ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing
(Day 31)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Wednesday, 18 December 2013 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
THE CHAIR: Yes, Mr Stewart.

MR STEWART: Your Honour, the first witness in this part of the case study is the witness identified by the pseudonym [DK]. The name of the witness is known to the Royal Commission.

<[DK], affirmed: [10am]

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Sir, you signed a statement, which has been provided to the Royal Commission, on 24 October 2013. Do you have a copy of that statement?

A. Yes, I do.

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

A. Yes, there is one.

Q. Where is that? Is it in paragraph 30?

A. Yes, that's correct.

Q. Could you identify the correction you wish to make?

A. Yes. I was aware that Patrick Monahan and a representative from Catholic Church Insurance were going to be at the facilitation. I should have said that. I didn't really understand the purpose of their presence.

Q. So is that to say at the end of that paragraph, from the word "neither" to the end, in other words, "neither of whom I knew would be attending prior to the mediation" - that should be deleted?

A. Correct.

Q. Subject to that deletion, do you confirm that your statement is true and correct?

A. Yes.

MR STEWART: I tender the statement.

THE CHAIR: Just a minute.

Q. As I understand it, what you intended to say was that they attended, but you didn't know why they were present?

A. I didn't fully understand why they were there, no.

THE CHAIR: So I think we probably need to add something
in, Mr Stewart, to make that apparent.

MR STEWART: Your Honour, the witness has now said that, and it is on record and he is under oath, so that is his evidence.

THE CHAIR: All right. We will note in the transcript that that evidence effectively amends that part of that paragraph. Very well. We will make the statement exhibit 4-43.

EXHIBIT #4-43 STATEMENT OF [DK], DATED 24/10/2013, BARCODED STAT.0075.001.0001_R_M

MR STEWART: Q. Sir, would you read your statement?
A. Okay.

"This statement made by me accurately sets out the evidence that I am prepared to give to the Royal Commission into Institutional Responses to Child Sexual Abuse. The statement is true and correct to the best of my knowledge and belief.

Where direct speech is referred to in this statement, it is provided in words or words to the effect of those which were used at the time, to the best of my recollection.

My name is [DK]. I was born in Queensland, and I am therefore 49 years of age.

I was a boarder at St Augustine's College, Cairns, between 1976 and 1981 and was sexually abused by three different brothers at the college.

In 1976, Brother Leonidas, my dorm master at St Augustine's College watched me and the other male students in my dorm while we showered each day. Brother Leonidas removed the curtains from the showers so there was no privacy. I remember that the other brothers who supervised the students when Brother Leonidas was away did not watch us in this way. I was 11 years old at the beginning of the year and I remember feeling weird, disturbed and unnerved by Brother Leonidas's behaviour.

In 1976 I was sexually abused by a brother at St Augustine's College. I was around 12 years of age at
the time. I went to see him because I had cut my foot and he was in charge of the infirmary after hours. He took me to his dormitory instead of the infirmary. He dressed my foot but made me take my pants off. He fondled my genitals and tried to masturbate me. I remember feeling completely and utterly confused.

In 1981 I was sexually abused by Brother Ross Francis Murrin. I had been good friends with Ross Murrin for the previous two years and we had a common interest in music. The friendship was important to me because it gave me a refuge from my previous sexual abuse. It also provided refuge away from the physical and emotional abuse which I was subjected to by other brothers who taught at the school, who I felt had ultimate control and power over me. Ross Murrin and I often met in the music room and I felt that music was my protection. I would also go to Brother Murrin's dormitory most nights and hang out with him. One night, Ross Murrin put his hands down the front of my pants, fondled my genitals and tried to kiss me. Ross Murrin appeared drunk at the time. I was terrified and moved away from him. Ross Murrin became very angry, swore at me and told me to get out of his room. I was shocked and afraid and ran back to my dormitory. This incident affected me deeply because I trusted Ross Murrin absolutely; we were such good friends and he betrayed me. That betrayal was particularly severe because I had developed trust in Ross Murrin in my time of need and fear of other brothers teaching at the school.

My grade 10 dorm master, Brother Andrew Moraghan, often found me in Brother Murrin's dormitory. I remember him getting very angry on these occasions. He would order me to leave Brother Murrin's dormitory, but Ross Murrin would always invite me back. I believe now that Brother Moraghan was put in charge of Ross Murrin to keep an eye on him. I also believe that Brother Gerald Burns, the principal of St Augustine's College, knew about Brother Murrin.

I feel that Brothers Moraghan and Burns failed to protect me and condoned Brother Murrin's behaviour. They also victimised me. I remember that, after the sexual abuse by Brother Murrin, I received a number of floggings and was treated differently by the brothers. I remember being excluded from school events and feeling like they were trying to get me to leave the school.
My academic performance also suffered following the incident with Brother Murrin. I failed my last semester of history, taught by Brother Peter Rodney, whereas previously I had been one of the top three students in his class. At no point did any of the brothers, including Brother Rodney, ask me about the reason or reasons for the decline in my performance in history or any other subject.

Ross Murrin was convicted twice, in 2008 and 2010, after pleading guilty to child sexual assault in relation to a Marist Brothers primary school in Daceyville and St Gregory's College, Campbelltown respectively.

The abuse I experienced at St Augustine's College has affected me profoundly. I have lived my whole life scared. I have difficulties trusting people and I am a very anxious person. I have terrible insomnia and have felt depressed and suicidal. As a young adult, I would binge drink, do stupid things and get into trouble. I find that now I compensate by overeating. Since my first child was born in 2009, I've put on 40 kilograms. I have difficulty concentrating and have struggled to work effectively over the years. Basically, I have never been able to string the consistency of life together. I have also felt a lot of anger towards my abusers and the brothers, who I feel have failed to act to ensure my safety.

After the birth of my first child, I began thinking more about the abuse I experienced at St Augustine's College. I began having terrible panic attacks, suffered anxiety and insomnia and basically had a meltdown. Because of this, I started seeing a psychiatrist and have seen a psychiatrist on and off since then. I was told by my psychiatrist that this reaction is very common at the time a victim has a child.

In 2009, after the birth of my first child, I wrote a letter to Brother Green, who was the principal of St Augustine's College. I recalled my unhappy experiences at the college, but I didn't mention the abuse specifically. I remember that it was months before I got a response from Brother Michael Green, the principal of the college.

Around this time, I also spoke to John Doolan, who was the deputy principal. I told him about the abuse...
I suffered at St Augustine's College and he told me that since the abuse was a long time ago, I should just get over it. Mr Doolan told me that there were no longer any protocols in place to handle complaints like mine, but then he gave me a 1800 number for Towards Healing in Brisbane.

When I rang the Towards Healing number, I just got a voicemail message, so I hung up the phone. I have never spoken to anyone from the Queensland Professional Standards Office.

On 16 October 2009, Brother Green wrote a letter to me. He acknowledged my letter and said that he was saddened to read about my feelings concerning my time at St Augustine's.

I remember that I saw Jason Parkinson from Porters Lawyers on television in 2009. He was talking about his work representing other victims of child sexual abuse. My wife and I met with Mr Parkinson in January 2010 to discuss a possible civil claim against the Marist Brothers, but ultimately I decided that it wasn't in my best interests to go ahead with such a claim. I was in a bad place at the time. I remember that I was breaking down, I couldn't work, I had a very young child and I was quite vulnerable.

In November 2009, I telephoned the head office for the Marist Brothers and was put through to Brother Turton. I told him about the abuse I suffered while I was at St Augustine's College. I spoke to Brother Turton about three of the brothers who worked at the college at the time, being Brothers Peter Rodney, Andrew Moraghan and Gerard Burns. Brother Rodney was a real mentor of mine and I looked up to him. Brother Burns was the principal of the college at the time. Brother Moraghan was one of the dormitory masters and used to flog me physically and abuse me mentally.

On 17 February 2010, I emailed Brother Turton to tell him that there were a number of things I wanted to achieve through the Towards Healing process. The email said:

I would like to meet with Brothers Gerald, Peter Rodney and Andrew. I would like to calmly and logically confront them and resolve issues that I have with them. I feel that they were aware of the abuse at
the school and covered it up. I also feel that they punished me for Ross Murrin’s actions.

I would like to meet with Brother Michael Green and then be provided with evidence that the school has some policy/mechanism going forward to deal appropriately with child sexual abuse, both historical and contemporary.

I would like a cash compensation payment for the damage that I have suffered as a result of abuse at St Augustine's. As you know, I have told my story to a solicitor with experience in this injury. His advice to me in relation to a compensation claim is in the vicinity of up to $200,000.

I would also like any future psychiatric/psychological treatment in relation to dealing with this matter covered.

I would like to know how the Marist Brothers and indeed the Church in general is dealing with the issue of child sexual abuse. I hope that this issue is being dealt with correctly.

I informed Brother Turton of the sexual abuse by Brother Leonidas and Brother Murrin. I did not disclose the identity of the brother who abused me in 1976 when I hurt my foot. I did know the identity of the brother, but I was struggling at the start of the Towards Healing process and did not have the capacity to disclose the name of the cleric not knowing whether he was the subject of any other allegations. The more that Brother Turton pressed me to tell him who the cleric was, the more reluctant I became to provide his name. At the date of this statement, I have still not provided the name of the relevant cleric.

I understood that Brother Turton was in charge of organising a mediation as part of the Towards Healing process. I remember that he asked me whether it was okay to use Michael Salmon as the Towards Healing mediator. At
the time, Brother Turton told me that Mr Salmon was an
independent mediator and a lawyer. I spoke to Mr Salmon on
two or three occasions before the facilitation and he
described his position in the same way and said he was
‘independent’. He also told me that he didn’t have an
office and gave me a mobile phone number as his contact
number. I agreed that it would be okay to use Mr Salmon as
the mediator because I believed he was independent and
contracted by the Marist Brothers to attend and mediate.
I had no idea he was employed by the Catholic Church in any
capacity.

On 18 February 2010, I received an email from
Brother Turton that included the student protection
protocol for the Diocese of Cairns. Brother Turton also
strongly advised me in the email to have a lawyer review
any deed of release relevant to the settlement.
I responded by email on the same day and said that I wanted
my wife and friend [DL] to attend the mediation with me.
[DL] is a barrister and I asked that the Marist Brothers
pay for his attendance.

On 19 February 2010, Brother Turton emailed me to
confirm that [DL] could attend the mediation conference and
that the Marist Brothers would meet the costs.

On 21 February 2010, I signed a statement that said
that the Marist Brothers had ‘strongly urged me to take my
complaint to the police or other civil authorities’. I did
sign this statement but at no time was I encouraged or
offered assistance to report the matter to the police by
Brother Turton or by any other person involved in the
Towards Healing process. I was really struggling at this
time and this support and encouragement would have been
essential to my reporting the matter to the police.

On 22 February 2010, I emailed Brother Turton and
attached a number of my modern history essays that I had
written prior to the abuse by Ross Murrin and said that it
was the responsibility of the school to investigate why my
results deteriorated. I also said that it was not good
enough that Brother Rodney, who I wanted at the mediation,
was on holidays. I also asked that there be some
consideration for sanctions regarding Brothers Rodney,
Burns and Moraghan for their failure to protect me against
the abuse.
On 17 March 2010 I was seen by Professor Harvey Whiteford, a consultant psychiatrist, at the Toowong Private Hospital in Brisbane. The evaluation was conducted as part of the Towards Healing process, at the request of Brother Turton. Professor Whiteford was a lovely man. The interview with him went for about an hour and during this time he said to me, '[DK], I shouldn't tell you this, but don't expect you are going to get any happiness out of this process. They are not going to do anything for you.'

On 18 March 2010 Brother Turton indicated that he would ask Professor Whiteford whether it would be possible to share a copy of my evaluation with me. I subsequently received a copy of his report.

The mediation was scheduled for 30 March 2010. I anticipated that I would be able to sit down with the three brothers, being Brothers Burns, Moraghan and Rodney, and talk to them about what happened to me at St Augustine's College and why it happened. I had communicated this request to Brother Turton and Michael Salmon quite clearly before the mediation.

On 30 March 2010, the Towards Healing mediation occurred in Brisbane. I attended the mediation with my wife and [DL]. Mr Salmon was the mediator. The mediation was also attended by Brother Turton, Brother Moraghan, Brother Burns; a lawyer, Patrick Monahan, and a representative from Catholic Church Insurance also attended for the whole day.

Mr Salmon met me, my wife and Mr [DL] when we arrived for the mediation. He took us into a room and lectured us on how good the Catholic Church was and he said, 'now I just want to tell you how rare it is that sexual abuse occurs in the Catholic Church.' I started to raise my voice at Michael and got very angry. We got into an argument before the mediation even began. Fortunately my wife was there and she is a calming influence. Michael Salmon had provided a few rules for the mediation, one of which was that I was not to be rude to the two brothers to whom I wanted to talk.

Mr Salmon then took the three of us into another room with everyone else. I was introduced to each of the people in the room by Michael Salmon. He did not explain the role of the insurance person or for whom Mr Monahan acted.
I had brought notes with me and I initially tried to go through them. I wanted to tell the story of what happened to me and to ask the brothers about their role in failing to protect and how they victimised me.

Whilst I was trying to talk to Brothers Burns and Moraghan, I was constantly interrupted and told not to ask any questions. Patrick Monahan kept telling me to hurry up. He said to me, 'You are wasting time, just hurry up.' I said to Mr Monahan, 'Listen even Harvey Whiteford told me I would get no happiness from you guys.' At that point Mr Monahan just blew up and started yelling at me, really abusing me.

Gerard Burns said, 'Look, I never knew about this.' Brother Moraghan said nothing. There was really no exchange between the two brothers and me, and Michael Salmon made no attempt to try and engage us in discussion. It was a very aggressive and destructive morning.

Michael Salmon and the others went into a room for lunch. My wife, [DL] and I then went into another room. Brothers Burns and Moraghan left the mediation during the lunch break. I was never asked whether I agreed to them leaving.

After lunch, the others, being Brother Turton, Mr Monahan, the insurance representative, and Michael Salmon, remained in the other room together. I remember thinking that it was really weird that the independent mediator would sit together with the representative of the Marist Brothers, a lawyer and the insurance representative.

Michael Salmon then told [DL] that he had to go between the two rooms to work out a financial settlement. We hadn't even discussed a financial settlement before that point.

[DL] spoke to them. He then came back to me and said, 'They have instructed me that this is their first offer and they are going to make three offers.' He relayed the amount, which I cannot recall. I had no idea what to do, but I confided in my wife. I made an offer to them, which was taken from out of the air. They subsequently made two further offers. [DL] told me that the third offer was
$80,000 plus costs and 'this is what you are going to get'. At that point, I just wanted to get the hell out of there as quickly as possible.

The mediation that day made me feel really quite dirty and filthy. From 1976 to 1981, I was sexually abused; there was horrendous physical abuse and there was control and emotional abuse by angry, cruel men who ruled my life and had more control over me than my parents. I cannot describe how much power they had over me. I had put my trust back in them for Towards Healing, and by 3 o'clock that afternoon I just felt that the same angry, cruel men had done the same thing to me 25 years later. It's the same abuse. I don't call it Towards Healing. I call it 'Towards Hurting'.

At the end of the mediation, Brother Turton read out a letter from Brother Murrin. I saw the letter but was not provided a copy. Brother Murrin apologised in the letter for his behaviour and expressed regret over the difficulties I have had in my life. I also recall that Ross Murrin in the letter made reference to Brother Moraghan and his role as supervisor to Ross Murrin. In preparation of this statement, I have been shown a letter, which I recall is the same letter that was read by Brother Turton. Ross Murrin in the letter said:

I also vaguely remember Andrew coming to my dorm looking for [DK] annoyed that he was not where he was supposed to be and had not asked permission. I also have a vague memory of when I said sorry to him and he told me he - Andrew - was not angry at all with me just with [DK].

The letter is such a relief for me, as it reaffirmed my belief that Brother Moraghan was supposed to be supervising Ross Murrin. It also reaffirmed the immense anger which Brother Moraghan had towards me and my horrible experiences when Brother Moraghan frequently victimised me whilst I was at St Augustine's College. I have forgiven Ross Murrin for what he has done. He is in gaol now, and that can't be a good place. It is really the denial by those who should have protected me from the abuse that really angers me now.

At the end of the mediation, I also signed a deed of release. I did not read the deed before signing it and had
no idea what I was signing. It was explained to me that
I could tell anyone anything and there was nothing
confidential. I have never read the document. I left the
mediation with the signed deed and a promise from
Brother Turton that I would meet Brother Peter Rodney
within six months. This did not happen, although I tracked
him down in Manila three years later. Brother Peter Rodney
told me through his emails that he was never asked to
attend the mediation.

On 14 April 2010, Brother Turton sent me a written
apology on behalf of the New South Wales Professional
Standards Office. Brother Turton apologised for the pain
and suffering I experienced at St Augustine's College and
the impact on my life.

One evening after I completed the Towards Healing
process, I was watching a television program and Mr Salmon
was being interviewed as the director of the New South
Wales Professional Standards Office. By this stage I had
not had my meeting with Brother Rodney, as promised, and
found Michael Salmon on the television defending the
Catholic Church as an employee.

The failure to disclose Mr Salmon's position as
director of the New South Wales Professional Standards
Office made me really, really angry because I felt that
I was lied to. Brother Turton and Mr Salmon had both told
me that Mr Salmon was independent.

I also read Towards Healing, which I had not read
before, and discovered that the director of professional
standards 'should not normally participate in the
facilitation process'. I remember that I was only given
a copy of the Towards Healing document late in the
mediation process, possibly on the day of the mediation.
It made me so angry that they couldn't even follow their
own rules.

I also read Patrick Monahan's biography, which
provided that he was a top insurance lawyer and has done
a lot of work with Michael Salmon. I started to think
about why it was that Patrick Monahan - or the Provincial
of the Marist Brothers, Brother Jeffrey Crowe - had not
told me of Michael Salmon's real position within the
Catholic Church.
On 15 September 2010 I emailed Brother Turton seeking confirmation that the director of the New South Wales Professional Standards Office was the same Mr Salmon who acted as the mediator in my case.

On 21 September 2010 Brother Turton confirmed in an email that the Mr Salmon who acted as the mediator in my case was also the director of the New South Wales Professional Standards Office.

In May 2013, I called Mr Salmon and told him I was annoyed at him and said, 'Why didn't you tell me you were the director of professional standards?' He responded by saying that it was 'an oversight' and that he was no longer a practising solicitor. He told me to call Norm Maroney. I understand that Norm Maroney is the current Marist Brothers professional standards officer, which is the role Brother Turton previously held.

The day following my conversation with Michael Salmon, I spoke with Norm Maroney and he said that he had spoken to the provincial, Brother Jeffrey Crowe, who told him to ask me to find a lawyer and that they would pay for the lawyer. He said that the Marist Brothers had appointed Howard Harrison of Carroll & O'Dea to act for them. He said 'They will do a proper settlement for you now'. These discussions are ongoing.

On 28 May 2013 I emailed Patrick Monahan because I wanted to share my concerns about the facilitation and ask him whether or not he was aware of Michael Salmon's role with the Professional Standards Office. He responded that same day, telling me he would recover his file from archives and review it before responding to my questions. He promised to get back to me quickly. I emailed Patrick Monahan again on 30 May 2013 to clarify that I really only had one question for him: 'At my mediation in 2010 were you aware that Michael Salmon was the Director of Professional Standards?' On 28 June 2013, I emailed Patrick Monahan to see if he was any closer to answering my questions.

On 3 July 2013, over a month after my initial inquiry, I received a response from Patrick Monahan. He told me that his secretary had 'given up' on finding the file and suggested that it must have been 'misfiled'. He then told me to contact the Marist Brothers directly. This really
annoyed me. Patrick Monahan is supposedly one of Australia's leading insurance lawyers, but he can't maintain his own filing system. It was basically a 'dog ate my homework' excuse. I wrote to Patrick Monahan on 16 August 2013 to ask him, once again, whether he knew that Michael Salmon was employed by the Professional Standards Office. Patrick Monahan responded on 23 August 2013 and said that the file had been mislaid and repeated his suggestion to contact the Marist Brothers. Patrick Monahan also said that it was no longer appropriate for him to respond to me, as I had by then engaged Maurice Blackburn to act in a civil claim against the Marist Brothers. I responded accordingly on the same day by email.

