

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

CASE STUDY 13 – MARIST BROTHERS

This document has been prepared by the NSW Crown Solicitor's Office as a response to 12 questions posed by the Royal Commission in a letter dated 11 June 2014. The summary is based wholly on documents produced to the Royal Commission by the New South Wales Office of the Director of Public Prosecutions under summons S-NSW-205, which I have reviewed.

1. When were the 1989 complaints from ADM and ADQ received and statements taken?

The Department of Community Services received a report regarding ADQ on 11 July 1989. That report was passed to the Campbelltown Police Child Mistreatment Unit ("CMU") by 2 July 1989. On 9 August 1989 a statement was taken from ADM. On 10 August 1989 a statement was taken from ADQ.

Reference documents

- DOCS notification intake summary dated 12/7/89.¹
- Statement of ADM dated 9 August 1989.²
- Statement of ADQ dated 10 August 1989.³
- Duty book entries, Senior Constable Lawrence.⁴
- Brief index.⁵

2. Was Sutton made aware of the allegations by the Police or anyone known to the Police?

It is clear that from his own statements that Sutton was made aware of the allegations before he left Australia. The means by which Sutton was made aware is unclear. The only information in relation to this on the ODPP file is a handwritten file note: "5/9" (year not stated):⁶ "[Detective Lawrence] indicated when contacted school in 1989 re complaint they not co-operative. Apparent had the effect of Sutton going [overseas]. There is nothing to suggest that Sutton was made aware of the investigations by Police.

Reference documents

- Letter from Psychiatrist Stokl (Ontario) dated 31 August 1989:⁷
"He told me that his Provincial had decided that he should come to Southdown for assessment two weeks ago. This was due to the fact that investigations were occurring on himself for school activities five years ago regarding his child abuse. When I asked him about the investigations he stated that they had not finalized their results."
- Report of Dorothy Stewart, Southdown, dated 7 December 1989:⁸

¹ Annexure "A"

² Annexure "B"

³ Annexure "C"

⁴ Annexure "D"

⁵ Annexure "E"

⁶ Annexure "F"

⁷ Annexure "G"

"Shortly before Greg came for an assessment in September of this year, investigations began to surface regarding his sexual activities with children some five years earlier. Greg states that within three days he was on a plane heading for Canada. When pressed he waffles a bit but finally says that in addition to the firm directive from his provincial, he, too, though it prudent to come for therapy."

- Counselling notes from Dorothy Stuart, Southdown, dated 30 November 1989:⁹

"I found him a little bit evasive in the sense of clearly naming in clear language the issue which brought him here, the sexual abuse of children, however when pushed a bit he would come to more clarity. He sounded to me a bit as though he had been whisked out of Australia in advance of legal investigations and he wasn't too secretive about that. I am pushing a bit to see whether he is also here to learn some things about himself or merely to escape."
- Counselling notes from Dorothy Stuart, Southdown, dated 14 December 1989:¹⁰

"... the larger part is concern for what his future will be ... will he be able to go back to Australia or what will happen to him. He knows that there is an investigation on hold since he is out of the country and that he can stay in North America for some time getting some further degrees that he wanted anyway and some studying, but what he wonders will there always be that case waiting for him to return ... apparently the community is paying for therapy for one former victim..."
- Evidence of Detective Sergeant Wayne Magann, transcript District Court 8 November 1996:¹¹

"All I can say is that I have spoken to the prisoner since his return from the United States. He has certainly told me that he was aware that there were some complaints. He had told the authorities - his own authorities in the church - of his problems and that I believe was when it was then seen fit for him to go to the United States and seek treatment" (page 2).

3. Was the school or the Marist Bros contacted about the allegations and what was communicated?

It appears that St Thomas Moore School were contacted by Detective Senior Constable Lawrence, however they were not cooperative. There is nothing to suggest that the Marist Brothers were contacted by Police regarding the allegations.

Reference documents

- Handwritten notes (possibly written by Helen Langley) dated 5/9 (year not stated but most likely 1995):¹²

"[Detective Lawrence] indicated when contacted school in 1989 re complaint they not co-operative. Apparent had the effect of Sutton going [overseas?]"

⁸ Annexure "H"

⁹ Annexure "I"

¹⁰ Annexure "J"

¹¹ Annexure "K"

¹² Annexure "F"

4. Were the Police aware that Sutton had been "tipped off" about the allegations and if so by whom?

The only information in relation to this is the handwritten note dated "5/9" (year not stated but most likely 1995):¹³

"[Detective Lawrence] indicated when contacted school in 1989 re complaint they not co-operative. Apparent had the effect of Sutton going [overseas?]"

