Third Defendant died, aged 84 years.

The Archdiocese of Sydney 1975-1986

10 The following persons would be considered to be persons with canonical/spiritual authority
in relation to the Third Defendant in the Archdiocese during the years 1975 to 1986:

- (a) His Eminence Sir James Darcy Cardinal Freeman;
- (b) His Eminence, Edward Bede Cardinal Clancy;
- (c) His Grace, Archbishop James Patrick Carroll;



- (d) His Lordship, Bishop Thomas William Muldoon;
- (e) His Lordship, Bishop Edward Francis Kelly MSC;
- (f) His Lordship, Bishop Patrick Laurence Murphy;
- (g) His Lordship, Bishop Bede Vincent Heather;
- (h) His Lordship, Bishop John Edward Heaps;
- (i) His Lordship, Bishop Geoffrey James Robinson; and
- (j) His Lordship, Bishop David Cremin.

11

I have reviewed the Archdiocesan records from 1975 to 1986 and I have adduced the following information:

- (a) His Eminence Sir James Darcy Cardinal Freeman, Archbishop of Sydney between 1971 and 1983, died on 16 March 1991;
- (b) His Eminence, Edward Bede Cardinal Clancy; the Archbishop of Sydney between 1983 and 2001, has now retired;
- (c) His Grace, Archbishop James Patrick Carroll, was Auxiliary Bishop of Sydney from 1954 and from 1965 to 1984 Auxiliary Archbishop of Sydney, died 14 January 1995;
- (d) His Lordship, Bishop Thomas William Muldoon, Auxiliary Bishop and between 1960 and 1982, died 13 January 1986;
- (e) His Lordship, Bishop Edward Francis Kelly MSC, Auxiliary Bishop between 1969 and 1975, died 2 September 1994;
- (f) His Lordship, Bishop Patrick Laurence Murphy, Auxiliary Bishop between 1977 and 1986, has now retired;
- (g) His Lordship, Bishop Bede Vincent Heather, Auxiliary Bishop between 1979 and 1986, has now retired;

Dorian Rogers
Donna

- (h) His Lordship, Bishop John Edward Heaps, Auxiliary Bishop between 1981 and 1992, died 21 June 2004;
- (i) His Lordship, Bishop Geoffrey James Robinson, Auxiliary Bishop and Vicar General between 1984 and 2004, has now retired;
- (j) His Lordship, Bishop David Cremin, Auxiliary Bishop and Vicar General from 1974.

The Third Defendant

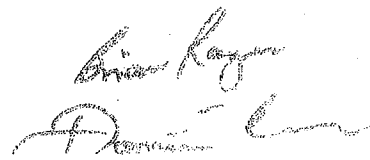
12 The Archdiocese retains personal files in relation to all Catholic Priests incardinated in the Archdiocese. Personal files contain documents relating to appointments, commendations, complaints or allegations in relation to the relevant Priest.

13 In December 2004, I reviewed the Third Defendant's personal file. From that file, I understand the following:

- (a) that the Third Defendant was born on 24 January 1920. He was therefore aged between 55 and 66 years during the period of alleged abuse between 1975 and 1986;
- (b) the Third Defendant was ordained on 8 December 1959 by His Eminence Sir Norman Thomas Cardinal Gilroy.

14 In 1954, the Third Defendant moved to Fort Augustus Abbey in Scotland. There are no records on the Third Defendant's personal file pertaining to his time in the United Kingdom other than correspondence relating to the Third Defendant's request to return to Sydney to join his brother Fabian, who is also a Priest. Among the correspondence in the Third Defendant's personal file dealing with his return to Sydney were the following documents:

- (a) letter from the Third Defendant and his brother Fabian Duggan addressed to His Eminence Cardinal Freeman, the Archbishop of Sydney, dated 22 September 1975 (annexed hereto and marked "BER 2");
- (b) letter from the Third Defendant addressed to 'the Most Holy Father', undated, requesting exclaustation (annexed hereto and marked "BER 3");