I have recently sought legal advice regarding the Marist Brothers and Mr Salmon for their failure to disclose Mr Salmon's role with the New South Wales Professional Standards Office.

I feel that the whole Towards Healing process was a sham. I feel a lot of rage in relation to Towards Healing. It is one of the biggest scars in my life.

As I have said above, I have read Ross Murrin's letter to Alexis Turton contained in exhibit I. I get no satisfaction knowing that he is in gaol. I have said that I forgive him. I hope that he is receiving appropriate medical help and support and he can one day lead a better life. It has always been my deep belief that some individual clerics within the Marist Brothers that failed me and continue to fail me have failed him also.

I have suffered and paid a price most of my life. Ross Murrin is now being held accountable for his actions. I would like to know when the Marist Brothers and those engaged with Towards Healing will eventually take some responsibility for their actions."

Q. Thank you, sir. As I understand it, you entered St Augustine's College, Cairns, as a boarder at age 11; is that right?
A. That's correct.

Q. And you stayed there for the rest of your school career?
A. Yes.
Q. Can you explain to the Royal Commission what the atmosphere of the school was? What was the relationship between the pupils and the brothers?
A. It was one of fear and anger.

Q. Were there many brothers at the school, on the teaching staff?
A. From memory, 10 to 15.

Q. Was corporal punishment used?
A. Very much.

Q. Can you give a sense of what you mean by that, "very much", how often, across how many --
A. I would have seen corporal punishment weekly. I got a bit of it myself during the six years - caning. I remember that the Marist Brothers, in their gowns - some of them had a special pocket where they could carry their canes around in their pocket.

Q. And where on the body did they cane the boys?
A. On my hand and I recall having blood blisters on my fingers a lot.

Q. In your recollection, was there a time when there became an awareness amongst the boys about there being any sexual abuse at the school?
A. I remember a general awareness about one of the brothers. I remember one morning waiting for breakfast outside of the dining room and there being a lot of talk about a young boy that had been abused by one of the other brothers.

Q. When you were, as you put in your statement, friends with Ross Murrin, approximately how old was he?
A. I think, from memory, he was five or six years older than me.

Q. Was he one of the younger brothers?
A. Yes.

Q. At the time you prepared your statement, you didn't have available to you any of the documents that the Royal Commission had in its possession, except the one letter from Ross Murrin in prison that was made available to you, that you refer to in your statement; is that right?
A. That's correct.
Q. Since then, have you read the statements that have been furnished by the various other prospective witnesses?
A. I've read everything.

Q. So you've read the documents in the tender bundle as well?
A. Yes.

Q. Now having read all of that and being possessed of the knowledge that you now have, which you didn't have at the time of your original statement that you read, what response do you have to that? Is there anything you want to say about that?
A. Yes. Can I do that?

Q. Yes, go ahead.
A. Having read all of the documents and having learned various pieces of information, I have been deeply hurt by the extent of information withheld from me through the Towards Healing process in 2009 and 2010.

I was 11 years old in 1976 when my parents placed me into the care and trust of the Marist Brothers. When I started as a boarder at St Augustine's, we had to write "JMJ" at the top of every page of written work that we did. This stood for "Jesus, Mary and Joseph". I believe that it was intended that we dedicate all of our written work to them.

At that point in time, I believe that, as an 11-year-old, I had faith, and, importantly, I wanted to have faith. Since this time, my faith has been eroded such that today I have no faith at all.

The erosion of faith has happened every time I have put my hands in the trust of the Marist Brothers. The first occasion occurred when I was a student at St Augustine's as I have already outlined.

The second occasion occurred when I, once again, put my trust in the hands of the Marist Brothers in 2009 and 2010, when I took part in the Towards Healing process.

Finally, any faith that I had remaining has been completely eradicated as a result of reading material provided to me during the course of preparing for the Royal
Commission. I have read and discovered things relating to my time at St Augustine's and the Towards Healing process that have been terribly hurtful to me.

Having said this, there has been healing for me from the truth. I have read and discovered things that are so morally repugnant that it would indicate to me that those involved in the Towards Healing process that I entered into have utterly and completely lost their way.

I now understand that the Marist Brothers concluded that Brother Anthony Hunt abused me in the infirmary. In 2009, I did not name this person who abused me when I cut my foot. The details that I have read are compelling. I had thought that it was another one of the brothers, but I may now never know. Nothing was discussed with me during Towards Healing. I should have been told.

I have also seen a list written by Brother Anthony Hunt in 2009, which nominates the names of individuals who may be possible sources of future complaints against him. There are 18 individuals on that list, and 4 of those relate to St Augustine's College.

I now have to carry the burden of this knowledge with me. I now believe that the Towards Healing process in which I was involved was a complete sham that was controlled and managed by lawyers and that this distorted the whole process. There was absolutely no healing in what transpired for me.

I have now read over 1,000 pages of documents provided to the Royal Commission by Towards Healing and the Marist Brothers. The thing that stands out for me is the constant reference in the documents to the legal liability of the Marist Brothers and their fear of the lawyer Jason Parkinson who was taking legal action against them and the complete lack of any concern, compassion or any thought for my well-being.

After reading the documents, I believe that Jason Parkinson's name is mentioned in the documents on more occasions than mine.

The abuse that I experienced at St Augustine's has had a profound effect on my life, starting with my academic results in 1981 and continuing through my life in career
disappointment and other events, such as a marriage breakdown.

For the last 37 years, I have experienced great pain, anger and hurt. Psychologically, I suffer from anxiety, panic attacks and fear. It is very debilitating to wake up every morning of your life scared. Every decision that I have taken in my life has, in its first instance, a basis of fear. This is a fear that I learned from my time at St Augustine's College in 1976 to 1981.

In concluding, I would like to speak directly to the Marist Brothers, both individually and as an organisation. Members of my direct family have a deep and strong faith. They are all practising Catholics. My wife spent all of her school years at Catholic schools. My wife and I, our extended family, would like our children to be educated in Catholic schools.

We have three young children, and my wife is now pregnant with our fourth child. It is my wish that the anger, hurt and pain that I have carried with me all these years presents no hurdle to the happiness of my family, my wife and my children, in the future. It is my desire that their wishes for our children to be raised as Catholics and receive a Catholic education be fulfilled. However, I will admit that has given me a lot of personal heartache and discomfort at times.

In addition to this, after 37 years, the weight of the anger, hurt and pain is now just too much to carry. It has become too heavy, especially in the light of what I have read preparing for these hearings. I no longer want to carry this around with me. Enough is enough. I need to let it all go. I have tried psychiatrists, who have provided cocktails of medication which I hate, because they make me feel so bad. I cannot do that any longer.

After all these years, I have come to the conclusion that in order for me to put this all behind me and move forward with my life, I need the following. Firstly, I need to forgive the Marist Brothers. And, secondly, I need the Marist Brothers to let me forgive them. I would hope that the Marist Brothers could do this for me.

Forgiveness is a two-way street. It requires an acknowledgment of wrongdoing, a sincere apology and
a heartfelt request for forgiveness. That request needs to come with honesty, sincerity, respect and good faith. If this cannot be done, then it is not a true apology, nor an honest request for forgiveness.

From what I have read, I believe the Marist Brothers are hurting and are in pain. I do not want to carry any malice against them into the future and I have no personal desire for them to have any personal pain. I hope they can heal also.

I feel that I have a capacity to forgive. I have maintained since commencing Towards Healing in 2009 that I wanted to forgive. I have already forgiven Ross Murrin. I am really tired of this being such a big part of my daily life.

I have mentioned that I now do not have any faith. But if I did believe, I would see God every day - on the swings in our backyard and in the bathtub at night. My focus now in my life is to be the best father that I can be and maybe one day, through that, I can regain some sort of faith.

MR STEWART: Thank you, sir, for your testimony. Those are my questions, your Honour.

<EXAMINATION BY MR CALLAGHAN:

MR CALLAGHAN: Q. Witness, can I take you to paragraph 41 of your statement.

MR STEWART: Perhaps if you would announce who you are.

MR CALLAGHAN: I'm sorry. My name is Callaghan, initials P J, of senior counsel, appearing for the witness [DL].

Q. Do you have paragraph 41 in front of you?
A. Yes.

Q. I am just going to suggest something to you about the contents of this paragraph. I can't, all this time later, be highly specific, but I do suggest that you did engage in some discussion with [DL] about the contents and effect of that deed?
A. Yes.
Q. You'd agree with that?
A. I do.

MR CALLAGHAN: Yes, that's all I had. Thank you.

THE CHAIR: Anyone else?

MR ATTIWILL: No questions, your Honour.

THE CHAIR: Mr Gray?

<EXAMINATION BY MR GRAY:

MR GRAY: Q. Mr [DK], my name is Gray. I am the barrister for the Marist Brothers and for the various relevant church bodies in this case study. I need to ask you some questions about some of the things in your statement concerning the Towards Healing process.
A. Mmm-hmm.

Q. I won't be asking you questions about your time at school. If you need a break at any time, please don't hesitate to say so.
A. Okay.

Q. In your statement, you make quite a few strong accusations against various people in terms of their involvement in the Towards Healing process; you would agree?
A. Yes.

Q. Including Brother Alexis Turton?
A. Mmm-hmm.

Q. Michael Salmon?
A. Yes.

Q. Brother Moraghan?
A. Yes.

Q. Brother Burns?
A. Yes.

Q. And Patrick Monahan, the solicitor?
A. Yes.
Q. I want to go through some of those shortly, but as a general matter could I ask you this: you've read all their statements, I gather from what you said a few minutes ago?
A. Yes.

Q. You know that each of them says that some of the things you say in your statement are wrong or mistaken?
A. Yes.

Q. Have you read Mr [DL]'s statement?
A. No.

Q. You haven't seen that one?
A. No.

Q. Do you accept that you might be mistaken in relation to any of the accusations that you have made against the five people that I just mentioned?
A. In specifically - all or some?

Q. Well, any. I am going to come to some specifics, but I wondered whether at the beginning you accept you might be mistaken in relation to any of the accusations that you have made?
A. I understand that people will have different recollections of what happened on the day, and we're all humans.

Q. You refer, as you know, in your statement several times to the anger and the rage that you have felt at various times, including up to the time of your written statement?
A. Yes.

Q. I don't suggest for a moment that you don't have every right to be angry about a lot of the things that have happened to you, so please don't misunderstand me in that regard. But do you think that your anger, even though it might be fully justified, may have caused you to make some accusations in your statement in relation to the participation of various people in the Towards Healing process which are not factually correct?
A. I think it could influence my thinking, but I don't know what facts you're talking about.

Q. Let me come to a few of the specifics. The first
one - these aren't in chronological order. The first one
I want to mention is the deed of release and what led up to
it towards the end of the facilitation meeting. In your
statement, which is paragraph 41, which is the one that
Mr Callaghan I think just asked you a question about, you
say:

I did not read the Deed before signing it
and I had no idea what I was signing.

You also said in the same paragraph:

I have never read the document.

In answer to Mr Callaghan, you said - and I don't have an
exact note of this, but you said it a few minutes ago -
that you did have some conversation with Mr [DL] about it;
is that right?
A. Yes, and I think what I'm trying to say there is
I read the document, but I didn't read the document. On
that day, the deed of release was so much not an important
thing to me. I didn't care one thing about the deed of
release.

Q. So do you say you did in fact read it?
A. Yes, I would have read it. I have no recollection of
reading it, and I couldn't even tell you today what's in
it.

Q. No, but the reason I'm asking this is that your
statement says quite plainly, unambiguously:

I did not read the Deed before signing
it ...

A. And I said there's reading and there's reading.

Q. So the true position is that you did read it?
A. Yes, I probably did. I don't recall reading it, but
I most likely did.

THE CHAIR: Q. Do you mean you looked at it as opposed
to reading and understanding it?
A. Yes.

MR GRAY: Q. Would you agree with this as a sequence of
what happened towards the end of the afternoon session:
the eventual offer, the last offer, that was made on behalf of the Marist Brothers was $88,000?
A. Yes.

Q. And that was made up of $80,000 plus $3,000 for legal costs?
A. Yes, could have been. I don't recall the detail.

Q. And $5,000 for future counselling?
A. Sure.

Q. Do you agree that that is right, or are you just accepting it from me?
A. I'll accept. I can't remember, but I do accept that. It sounds right to me.

Q. You've seen that in various things that you've read?
A. Yes.

Q. And you accept that that's the case?
A. Yes.

Q. Mr Salmon, I think, said to you at about that time that although the brothers were saying that was their final offer, you didn't have to accept or reject it there and then, that you could think about it for some time; do you agree with that?
A. Sure, yes.

Q. He said - that is, Mr Salmon - that the next step would involve a deed and that therefore you could take your time, if you wanted to?
A. Yes.

Q. But you then discussed the offer - that is, the amount, the $88,000 made up that way - and the deed with Mr [DL] and your wife?
A. Yes.

Q. Without anyone else in the room, just among the three of you?
A. Yes. There was no-one in the room. For the whole afternoon, there was only [DL], me and my wife in the room.

Q. Yes, quite, I think we're on common ground there. After discussing it with [DL] and your wife, you decided that you would accept that offer and that you would sign
the deed that day?
A. Because I wanted to get out of there as quickly as possible.

Q. Quite. And so the deed was available; either Mr Monahan or someone produced the deed?
A. I think [DL] brought it in to me. He was going between the rooms.

Q. I want to come to that. You say Mr [DL] was going between the rooms?
A. Absolutely.

Q. Do you say Mr Salmon was as well?
A. No.

Q. I'll come to that. Anyway, Mr [DL] brings the deed in?
A. Yes.

Q. And did he discuss it with you, go through it with you?
A. I assume so. I would expect so.

Q. Did he tell you what it was that you were signing?
A. Yes. But, you know, I didn't care. Why should I have to think about a legal deed of release?

Q. Fair enough, Mr [DK]. I'm not really at odds with you there.
A. You know, it was not something --

Q. I'm just asking about your statement, you see, where you say - which is what the brothers have had to respond to - "I did not read the deed before signing it and had no idea what I was signing."
A. Sure.

Q. If Mr [DL] in fact explained it to you, then that is not quite right, is it?
A. Fine.

Q. The deed itself is tab 60 in the exhibit bundle. I don't want to take you through all the detail of this, but do you see on the second page, I think it is, if we scroll down, the figure of $88,000 appears in section E, paragraph E?
A. Yes.

Q. That was said to be inclusive of costs?
A. Yes.

Q. The costs were legal costs for Mr [DL] of $3,000, wasn't it?
A. Where does it say that?

Q. It doesn't say it there. That's my question.
A. I don't recall.

Q. Then on the page where you've signed it, which is the next page, at the bottom of the next page - they have been redacted, of course - you have signed it and the witness to your signature is Mr [DL]?
A. Yes.

Q. If we turn over the page, we'll see that in due course it was signed on behalf of the Marist Brothers. That happened later, I think.
A. Yes.

Q. Then on the last page, we have a certificate by Mr [DL] where someone has crossed out the word "solicitor" and put in "barrister"?
A. Sure.

Q. And in paragraph 2, Mr [DL] certifies - well, first of all, in paragraph 1 he says that he acts for you. Do you see that?
A. Yes, but --

Q. Was that true?
A. I had approached him a short time before the facilitation. He is a friend that I went to boarding school with. He was a barrister; I understood that, and I asked him to come as my friend. I never - he never saw any of the information before that day. But, yes, I suppose you would say he was acting for me.

Q. Well, he has signed a certificate that says that he was acting for you. Was that true?
A. Yes.

Q. In the second paragraph, he says:
I -

that is he -

have explained the purport and effect of
the annexed Deed to the Claimant -

namely you -

who appeared to me to understand the
purport and effect of this Deed.

A. Yes, okay, I understood it.

Q. Now, was that true?
A. Yes.

Q. I just want to ask you about how Mr [DL] came to be
asked to come along with you on that day.
A. Sure.

Q. In paragraph 23 of your statement, you say that on
18 February you had received an email from Brother Turton.
You say:

Brother Turton also strongly advised me in
the email to have a lawyer review any Deed
of Release relevant to the settlement.

Do you remember that?
A. Yes.

Q. You responded by email, saying you wanted your wife
and your friend [DL] to attend, and you went on to say that
[DL] is a barrister and you asked the Marist Brothers to
pay for his attendance?
A. Yes.

Q. You attached at that point in your statement these
e-mails, which have now become tabs 27 and 28. I wonder if
they could be turned up, please. That's tab 27, the email
from Brother Turton to you on 18 February.
A. I can't see the date, but I assume that it is.

Q. It's just up the top there.
A. Okay, yes.
Q. Mr [DK], you are by profession an accountant; is that right?
A. Yes.

Q. And you are still a practising accountant?
A. Yes.

Q. Were you a practising accountant in 2010?
A. Not very effectively.

Q. You were, though?
A. Yes.

Q. In this email, in the second long paragraph, Brother Turton is referring to the question of legal advice for you. Do you see that?
A. Yes.

Q. He says:

Assuming that we are able to work towards a mediated settlement ... there is usually a Deed of Release ... Included in this Deed of Release is a statement that you have taken legal advice ...

And he says it is up to you. Two-thirds of the way down, there is a sentence that says:

That is up to you but we strongly recommend that you do have a lawyer view the agreement. ... if you wanted to have a lawyer with you and your wife during the discussion then we would be happy with that. This of course is not the full legal involvement as in civil litigation but more a legal assessment that everything has been done properly. In cases such as this the Marist Brothers would be prepared to pay moderate costs for a lawyer to view the agreement and even for one to sit in on the mediation meeting if that is your desire.

Do you remember all that?
A. I'm happy - yes, he told me to get a lawyer. I got a lawyer. He explained the deed to me. I signed the deed.
Q. He did suggest strongly that you get a lawyer, and you responded in tab 28, and if we could scroll to the bottom, I think it starts at the bottom first. You responded on the same day, in fact within about an hour, saying:

I have asked [DL] to come ...

This was in response to his email about the need for you to have legal advice.

I have asked [DL] to come with me and my wife.

[He] is a barrister ...

He understands my position and what I am trying to achieve ...

I would like you to cover his costs ...

A. Sure.

Q. Brother Alexis writes back at the top of the page:

... I don't see any problem with your barrister friend attending. May mean we have a legal person there as well in case it gets into serious legal speak.

A. But they had a legal person there right from the start, didn't they? But that's not factually correct, is it?

Q. Why is that?
A. Because they had legal people involved in Towards Healing right from day one, and I did not.

Q. Certainly in Towards Healing, there is no doubt.
A. So this, "May mean we have a legal person there as well" - his legal people were already there.

Q. Do you say there had already been arrangements made for them to be at the meeting?
A. No, they were there in Towards Healing.

Q. Certainly.
A. Yes.
Q. This is about attending a meeting, though, isn't it?
A. Sure.

Q. Do you say that Brother Turton was somehow being misleading when he talks about having a legal person at the meeting?
A. Well, he had asked me to get a lawyer. I had rejected a lawyer, as you know, already.

Q. I'll come back to that, if necessary, but I do know what you're referring to.
A. I rang him. I had no intention of lawyers. I was told, "Let's go through Towards Healing and keep the lawyers out." I didn't want a lawyer. He asked me to get a lawyer. I got a lawyer. But the lawyers were already there. They were not keeping lawyers out, were they?

Q. I'm just asking about the meeting, Mr [DK], for the moment.
A. Well, you're asking about lawyers also.

Q. I'm asking about you having a lawyer at the meeting at his suggestion.
A. Sure. Well, but that sentence is not quite correct, either. "May mean we have a legal person there".

Q. At the meeting.
A. Sure.

Q. The second thing I want to ask you about is the presence at the meeting of Mr Monahan and Mr Bucci. This is dealt with in your statement at paragraph 30, to which you made a correction this morning.
A. That was wrong.

Q. Yes. In your statement, you said at paragraph 30:

A lawyer, Patrick Monahan, and
a representative from Catholic Church Insurance ...

Whom we know was Mr Bucci, in the end?
A. Yes.