5. Were the Police aware that Sutton left the country in 1989?

The only information on the ODPP file is the handwritten file note, as detailed above at 4, and the material referred to below at 6.

6. What steps did the Police take to pursue Sutton to the US or Canada in 1989?

There is no indication from the material that the Police were aware in 1989 of Sutton's location. The material from the ODPP file indicates that inquiries were made with the school but not with the Marist Brothers. One document within the ODPP file indicates that the police circulated his name as being "wanted".

Reference documents

- DPP memo dated 25/8/1995 from Helen Langley:¹⁴
"Charges had never been laid although police had circulated that Sutton was wanted by them".
- Transcript of District Court proceedings on 8/11/1996 - Detective Sergeant Wayne Magann:¹⁵
"Q: Did the police follow-up on the complaints that were made, the police at Campbelltown? A: The police at Campbelltown at that time I believe simply left the brief, sir, as they were unable to locate Mr Sutton at that time."
"Q: Now you said that the police at Campbelltown left the brief and they were unable to locate the prisoner, is that right? A: That's correct."
"Q: Do you know from your enquiries whether any of the police at Campbelltown contacted the religious authorities in respect to the order that he was a member of to ascertain his whereabouts? A: I don't believe they did."

7. Why was the investigation not proceeded with until 1995?

The documents suggest that the 1989 investigation did not proceed because Sutton was not able to be located, and he was circulated as wanted. In 1995 this investigation was proceeded with when the relevant officer, Detective Senior Constable Lawrence, was made aware of Sutton being located. This is addressed further below at 8.

The investigation into the St Carthage's matters did proceed well before 1995. The extradition process commenced in 1992, when first instance warrants were obtained and advice in relation to Sutton's extradition was first sought from the ODPP by

¹³ Annexure "F"

¹⁴ Annexure "L"

¹⁵ Annexure "K"

Detective Magann. Consideration of an application for extradition in 1993 was not able to proceed as it became apparent that Sutton was no longer in Chicago. Sutton was located in Missouri in the USA in March 1994, arrested in the USA in August 1995, and arrived in Australia in April 1996. This is addressed further below at 10.

Reference documents

- Memo from Det Magann to DPP requesting advice re extradition dated 4/10/1992.¹⁶
- DPP memo dated 25/8/1995 from Helen Langley to Phil Dart indicates that: *"Charges had never been laid although police had circulated that Sutton was wanted by them"*.
- Statement of Detective Magann dated 20/5/1996.¹⁷
- Transcript of District Court proceedings on 8/11/1996 - Detective Sergeant Wayne Magann:¹⁸
 - "Q: Did the police follow-up on the complaints that were made, the police at Campbelltown? A: The police at Campbelltown at that time I believe simply left the brief, sir, as they were unable to locate Mr Sutton at that time."*
 - "Q: Now you said that the police at Campbelltown left the brief and they were unable to locate the prisoner, is that right? A: That's correct."*
 - "Q: Do you know from your enquiries whether any of the police at Campbelltown contacted the religious authorities in respect to the order that he was a member of to ascertain his whereabouts? A: I don't believe they did."*
- First instance warrants.¹⁹

8. How did the Lismore Police become aware of the allegations by ADM and ADQ so that they were contacted?

Shortly after Sutton's arrest in the USA, one of [ADQ] 's parents apparently contacted Police due to media reports, and was put in touch with Detective Magann. Detective Magann then took steps to contact the officer who had investigated the Campbelltown offences in 1989.

Reference documents

- Statement of Detective Magann 20/5/1996:²⁰
 - "Shortly after the accused was arrested I received a telephone call from a Mr [REDA] ... I spoke with this gentleman and later contacted Detective Senior Constable LAWRENCE of the Macquarie Fields Police Station. I am aware that as a result of this telephone call, a number of further matters were revived and forwarded through the Federal Attorney General for extradition proceedings involving the accused."*
- DPP memo dated 25/8/1995 from Helen Langley:²¹
 - "The hearing of the extradition is fixed for 28 August 1995 (USA time). However, as a result of media reports last weekend, the mother*

¹⁶ Annexure "M"

¹⁷ Annexure "N"

¹⁸ Annexure "K"

¹⁹ Annexure "O"

²⁰ Annexure "N"

²¹ Annexure "L"

of a complainant in respect of similar conduct by Sutton when teaching in the Campbelltown area in the 1980's contacted police early this week."