- (c) letter from His Eminence Cardinal Freeman, the Archbishop of Sydney, to the Abbot of Fort Augustus Abbey dated 25 September 1975 (annexed hereto and marked "BER 4");
- (d) letter from the Abbot of Fort Augustus Abbey , the Right Reverend Dom Nicholas Holman OSB to His Eminence Cardinal Freeman dated 17 October 1975 (annexed hereto and marked "BER 5 ");
- (e) letter from the Third Defendant to His Eminence Cardinal Freeman, the Archbishop of Sydney, dated 26 April 1982. This letter sets out the Third Defendant's teaching experience (annexed hereto and marked "BER 6");
- (f) letter from His Eminence Cardinal Freeman, the Archbishop of Sydney, to the Abbot of Fort Augustus Abbey dated 11 April 1986 (annexed hereto and marked "BER 7");
- (g) letter from His Eminence Cardinal Freeman, the Archbishop of Sydney, to the Third Defendant dated 16 July 1986 (annexed hereto and marked "BER 8"); and
- (h) letter from His Eminence Cardinal Freeman, the Archbishop of Sydney, to the Abbot of Fort Augustus Abbey dated 25 July 1986 (annexed hereto and marked "BER 9")

15 To the best of my knowledge and belief the Third Defendant moved in 1954 to Fort Augustus Abbey, which was an abbey of the English Benedictine Congregation, where he spent some 20 years teaching and ministering at the Fort Augustus Abbey School. I annexe hereto and mark "BER 10" a Memorandum from the Third Defendant and his brother to Archbishop James Carroll (undated) taken from the Third Defendant's Personal File.

16 To the best of my knowledge and belief Fort Augustus Abbey School closed in 1999 and the Abbey itself was canonically suppressed in 2001 and ceased to operate in 1998 due to declining numbers of monks.

17 The Abbot during some of the time of the Third Defendant's membership of the Abbey community was Right Reverend Dom Mark Dilworth OSB who, to the best of my knowledge and belief, died on 28 February 1974 at the age of 79. I am also aware that another former Abbot of Fort Augustus Abbey, who also knew the Third Defendant, the

Brian Langman
Dom Mark Dilworth

Right Reverend Dom Nicholas Holman OSB, (referred to in paragraph 14(c), (d), (f) and (h) above), died and was buried on 13 August 2001.

18 The First and Second Defendants do not appear to hold any records or documents concerning the Plaintiff's alleged engagement as an altar server in the Parish of Bass Hill between 1974 and 1979.

19 As I noted in paragraph 5 of this affidavit, by the Plaintiff's own Statement of Claim there are no independent witnesses to the allegations against the Third Defendant. The Third Defendant is now deceased, as is Fr Farrar who is mentioned by name at paragraph 39 of the Plaintiff's affidavit, sworn 10 November 2004. The majority of those who comprised the canonical chain of command for the relevant period are also deceased. Accordingly, there is no contradictor to the allegations made by the Plaintiff.

20 Annexed hereto and marked "BER 11", is the copy of a letter sent to the Plaintiff by John Davoren, from the Professional Standards Office in the Archdiocese and dated 15 July 2002. This letter refers to the health of the Third Defendant at the Little Sisters of the Poor Nursing Home. In the third paragraph of this letter it states;

"The advice I have now received from Sister Rosemarie, Director of Nursing at the Nursing Home section of the Little Sisters at Randwick is that Fr Duggan's mental state has deteriorated seriously. His memory is variable, he cannot make a mature decision and has no capacity to understand the full implications of a decision."

21 Accordingly, it would seem that the Plaintiff was made aware of the Third Defendant's deteriorating health at least as early as 15 July 2002.

SWORN at Sydney before

DOMINIC EDWARD CUMMERS

Dominic Cummers
.....
A Justice of the Peace/Solicitor

Brian Ernest Rayner
.....
Monsignor Brian Ernest Rayner

Deponent