Q. "Also attended for the whole day", and in your statement initially you said "neither of whom I knew would
Q. Actually, the idea to have those people attending came from you, didn't it?
A. Yes. Alexis said, "They'll be there," and I think I remember saying, now that I remember it, something to the effect, "Well, I don't want to have to tell my story twice. Just let them be there for the whole day."

Q. Well, is that right, though, Mr [DK]? Wasn't the sequence a little different from that?
A. Oh, I don't remember the exact sequence.

Q. No, well, let's see if I can help you there. Tab 59. If we start at bottom of the sequence, please, it goes from the bottom to the top, so we start on the second page. Do you see on 25 March, which is five days or so before the mediation, you write to Alexis saying:

Alexis,

I had an idea last night, I don't know if it would be appropriate, however, would it be a good idea to have the case manager and your solicitor just sit in on the session with Brothers Gerald and Andrew.

A. Sure.

Q. The only reason that I suggest is to save going over the same stuff twice.

And so on?
A. And I think that was from a response to a telephone conversation or something that there was going to be some process with lawyers and case manager, and I didn't want to do it twice.

Q. Well, according to this email, you had an idea and you suggested the case manager and the solicitor, and Brother Alexis responded, if we then scroll back up the page - first of all, Brother Alexis responds to you:

Makes sense [DK]. I will check. May have
to delay start as they are flying in.

Then if we scroll up further, you respond saying:

... please call me on my mobile to confirm whether this will be OK.

He then at the top of the page confirms:

Just confirming that Patrick Monahan (solicitor) and Joe Bucci (case manager) will attend the interview ...

Mr Monahan was the solicitor for the brothers and for CCI; you understood that, and Mr Bucci --

A. No, I did not understand that.

Q. What did you think he was?
A. I knew he was a solicitor, but I didn't know who he was a solicitor for. I thought he was a solicitor for the Marist Brothers.

Q. As indeed he was, but --
A. Well, I don't know.

Q. Anyway, that was your request and that was the information that came through in answer to your request. Would you agree with this, that on the day of the meeting itself, at the start of the day - and I'll come to that more fully in a minute, but at the start of the day, more or less the first thing that happened was that there was a phase where Mr Salmon was just with you and your wife and Mr [DL]? A. In a room, yes.

Q. And in that room at that point, at the beginning, Mr Salmon said that Joe Bucci was there on behalf of CCI and that Mr Monahan, the solicitor assisting Mr Bucci and Brother Turton, was also present? A. I don't remember the exact words. He told me, I think I recall - he told me who was in the room waiting for me.

Q. I just want to put to you, though, that he told you who they were - that is, he told you that Joe Bucci was there on behalf of CCI; do you accept that? A. I'm not sure whether he said it was - probably, yes.
Q. And he also told you that Mr Patrick Monahan was the solicitor assisting both Mr Bucci of CCI and Brother Turton of the Marist Brothers?
A. I'm not sure about that. It's possible, but I don't remember.

Q. I also want to ask you this, that in the same part of the day, this same first meeting when it's just your team of three plus Mr Salmon --
A. At the beginning of the day?

Q. I'm asking now about the first, as it were, joint session with everyone together in the room. He, Salmon, introduced everyone to everyone; there were introductions made. Do you agree with that?
A. Probably. I don't remember it, but --

Q. Did he introduce Mr Bucci as being from CCI?
A. I don't remember.

Q. He may have done?
A. Could have.

Q. And did he introduce Mr Monahan as the solicitor assisting both CCI and the brothers?
A. I don't remember.

Q. He may have done?
A. Could have.

Q. Another matter of detail, just because the brothers have to deal what you've said. In one part of your statement, in paragraph 45, you say that you only received the Towards Healing document, the actual protocol document, just before the meeting, perhaps even on the day?
A. I wasn't really quite sure when I received it. I don't - I thought it was towards the late - I think.

Q. Would you accept that it is the case or might be the case that actually Brother Turton had sent it to you back in mid-February?
A. I don't remember. It could have been. I don't remember.

Q. If we have a look at tab 20, please, in the bundle, this is not an email to or from you, Mr [DK]. I'm not suggesting you have seen this until recently. It's an
email from Brother Turton to Mr Bucci and to the Marist Brothers provincial and someone else. Do you see in the first paragraph, talking about you, the complainant, [DK] --
A. Not just me.

Q. What do you mean? Do you mean there's a reference --
A. He's not just talking about me there, is he?

Q. Do you mean there's a reference to Jason Parkinson?
A. Yes.

Q. That's true, you've made that point; I agree. But do you see in the third-last line Brother Turton's email says:

   He -
   does want financial recompense and I have
   sent him a copy of Towards Healing.

A. It could have happened. I've got no reason to doubt it. It's possible. I don't remember.

Q. You also say in your statement - a different point now - that you were not encouraged by Brother Turton to report the abuse to the police. Do you remember saying that in your statement?
A. Sure.

Q. I want to suggest to you that the position is a little different from that.
A. I signed a piece of paper encouraging me to go to the police.

Q. You did. I just want to put these things to you to see if you agree. As at the date that you signed that statement, which apparently was 21 February, you knew that Brother Murrin, the abuser, the main abuser in question, was already in gaol?
A. Yes, I think so, yes.

Q. Sorry? I didn't hear that?
A. I believe so, yes.

Q. You felt that Brother Murrin had been punished,
deservedly so, and to some extent you had forgiven him?
A. I had forgiven him.

Q. You had forgiven him, all right. And by this time, that is 2009/2010, your main concern was how you thought the other brothers, particularly Brothers Burns, Moraghan and Rodney, had behaved?
A. Yes.

Q. Is that fair, in summary?
A. Yes, yes.

Q. Brother Turton, in February, did raise with you the matter of reporting the abuse to the police, didn't he?
A. At some stage, yes, he did. I don't recall the date.

Q. But you did not want to do so?
A. No, but I had just had my first child. I had no - I could barely get out of bed in the morning, let alone go to the police.

Q. I'm not cavilling with any of that, Mr [DK], but just as a preliminary matter --
A. Sure, yes, he did.

Q. -- you didn't want to go to the police.
A. No.

Q. For no doubt very good reasons, but you didn't want to?
A. Correct.

Q. All I want to establish, if you agree, is that Brother Turton, for his part, said to you that you could and urged you to do so?
A. Yes, he did.

Q. You'd agree with that?
A. Yes.

Q. Thank you for that. The file notes which confirm that, just for the record, are at tabs 10 and 19. Just in passing, because you said something about this orally this morning, in your statement, and in fact I think in your original police statement --
A. I didn't make a police statement.
Q. I'm sorry, I'm confusing it with another one. My apologies. Anyway, in your statement in this matter, you refer to abuse by another unnamed brother who was connected with the infirmary?
A. Yes.

Q. In the statement, you didn't name that person?
A. That's correct.

Q. Indeed, in your statement, you tell us that you deliberately didn't name him even though you believed you knew who it was?
A. I believed I knew who it was.

Q. You've learnt, perhaps in the last little while just before today, that one particular brother has put on a statement to the Commission - do you know this?
A. Yes.

Q. Saying that it wasn't him, that he didn't do it?
A. Oh, is that a statement?

Q. Yes.
A. I think I saw that yesterday.

Q. You know, I think - tell me if this is right - from the materials you've seen over the last month or two that Brother Turton had surmised that it was that brother, the one who now denies it?
A. And I've read his summation, and it was compelling.

Q. At any rate, is this right - I just want to get this clear - you're now saying that it wasn't that brother?
A. I'm saying I was 11 years old. I don't know why I didn't name a brother in 2009, and right now I don't want to name anyone --

Q. I'm not asking you to.
A. -- and I have uncertainty and confusion, and it should be investigated.

Q. Fair enough. All I want to just try to understand, though, is this: at the time you wrote the statement for the Royal Commission some two months ago or so --
A. Yes.

Q. -- you thought you knew who it was?
A. I thought I knew, yes.

Q. The person you thought it was was somebody other than the person who has now given the statement denying it?
A. That's correct.

Q. You've never told - and I'm not criticising you for this for a moment - the brothers or Brother Turton who the name is that you had thought it was?
A. Never.

Q. Now, coming back to where I was, another thing that you say in your statement in a couple of places - just correct me if I've understood this wrongly - was that you wanted Brother Peter Rodney to be at the meeting?
A. Absolutely.

Q. You say at paragraph 26 that you thought it was not good enough that Peter Rodney was on holidays.
A. I think there was a telephone conversation or something - he was on holidays.

Q. I'm not sure that I'm understanding this correctly. At paragraph 29 you say this:

经调解人安排在2010年3月30日举行。我原以为能与三位兄弟，即
Brothers Burns, Moraghan and Rodney ... 我已经通知了这个
request ...

Is what you're saying there that even as at the day, you still thought Brother Rodney was going to turn up?
A. I think there was - I just recall there being some vagueness in the short time leading up to the facilitation, and I remember some uncertainty whether he was or was not going to be there, because Brother Peter Rodney being there was a big deal for me.

Q. I just want to examine that briefly. Hadn't Brother Turton explained to you more than once that Peter Rodney was overseas and could not be there?
A. I don't recall that. He might have, you know, but I - maybe I had misinterpreted him, but it was very important to me that he be there. But what I do remember - and he may have done that - at the facilitation he gave me
a promise that within six months he would arrange a meeting with Peter Rodney.

Q. I might come to that a bit later. But for the moment I'm just focusing on --
A. But it is a bit vague leading up to the facilitation.

Q. Let's see if we can work with that a bit. What I suggest to you is that Brother Turton told you a couple of times that Peter Rodney was overseas and would not be able to be at the meeting, and you said that you were happy to go ahead with the meeting on the basis that just two of the three brothers would be there?
A. I think at some stage that did happen, but there might have been some other phone calls about whether he was or was not going to be there.

Q. Perhaps if we could start with tab 19, please. This is a file note by Brother Alexis on 15 February recording a telephone call with you. Is this one of the things that you have seen in recent weeks?
A. Quite possibly, but there's a lot of things. I'm sure it is.

Q. You take as much time as you like to read as much of it as you would like.
A. What do you want me to read?

Q. The bit that I want to direct you to is, in particular, subparagraph (a), which is towards the bottom of the first page. The note says:

He would like to have a meeting with Peter Rodney, Gerry Burns and Andrew Moraghan as he wanted to clarify for himself how much they knew at the time and whether or not they were trying to protect [Ross Murrin] ...

A. Where is that again?

Q. Paragraph (a) towards the bottom.
A. Oh, (a), yes.

Q. Have you found the place?
A. Yes.
Q. And Brother Turton's note says:

I indicated that Peter Rodney and
Gerry Burns had indicated their willingness
to speak with him. I also indicated that
Peter Rodney was away for some months and
he was going to consider whether he -

that is, you -

wanted a number of interviews or wait and
talk to the three of them together.

A. That's exactly how I recall it. I just thought it
happened closer to the facilitation.

Q. Allowing for that, do you accept that in fact it
happened on 15 February?
A. Yes.

Q. All right, thank you.
A. No. I'm not sure that it happened on 15 February.
I thought it was a little bit closer. It could have.

Q. You see --
A. But that's exactly what I think the telephone
discussion was.

Q. You see that this note is dated 15 February?
A. Sure.

Q. The next tab that I would like to go to is 25, which
is three days later, on 18 February. Another phone call
with you. I want to direct you to a couple of paragraphs.
Firstly, the second paragraph - in fact, just picking up
the first paragraph, is this what you had in mind earlier,
where it says, in the second line:

He [you] reiterated that he does not want
to be part of the formal legal solution and
would prefer lawyers not to be involved.

A. Yes, absolutely. It wasn't the case, but, was it?

Q. Sorry, what wasn't the case?
A. There were plenty of lawyers involved.
Q. It goes on, doesn't it. Brother Turton says:

I [meaning he] have suggested to [you] that we strongly recommend a lawyer at least view the deed of release ...

A. I agree.

Q. The next paragraph is the one I was coming to, about Peter Rodney. Do you see the note says:

We discussed his meeting with Brothers Gerald, Peter Rodney and Andrew. He is aware that Peter Rodney is overseas and is happy to speak to him when he returns. In the meantime he is very keen to meet with Gerald and Andrew in the same conversation with a mediator present as soon as possible.

A. I agree.

Q. Do you agree that that was said?

A. Yes. I just thought it happened closer, but my recollection must be wrong.

Q. And then on a related point, if we scroll down about three more paragraphs, do you see the one beginning, "We spoke at length"?

We spoke at length about the history of abuse ... and present attempts to resolve that in a professional and pastoral way by the Church and by the Marist Brothers. This was a positive discussion.

There is a record of what you were saying about wanting to try to let go some of the anger, and so on.

A. Yes.

Q. Then it goes on:

His wife is due to give birth in the near future and he would like to have these matters finalised before that time if possible.
A. Yes.

Q. Perfectly reasonable, but the point I'm asking you about is you wanted, for perfectly good reasons, to get this over and done with by the end of March?
A. Yes.

Q. Therefore, if Peter Rodney wasn't around --
A. That's correct.

Q. If Peter Rodney wasn't in Australia, he would have to wait until later?
A. And so we agreed that they would make a time following facilitation for me to sit down with Peter Rodney.

Q. I'll come to that, but at least in terms of the meeting itself, you knew perfectly well that Peter Rodney wasn't going to be there?
A. Yes. I just thought it was closer to the day. I must be wrong.

MR GRAY: I see the time, your Honour.

THE CHAIR: Yes, very well. We will take the short adjournment.

SHORT ADJOURNMENT

THE CHAIR: Yes, Mr Gray.

MR GRAY: Q. If we could have, please, tab 33 and if we could scroll towards the bottom, because it goes from back to front. Mr [DK], you will see this is an email from you on 22 February to Brother Alexis Turton and you attach some pieces of work from your school days. You're aware of that. Some essays. Scrolling down, over the page, you say:

Did not Brother Peter Rodney, Gerald and Andrew have a duty to investigate why my results deteriorated...

It is my belief that Peter Rodney didn't ask any question ... as he nor Brother Gerald wanted to know the answer ...
The next bit I want to draw your attention to is this, bearing in mind this is coming after those two previous conversations that we've already looked at:

I also do not believe that it is good enough for Peter Rodney not to attend my mediation because he is on holidays.

A. Sorry, what date is this email?

Q. This is 22 February.

A. This after?

Q. This is after those two previous ones. There we are.

A. I don't know.

Q. I just draw your attention to the record. It would seem that you had had first one conversation, then another --

A. Absolutely.

Q. -- where he had said "Brother Peter Rodney is overseas and can't come". You then write and say, "It is not good enough for him not to be there because he is on holidays".

A. I can see that.

Q. You get a response from Brother Alexis, at the top of the document, the next day, the first paragraph dealing with school results. Then Brother Alexis says, now in effect for the third time:

Brother Peter Rodney is not presently on holidays. He is undertaking a professional sabbatical ... 2 academic courses ... not in a position to cancel these. ... ready to speak to you and could have done so in January but he had to head overseas at the end of January.

That's what Alexis tells you in this email?

A. Yes.

Q. So, again, by the time the mediation came around, five weeks after this, you were fully aware that he wasn't going to be there?

A. Yes.
Q. Thank you. I then just want to pick up your point that you made this morning about whether, at the meeting itself, there was some promise by Alexis to arrange a meeting with Peter Rodney. You say this in your paragraph 41 of the statement to the Royal Commission:

I left the mediation with the signed Deed and a promise from Brother Turton that I would meet Brother Peter Rodney within six months. This did not happen, although I tracked him down ... three years later.

Et cetera. I just want to ask you about that. What I want to suggest to you is that at the end of the meeting on 30 March, or by the end of the meeting, there wasn't a promise by Alexis to you that you would meet Brother Rodney within six months. I take it you disagree with that?

A. Do you want me to respond now?

Q. Yes.

A. Yes, and I can tell you why, if you like.

Q. Yes, please?

A. Peter Rodney was my home room teacher in grade 10. He taught me modern history in grades 11 and 12. I idolised him and he was a mentor of mine, because he was just so smart. I've read his statement. He's an academic. I admired him, I looked up to him. I sent them those pieces of work that I wrote for him as an indication of what I was doing and also to show - and it's there in the comments, in his comments and in my writing - I looked up to him so much when I was 15 years old that I even changed my writing from running writing to printing, to emulate him. So to go through the facilitation and walk away without ever seeing him would have been a deal-breaker for me. That was very important and it was probably, if not the most important reason for the facilitation, it was up there, and it was very important to me.

Q. Let's just, if I can, break that down a bit. You have accepted that you knew he wasn't going to be there on the day of that meeting?

A. Yes, sure. I can see that now.

Q. In terms of the contact being arranged with him after that meeting, what I want to suggest to you for your
agreement or disagreement is that although leading up to the meeting you had undoubtedly wanted to meet Peter Rodney as well as the other two, and we've looked at correspondence where you said that, by the end of the mediation, especially at the end of the session with Brothers Moraghan and Burns, it was left on the basis that you may or may not choose to pursue an additional meeting with Brother Rodney?

A. No. And when I didn't and I'd had no response, and I recall this day very clearly, and then when I found out about subsequent things, I was so upset that I took those assignments that I'd written and kept for over 30 years, the originals, and I shredded them at the disappointment of not getting my meeting. This is later on in 2010. So, no, I disagree with your suggestion.

Q. I understand that, but let me try to follow this. Are you saying that at some point later in 2010 you contacted either Alexis or someone else to ask about it?

A. No, I heard nothing, it was nothing, I got no contact.

Q. No, but did you make contact with someone asking for it?

A. No. I had heard nothing.

Q. I follow that, but did you pursue it with either Alexis or anyone else?

A. No. Why would I? And that was after my email to Alexis of some time I think in September or October 2010, but none of that was concerning Peter Rodney. So I'd got sort of two disappointments, so I just effectively gave up.

Q. I'll come to the other disappointment --

A. But I'm talking about the Peter Rodney issue.

Q. The other disappointment you're referring to was the Michael Salmon topic.

A. Correct.

Q. I'll come to that. But just on Peter Rodney, could we have tab 68, please. You've, I gather, seen this in recent weeks?

A. I think so.

Q. This is obviously not one passing to or from you.

A. No. I understand.
Q. It's from Alexis Turton to Peter Rodney within a few weeks of the mediation back in April 2010.
A. Yes.

Q. You can see that what Brother Alexis records, and clearly from what you've said your recollection is different, but you can see that what he records in the second paragraph is that it was a very moving discussion, and so on, and then in the fourth line:

> Overall I think it could be described as a worthwhile exercise and there was some reconciliation with the two former staff members there. By the time we had finished the discussion there was no indication from [you] that [you] wanted to have a meeting with [Peter Rodney].

That's what Alexis has written. Do you accept that that may well have been his state of mind?
A. I could say a couple of things about that. It wasn't my state of mind.

Q. I understand.
A. And prior to the facilitation, it's obvious that Peter Rodney was happy to meet with me. And it appears that some time during this process, and what has struck me in recent days, is my email address was given to Anthony Hunt, and he emailed me, but obviously Peter Rodney couldn't even send me an email. And so that was one of the bigger disappointments also.

Q. Thank you for that.
A. Now, I don't know why - he was overseas, but - he couldn't have even sent me an email before or after the facilitation, and that would have been somewhat of a nice gesture, but I received nothing.

Q. You can see what Alexis has said to him in this email.
A. Yes.

Q. There was no indication from you, says Alexis to Peter Rodney, that you wanted to have a meeting with Peter Rodney any longer?
A. Well, I remember in the doorway of the room saying to Alexis as I left to go home, "Don't forget that I would like to speak to Peter Rodney." That's my recollection.
Q. Thank you. Just pausing there, in terms of Peter Rodney, though, if this is what Peter Rodney was told by Alexis, you could understand that Peter Rodney might think it might be better to leave this alone?
A. No.

Q. Do you see in the end of that paragraph Alexis says to Peter Rodney:

...at this stage it does seem that it is the end of it as far as [DK] is concerned and that there was some real healing.

A. I don't accept that, but if that was me - he couldn't have even sent me an email? Even with this? "Dear [DK] I got an email from Alexis, I hope it's all going well for you now."