9. Were the 1989 statements of ADM and ADQ lost? If so, why?

The police copies of the 1989 statements were lost, necessitating fresh statements to be taken to allow the Campbelltown matters to be added to the extradition proceedings. Other copies of the 1989 statements which had been made for Community Services and kept on their file were later retrieved and made available to the DPP. The 1989 statements of ADM and ADQ were included in the Prosecution brief that was tendered in the sentencing proceedings. The documents do not make clear why the statements were lost, only that the file was missing and could not be found.

Reference documents

- Memo from Johanna Pheils dated 27/8/1995 to Philip Dart.²²
- Duty Book entry of Donna Lawrence dated 29/8/1989.²³
- Handwritten notes (possibly written by Helen Langley) 5/9 (year not stated but most likely 1995).²⁴
- DPP memo from Helen Langley to Johanna Pheils dated 11/9/1995 attaching material from Detective Lawrence including extract of duty book from 1989 and extract of DoCS file including statements from ADQ and ADM from 1989.²⁵
- DPP memo dated 28/8/1995 by P Dart.²⁶
- Memo Helen Langley to Philip Dart dated 25/8/95.²⁷
- Brief index.²⁸

10. What steps were taken by the NSW Police to locate Sutton in the USA or Canada?

As part of the investigation into the St Carthage's offences, Police obtained information that Mr Sutton was residing in Chicago. Detective Magann commenced the extradition process in 1992 by obtaining first instance warrants on 18 September 1992, obtaining the advice of the Office of the DPP on the sufficiency of evidence and appropriate charges dated 4 October 1992, and seeking to commence the extradition process (see report dated 10 February 1993). As part of that process, Detective Magann learnt through the US authorities that Sutton was no longer in Chicago. At the request of NSW Police and liaison with the Australian Federal Police, the USA Marshals sought to locate Mr Sutton. Mr Sutton was located in St Louis, Missouri by the USA Marshals on or shortly before 10 March 1994. On 24 March 1994 the Police wrote to the NSW Attorney General requesting that extradition be sought. On 15 April 1994 the NSW Attorney General requested that the Commonwealth Attorney General seek Sutton's extradition from the USA. The Commonwealth made an application to the USA on 10 July 1995, and Mr Sutton was arrested on 15 August 1995. Mr Sutton was extradited to Australia, arriving in Australia on 30 April 1996.

Reference documents

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- ²² Annexure "P"
 - ²³ Annexure "Q"
 - ²⁴ Annexure "F"
 - ²⁵ Annexure "R"
 - ²⁶ Annexure "S"
 - ²⁷ Annexure "L"
 - ²⁸ Annexure "E"

- Police fact sheet dated 29/4/96 signed by Det Sgt Magann.²⁹
- Memo from DS Magann to DPP requesting advice re possible re extradition dated 4/10/1992.³⁰
- Statement of Tim O'Reilly (School Counsellor, Trinity College) dated 12/12/91.³¹
- Memo Helen Langley to Philip Dart dated 25/8/95.³²
- Letter from Det Sgt Richardson to DPP dated 13/7/94:³³
"Detective Sergeant Magann has advised this date that Sutton's location is still known to the US Marshall Service."
- Letter S/Sgt Richards to NSW Attorney General dated 24/3/1994:³⁴
"Detective Magann raised the matter of extradition in early 1993 but subsequent inquiries made to confirm Sutton's Chicago address revealed that he had moved and his whereabouts could not be established. Advice is now to hand from the US Marshall Service that Sutton has been identified and located in St Louis, Missouri. US authorities have requested urgent advice as to whether the arrest of Sutton is required. This Service is responsible for costs in relation to extraditions and the State Commander has given approval for such expenditure in this particular matter. In the circumstances it would be appreciated if the Attorney General could consider the application please."
- Report of DS Magann dated 14/3/1994:³⁵
"Through liaison with the Australian Federal Police, International Division, inquiries have been made vids [sic] U.S. Marshall Service. These inquiries reveal that the offender resides in St Louis, Missouri in the U.S.A. The Marshall Service is awaiting instructions as to whether extradition is still sought and position in relation to warrants."
- Notification from US Marshalls 11/3/94 re location of Sutton in St Louis.³⁶
- Report of DS Magann dated 10/2/1993 regarding extradition.³⁷

4

11. Were the Marist Bros contacted to determine where Sutton was and what assistance, if any, was provided by them?

There is nothing within the documents to suggest that the Marist Brothers were contacted in relation to Mr Sutton's location. Inquiries were made with the relevant schools by both Detective Lawrence and Detective Magann. Both officers reported that the schools were not cooperative with the investigation.