Q. Is that what you want to say about that --
A. Well, you've asked me would he accept that, and, yes, obviously Alexis has told him that, and after Alexis has told him that, he couldn't find it within himself to make any contact with me at all even though I had requested that numerous times.

Q. You appreciate he didn't know that?
A. Well, I don't understand how he was thinking.

Q. On what you've seen, he didn't know that, did he; do you agree?
A. But he could have - yes.

Q. Thank you.
A. He could have acted independent of this email, couldn't he, himself?

Q. Can I just ask you this: in more recent times, I think basically this year, when you managed to make contact with Peter Rodney, he has engaged in quite a lot of email correspondence with you, hasn't he?
A. Absolutely, and freely.

Q. And, would you agree, in a very kind and caring way?
A. Absolutely, and that's the way I remember him. It's just disappointing that it's three years after the fact.
Q. The last thing I want to ask you about this topic of Peter Rodney is if we could have tab 70, please - I will need to come back to this on another note. Meanwhile, if I could just have tab 70, and scroll down. This is your email to Brother Alexis dated 3 May where you start off by saying:

Thank you for your letter dated 14 April.

The 14 April letter was the letter of apology?
A. Yes.

Q. What you say there is that you have now had some time to process everything and would like to pass on comments to "you and both Gerry and Andrew". No mention of Peter Rodney at that point. Do you see that?
A. I think I was angry at him.

Q. Then you say in the first bullet point:

Something bad happened to me ...

I will come back to this. I'm not passing over it lightly. But just on the Peter Rodney topic, you say:

... in my mind I blamed 3 people for this.
Those 3 were Gerry, Andrew and Peter Rodney. For some reason now I am just not so angry, I feel that I am able to let it all go. To that extent, the fact that they were able to be present on the day was extremely helpful. I do not understand but I feel somewhat better now.

All I'm asking you is, there's no suggestion in that email, is there, that you still wanted something from Peter Rodney, or with Peter Rodney?
A. No. But was it up to me to keep requesting it?

Q. Okay. I need to move to a different topic. I want to come to the question of Michael Salmon, which is something that you've emphasised in particular in your statement, that is, the use of Michael Salmon as facilitator and what you were told about him. You understand what I'm talking about?
A. Absolutely.
Q. You say, and I'm summarising, that you were never told that he was employed by the church?
A. No.

Q. You've seen the statements and read the statements of Brother Alexis Turton and Michael Salmon?
A. I've read them. I can't recall everything in them.

Q. All right, I'll take you to the bits that I want you to focus on, but you're aware, I take it, that both of them say that each of them did tell you just that, namely, that Michael Salmon was employed by the church?
A. In their statements they do.

Q. On reflection, are you prepared to accept that actually each of them did so?
A. Absolutely not.

Q. Do you think they may have done so?
A. No. Can I say one other thing?

Q. Yes, by all means.
A. Michael Salmon told me he was a lawyer, and any experience that I've had with lawyers, they put everything in writing.

Q. That's what you wanted to say?
A. Yes.

Q. All right. On 22 February - let me just orient you in time. We've looked at a few emails and file notes dating from the February period today on other topics. So you were in, I won't say constant, but quite frequent contact with Brother Alexis at that time?
A. Absolutely. Yes.

Q. Around February. And in fact not only emails but lots of telephone conversations?
A. Yes.

Q. Do you accept that he was listening to you respectfully and kindly and in a pastoral way?
A. Very much so.

Q. Thank you. I want to suggest to you that on 22 February, you telephoned him and there was a conversation between you and that in the course of that
conversation, he said this, "I just need to make it clear to you that Michael Salmon is employed by the church and his role as director of the Professional Standards Office is to oversee the implementation of the Towards Healing process. He is a very experienced and qualified mediator whom we often use." Do you accept that he said that?
A. Not at all.

Q. Do you accept that he might have said that?
A. No.

Q. Have you seen the file note that he made of this conversation?
A. Yes.

Q. You have. Could I show that to you, please. It's tab 31.
A. Is it a file note or an email that he failed to send?

Q. You're quite right - well, it's both, I suppose. It's a note, which was to have been an email. You have obviously, from the question you've just asked, read his statement --
A. I've read --

Q. -- where he explains how this document came to be created, namely, that it was an email that he was on the point of sending you, but then you telephoned?
A. And I never got it, did I?

Q. He didn't send it, as he writes at the bottom.

This was not sent as a long conversation was held with [DK] on 22nd February 2010 and above was explained.

Now, do you see that in that document which Brother Alexis says was a document he prepared that day to be sent, but which he didn't send, he says in the third paragraph:

... a point of clarification ... The mediator that is available is Michael Salmon.

A. I can't see that.

Q. Do you see the paragraph beginning, "The second matter

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is just a point"
A. Okay, yes.

Q. ... of clarification to make sure you are
happy with the present proposal. The
mediator that is available is
Michael Salmon. Michael is employed by the
Church to supervise the implementation in
NSW of the Towards Healing protocol.
Pausing there, do you see that's what it says?
A. Yes.

Q. Passing down a few lines:

He is also a very experienced and qualified
mediator. We have used him frequently and
never had any concerns. I mention this
though because he is paid by the Catholic
Church to run the Professional Standards
Office and to oversee that it is properly
implemented.

He said something to that effect to you, didn't he?
A. No. The last bit, yes.

Q. What was the last bit?
A. What you just read:

He is also a very experienced and qualified
mediator.

He also told me that he was independent and a lawyer.

Q. Just so that I'm clear, what's the bit that you're
agreeing that he said?
A. That:

He is also a very experienced and qualified
mediator. We have used him frequently and
never had any concerns. I mention this
though because he is paid by the Catholic
Church ...

And not to run the Professional Standards Office. I knew
he was being paid by the Catholic Church. I knew he was an
experienced mediator. I thought he was independent. And he told me he was a lawyer.

Q. So do you agree that Alexis did say that he was paid by the Catholic Church?
A. Absolutely.

Q. But you say that he didn't say he's employed by the Catholic Church?
A. No.

Q. Do you have a clear recollection of him saying that Michael Salmon is paid by the Catholic Church?
A. Yes, because he's a mediator, he was going to be paid by the church, and there would be no cost to me for that.

Q. As you understand where I'm coming from, I'm suggesting to you that he not only said that Mr Salmon was paid by the church but that he was employed by the church. You say that didn't happen?
A. Well, I guess we'll have to disagree on that.

Q. We will, and I'm suggesting to you that he also said to you something like what then appears:

   If you are concerned about this then we would try to obtain another mediator ...

A. And I never had any concerns because I obviously didn't know his role.

Q. Did he say to you, "If you are concerned about this then we would try to obtain another mediator"?
A. Not in the context of him being the professional standards director.

Q. Well, tell us what you remember?
A. If I had any concerns at all after talking to him - because he told me Michael would ring - then we could look at other mediators.

Q. What I want to suggest to you is that Brother Alexis did say the things to you that I've just put, namely, that Mr Salmon was employed by the church, et cetera, and that you said that you were happy to proceed with Mr Salmon?
A. Once again, we'll have to disagree.
Q. Could we have tab 32, please. This is, as you can see, a file note by Brother Alexis of a conversation with Mr Salmon the following day, not a conversation with you. In the first paragraph, you will see that Brother Alexis says to Mr Salmon about you -

I informed him -

being Mr Salmon, says Alexis -

that I had raised the question with [DK] [yourself] pointing out clearly to him that Michael Salmon was employed by the Church to oversee the implementation of Towards Healing and was an experienced and qualified mediator. [DK] saw no trouble with this.

Now, you see that that's what he has written?
A. Yes, but --

Q. And you've seen in his statement that Brother Alexis says that he had that conversation with Michael Salmon and said that?
A. But once again, this wasn't sent to me, was it?

Q. Quite so, it wasn't. We're on the same page there. My question is, given that that's what Brother Alexis wrote down on 23 February, do you believe that Brother Alexis was writing it down accurately?
A. No.

Q. You think Brother Alexis was writing it down falsely?
A. I don't know whether falsely. But even he, in other documents, said that he might not have communicated it to me properly.

Q. We'll come to that.
A. Well, I don't want to say that he's malicious. I think "falsely" is the wrong word. Inaccurately, maybe. But I had no understanding of that.

Q. I want to move on now to what I want to suggest Mr Salmon said to you, moving away from Brother Alexis.
A. Yes.

Q. I think you say in your statement that you had two or
three conversations with Mr Salmon before the mediation?
A. Possibly. I think so.

Q. And he, Mr Salmon, in his statement talks about one of those in particular on 2 March. I want to invite you to agree with this, that in that telephone conversation, being the first one he had with you, after introducing himself by name, he said, "Even though I am employed by the church in another capacity, my role is to be an honest broker and to get the best outcome. It's not my role to protect the backside of the Marist Brothers". Do you agree with that?
A. Agree with what?

Q. That he said that.
A. Your invitation or that he said it?

Q. That he said that.
A. He didn't say - at no stage did he tell me that he was employed in any capacity by the church.

Q. So that we're clear, you understand that I'm suggesting to you that he did?
A. I'm suggesting that he did not.

Q. I now want to suggest to you that he did it a second time at the mediation meeting itself, at the first stage of that meeting when he was in the room with just you, your wife and [DL]. I'm orienting you to the time. I want to suggest to you that in that session, Mr Salmon reiterated to you that even though he worked for the church, he was independent of the Marist Brothers.
A. No, and you know what strikes me here with the suggestion that you've made - during this process, they sent me so many emails, they required me to sign so many documents, they required me to do a statement that I signed, we had emails back and forwards. They made disclosures to me about everything, and then you're suggesting on this one point, which was so hurtful to me, that they made a couple of phone calls and didn't put it in writing, when they put absolutely everything else in writing? You know, that's just ludicrous.

Q. Thank you. And the third thing I want to suggest to you is that at the mediation itself, also in this first part when he, Salmon, was just in the room with you, your wife and [DL], one of the things he said was this, "The church has endeavoured to respond to these issues. One...
example is the Towards Healing process, which in my experience of managing complaints in New South Wales has often delivered good outcomes to victims." I'm not asking you to comment on whether that's --

A. He might have. I don't recall that.

Q. -- accurate or not, but did he say that?
A. I wouldn't have a clue. Are you trying to tell me that, by saying that he managed complaints, he's alluding to his role as director of professional standards?

Q. That's what he will say.
A. So I was there, I was upset, I've just had a child. You know, this is probably one of the biggest days in my life, and I'm supposed to understand that?

Q. My question at the moment simply is whether you agree that he said that?
A. No, and - well, he may have said it, but I had absolutely no understanding. If he did say it, that did not convey to me at all any role that he had in the church. And I don't think, if he was intending to do that, that that would be a truthful way of telling me about it.

Q. You appreciate that, according to him, he had already said it to you in plain English previously?
A. Well, I don't think he's correct.

Q. I want to ask you this, Mr [DK], for your comment more generally. Could this be the position: the abuse you suffered as a boy has obviously affected your very deeply?
A. Absolutely.

Q. For many years, you believed that some of the other brothers - not the abusers themselves, but some of the other brothers - either knew about it or should have suspected and investigated?
A. I think they knew of abuse. They may or may not have known about me, but I think they certainly knew about the abuse that was going on at St Augustine's.

Q. Thirdly, at the facilitation meeting, two of those brothers - Brother Burns and Brother Moraghan - were there to face up to your accusations in that regard?
A. Absolutely, and I appreciated them being there.

Q. They both said that they had not known of the abuse,
didn't they?
A. About any abuse?

Q. Yes.
A. Yes, they both said that.

Q. Your discussions with them, those two, on the day of
the meeting went quite some distance, would you agree,
towards you being able to let go of your anger towards
them?
A. I wanted - you know, I was desperate, I've always been
desperate, to let go of the anger.

Q. Yes. Do you agree that what I've just said is right,
though? Would you like me to put it again?
A. I don't know if it did. I don't know. I'm not
a psychiatrist. I wanted it to be - I was trying to
convince myself to let go of the anger.

Q. Do you agree that the discussions you had with the two
brothers that day did enable you to go some distance
towards letting go of the anger on that day?
A. On that day, yes.

Q. Indeed, that part of the day, the first pastoral part,
as it's being called, ended very amicably, didn't it?
A. Yes.

Q. There were handshakes all round?
A. Absolutely.

Q. And an invitation from Brother Moraghan in particular
for you and your wife to visit him at Mittagong?
A. I've always wanted to reconcile with them.

Q. You're agreeing with what I've just said?
A. Yes.

Q. Even the balance of the day, the second half, which
was talking about money, ended, in the end, in terms of
when people were departing --
A. They weren't in the room.

Q. No, I know that. It's a different question, if you
would just let me finish.
A. I said goodbye to them. I was civil.
Q. You did. I'm now talking about a later part of the
day after they had gone, at the end of the financial part
of the day.
A. The financial - it didn't end, because it never
started. They weren't there.

Q. Sorry, I'm not following you.
A. In the second part of the day, no-one was there. It
was empty apart from my wife and [DL]. How could it end
amicably when they weren't there?

Q. Let me try to clarify this. At the end of the first
part of the day, which did involve Brothers Burns and
Moraghan, I think you've just agreed that that ended
amicably; handshakes?
A. Absolutely.

Q. Pleasant conversation?
A. Yes.

Q. And off they went?
A. Yes.

Q. Those two brothers left, and they left with your
knowledge because you all said goodbye to each other?
A. Absolutely.

Q. Then there was lunch?
A. Yes.

Q. There was a lunch break, and then in the second part
of the day there was quite a separate, different part of
the process?
A. Yes.

Q. Where you were in one room with your two people, and
Brother Alexis, Mr Bucci and Mr Monahan were in another
room?
A. And Mr Salmon.

Q. And Mr Salmon was also present. I'll come to --
A. Incorrect.

Q. What's incorrect?
A. That (indicating). He was - he remained in the room.

Q. Anyway, he was there. I'll come to what he did. In
that part of the day, what was being discussed, in essence, was compensation, money?
A. Correct.

Q. What I'm putting to you is that at the end of that phase, accepting that there were two different rooms, but at the end, by the time the last offer had been accepted and the deed of release signed, and so on, people said goodbyes?
A. Yes.

Q. And at that point, that part of the day also ended at that point quite amicably?
A. I hope so. Yes.

Q. Well, you thought so?
A. Yes.

Q. In your mind, it was ending on quite a good note; is that right?
A. It ended civilly. I don't know how good a note.

Q. Well, I'm asking you, if I may, in your own mind, did it seem to be ending on a fairly good note?
A. We weren't punching each other, but I suppose we were civil.

Q. In your mind, did you feel reasonably good about it?
A. Yes.

Q. Thank you. In the light of that, you wrote to Brother Turton shortly afterwards, which is the one I took you to a while ago?
A. Yes.

Q. To say - I'm paraphrasing - how the meeting had helped you quite a bit?
A. Absolutely.

Q. I will come back to that, but then subsequently, some time after that in the months that followed, as time passed, some of your old anger and resentment rose to the surface again?
A. Absolutely.

Q. And you, I'm asking you, if I may, looked to find fault with what had happened?
A. I didn't look. It found me.

Q. And you fastened on the fact that Mr Salmon was a church employee?
A. I fastened on the fact that he was the director of professional standards.

Q. And a church employee?
A. Yes.

Q. A church person. That was the point, wasn't it?
A. Yes.

Q. You claim now, as we know, that you were never told that?
A. Absolutely.

Q. I'm putting to you, as you know, that in fact you had been told that, not once but more than once?
A. I don't know how many times you want me to disagree with you.

Q. All right then. Let me move to a different topic. Just before I do, in terms of your accountancy profession, how long have you been an accountant?
A. I don't know. Late 1980s, early 1990s.

Q. Late 1980s?
A. Yes.

Q. Did you study --
A. A Bachelor of Commerce.

Q. When was that?
A. In the 1980s.

Q. Starting and finishing?
A. I don't know, 1983 to 1990, 1989 or something. I just forget the exact dates.

Q. Were you doing it part time?
A. Part time, full time. It took me a long while to finish.

Q. So since about the early 1990s you've been a qualified accountant?
A. Yes.
Q. I just want to ask you now only a couple more things. The first is the actual content of the discussions between you and mainly the two brothers in the first substantial part of the day. You say - and I'm summarising a bit here, paraphrasing - don't you, that you were prevented from saying much of what you wanted to say?
A. From what I wanted to say. I got bits and pieces, but it didn't flow the way I wanted it to.

Q. You say that you were interrupted and cut short by various people?
A. And I felt frustrated.

Q. No, but do you agree with that, that's what you say?
A. Yes, yes.

Q. And you say - this is all from your statement, I'm suggesting - that both Brother Burns and Brother Moraghan said almost nothing and that there was hardly any exchange between you and them?
A. We didn't have the conversation that I was hoping for.

Q. But that's not my question. Your statement says that Brother Burns and Brother Moraghan said almost nothing. Do you stand by that?
A. Almost nothing. I got very little from Andrew Moraghan and a little bit more from Gerry Burns.

Q. You say there was hardly any exchange between you and the two of them?
A. Correct.

Q. I want to put to you again that in fact none of that is accurate. Firstly, I suggest to you that you actually spoke at some length?
A. Yes.

Q. You used your quite detailed notes?
A. They were my notes, yes.

Q. I'm not saying this critically.
A. Yes.

Q. You spoke from your notes?
A. It sometimes feels a bit critically.
Q. Pardon?
A. It feels critically.

Q. Sorry, I don't mean to be. That's not the object of this exercise. You spoke very forcefully, would you agree?
A. I don't know.

Q. You went into considerable detail?
A. Yes.

Q. And you made your accusations about their complicity, as you saw it, quite clear?
A. I always believed they knew what was going on at St Augustine's.

Q. And you said that in very plain terms at the meeting; agreed?
A. Yes, yes.

Q. I want to suggest to you that you were not interrupted in the course of doing that?
A. Well, I believe that I was - not by the brothers.

Q. But by?
A. Patrick Monahan and Michael Salmon.

Q. What I want to suggest to you is that rather than interrupting you, it may have been pointed out to you by one or other of those that you were going over something that had already been discussed by you?
A. I actually do remember them saying that, yes.

Q. Just so that we're clear - I think we are - what I'm suggesting to you is that it wasn't a matter of interrupting you; it was a matter of saying that you had already covered that point?
A. But they did interrupt me in saying that.

Q. All right. The next thing I want to put to you is that each of Brother Moraghan and Brother Burns responded directly to the various things that you put to each of them?
A. Yes, but not - I didn't feel that it was openly and fully.

Q. I want to suggest to you that the discussion was quite wide-ranging with both of them, firstly mainly with
Brother Moraghan, secondly mainly with Brother Burns, and then with both of them; do you agree with that?

A. My discussion was wide-ranging, but I didn't think they were open or forthcoming or free.

Q. I want to suggest that the discussion was quite wide-ranging, covering not only the question of the abuse itself but also such things as the culture of the school, the steps the brothers in the school had taken since the 1970s, and so on?

A. And I think that could have been with Alexis.

Q. I beg your pardon?

A. I think that could have been with Brother Alexis also.

Q. But you agree, do you, that --

A. Yes, in that, what you've just said I agree with.

Q. The brothers, and in particular I'm talking about the two brothers Burns and Moraghan here, acknowledged that some of the criticisms you made of the culture were basically valid?

A. And who acknowledged that, sorry?

Q. Brothers Burns and Moraghan.

A. I don't recall, but it's highly likely, yes.

Q. And Brother Alexis - and I think this part at least is common ground - gave an oral apology to you?

A. Yes.

Q. And you recognised it at the time as genuine and wholehearted?

A. Yes.

Q. What this led to is, of course - because this was all when Brothers Burns and Moraghan were there - when that came to an end, they left, that is, Burns and Moraghan?

A. Yes.

Q. You say in your statement, but I think from what I've heard you say just now, you may be willing to accept some change is necessary to this - you say that the discussion with the two brothers was a very aggressive and destructive morning. Do you still say that?

A. They weren't aggressive or destructive, no. But I think overall, the morning didn't achieve what I wanted
it to achieve, and therefore it was destructive and there
was some aggression from others.

Q. But I'm asking you about the words you've used only
because this is what the brothers have to respond to.
A. Yes, I'm agreeing.

Q. It was a very aggressive and destructive morning?
A. Yes. At the end of the day, it was, but not because
of the brothers.

Q. But, rather, because of?
A. Other people.

Q. Namely?
A. Monahan and Salmon.

Q. First of all, in paragraph 35 of your statement you
say that:

Brothers Burns and Moraghan left the
mediation during the lunch break. I was
never asked whether I agreed to them
leaving.

That's just not right, is it?
A. That's what I - well, that's what I thought. I could
be wrong.

Q. I thought you had agreed a little while ago that you
shook hands with them --
A. Yes, sure, when they did, they obviously left.

Q. They left and that was all amicable?
A. It was.

Q. So if your sentence in paragraph 35 gives the
impression that they just left without notice, that would
be wrong, wouldn't it?
A. Correct.

Q. I only have a couple more things to go, Mr [DK]. You
were aware, I take it, at least by the time the meeting
started in the morning, at the beginning, that it was going
to be in approximately two parts?
A. Yes.
Q. The pastoral, Burns/Moraghan/apology, part first and
the financial part second?
A. Yes, I believe so.

Q. In terms of Mr Salmon as mediator on the day, his
actual activity, you say in paragraph 37 that Mr Salmon
told [DL], your barrister, your friend, that [DL] had to go
between the two rooms?
A. Yes.

Q. In fact, it was Mr Salmon who went back and forth
between the two rooms, wasn't it?
A. No.

Q. It wasn't [DL] at all?
A. I believe it was [DL].

Q. You haven't seen [DL]'s statement?
A. No.

Q. If [DL] says that Mr Salmon shuttled back and forth
between the two rooms, do you say [DL] is wrong about that?
A. No.

Q. Do you think [DL] might be right, if he says that?
A. He most likely is.

Q. Do you think Mr Salmon might be right if he says that?
A. That he went back and forth?

Q. Yes.
A. Well, I - I never believed that, but I am open to
admit that I'm wrong.

Q. Finally, your feelings after the meeting, at the end
of the meeting and subsequently. First of all, could we
please have tab 66. This is the letter of apology that
Brother Alexis Turton wrote to you a fortnight or so after
the meeting. This document, at least in my copy of it, has
only the first page. Yes. The next tab, 67, has the whole
letter. At any rate, this is the one you received,
preumably? It has the letterhead on it.
A. I think - yes.

Q. Let me just ask you about that. Brother Alexis says
in the second paragraph:

Transcript produced by Merrill Corporation
I apologise to you for the pain and suffering that you endured during your time at St Augustine's not only through the abusive events you describe but also through the effect of these matters on your academic performance and your own self confidence. Your sense of betrayal was clear for us to see. I admired your courage in speaking out so clearly as you described your experience.

I would hope, and I'm asking you, did you accept that apology as genuine from Brother Alexis?
A. Fully.

Q. In the fourth paragraph:

You have a copy of the Diocese of Cairns Child Protection Policy and Protocol ...

That was one of the points that you had made back in the beginning that you wanted, wasn't it - some indication that the policy in place now was better?
A. Yes.

Q. And this was him attempting to fulfil that request from you?
A. Absolutely.

Q. Then in the bottom paragraph, he says:

I know that Brother Gerald and Brother Andrew share the sentiments that I have expressed here. You heard them voice their own sadness at your time in Cairns. I have conveyed to Brother Ross - that's Brother Murrin -

your appreciation of his message to you. Again he expressed his profound apology to you as well as his admiration for you. He was extremely sorry to hear of the difficulties that you have had in your life.

So that was presumably a good thing for you to read?
A. Yes.

Q. We then have to go to tab 67 to get the second page of this letter, I think. In the last paragraph, he says:

I trust that this apology as well as our financial gesture will help you along your healing path.

You understood what he meant by the word "gesture" there, I presume?
A. Yes.

Q. Namely, is this right, approximately, that it was only a gesture, the $80,000, or the $88,000, rather than put out as being actual compensation because, in a sense, nothing can compensate?
A. Yes.

Q. Is that roughly how you understood it?
A. Mmm-hmm.

Q. And he says then in the last sentence:

While nothing we can say or do can change what has happened in the past I pray that our addressing it now can help you move forward.

Would we be right in thinking that you were pleased to receive that sentiment from him?
A. Very.

Q. Thank you. You responded - and this is the email that I took you to before - on 3 May, tab 70.

Good morning Alexis.

Thank you for your letter dated 14 April.

Being the one we just looked at. Then you say:

I have now had some time to process everything and would like to pass on some comments to you and both Gerry and Andrew. I hope that you can pass on this email to them also.
Then I won't read it out again, but I read that first bullet point to you previously. Is it fair to say that in that paragraph you were saying to Brother Alexis that for some reason, maybe not easy exactly to pinpoint, the experience of that meeting had left you not so angry and able to let it all go?

A. Yes.

Q. In fact you say in the last sentence:

*I do not understand but I feel somewhat better now.*

A. I was desperate to feel better.

Q. And you did feel better?

A. Yes. It's just that other things got in the way.

Q. I follow that, but at the point you were writing this, that was perfectly true and heartfelt from you?

A. Absolutely.

Q. Indeed, you then go on to say in the next bullet point that one of your disappointments was that you felt you hadn't fulfilled all of your ability?

A. Yes.

Q. Then in particular, in the third bullet point, you say:

*Since our mediation I have had the time and energy to put some thought as to what I want to do with the rest of my life.*

Then you indicate some lines of thought that you had about ways in which you could help other people?

A. Yes.

Q. Is it fair to say that at least at that stage when you were writing that email, the Towards Healing process had been of some real help and value to you?

A. Yes.

Q. You were saying, among other things, that you now finally had the time and energy, which you previously hadn't had, to look forward with renewed hope to the rest
of your life?
A. At this time?

Q. Yes.
A. Yes.

Q. Finally - this is my last question - Brother Alexis replied to that email. You may remember that?
A. Yes.

Q. Tab 71. Brother Alexis writes back a week or so later, 12 May:

Thanks very much for your letter recently.

He says "Dear", and I think that was your first name, I believe, in the opening salutations.

Dear [DK]

Thanks very much for your letter recently. I am so pleased that even if the processes and reasons are not always clear that you feel some sort of movement and that some weight has been lifted off your shoulders.

Did that capture approximately how you did actually feel?
A. Yes.

Q. And then he goes on, and I won't read it all, to, among other things, offer some suggestions about the kind of thing you had raised with him about helping other people?
A. Yes.

Q. In the end, in the second-last paragraph, on the next page, he says:

Anyway -

using your first name, [DK] -

once again it was really good to hear from you and feel free to keep in touch.

That's what he said?
A. Yes.
Q. No doubt you did feel free to keep in touch?
A. Yes.

MR GRAY: Thank you, your Honour.

THE CHAIR: Mr Anderson, do you have any questions?

<EXAMINATION BY MR ANDERSON:

MR ANDERSON: Q. Mr [DK], you've just been asked questions about the apology you received and you treated that as a good thing and you accepted that?
A. Yes.

Q. You did feel positive about that experience and wrote back to Mr Turton after that apology was received?
A. Yes.

Q. What I want to know is, through this process and the documents you've now seen and become privy to, has that feeling that you had at the time of receiving the apology changed?
A. Utterly.

Q. Why is that?
A. Specifically about the apology?

Q. Yes, we can deal with that.
A. Because I've learnt that it didn't just come from Alexis; it came from Patrick Monahan and the insurer also. It was vetted by them. They had to read my apology.

Q. So how did it make you feel to see that it was vetted in that way, as you put it?
A. That's not an apology.

Q. Now we've just confined your answers to the apology. You also wrote, then, back to Mr Turton, Brother Turton?
A. When was that?

Q. You wrote back to him --
A. After the apology?

Q. Yes. It was the last document we had up on the screen where you --
A. Oh, that email?
Q. Yes, your email, so I'm referring to that. What was
the feeling you got from writing that email and how you
were feeling at the time and the response you got from
Brother Turton?
A. I wanted to do something positive and constructive in
my life. I wanted to try and help some other people.
I sent that email to Alexis and my offer got rejected.

Q. Is that how you took it?
A. Yes.

MR ANDERSON: Those are the questions I have, your Honour.

THE CHAIR: Thank you. Thank you, Mr Stewart.

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Firstly, Mr [DK], in the mediation, in
the second part of it where you’ve told us that you and
your wife and [DL] sat in your own room, that’s how it
occurred, was it?
A. Yes.

Q. During that afternoon of negotiation, did you leave
the room from time to time or were you in the room?
A. I never left the room.

Q. Did Mr Salmon at any time come into the room?
A. It's not my recollection that he came into the room.

Q. And did Mr [DL] leave the room and come back in again
from time to time?
A. Two or three times.

Q. In this process of giving evidence to the Royal
Commission, you’ve obviously learnt a lot that you didn’t
know previously. Have you experienced any healing in that
process?
A. Very much so.

Q. Could you explain that briefly?
A. The healing that I have experienced started four weeks
ago when I was given a whole stack of documents, which
I now believe was the truth, and that truth was searing and
hurtful and very hard to read and to understand and
process, and I was debilitated for a week. But coming out
of that, I believe now I know the whole truth, and that's the only reason that I was able to put down my thoughts on moving on, not being angry and truly forgiving the Marist Brothers, because I was told the truth.

MR STEWART: Thank you, Mr [DK]. Thank you for your testimony.

THE CHAIR: Thank you, Mr [DK]. Thank you very much for coming and telling your story. You are now formally excused.

<THE WITNESS WITHDREW

MR STEWART: The next witness is the witness known as Mr [DL]. His name is known to the Royal Commission.

<[DL], sworn: [12.50pm]

<EXAMINATION BY MR STEWART:

MR STEWART: Q. Sir, you have furnished a statement to the Royal Commission dated 9 December 2013. Do you have a copy of that statement with you?
A. I do.

Q. Do you confirm that it's true and correct?
A. I do.

MR STEWART: I tender that statement.

THE CHAIR: Yes, [DL]'s statement will be exhibit 4-44.

EXHIBIT #4-44 STATEMENT OF [DL], DATED 9/12/2013, BARCODED STAT.0093.001.0001_R

MR STEWART: Q. Mr [DL], you are a barrister practising in a town in northern Queensland; is that right?
A. It is.

Q. You had been at St Augustine's College in Cairns with Mr [DK]; is that right?
A. Yes.

Q. Did he call you at some stage and ask you to assist him with something?
A. Yes. I had a telephone call from him in early 2010
where he made the revelation to me - I had no prior knowledge - that he had been interfered with during our time at school, or in fact perhaps prior to my time there. He was there for, I think, a year in primary school before I started in grade 8. So he revealed that to me during the course of the telephone discussion.

Q. What did [DK] ask of you?
A. He told me that he had had contact with the school and with representatives of the Marist Brothers and that he was interested in pursuing a path involving a program that was available, and he was encouraged to have legal representation during the course of this process. He asked me if I could assist in that regard, not just because I was a lawyer but because I was a friend from school, and I was still a friend.

I was initially quite reluctant to take that role, for various reasons, in particular because my area of practice is predominantly commercial, and I said as much during the course of that first telephone call. In fact, I did not agree to do so during the course of that first telephone call.

He told me, during the course of that telephone call, that he had seen lawyers about his situation, and what I suggested to him was that he should have those lawyers represent him in the course of the process that he was speaking of.

Q. Did he tell you why he didn't want those lawyers?
A. He did. He expressed some fairly strong and cynical views about the legal process generally, so he was not particularly enthusiastic about the prospect of suing and he was more attracted towards the idea of a conciliated, consensual outcome.

Q. What did you understand your role to be in assisting him in that process?
A. Well, it's not just a question of understanding; I put to him that if I was to take a role, he shouldn't look to me for advice about such things as what a potential common law claim might be worth, because I would have no idea about that, and he reassured me that that wasn't what he was looking for from me; he was really looking for support. I felt I was able to offer that because, in my practice, I have participated in many, many mediations over the
years, probably hundreds, and I thought I had some
objectivity that I could offer him in terms of the approach
generally and in terms of the procedure.

So talking it through with him to that effect, as the
discussion progressed, I sort of started to thaw a little
and think maybe there was something I could do for him.
Nevertheless I didn't agree to it immediately. I went away
and thought about it, at least overnight; it might have
taken a few days, even.

Q. The upshot of that is that you attended the mediation,
as I understand it?
A. Yes.

Q. Mr Salmon was the mediator, was he?
A. Yes. I attended the mediation. It was some weeks
after that initial discussion. What was contemplated
initially was a mediation that would happen somewhere in
the vicinity of Brisbane Airport, that I would fly down
from Cairns and that it would happen in the vicinity of the
airport. I think in fact the Qantas Club was mentioned as
a possibility; they have facilities there. Initially this
is by [DK] to me, no doubt he having had discussions with
the Marist Brothers and its representatives.

Ultimately, the mediation happened in the City of
Brisbane at a building called the Riverside Centre, at
a firm called Mullins Lawyers, I think either then or
previously known as Mullins & Mullins.

Q. It took place at some lawyers offices and Mr Salmon
was the mediator; is that right?
A. Yes, and Mr Salmon was the mediator.

Q. At the commencement of the mediation, what was your
understanding as to Mr Salmon's role in life other than in
the mediation? In other words, did you know anything about
his employment or what he otherwise did? I'm asking you
specifically at the commencement of the mediation, what you
knew?
A. Yes. At the commencement of the mediation, I formed
the impression that he was a lawyer in private practice,
I thought probably a solicitor. I don't recall him
revealing that specifically, but that was an impression
I formed at the mediation and probably during the course of
the mediation.
Q. You didn't know anything more about his life outside of that mediation or who he was employed by?
A. No.

MR STEWART: Would that be a convenient time?

THE CHAIR: Yes, very well. We'll take the luncheon adjournment.

LUNCHEON ADJOURNMENT
UPON RESUMPTION

MR STEWART: Q. Mr [DL], just before the adjournment I had asked you about what you knew at the commencement of the mediation as to Mr Salmon's employment otherwise than as mediator in that mediation. During the mediation, was it ever revealed to you or explained to you what Mr Salmon's role is or was at that time?
A. No, it was not.

Q. Dealing with the mediation itself, and in the first part of it, in the plenary, what was the atmosphere when [DK] started telling his story?
A. [DK] spoke at some length about his grievance or grievances with individuals but also with the school and the Marist Brothers more broadly. He at times became quite angry and emotive and expressed himself in a fairly animated fashion. So it had its moments.

Q. Did the mediator, Mr Salmon, respond during those moments at all?
A. Once or twice he raised his voice and became similarly animated, and Brother Andrew was also obviously annoyed, once or twice.

Q. The mediator's annoyance as described - what was that directed to, to what purpose?
A. Well, it was - I don't recall the specific discussion, but it was in response to what one might have objectively thought to be perhaps an unfair criticism expressed by [DK], and that I perhaps even was inclined to think was perhaps a little unfair also, bearing in mind that I had come into the matter fairly - without any background knowledge. So he was animated in a defensive way, if you like, responding to what he perceived, and perhaps what I was inclined to agree, might have been unfair criticism.

Q. As I understand it, the morning was spent in what is described as the pastoral session, and then in the afternoon there was the settlement negotiation; is that right?
A. Yes.

Q. You and Mr [DK] and his wife had a room, and there was another room where the church insurance and church representatives were; is that right?
A. Well, that was in the afternoon.
Q. In the afternoon, yes.
A. Yes.

Q. The mediator, Mr Salmon, conveyed offers between you, on the one hand, and someone else on the other hand; is that right?
A. Well, it was more the other way around. He conveyed - at the start of the afternoon session, he informed me - and this was not in the room with [DK]; this was outside the room, and he may have been in the presence of the insurer's representative at the time - that there would be three offers made, successively, and that's what happened. They were put to me not in the room with [DK] and his partner; they were put to me outside the room, but not in the room of the other camp, either down a corridor or in a different room, and I would then take the offers in to [DK] and his partner and convey them and discuss it.

THE CHAIR: Q. I just want to make sure I understand what you are saying. You were told there would be three offers, were you?
A. At the commencement of that afternoon session.

Q. At the commencement of the process?
A. Yes.

Q. I assume it was available to you to tell [DK]?
A. Indeed.

Q. That's a very odd negotiating process, isn't it? Why would you accept offer one or two?
A. It was extraordinary, in my experience. I had never been involved in something similar until then and I haven't since.

MR STEWART: Q. During the course of that afternoon and shuttling backwards and forwards with the three offers and, I take it, counter-offers, did the mediator at any time comment to you on the strength or otherwise of [DK]'s case, were he to pursue it, at law?
A. He did. When the third offer was put, I was attempting to elicit a higher figure, and I had discussed with [DK] a number over the $100,000 mark, it might have been only slightly above that, that he made known to me he would be willing to accept, and I did my best to elicit from the other side something above the third and best
offer that had been made. But I didn't put it as
a counter-offer because I was concerned that that might
have the effect of implicitly rejecting the third offer,
which I didn't want to do.

In the course of that, he made the comment to me that
[DK]'s position was plagued by two weaknesses. One was the
limitation period that had long since expired, and the
second weakness was that it was less than clear on the face
of the psychologist/psychiatrist report that had been
commissioned by or on behalf of the Marist Brothers that
[DK] had suffered actionable loss, suffered actionable
harm. It was a very borderline scenario in that sense
also. And he put that to me, and, as I said in my
statement, I found it difficult to cavil with that.

Q. Mr [DL], during the plenary - in other words, the
morning session, the pastoral session - was the name
Anthony Hunt ever raised?
A. No.

Q. Not in your presence?
A. Not in my presence.

Q. Is that a name that would have rung any bells for you?
A. It would have.

Q. Is that someone you know?
A. A Brother Anthony Hunt was at St Augustine's when
I commenced there in grade 8, and he taught Italian and he
was also in charge of the infirmary.

Q. So you knew him?
A. So I knew him from those days.

MR STEWART: Thank you. Those are my questions.

THE CHAIR: Who wants to ask questions?

MR GRAY: I do, your Honour.

THE CHAIR: Does anyone else want to ask any questions?

MR CALLAGHAN: I reserve the right to go last, if I may,
for my client.

THE CHAIR: Yes, you may.
<EXAMINATION BY MR GRAY:

MR GRAY: Q. Mr [DL], you are a practising barrister?
A. I am.

Q. And you were in 2010?
A. Yes.

Q. When you were asked by [DK] if you would go along to the meeting with him, did he tell you that the Marist Brothers had strongly advised him to have a lawyer to, among other things, review any deed of release that might be involved?
A. He did.

Q. So you knew that he was asking you to go with him not just as a support person but as a lawyer?
A. In that sense, yes.

Q. You realised, of course, as I think you have said you have been in many mediations yourself --
A. Yes.

Q. -- that if the matter were to settle, a deed of release was likely to be involved?
A. Yes.

Q. Did you see it as your role, attending with [DK] and being a barrister, to give him advice about the deed of release if and when necessary?
A. Yes, most definitely.

Q. You knew that the Marist Brothers had told [DK] that they would meet your costs of attending?
A. Well, that was what he conveyed to me.

Q. The meeting, as we have heard, was approximately in two parts, that is, the pastoral part and then subsequently after lunch the financial part?
A. Yes.

Q. At the outset, that is, before the first joint session, at the start of the day, do you remember that Mr Salmon, the mediator, first spoke to [DK] and his wife and you privately, that is, with no-one else in the room?
A. I think so.
Q. In the course of that first session - when I say "session", that encounter with just you three and Mr Salmon - he told you, among other things, who else was present, that is, apart from your group?
A. I don't specifically recall that.

Q. It may have --
A. But it may well have happened.

Q. At the first joint session when everybody was together, he introduced everyone?
A. Yes.

Q. Among those that he introduced were Mr Bucci, as the CCI representative?
A. Yes, I remember there was an insurance representative.

Q. And he was introduced as such; that's what I'm getting at?
A. That's probably right, yes.

Q. And Mr Monahan was introduced by Mr Salmon, the mediator, as the solicitor for the Marist Brothers and CCI?
A. Look, that may have been so. In the course of preparing a statement for this proceeding, I have difficulty remembering the solicitor for the insurer. He didn't create an impression in me. He did not create much of an impression.