Reference documents

- Handwritten notes (possibly written by Helen Langley) 5/9 (year not stated but most likely 1995)³⁸:

²⁹ Annexure "T"

³⁰ Annexure "M"

³¹ Annexure "U"

³² Annexure "L"

³³ Annexure "V"

³⁴ Annexure "W"

³⁵ Annexure "X"

³⁶ Annexure "Y"

³⁷ Annexure "Z"

³⁸ Annexure "F"

"[Detective Lawrence] indicated when contacted school in 1989 re complaint they not co-operative. Apparent had the effect of Sutton going [overseas?]"

- Advice from DPP dated 12/10/1992:³⁹
"The informant reports a lack of cooperation from St Carthage's in pursuing his investigation. It may well be appropriate to raise the question of cooperation with senior Catholic clergy".
- Memo from Detective Magann dated 4/10/1992:⁴⁰
"At this time I have been unable to locate Brother Michael, mainly due to lack of cooperation from the St Carthage's School. Every endeavour will be made to obtain a statement from this person".

12. What, if anything, is or was known about Sutton's involvement in the school in St Louis, Missouri, including whether there were any allegations of child sexual abuse?

Police first learnt of Mr Sutton's involvement in a school in St Louis, Missouri after his arrest in August 1995. The name of the school was given as St Dismas Community College of Advanced Education, and St Dismas Grade School. NSW Police were advised that the US police made inquiries of children at the school, and there were no complaints that were identified.

- Police fact sheet dated 29/4/14 signed by Det Sgt Magann:⁴¹
"As a result of police receiving these complaints, assistance was sought through the Australian Federal police and the United States Marshals to locate the accused. He was located in St Louis, MISSOURI, in the position of Headmaster at a Catholic School. He was arrested in August 1995 and extradition proceedings commenced that have seen him returned to Australia on the evening of the 30 April 1996. He has been in custody since his arrest in the U.S.A."
- Advice from Police that Sutton had been arrested on 15/8/1995⁴² indicates "apparently subject was employed as a principal at a Catholic school".
- ROI Sutton on 25/5/1996, Q44 and Q46⁴³.
- Chronology prepared on behalf of Sutton in CCA⁴⁴ notes in 1991 – 1992, Sutton was employed at St Dismas Community College of Advanced Education initially as a lecturer and later as Headmaster.
- Chronology prepared on behalf of DPP in CCA⁴⁵ notes that in 1992 he resided in St Louis and obtained employment as a teacher.
- Character references from Sister Carol Flaherty, Sharon Gettemeier and Alice Kehn refer to Sutton working as school principal in St Louis (St Dismas Grade School).⁴⁶
- Transcript of District Court proceedings on 8/11/1996, evidence of Detective Magann.⁴⁷

³⁹ Annexure "AA"

⁴⁰ Annexure "M"

⁴¹ Annexure "T"

⁴² Annexure "BB"

⁴³ Annexure "CC"

⁴⁴ Annexure "DD"

⁴⁵ Annexure "EE"

⁴⁶ Annexure "FF"

⁴⁷ Annexure "K"

"Q: The prisoner eventually obtained a teaching position in United States undergoing more therapy and teacher's training in the United States? A: He obtained a role in a non-teaching capacity."

"You made enquiries from the various sources in the United States and you were told there were no complaints of his behaviour when attached to the school in Missouri? A: That is correct. Police in St Louis made extensive enquiries of children at his school and there were no complaints whilst he was there".

- Post extradition interview with Sutton, *"Right. And I think when you were arrested by the authorities in the United states you were in fact a headmaster of a school in St Louis"*; answer correct, had been for two years. Sutton went on to say that he was not in a teaching capacity and worked in administration.⁴⁸
- Sentencing submissions made on behalf of Sutton at NSW District Court 8/11/96:

"At the time that the Prisoner's conduct in Australia, came under notice of the United States authorities, a detailed investigation was undertaken by those authorities. In appearances in the Local Court the representative for the Director of Public Prosecutions has conceded that the Prisoner had not come under notice whatsoever in relation to any allegations involving any type of misconduct whilst he was in the United States of America. This included the period right up until the time of his arrest whilst he was working as an administrator and then the Headmaster of a school in St Louis, Missouri."⁴⁹



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⁴⁸ Annexure "CC"

⁴⁹ Annexure "GG"