Q. What's your memory of what Mr Salmon looked like and what Mr Monahan looked like?
A. Mr Salmon would, I think, be described as a middle-aged man with blondish-greyish hair. Mr Monahan - I can't picture him.

Q. Did either of them have a moustache?

THE CHAIR: I'm not sure what the purpose of this is. This is not a police check.

MR GRAY: No, no. There is a purpose, though, your Honour, if I may say so.

THE CHAIR: Tell me what the purpose is.

MR GRAY: I'm going to suggest to Mr [DL] shortly that the
person who said a couple of the things to him that he says were said was not Mr Salmon but Mr Monahan.

THE CHAIR: That may be so, but in the scheme of things I'm not sure where this goes. Put it to him. In other words, the fact that he may not remember the precise detail of someone's visage is not going to influence the decision we make about what happened, because we would expect people not to remember the precise detail of people's visage.

Mr Gray, there is a lot of writing about this sort of material.

MR GRAY: Yes, I do understand that, your Honour.

THE CHAIR: And I have written a lot of it myself. This is not going to help us. Go to the question.

MR GRAY: I will move on, your Honour. I will come back to that, though, if I may, in a slightly different way.

THE CHAIR: You may, but let's get to something that is relevant and helpful.

MR GRAY: Q. In the first pastoral session with everyone present, Mr [DK] spoke forcefully, you said?
A. Yes.

Q. And at some length?
A. Yes.

Q. Quite a bit of detail?
A. Yes.

Q. He included assertions to the effect that Brother Burns and Brother Moraghan had either known about the abuse by Brother Murrin or should have known?
A. Yes, that Brother Murrin had been protected.

Q. By them?
A. Well, by the Marist Brothers more generally, perhaps. I don't recall. I recall discussion about an incident in which Brother Ross, out of hours, was in a room alone with [DK], and Brother Andrew appeared and was very angry.

Q. This is [DK] speaking, is it?
A. This is [DK] relating an incident in which Brother Andrew was very angry at finding the two of them
alone and directed that anger - this is as [DK] relayed it - to [DK].

Q. To Brother Moraghan?
A. To [DK].

Q. I see, I am with you.
A. That was one incident where, describing it, [DK] was himself quite angry and almost accusatory, and Brother Andrew was a little annoyed in response as well. I think I have made mention of annoyance on his part in my statement. So there were discussions of incidents like that. That's one that comes back to my mind.

Q. Did each of Brother Moraghan and Brother Burns respond to the thrust of what [DK] was putting to each of them?
A. Well, certainly Brother Andrew responded to that. Now, I don't recall --

Q. But more generally, I'm speaking.
A. And certainly more generally. They were both responsive. Yes.

Q. So this part of the morning, this discussion among, essentially, those three, went on for some time?
A. Yes. It pretty much lasted until lunch.

Q. So what is your estimate of how long?
A. It was a matter of some hours.

Q. A couple of hours or more?
A. Three hours, something like that.

Q. Did the two brothers acknowledge the force of some of what [DK] had to say?
A. Oh, yes.

Q. To your observation, did [DK]'s initial anger subside?
A. It did as the day progressed, yes.

Q. And did that part of the meeting, to your observation, end on a good note? I'm talking about the pastoral part.
A. Well, it did in the sense that as the day progressed, his demeanour was more and more - I think I have said in my statement he became more and more at peace, is the way I would describe it.
Q. Are you saying that that trend applied across the whole day, not just the first part but the second part as well?
A. Yes.

Q. When the two brothers left - that is, Brother Moraghan and Brother Burns - they and [DK] shook hands and parted on good terms, to your observation?
A. Yes. I shook hands with them, too. I hadn't seen them for many years myself. That was immediately after lunch.

Q. So, as you have just said, even at the end of the day, at the end of the whole day, after the financial part, your impression was that [DK] had found some peace?
A. Yes.

Q. That's what you've said in your statement.
A. That was my impression. What particularly elicited that impression in me was a discussion that I had with [DK] later in the day and after they had left, and I touched upon it in my statement. I make mention there about [DK] - I was not present during the discussion he had, but he had a discussion with Brother Andrew in particular where the possibility of future social contact was raised, and there was something said about the Marist Brothers having a vineyard and about [DK] and his wife visiting Brother Andrew at a vineyard.

Q. I want to ask you a couple of things about Mr Salmon, the mediator. At the first meeting - that is, just him with you, [DK] and [DK]'s wife at the start of the day - would you agree that Mr Salmon said something like this, that Joe Bucci was there on behalf of CCI and that Patrick Monahan was there as the solicitor assisting both Mr Bucci and Brother Turton?
A. He may well have said that.

Q. Did Mr Salmon say, in that setting, that even though he, Mr Salmon, worked for the church, he was independent of the Marist Brothers?
A. No.

Q. Do you have a memory of that one way or the other?
A. Had he said he worked for the church, I would recall that. He didn't say that. That would have been something that rang bells with me.
Q. Did he say, in the same part of the day, the first part, that his job or his experience involved managing complaints in New South Wales?
A. No.

Q. During the financial part, in the afternoon, moving to a different part of the day --
A. Yes.

Q. -- Mr Salmon, I think you have said in your statement, took on the conventional role of the mediator, in the sense of shuttling between the two camps, you have said?
A. Yes.

Q. That is, it was Mr Salmon who did that, not you?
A. No. It's a combination. As I mentioned to you, when offers were conveyed, Mr Salmon didn't come into the room and convey an offer; I would meet him somewhere neutral, if you like, so I would leave the room and bring something back into the room.

Q. And he, Mr Salmon, would then go off to the other room in due course?
A. Either there or remain outside.

Q. Then once you had conveyed a response, he would go off to the other room?
A. It might have been, for example, that if I had a response, I would walk out of our room and either see him in the hallway or in another room, or I would knock on the door if he was in the room with the other camp, if you like.

Q. In terms of the actual offers back and forth, do you recall that initially the first offer from the brothers' side was $60,000?
A. It was around that figure.

Q. And the first counter-offer from your side - that is, [DK]'s side - was $160,000?
A. Look, I would have thought it was around the $150,000 mark.

Q. And then a second offer from the brothers' side of $79,000?
A. Yes.
Q. And a counter-offer from [DK]'s side of $150,000?
A. Look, it may have been that. I would have thought around the $130,000 mark.

Q. And then a third offer from the brothers' side, which was a total of $88,000, made up of $80,000 plus $5,000 for counselling plus $3,000 for legal costs?
A. I have said in my statement that it was around the $90,000 mark and it was put as an all-up number rather than being broken up in any way, as you have perhaps suggested.

Q. Are you sure about that, because I am asking you that deliberately?
A. Yes, well, there was some discussion about my costs, and I think I made known to the mediator and/or the insurance representative and/or his solicitor that, at that time, I was doing magistrate court work at a daily rate of about $3,000. So that number - I may have made known that number. But there was no break-up conveyed of that third offer that was ultimately put.

Q. I hear that, but I need to put to you --
A. I understand.

Q. -- that the $3,000 that I just mentioned - $80,000 plus $5,000 plus $3,000 - the $3,000 for the legal costs was in respect of your costs, and you understood that?
A. I made known a daily number of $3,000, but I had flown there at my own cost, so $3,000 wouldn't have covered my costs if it was $3,000 alone. I mean, if I had charged for the day, I would have charged $3,000 plus whatever the airfare was - I don't remember now what that was - and perhaps something for taxis and that sort of thing.

Q. At any rate, that offer of $88,000, which I suggest was made up in that way, was conveyed by you to [DK]; that is, Mr Salmon conveyed it to you, and you conveyed it to [DK]?
A. I certainly conveyed the final offer to [DK], and that final offer, yes, might well have been $88,000.

Q. So Mr Salmon conveyed it to you; you conveyed it to [DK]?
A. Yes.

Q. You then discussed it with [DK] and his wife
privately?
A. Privately in a room, yes. And it took some time. It took some time.

Q. [DK] decided to accept it?
A. He did.

Q. And you informed Mr Salmon and Mr Monahan that [DK] had decided to accept it?
A. Yes.

Q. Do you recall that the brothers, through either Mr Salmon or Mr Monahan, made it clear that the offer did not have to be accepted on that day and that he, [DK], could take some time if he needed to?
A. Look, I don't recall that specifically, but I'm not saying it didn't happen.

Q. Did [DK] tell you that he wanted to go ahead immediately and bring the matter to an end?
A. Yes.

Q. A proposed deed was produced?
A. A document was produced, yes.

Q. And you went and discussed the terms of that document with [DK]?
A. Yes.

Q. I just want to pick up two things in your statement briefly. At paragraph 23 you say that after lunch, as you recall, it was the mediator - that is, Mr Salmon - who told you that [DK] would be made three successive all-up offers?
A. Yes.

Q. Do you think that you may be mistaken about that and that the person who said something to that effect was Mr Monahan?
A. Look, that's possible. It's possible that that was put to me in the mediator's presence, not by the mediator but by Mr Monahan. That's possible. I accept that.

Q. Similarly, in paragraph 26 you recount Mr Salmon making various observations about the statute of limitations and the possibility that the claim was weak on a causation level as well. Do you remember saying that in paragraph 26?
A. Yes.

Q. Do you agree that if something like that was said, it may have been Mr Monahan who said it rather than Mr Salmon?
A. That's possible. Again, it may have happened in the mediator's presence, but it may have been Mr Monahan that put it to me.

Q. Just with respect to the deed, if I may, briefly, which I think is tab 60, from memory. Obviously this was an important document for [DK]?
A. Yes.

Q. You were a barrister?
A. Yes.

Q. Did you go through it with him?
A. Yes, I did. I don't recall now the detail of the discussion, but what I do recall is that he stipulated his - when I say "he", [DK] - bank account details for inclusion in the document for a direct payment of the compensation amount to be made. This is the first time I have seen the document since that day, so I assume that's in there. That's my recollection.

Q. I don't think it is in the deed, actually, Mr [DL]?
A. It may not be.

Q. It may be somewhere else. I will move on from that. At any rate, did you go through it with him and explain it to him?
A. Look, I think I did, yes.

Q. And did he say he understood it?
A. I can't recall the specifics of the discussion. He would have either said he understood it or his conduct would have been consistent with him having no difficulty with the content.

Q. If we look at what is headed page 5 of the deed, so I guess that's what page it is - sorry, page 4, the one with [DK]'s signature on it towards the bottom. You witnessed his signature?
A. It is redacted on the document.

Q. You are [DL], "Name of witness"?
A. Yes. I probably did. It would be nice to see my
signature.

Q. Then if we look finally at page 6, please?
A. That's my writing.

Q. Yes. The heading of that page is "Independent Solicitor Certificate", but someone, and I'm asking presumably you --
A. That's my writing where I have crossed out "Solicitor" and written in "Barrister".

Q. You wrote "Barrister"?
A. Yes.

Q. Paragraph 1 says, among other things:

   I act for [DK].

A. Yes.

Q. So that was true; you were acting for him?
A. Yes.

Q. Paragraph 2 says:

   I have explained the purport and effect of the annexed Deed to the claimant who appeared to me to understand [it] ... 

So presumably that was true?
A. Yes.

MR GRAY: Those are my questions, thank you.

<EXAMINATION BY MR CALLAGHAN:

MR CALLAGHAN: Q. Could we have paragraph 33 of the witness's statement up. Witness, you were asked a question as to whether Mr Salmon had said in your presence that even though he worked for the church, he was independent of the Marist Brothers. If you could take a look at paragraph 33 of your statement, would that, in effect, be your response, if you were asked how could you be certain of your answer, or is there anything you want to add to that?
A. Yes, well, had the mediator said something that suggested to me that he was less than independent, that would have stood out to me. One assumes when one attends
a mediation, almost because it goes without saying, that
the mediator is independent, just as when one appears in
a trial, that the judge is independent, unless the judge
makes a disclosure. As I have said, the mediator said
nothing to suggest to me that he was partial or lacking in
independence in any respect.

Q. Had he said that he worked for the church, would that
have given you such an indication?
A. Absolutely.

MR CALLAGHAN: That's all I have, thank you.

THE CHAIR: Yes, Mr Stewart?

MR STEWART: No further questions for this witness.

THE CHAIR: Thank you, sir. You may step down. You are
excused.

THE WITNESS WITHDREW

MR STEWART: The next witness is Brother Turton.

ALEXIS TURTON, resworn: [2.30pm]

EXAMINATION BY MR STEWART:

MR STEWART: Q. Brother Turton, will you state your full
name and occupation, for the record?
A. Brother Alexis Turton, chaplain.

Q. You signed a statement dated 15 November 2013, which
has been furnished to the Royal Commission. Do you have
a copy of that statement?
A. I do.

Q. Is there any correction that you would like to make in
it?
A. No, counsel assisting.

Q. Do you confirm it is true and correct?
A. Yes.

MR STEWART: I tender the statement.

THE CHAIR: That will become exhibit 4-45.
EXHIBIT #4-45 STATEMENT OF BROTHER ALEXIS TURTON,
DATED 15/11/2013, BARCODED STAT.0085.002.0001_R_M

MR STEWART: Q. Brother Turton, just to set the scene, in a sense, you were the director of professional standards for the Marist Brothers from January 2002 until March 2012; is that right?
A. That's correct.

Q. Yesterday, when you addressed some of these aspects in your evidence, you said - and I am reading from the transcript:

... I would represent the provincial and deal with any matters concerned with complaints against brothers regarding abuse, to inform the provincial of those and act on his behalf as he wished in terms of responding to those and relating to the State Professional Standards Office.

Is that a description of your role as director of professional standards?
A. Could you just read that again, please, I am sorry?

Q. Yes, of course. I should have read the question to you, for what you had said. For those who might have it, it is at page 3215 line 28:

... I would represent the provincial and deal with any matters concerned with complaints against brothers regarding abuse, to inform the provincial of those and act on his behalf as he wished in terms of responding to those and relating to the State Professional Standards Office.

A. Yes, yes. And could I just make a comment?

Q. Of course. If there is some part of your role not covered by that, then please, that's what I'm trying to -- A. In terms of acknowledging complaints that come, I just want to acknowledge at the beginning the very moving statement of Mr [DK] this morning, where he made a comment, "I need the Marist Brothers to let me forgive them", and in making that comment, he said, "I would like to put this
behind me, which includes forgiving the Marist Brothers, that they let me forgive them, that the Marist Brothers would do a number of things", which I feel have been articulated in an apology that I wrote, that we are in pain, the Marist Brothers, and that he wanted that with no malice and a capacity to forgive.

I just wanted to acknowledge that, as it was addressed directly to us, and say that most heartily we would want to do the same thing. So if there is a pastoral atmosphere in which that can be done - I realise the confines of the Royal Commission - that we totally accept that and acknowledge that. I just felt I needed to acknowledge that, as it was very personally made this morning.

Q. Thank you, Brother Turton.
A. Otherwise, to go back to your question, I think that description is appropriate.

Q. The role of the director of professional standards in the Marist Brothers is obviously distinct from the State Professional Standards Office; is that right?
A. That's correct.

Q. The State Professional Standards Office or directors of professional standards are independent of any particular body within the Catholic Church; they are employed, as it were, by the Catholic Church as a whole, is that right?
A. That's my understanding, yes.

Q. Do you accept that there is some value in that, in that independence from any particular organisation or institution or order or diocese within the church?
A. Yes, it is important, I believe, that they can represent any group within the Catholic Church that comes forward, yes.

Q. They don't have a representative function, do they, Brother Turton?
A. Oh - yes, they can deal with the matter.

Q. They can perform their office, their duties, independent of any particular grouping within the overall Catholic Church in Australia?
A. Yes.

Q. Do you know - and if you don't, of course you must
just say so - why it is that the Marist Brothers, or the Province of Sydney, as it then was, created their own position of director of professional standards?

A. My understanding is that many orders have a person in the order who deals with professional standards matters. They don't all use the term "director of professional standards", but that wouldn't be unusual, according to my knowledge, particularly for the larger orders of men, yes.

Q. In your statement, you have said that in the ten years or so that you were director of professional standards, you handled 128 complaints, and of those you identified 77 went through Towards Healing. Did you have any process of exit interviews to ascertain the levels of satisfaction or otherwise of people who had been through the Towards Healing process?

A. We did not have a formal process for that, and I believe that would be one of the first thing that I would address in a review of our process, yes.

Q. So I take it, then, you didn't maintain any data in respect of people's levels of satisfaction, given that there was no formal exit interview process?

A. Apart from expressions that they would have made in various correspondences or the general records of a particular matter, yes.

Q. And I suppose the extent to which any particular person felt satisfaction might depend also on how long after the process one asked them about it?

A. That would be a factor, I presume, yes.

Q. In this particular case, Mr [DK]'s initial contact with you was by a telephone call on 5 November 2009. Do you recall that?

A. I think that's about the date, yes.

Q. You cover it in your statement in paragraphs 47 and 48, but that is what you identify?

A. Yes.

Q. Do I understand it correctly that that conversation was left on the basis that [DK] was considering his options and would get back to you?

A. That's correct.

Q. After that initial telephonic contact from him, you
then informed the New South Wales director of professional standards?
A. That's correct.

Q. You say in your statement that you informed him. I take that to be something distinct from referring the matter to him; would I be right? In other words, it was a matter for his information rather than a matter for him to take over, to run the conduct of a complaint?
A. It would be normal practice that when a complaint came in, we would notify the director of professional standards that a complaint had come in. It wasn't necessarily a firming up of managing, in the sense that our aim would be to ascertain from the complainant how they wanted it to run, and my own, I suppose, interpretation of Towards Healing is that a key part of it is that the best healing takes place when the wishes of the complainant are followed as closely as possible while staying to the basic steps of Towards Healing, and in some cases, some complainants would quite specifically say, "I wish to deal directly with the brothers and not go through a second organisation."

Q. At that particular stage, where you had had the telephonic contact, you were waiting for Mr [DK] to come back to you and you informed the director of professional standards, that's at the stage before you knew that the complainant in that case wanted to do a Towards Healing process?
A. Yes. At this stage he was considering his options.

Q. At that time, the New South Wales director of professional standards was Michael Salmon; is that right?
A. That's correct.

Q. Then at much the same time - and this appears from tab 14, if that can be brought up - you also involved Howard Harrison of Carroll & O'Dea; is that right? You will see that the top email is from you to the provincial. It is copied to the PSO New South Wales - I take that to be the Professional Standards Office New South Wales, Michael Salmon; is that right?
A. That's correct.

Q. And to Howard Harrison - that's the solicitor from Carroll & O'Dea; is that right?
A. That's correct.
Q. You refer in that email, in the second paragraph, in the fourth line:

Pretty sure Jason P is trying to convince this man to go legal ...

That would be a reference to Jason Parkinson, would it?
A. Correct.

Q. A solicitor, I understand, based in Canberra?
A. Yes.

Q. Who was at that time putting together a number of civil claims against the Marist Brothers arising from the activities or abuse by Brother Murrin?
A. Specifically Brother Murrin. I'm not sure of the numbers or anything like that, but I believe that's correct.

Q. So it may not have been specifically Brother Murrin or only Brother Murrin, but it was one or more Marist Brothers; is that right?
A. Yes.

Q. Your concern at that time, of course, was that you didn't want Mr [DK] also to fall into that camp and bring a civil claim?
A. My main concern was that I believe in the Towards Healing process and the pastoral aspect of it, and I believe that the best healing takes place in the Towards Healing process. Having said that, there would be many cases with lawyers, which is quite correct.

Q. So from your perspective, you regarded it as being better that [DK] was not enlisted by Jason Parkinson to bring a civil claim?
A. My understanding was that it would be better for him to follow the Towards Healing process, which does allow for lawyers, but I favour the - I feel the best healing takes place, in terms of feedback I've had from complainants, that the Towards Healing is --

Q. Perhaps if we look at tab 15, that point is made clear, in the lower half of it, if we scroll down, the email from you, Keith Turton, to the provincial, copied to Howard Harrison. Do you see that one, "Dear Jeff"; that's Jeff Crowe, is it?
A. That's correct.

Q. You say:

Regarding this man [DK] I have a feeling that we need to respond fairly quickly. Jason Parkinson has indicated that he is in touch with a number of people from Cairns.

So you wanted to resolve this reasonably quickly, before [DK] might change his mind and decide to pursue a civil route; would that be right?
A. I can't remember the detail, but at some stage Mr [DK] had expressed a desire to move quickly, which is not always the process with various legal processes, and, secondly, I was in favour of moving towards the Towards Healing process, yes.

Q. That's because, or at least partly because, Brother Turton, the longer the resolution of [DK]'s Towards Healing process might take, the greater the risk that he might change his mind and pursue a civil case?
A. It is a little hard to answer that precisely, but I do know that the processes with lawyers take considerable time and Mr [DK] was looking to resolve his expeditiously, and also it was the Towards Healing preference. They were the main things in my mind.

Q. Brother Turton, you say it is hard to answer precisely, but isn't that, in effect, what those two lines of the email say, that you have a feeling that "we need to respond fairly quickly", effectively because Jason Parkinson has indicated that he is in touch with a number of people from Cairns. Wasn't that your state of mind --
A. What I understand myself to be saying there is if the decision wasn't made fairly quickly, it would be committed to the long-term decision, which was the lawyers decision, yes.

Q. Which was the one you didn't favour?
A. I did not favour, correct. Having said that, I was clear with Mr [DK] that it was his choice as to which way he went.

Q. You would agree that what one has in this email is effectively you and the provincial, and Mr Harrison, strategising the way to deal with this claim by [DK]?
A. Well, that's an email from me giving the facts of what had happened and the possibilities. "Strategising" suggests others are involved in the responses, and so on. I think my preferences there are clear.

Q. And it is what you are suggesting to the provincial and to Howard Harrison as to what is the way forward?
A. Yes.

Q. I suggest that what this email reflects is that your guiding consideration is the best interests of the Marist Brothers not the best interests of the victim; would you agree with that?
A. I think I said earlier that my belief is that the Towards Healing process brings about the best overall healing for victims, so I do have a preference for that. I think that's what I'm saying.

Q. [DK]'s next call to you was on 15 February. It is the next particular contact. I can assure you now, I'm not going to take you to all of them, but your file note for that is at tab 19. In that file note, obviously there are a lot of things recorded, but if we can scroll down to the paragraph starting "[DK] said that he had been thinking over the matter for many months", do you see that, and then at the end of that, you say:

He was urged to take the matter to the police but that was not his desire.

A. Yes.

Q. That's what you said to [DK]; that's right, isn't it?
A. I'm sorry, could you say that again, please?

Q. In other words, you urged [DK] to take the matter to the police, but that was not his desire?
A. Yes, that was my normal procedure and my understanding of his case.

Q. At that time, Ross Murrin was in gaol; is that right?
A. That's correct.

Q. At the bottom of that note and over the page, if one scrolls down, there are the three main objectives of [DK] at that time that were identified?
A. Yes.
Q. Do you accept at that time, 15 February, following
that phone call, you did have from [DK] a complaint of
sexual abuse?
A. I don't recall the date on which - do you mean,
counsel assisting, the details of the complaint or just the
fact that he had a complaint?

Q. The fact of a complaint of sexual abuse?
A. Yes, yes.

Q. Against a Marist Brother? That was a question -
against a Marist Brother?
A. Yes, yes, yes, counsel assisting.

Q. And that he did want a Towards Healing process?
A. I would have to read it again to say he had decided at
that stage, but certainly he was close to that, anyway.

Q. What he was looking for in these three objectives was
certainly consistent with Towards Healing?
A. I believe so, yes.

Q. You will see in the line which is near the top of the
screen now:

    After the discussion about Towards Healing
    he indicated that he had 3 main objectives.

A. Yes, yes.

Q. At that time, then, you did have an expression from
him of a desire to pursue Towards Healing?
A. Yes.

Q. At that stage, you did not refer the matter to be
handled by the State PSO, the Professional Standards
Office?
A. Yes, I believe I had notified the PSO of the complaint
coming in, and in the first or second conversation that we
had - and I'm not sure it is noted - I remember clearly in
the first conversation we had, [DK] was quite agitated. He
had had some dissatisfaction with responses from other
people, and I had mentioned to him early in the piece that
the church had a process, and it was called Towards
Healing, and a Professional Standards Office. And
I recall, even though I don't think I wrote it specifically
in any of the notes, that he said, "Oh, so you are going to deflect me to another office again?" In that discussion, I got the impression that he wanted to deal directly with the brothers in processing his claim, and that's the way it followed through.

Q. Brother Turton, that's not something recorded in any of your file notes or emails; do you agree?

A. I agree.

Q. It's not something that's recorded in your statement?

A. No, I agree.

Q. That's something which has come to you just recently to ease the criticism on you for having handled the process entirely yourself?

A. It has always been in the back of my mind; I just didn't realise it was going to become an issue like this, because the professional standards director was informed of every step along the way. In a way, we were co-managing, if you like, because it was - he was fully aware of every step.

Q. So you were co-managing it with Mr Salmon; is that it?

A. I was managing it, I believe, in terms of doing nearly all of the contacts and discussions with the full acknowledgment and knowledge of Mr Salmon, yes.

Q. The evidence that you gave a few moments ago that there had been an indication from Mr [DK] that he would prefer to deal directly with the Marist Brothers rather than a separate process - is that something that you explained to the legal advisers in this hearing for the Marist Brothers?

A. My understanding is that that would have been part of my discussion with Mr Salmon. As to specifically explaining it to each of the other participants, no, I can't recall that. It seems to me that it would be fairly clear from the nature of the transmissions.

Q. So do I understand you correctly, Brother Turton, that your evidence is that you told Mr Salmon that [DK] preferred to deal with the Marist Brothers directly rather than through a State-handled Towards Healing process?

A. I believe that was clear from the way in which I conveyed to him that the phone calls had come in to me, his couple of instances with, first of all, his
dissatisfaction with contacting the Queensland office and
his comment about being deflected to another office -
I believe I conveyed that sense to Mr Salmon and that was
accepted.

Q. Have you seen Mr Salmon's statement in this hearing?
A. I have not.

Q. Mr Salmon's statement does not say that you informed
him that [DK] would rather deal with the Marist Brothers
directly?
A. That's correct.

Q. Mr Salmon's statement, in paragraph 23, says that in
the course of conversations with you, you had said that you
thought that Mr [DK] was understandably angry and
suspicious of the Marist Brothers; that's correct, isn't
it?
A. Yes.

Q. So if he was angry and suspicious of the Marist
Brothers, why would he want to deal directly with them and
not with a more independent office?
A. I believe there was quite a change in attitude over
the first three phone calls, that he rang up very agitated,
we discussed the matter at some length, and eventually -
and I believe he made a comment to the headmaster of the
school that he was quite happy with his discussion with me
at the end of that, and that, having everything put to him,
he chose to follow through, and the strong indication to me
was, with the Marist Brothers.

Q. Returning to a question I asked you earlier, which you
didn't answer, in the process of preparing and conducting
this hearing before the Royal Commission, did you inform
the lawyers representing the Marist Brothers in this
hearing that this was your evidence, that is to say, that
[DK] had indicated to you that he preferred to deal with
the Marist Brothers directly rather than in a conventional
Towards Healing process?
A. My sense is that that was the sense that I conveyed to
them, yes. I cannot say the exact words, but --

Q. You were present when [DK] gave evidence, weren't you?
A. I was watching it, yes.

Q. You were watching it, and you heard Mr Gray carefully
put to [DK] a number of factual circumstances and propositions contrary to what [DK] had said in his evidence; do you recall that?

A. Yes, yes.

Q. And this, what you are now saying, was not put to [DK], which suggests that you hadn't explained that to Mr Gray, because had you done so, he would have put it. A. I don't quite see it the same way, no. I don't see that.

Q. The truth is that you have really made this up on the spur of the moment, haven't you? You have made this up now in order to avoid any criticism that there may be of you for having run the whole process yourself and not having referred it to the management of Mr Salmon at the New South Wales Professional Standards Office?

A. That's not correct.

Q. You agree, of course, that you did not refer it to Mr Salmon to be managed; that's right, isn't it?

A. I notified Mr Salmon right from the very first contact. We never - I never made a formal statement that, "This is being managed formally by us", yes.

Q. Brother Turton, in the interests of progress, I'm going to ask you to try not to go over ground we have been over already. You have explained that on the earlier occasion, following the phone call of 5 February, you informed Mr Salmon of the complaint, but it was not at that time a referral; that's right, isn't it?

A. Yes.

Q. After the telephone call of 15 February, where, as we have ascertained, you had a complaint of sexual abuse against a Marist Brother and you had an expression of wanting to pursue a Towards Healing process, you did not, at that stage, refer the matter to Mr Salmon for him to case manage?

A. No, I did not refer it to him to case manage.

Q. We are now dealing with February 2010. By then, the January 2010 Towards Healing protocol had come into effect, hadn't it? Well, that's obvious, isn't it?

A. Yes.

Q. Do you accept that if the matter was properly handled
under that protocol, you were obliged at that time to refer it to the PSO?
A. In terms of formal definitions, no. In terms of Mr Salmon being aware of every step along the way, being informed and acknowledging, then I took it that it was appropriate to continue.

Q. I am asking a different question. I'm not asking you what you did. I'm now asking about your understanding as to the proper protocol, in the event that it was to be followed, and that is that you were obliged, under the Towards Healing procedures, to refer it to the State PSO?

I can take you to each individual clause; we can go through them. We have been through them several times when you have been sitting here over the last several days. I am very happy to do it. It will just take a long time. Or, if what I am saying is accurate, you may just accept it?
A. I acknowledge that, technically, that formal acknowledgment wasn't done. My understanding was that --

Q. Mr Turton, I'm not asking you what you did. I am asking you as to your understanding of the protocols so that the Royal Commission can properly understand how this document is supposed to work.
A. So could you just give me the question again, please, counsel assisting?

Q. Yes. At that time, after 15 February 2010, under the Towards Healing procedures, you were supposed to refer the case to the State PSO?
A. Yes.

Q. And you didn't do that, as I understand it; you did not refer it to Mr Salmon for his case management?
A. Not formally, no.

Q. You essentially ran the process yourself?
A. I continued to have contact with Mr [DK], with every step being informed to Mr Salmon, but I was doing the communication and collecting the steps as Mr [DK] acknowledged them and requested them, yes.

Q. Do you accept that you should have referred the matter over to Mr Salmon for his case management at that stage?
A. I definitely should have been more formal about it and
clarified the steps and referred it quite clearly, yes.

Q. After that phone call on 15 February, what you did do - and it is just as well to look at it, tab 20 - is that informed Mr Joe Bucci at Catholic Church Insurance, and you copied that to Howard Harrison; "COD" I take to be Carroll & O'Dea. Do you accept that?
A. Yes.

Q. You record in the last paragraph of that email:

   No assessment has been carried out although
   I have no doubt that the events did occur.

A. Yes.

Q. Those being the events that had been relayed to you by [DK]?
A. Yes.

Q. At tab 21, you had a meeting with Howard Harrison. Do you see that? That will come up in a moment. That's his file note, "HGH", and "Attending today (16 February 2010) on Brother Alexis". Do you accept that you consulted with Mr Harrison on that day?
A. Yes, yes.

Q. Do you see that he records, in the fifth line:

   The matter is being dealt with through the
   Towards Healing system.

A. Yes.

Q. He doesn't record that it is being dealt with separately by the Marist Brothers?
A. No.

Q. So do I take it, then, that that's what you told Mr Harrison?
A. Yes, my meaning there was that the precise steps of the Towards Healing process would be followed.

Q. One sees there again a reference to Mr Parkinson, from whom [DK] had had a visit and been given an indication as to what he might get in a civil claim; do you see that?
A. Yes.
Q. At tab 23 there is an email, and at tab 24 there is a detailed statement - perhaps we can just go to tab 23 where Mr [DK] wrote to you, setting out what he says are "the following outcomes through the Towards Healing process", and he identifies them. Then there is a five-page statement that was attached to that. Do you see at the beginning of this email, he said, "Attached is my story about abuse at St Augustine's"?
A. Yes.

Q. Do you remember that document?
A. Yes.

Q. As I understand it, those two documents then together, the email and the statement, essentially served the purpose of a contact report; is that right?
A. That's correct, yes, counsel.

Q. In these documents, you will recall that [DK] identified two brothers whom he said were responsible for his abuse - Brother Leonidas and Brother Murrin - but he did not identify a third brother in relation to the infirmary incident; is that right?
A. Correct, yes.

Q. It is right, is it not, that he has never identified to you or to the Marist Brothers who the third brother is?
A. Not that I'm aware of, no.

Q. At tab 25, there is a recordal of what looks like a file note of yours, 18 February 2010. That is a file note of yours, is it?
A. Yes, yes.

Q. If we could scroll up slowly so you can familiarise yourself with it, and then down to the last paragraph, do you see in the last paragraph he says:

I'm presently in consultation with Joe Bucci of CCI as to how we might proceed with this claim. It is not clear ...

Do I read it correctly that that is a recordal, as it were, for the file, or for yourself, as to what you were doing? That part of the note is not a recordal of what you told [DK] in the phone call?
A. No, I don't think I would have told [DK] about that. That was a normal notification matter to insurance, if insurance was involved.

Q. Yes. That's not something you would have been talking to [DK] about?
A. No.

Q. That's how I read the file note. So the file note is partly a note of your conversation and partly just a note for the file as to progress in the matter; is that right?
A. That's correct.

Q. Do you know, as you sit here now, Brother Turton, when you prepared this file note?
A. No, not without looking at the date.

Q. The date is 18 February 2010.
A. I presume that's when I prepared it.

Q. I am just having a hard copy handed to you so that you can see the whole thing at once, Brother Turton.
A. Thank you.

Q. If I'm not mistaken - and you can peruse that note and correct me if I am - there is nothing in your note of the conversation of Mr Salmon being the mediator or being proposed to be the mediator or facilitator?
A. There is a note at the bottom, I see.

Q. Yes, that's the part of the note that is not in relation to the telephone call. But the part of the note above that dealing with the telephone call doesn't deal with that issue; do you agree?
A. I'm sorry, could you just give me that question again? I'm sorry, counsel.

Q. Brother Turton, what I'm getting at is just to try to understand what passed between you and [DK] in the telephone conversation. The bottom of the note, the last paragraph, we have ascertained, is a note to the file rather than a note of the phone call, and in the paragraphs preceding it, which read more like they may have been a note of the phone call, there is no recordal there of Mr Salmon --
A. I beg your pardon, I just missed that. Yes, that's correct, that's not part of the phone call.
Q. So do you accept that at that time, in other words, at 18 February - I know Mr Salmon was obviously mentioned later, but at that time - you did not propose to [DK] that Mr Salmon should be the mediator?
A. Yes, I'm not sure on what date I proposed that to [DK]. Mr Salmon was one of a number of facilitators that we regularly used and, for convenience and his skills, that was in my head as a possible nominee.

Q. There is certainly no recordal there that [DK] had agreed at that stage that Mr Salmon be the mediator?
A. I don't think so.

Q. So you accept that the probabilities are that you didn't canvass that in that telephone call?
A. I don't think so, no.

Q. Over the page, at tab 26, there is an email from you to the PSO, "Dear Michael", with a lot of documents attached. If you go to the second paragraph:

As you see I have mentioned your name as mediator and he is happy with that.

That's the same date, 18 February, as the telephone call. Do you accept that that's incorrect; that's a misunderstanding on your part? At that time, you had not mentioned Mr Salmon's name and Mr [DK] had not indicated that he was happy with that?
A. I don't know. I would have no reason to suggest to Mr Salmon, I don't think, that he was accepted if he wasn't. So how I've got those dates there, I'm not sure, or whether there was another phone call in between that I didn't record - I tried to record most, but I can't explain that.

Q. I can take you to the provisions if necessary, but do you accept that under the Towards Healing 2010 protocol, it is provided, in the words of the protocol, that the facilitator should be agreed from an approved panel?
A. Correct.

Q. Was there a panel, at that time, of facilitators?
A. I believe there was.

Q. Were there several names on the panel?
A. There were.

Q. Did you provide any of those names, other than Mr Salmon's, to [DK]?
A. No.

Q. Did you provide him with any options from which to choose or express a preference for facilitator?
A. In terms of facilitators, no, I only suggested the one name.

Q. So the reality is that you selected Mr Salmon and proposed that to [DK]?
A. Yes.

Q. Indeed, you recommended Mr Salmon to [DK] by speaking of --
A. I did recommend Mr Salmon.

Q. Do you accept also that for consent to a facilitator to be valuable, it needs to be informed consent?
A. Yes.

Q. In other words, the person who you are asking to agree needs to really know what it is that they are agreeing to?
A. Yes.

Q. You are aware, of course, that in the Towards Healing protocol it is provided that the director of professional standards should not even participate in a facilitation? Are you aware of that?
A. I am aware of that, yes.

Q. That's clause 41.4.2. So you accept that under the protocol, Mr Salmon, because he was the director of professional standards for the State, should not have been the mediator?
A. I did not turn my mind to that fact at that time, so that was an oversight on my part. But I regard Mr Salmon as being a very professional man, and he is aware of the protocol, yes.

Q. Mr Salmon was, at that time, a director of professional standards who not only had been informed of this complaint but had been informed of or was dealing with other Marist Brothers complaints; is that right?
A. Yes.
Q. Even in respect of complaints that arose in Queensland, you would refer them, because of circumstances at that time in that office, to the New South Wales office; is that right?
A. That's correct.

Q. You would accept, of course, that it is important in a Towards Healing facilitation to have a good facilitator?
A. Yes.

Q. And that is at least in part because the facilitator is influential in the process?
A. I see the facilitator as being a very good listener in the process and helping the two parties come to a decision, yes.

Q. The skills of the facilitator can assist in influencing the process towards a positive resolution; would you accept that?
A. That's correct.

Q. Would you accept that for a facilitator to be effective, the facilitator must be impartial?
A. Yes.

Q. And he or she must be fair?
A. Yes.

Q. Do you accept, too, that he or she must be trusted by the parties?
A. Yes.

Q. For the process to enjoy the legitimacy of the parties, the mediator or facilitator must also be seen to be impartial?
A. Yes.

Q. And should be seen to be fair?
A. Yes.

Q. And needs to be seen to be trusted; is that right?
A. Yes.

Q. The employer, as I understand it, of the State director of professional standards is the church, in the sense of it being a post created by the Australian Catholic
Bishops Conference and Catholic Religious Australia; is that right?
A. That's correct, yes.

Q. Would you accept, then, that as fair and as competent and as professional as a facilitator might be, he might not be seen to be impartial if he is employed by the church?
A. As I said in one of my notes, looking back, I would have recommended or - yes, recommended a facilitator totally unconnected with the church.

Q. Brother Turton, at the beginning of your answer, before you started speaking, you were nodding your head in assent, but it didn't record, so I will ask you the question again, just so that you can give --

THE CHAIR: Q. Well, I think the answer is yes, isn't it?
A. Yes.

Q. On reflection, the perception is a negative and should be avoided; is that right?
A. Yes, that's correct, your Honour, yes.

MR STEWART: Q. Part of the reason for that is that it is a conflation of the roles, isn't it? It is a conflation of the roles of the director of professional standards and the facilitator into one?
A. I'm not quite sure of the meaning of the word "conflation", but it's a confusion of roles. Is that what you mean, counsel?

THE CHAIR: Q. No, no, but I think what you are concerned with - and, can I say, I think the Commission would share your view - is that people looking at the director fulfilling the mediator or facilitator role raises inherently the potential for a conflict of interest in the mind of the outsider; is that right?
A. Yes, your Honour, yes, and that's the subject of another email, yes.

Q. It gets mixed up with the whole question, which the church has acknowledged is a question we have to look at, and that is what is the appropriate process for all of this?
A. Yes, your Honour.
MR STEWART: Q. As I understand it, now looking back, and no doubt there are other things you have learnt, too, but you accept that, looking back, Mr Salmon should not have been asked to be the facilitator in this matter; is that right?
A. Yes. I simply overlooked the fact that he's mentioned in the Towards Healing process, and I certainly would not do that.

One other issue which is relevant here, I believe, is in earlier cases - you referred to the list of facilitators, counsel assisting. On a number of facilitations, I had put to people a list of facilitators, and, without exception, they had all said, "Look, we don't know any of these people. You suggest someone." So that partly reflects on the fact that I would suggest a name.

Q. In the Towards Healing protocol, it is also provided that the names of approved facilitators shall be made available publicly by the director of professional standards. I take it that that was the case?
A. I'm not sure. I believe it's on the website, but I'm not sure, counsel. Yes, I think it has been made known publicly.

Q. Can we go to paragraph 69 of your statement. This is the part of your statement where you deal with the question of what Mr [DK] was informed about Mr Salmon at the time that he gave his assent to Mr Salmon acting as facilitator. Do you see in italics you characterise, I take it, as best as you could at the time that you prepared the statement, as to what you said. Will you read that to yourself? You said:

I just need to make it clear to you that Michael Salmon is employed by the Church, and his role as Director of the Professional Standards Office is to oversee the implementation of the Towards Healing process. He is a very experienced and qualified mediator whom we have often used.

A. Yes.

Q. Does that capture the essence of what you conveyed to [DK]?
A. What I recall most clearly is that I wanted to
emphasise that he was an employee of the church. I recall
I had written a draft of an email, which you, I am sure,
have seen, and I got a phone call, went out of the office
and believed I was conveying the content of that draft
email to Mr [DK]. I can't say word by word that's what it
was, but the main thing that was in my consciousness after
that was that I had conveyed to him that Mr Salmon was
employed by the church to overview the Towards Healing
process.

Q. That email you drafted obviously prior to the
telephone conversation?
A. That's correct.

Q. And there was then the telephone conversation?
A. Correct.

Q. Were you in your office for that telephone
conversation?
A. No, I wasn't.

Q. So do I understand that the draft email was not before
you whilst you were on the telephone?
A. No, I don't think it was.

Q. So after the telephone conversation, you then made the
inscription at the foot of the email about, "This email not
sent, but I had a telephone conversation"; is that right?
A. Within a day or two. I can't say exactly, but very
soon afterwards I realised, no, you talk about something on
the phone; you don't then send the whole thing again, and
I didn't forward the email, but I was comfortable that
I had given the sense of Mr Salmon being an employee and
overviewing the Towards Healing process.

Q. And those were the two relevant considerations, then?
A. That's what stayed in my mind, yes.

THE CHAIR: Q. Do you think you used the word
"employee"?
A. Yes, your Honour.

Q. You could understand, couldn't you, in a discussion
about overview, giving an outsider one understanding, but
"employee" is a different concept?
A. Yes, I understand, your Honour, yes.
MR STEWART: Q. So there is nothing beyond what you have already said that you wish to add to that paragraph there, paragraph 69, in the italics?
A. No. That is correct, I think, counsel assisting.

Q. So I take it you did not point out to [DK] that the Towards Healing protocol says that the director of professional standards should not participate in a facilitation?
A. I did not point that out.

Q. You would accept, of course, that you should have done so?
A. I should have done so. I simply wasn't aware of - yes.

Q. And do you accept that what you did say, as recorded here in your statement, conveys or makes it seem that it is a usual part of Mr Salmon's duties to be a mediator in such a process?
A. I'm not sure about that. I have said that he's an experienced and qualified mediator, I said that - or facilitator; I'm not sure of the word now. I did say that he also overviewed the Towards Healing process. I don't think I made the connection that one goes with the other.

Q. The nub of the problem, of course, is this conflict of interest, or apparent conflict of interest, and that you didn't make plain?
A. Yes, correct.

Q. Tab 73 is where Mr [DK] wrote to you months after the facilitation, and even September 2010, asking you about Mr Salmon. You will see it says:

Good evening Alexis,

Could you please tell me if this is the same Michael Salmon that was the independent mediator at my mediation through the "towards healing process"?

Then below that, it has the details, "Professional Standards Resource Group of NSW & ACT Director: Mr Michael Salmon", and some contact details. So you accept that was, of course, Mr [DK] asking you that. Tab 74 is your response. At the top, it says:
Sorry [DK] it was sitting in my drafts -
thought I had sent it.

The substance of the email then follows. You thank him for
the email and you say:

I confirm that the Michael Salmon referred
to in your email is the Michael who
assisted the parties as mediator in your
case.

Then you say:

Michael is an experienced and qualified
mediator as we did discuss at one juncture
prior to the facilitation.

That's obviously consistent with both your evidence and
his, that you did discuss that he was an experienced and
qualified mediator?
A. Yes.

Q. And then you say:

Michael is employed by the Church to
supervise the implementation in New South
Wales of the Towards Healing Protocol but
is also involved from time to time as
mediator in such cases.

You accept, of course, that in this email you don't say
that that paragraph that I have just read was something
that had previously been discussed between you and [DK]?
A. No, I don't.

Q. Is it not the case that if at the date of that email
you thought that you had done so - in other words, that you
had discussed that Michael was employed by the church to
supervise Towards Healing - you would have said so in the
e-mail?
A. Well, I do have a phrase there, "as we did discuss".

Q. Yes, but "as we did discuss" deals with the earlier
part of it, in other words, that he is experienced and
qualified, which is something that both you and [DK] recall
you having discussed?
A. I considered it applied to the whole message, but -
that's my understanding of it.

Q. Tab 81 is an email you wrote to Peter Rodney. At the
top of it, from Keith Turton to Peter Rodney, now
some years later, 25 February 2013.
A. Mmm-hmm.

Q. You will notice that you say there that you attach
a file note. You will see in the second paragraph:

\textit{I also attach a copy of my notes regarding}
\textit{the use of Michael Salmon as mediator.}

Do you see that?
A. Yes.

Q. So I take it that, at that time, you had your records
available to you when you wrote to Mr Rodney?
A. Yes, certainly. I don't know which ones I was looking
at, but certainly I had my records, yes.

Q. And in writing to Brother Rodney about this, you
looked back through your records in order to get material
to send to him?
A. I would have, yes.

Q. Of course, at that time, you were concerned about this
issue that had been raised by [DK]?
A. Yes.

Q. You were concerned about what you had explained to
[DK] at the time?
A. Yes.

Q. Because you say there quite candidly in the second
paragraph:

\textit{Certainly my intention was to communicate}
\textit{what was in the draft -}

that's the draft email -

\textit{but from this distance I may have not made}
\textit{it clear.}

That's right, isn't it?
A. Yes, correct.

Q. When you wrote this email, you could not be clear in your own mind just how much you had explained to [DK]?
A. That's correct.

Q. That can come down from the screen. That was in February 2013. Some nine or ten months later, you prepared a statement for this hearing where you equally had those file notes available to you. You can't be more sure now than you were then as to just what you had discussed with [DK], can you?
A. No.

Q. Do you accept that you should have put it in writing to him?
A. In hindsight, I definitely should have put it in writing and clarified steps more specifically.

Q. Do you accept, too, that whatever it is exactly that you said, it wasn't effective in [DK] understanding the true position of Mr Salmon; do you accept that?
A. I accept that.

Q. Moving on to a different issue, it is right, as I understand it, that Brother Murrin was convicted in 2008 and in 2010 after pleading guilty to child sexual assaults at Marist Brothers schools in Queensland; is that right?
A. The dates I can't say for sure, but he was convicted twice, yes.

Q. To your knowledge, have there been subsequent charges against Brother Murrin?
A. I'm not sure about that.

Q. You don't know whether there have been further convictions since then?
A. To the best of my knowledge, there have been no further convictions. Whether there are other charges, I'm not in the office now to address those.

Q. So equally, you won't know whether there are other investigations pending?
A. I don't know that, no.

Q. When you were in your role as director of professional standards for the Marist Brothers, you had cause to visit
Brother Murrin periodically in prison; is that right?
A. That's correct.

Q. At tab 36, there is a file note following one of your visits to Silverwater. Well, I take it to be Silverwater. Is that where he was imprisoned at the time of this file note?
A. I don't think so, but does it matter?

Q. No, it doesn't matter.
A. Yes.

Q. That was on 25 February. Then at tab 37, there is a letter from Brother Murrin to you dated 26 February. Do you see that? It will come up in a moment. It is from Silverwater. That's where I must have got it from.
A. Oh, it is. I beg your pardon, sorry. Yes, that's from Ross, yes.

Q. If we scroll down - it is a bit hard to see - just below the middle of the page, do you see where it says:

I know/believe ...

A. Yes.

Q.

I know/believe that I must have done something to make the person very uncomfortable.

That's about [DK], isn't it?
A. Correct, yes.

Q.

So I am very sorry that I caused this discomfort.

It goes on:

If appropriate, could you convey my best wishes when you speak next to this person. Please let him know that I remember him well and my memories are all very positive. Please pass on my apologies for any hurt or discomfort caused by anything I did and I certainly wish him all the best for now
and the future.

Subsequently, then, you received a further letter; is that right?
A. Yes, that's correct.

Q. And a letter which perhaps made the position slightly clearer. That's at tab 41, on 1 March, a few days later:

Dear Alex
Greetings once again from MRRC!

If one looks at the second paragraph:

Since then I have done a lot of reflection and thinking as we are in the cells 22 hours a day ... I think that the two incidents you spoke to me about ...

So those are the two incidents that [DK] had complained about; is that right?
A. Correct.

Q. ... did happen and I do now vaguely remember something about them.

It was on the basis of this - perhaps other information as well, but also this - that you accepted that what [DK] had said to you, reported to you, had happened; is that right?
A. Yes, that's correct.

Q. At the mediation, you read out to [DK] part of a letter?
A. Correct.

Q. Are you able to recall now which of these two letters it is, or which part?
A. To the best of my knowledge, it was mainly the second letter and it was to read out his acknowledgment that he had had recollections and that what Mr [DK] had referred to quite probably happened. I think they are even underlined in that letter.

Q. Was it your understanding that that brought some comfort to [DK]?
A. That was my understanding.
Q. There is the question, obviously, that hangs in this case, or in this investigation, of the unnamed brother in the infirmary incident?
A. Yes.

Q. You had asked [DK] who it was, and he had declined to identify him; is that right?
A. That is correct.

Q. It was in fact CCI who wanted to know the name of the infirmary abuser; is that right?
A. Correct.

Q. And CCI asked you who it was; is that right?
A. Yes, yes.

Q. You then asked [DK] again, and it is worth looking at that at tab 44. On the second page, in that email - this is from you to [DK], copied to Michael Salmon. You say in the second paragraph:

If I can email you some photos of some of the Brothers who were there at the time would you be happy to see if you can identify the man whom you encountered in the infirmary in 1976? We don't have photos of everyone but I can copy some out of the 1981 magazine.

Then you say:

The Staff Brothers in 1976 were ...

And then you list a number of names. This was your effort to try to get, or to assist, [DK] to identify who the person was; is that right?
A. Yes.

Q. Then he replied at the top of the page. I take it that Keith Turton is also you, is it?
A. That's correct, yes.

Q.

Thanks Keith. I know exactly who it was from the names, so no need for the photos.
So he didn't identify who it was, but, in a sense, he confirmed your shortlist?
A. Oh, I don't know about the second part. He just said he wasn't going to --

Q. Well, he says there, "I know exactly who it was from the names". That would suggest --
A. Oh, I see what you mean, yes.

Q. -- that it is one of the people on the list?
A. Yes, yes, it does. I understand.

Q. And the person who you then or subsequently identified as being the likely candidate - his name was on that list?
A. Who I identified was a person who conformed to the descriptions of the role that he had given. And, just for the record, he was not the infirmarian. It was a brother who did part-time work when the infirmarian wasn't there. She was a nurse.

Q. Yes, but my question is, the person you identified, Brother Anthony - his name is on that list, if the screen would just scroll up?
A. Yes, I'm pretty sure he was, but could I just see it again, please?

Q. It is further to the bottom of the page.
A. Yes, yes.

Q. Then if we go back to the first page, you will see that you then forwarded that exchange to the insurers and you gave something of an explanation; do you see that?
A. Yes.

Q. You identified that and said you were sure that it was Brother Anthony? Do you see that in the second line:

I am quite sure that it is Br Anthony.

A. Yes. In fairness, what that is saying is that Brother Anthony was normally the brother who would look after after hours, but, in fact, in a lot of our boarding schools, it could be other men, but certainly Brother Anthony was the one who normally was the after-hours infirmarian, yes.

Q. It is more than that, isn't it, because you go on to
Due to some totally internal matters with the Marist Brothers Brother Anthony Hunt has acknowledged that there were some difficulties in his career ... he did not mention the name [DK] but given that he was the after hours infirmarian and that [DK] specifically mentions the infirmary, I am sure that is who it is.

So it wasn't only that he was after hours in the infirmary, but there were other matters, too, that you were relying on?
A. I feel I wasn't justified in going as far as I did there.

Q. I understand now, Brother Turton, that you are being protective of the brother involved, and that's a matter for you right now, but we will get through this most quickly and painlessly --
A. Good.

Q. -- if you just address the questions and answer my questions directly. So it wasn't only the infirmary; there was other information you relied on - yes?
A. Yes, that's correct.

Q. Mr Monahan, the solicitor for the insurers, CCI, then asked for more information; is that right?
A. Yes.

Q. You then passed on a lot more information from the Marist Brothers files to the insurers; is that right?
A. Yes, that's correct.

Q. We can go to the documents if necessary, but you also then elaborated and gave further reasons as to why you identified this particular brother?
A. I may have, but I don't specifically remember what that was.

Q. At tab 50, you will see this is from "Debbie <pa_", and so on. I won't read the address, but I take it that is your PA; it says "Professional Standards Office Marist Brothers" under that?
A. That's correct.
Q. She is passing on:

Below I have the information from
Brother Alexis requested by Patrick Monahan
regarding [DK].

A. Good.

Q. You will see, before it scrolls down, there are a lot
of attachments. You will see there are, I don't know how
many, but a lot of attachments of various documents,
including --
A. Oh, yes, yes, I see. Yes, that's correct.

Q. Then if one scrolls down --
A. Yes, I recognise it.

Q. -- essentially, you answer a number of the points
raised by Mr Monahan?
A. Yes.

Q. On the second page, about the fifth paragraph, it
says:

For point 5 the list of students created by
Anthony Hunt I presume would cover the area
of potential legal liabilities for the
Marist Brothers. This list has only become
available in 2010.

That is, as I understand it - and perhaps you can confirm
this - the list at tab 7, if that can be called up?
A. Yes.

Q. This is headed "Possible Sources of Complaints re
Professional Standards", and it sets out, apparently, the
brother's career at different places. The third one, if we
can scroll a bit further, is Cairns. Then it gives the
dates under that, "1976-81 infirmary assistant", and there
are two names redacted, and then it says "Others?" This
was part of what you relied on in reaching your
conclusions?
A. Yes.

Q. Then at tab 9 - and I don't need to go to the
details - this sets out really a chronology of issues, if
I can put it like that, or special issues, with
Brother Anthony; is that right?
A. Yes, matters that were investigated, yes. One of them
was investigated and resolved, as I understand it. The
other one was a personal matter between brother and another
brother.

Q. If we go to the foot of that document, on the second
page, the last entry refers back to the 1 November 2009
"Possible Sources of Complaints" document. That's the one
we just looked at at tab 7; is that right?
A. That's correct.

Q. Both of these documents were amongst the documents you
provided to Patrick Monahan?
A. Yes, I believe so. I'm not exactly sure what each one
was, but I think that's correct.

Q. You were, of course, reasonably sure in your own mind
that it was Brother Anthony?
A. What I was sure of was that Brother Anthony fitted the
description of the role of the brother concerned.
I specifically asked Brother Anthony, and he did not
remember [DK]. That's all the factual knowledge I had.

Q. There is a statement, which I will tender in due
course, in which Brother Anthony denies that it was him?
A. I have not seen that.

Q. The effect of that - in other words, of the insurer
asking for you to provide that information and to identify
someone - you accept is that in the records of the National
Committee for Professional Standards, there is recorded
a complaint by [DK] against the name of Brother Anthony; is
that right?
A. I can't answer that. I don't know how they would
translate that from the information I have given them.

Q. Well, let's have a look at that --

THE CHAIR: Just before you do, can we stay where we are
at the moment.

Q. Can you help us to understand what these references
are?
A. Yes, your Honour.
Q. For example, what's the "Origins Program"?
A. The Origins Program - when you were speaking, your Honour, with Brother Michael Hill, he referred to Encompass. The Origins Program is a very similar program which now operates, which is not residential.

Q. So it is a treatment program, is it?
A. It is a therapy program that covers a whole range of issues, including sexual abuse.

Q. For people who are at risk of abusing or are thought to have abused?
A. Yes, for people who could be at risk of abusing, for people who may have been accused, even who deny it - for whatever reason. There would be many reasons, I would think. But it is a therapeutic program, which often deals with issues regarding abusers, yes.

Q. Can you do that program if you don't admit what you have done?
A. If you wish to do it, yes.

Q. What's the "Vitality assessment"?
A. The Vitality is the name of the organisation that runs the Origins Program.

Q. What does the assessment involve?
A. The assessment involves a week's interviews and discussions and reflections and - I'm not the expert here, but tests and things like that to assess, "Will you benefit from doing the full program?"

Q. So it seeks to work out whether you are a person at risk, does it?
A. If it is a question to do with abuse, yes, that's one of its - I know that's one of the functions that it has.

Q. Dr Geraldine Robinson at Vitality Psychology - is that just the referral which is then effected on 13 May, is it?
A. Yes, Dr Geraldine Robinson is one of the key specialists who run that program and also run the assessment week.

Q. What do I understand by the reference there on 22 October, "AH commits to future supervision and reporting in Rome" - what is that all about?
A. At the end of the program, quite often people who do
that program - now, I am speaking not as the expert, in my
sort of words - if they feel they have issues or if the
program coordinators feel they have issues, they will
suggest that they engage in a whole process of supervision
and commitment to particular safeguards, reporting and
things like that.

Q. This commits to "future supervision and reporting in
Rome"?
A. Yes.

Q. Does that mean they are sent to Rome?
A. Oh, no. It just so happens that this particular man
happens to be an expert in Italian, and Rome was looking
for a position - for a brother to manage a course for
adults in Rome, and they - well, I wasn't the provincial,
so I'm getting this a bit rough, but my understanding is
that a request came to the provincial and this man was
nominated.

Q. So he goes to the Origins Program from 3 August to
30 October. He comes out of that highly commended,
I assume meaning he did the program well. But then he is
off to Rome. The supervision referred to there would be
supervision of his behaviour, would it?
A. Supervision of his behaviour and knowledge that he had
followed the Origins Program, yes.

Q. And the reporting - what does that mean?
A. The reporting usually means that there is - he would
be - the supervision would mean that there is an expert
group of people aware of his situation, and he would report
to them as he committed to.

Q. Then finally, "AH supplies possible sources of
complaints". Does that mean that he has told someone about
who he thinks may come to complain about him?
A. He provided the list that was provided earlier by
counsel.

MR STEWART: Tab 7.

THE WITNESS: The detail was unknown, but just possible
sources of complaints. I think that came as a result of -
if anyone has action or whatever. It was never quite clear
what precisely that meant, but he did provide that list
that you saw.
THE CHAIR: Q. Would that have been demanded of him or was it part of the Origins Program? How did it come about that that would be obtained?
A. At the time, I received that list. It wasn't entirely clear to me. My understanding was that it was suggested to him that as part of his following that program, anyone who might have a complaint of whatever, he would make that note. I've got to say, it came right out of the blue to me.

Q. The note just sits on the file, does it?
A. The note is in the provincial files and it is here and is provided to CCI.

Q. It carries with it a fairly strong inference, doesn't it?
A. It does, yes.

Q. Is that an inference that you drew at the time?
A. At the time, since I wasn't expecting it, I commented to him, "What does this mean?", and his comment was, "Well, it's hard to know how other people will interpret that", but some of that will be very peripheral - there had been a comment by brothers in training that they didn't like the way he hugged them, for example, so not what I would normally call abuse. So I didn't get any other information than that.

THE CHAIR: Yes, very well.

MR STEWART: It might be an appropriate time, your Honour.

THE CHAIR: 10 o'clock in the morning. We will adjourn.

AT 4PM THE COMMISSION WAS ADJOURNED TO THURSDAY, 19 DECEMBER 2013 AT 10AM
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