

**ABUSE IN CARE ROYAL COMMISSION OF INQUIRY
MARYLANDS SCHOOL**

Under The Inquiries Act 2013

In the matter of The Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions

Royal Commission: Judge Coral Shaw (Chair)
Ali'imuumua Sandra Alofivae

Counsel: Ms Katherine Anderson, Mr Simon Mount QC, Ms Kerry Beaton QC, Ms Jane Glover, Ms Anne Toohey, Ms Kima Tuiali'i, Ms Julia Spelman, Mr Winston McCarthy, Ms Echo Haronga, Mr Michael Thomas and Ms Kathy Basire for the Royal Commission
Ms Rachael Schmidt-McCleave, Ms Julia White and Mr Max Clarke-Parker for the Crown
Ms Sonja Cooper, Ms Amanda Hill, Mr Sam Benton, Ms Alana Thomas and Mr Sam Wimsett as other counsel attending

Venue: Level 2
Abuse in Care Royal Commission of Inquiry
414 Khyber Pass Road
AUCKLAND

Date: 15 February 2022

TRANSCRIPT OF PROCEEDINGS

1 Good morning, Ms McKechnie.

2 **MS McKECHNIE:** Good morning, Commissioners. A couple of housekeeping matters, ma'am.

3 While Tim is getting back up on the screen. The first one, yesterday Ken Clearwater gave
4 evidence and referred to a Brother Timothy in a phone call. I just wanted to clarify with the
5 Commissioners, in part because it has left, unfortunately, an inaccurate impression with the
6 media and may well have left it with survivors.

7 We raised this with counsel assisting last week when we got Mr Clearwater's
8 evidence and we understand that Mr Clearwater doesn't know which Brother Timothy he
9 spoke to. Brother Timothy Boxall was the Prior in Christchurch during 2002. Timothy
10 Graham will give evidence today that he has not spoken to Mr Clearwater, so we don't
11 know which Brother Timothy Ken spoke to and he doesn't know either.

12 I just wanted us to clarify that matter before we commenced. There is some media
13 reporting this morning that indicates it was Mr Timothy Graham that Mr Clearwater spoke
14 to, and that is not Ken's evidence.

15 **CHAIR:** I cannot influence what the media says. But it is noted for the record, and it is quite
16 clear from Mr Clearwater's evidence that he did not say Brother Timothy Graham, he just
17 said Brother Timothy, so it is clear that well, he didn't identify him as Brother Timothy
18 Graham.

19 **MS McKECHNIE:** No, he didn't. In our conversations with counsel assisting last week, this was
20 clarified with Mr Clearwater, he was quite clear that he didn't remember. That the man
21 only used "Brother Timothy".

22 **CHAIR:** Well noted, thank you, Ms McKechnie.

23 **MS McKECHNIE:** Thank you, ma'am.

24 Turning to Brother Timothy's evidence, I'm slightly concerned we can't see him.

25 **CHAIR:** I'm concerned too.

26 **MS McKECHNIE:** There he is.

27 The timetable for today, I only have an hour, unfortunately, to lead Tim's evidence
28 because my friend Ms Anderson has a number of questions and we have today with Tim.
29 I will highlight a small range of issues only.

30 **CHAIR:** Certainly.

31 **MS McKECHNIE:** There are some support people with Tim in the room in Australia. It is the
32 only straight live feed Australia has so it is a slightly larger group than usual because that is
33 where they have been watching the live feed from. We have provided him with a bundle of

1 documents in case our AVL is immune to the karakia of this morning and doesn't play ball.
2 There are a bundle of documents in front of Tim and he can be taken to the documents
3 when Ms Anderson needs that to happen, if necessary.

4 Finally, Tim has taken some notes in the last few days, he has been listening to the
5 evidence of the survivors and of the witnesses yesterday, so he has those notes with him in
6 addition to his brief of evidence.

7 **CHAIR:** That is very helpful, thank you.

8 **MS McKECHNIE:** Ma'am, you'll want to take the affirmation now.

9 **CHAIR:** I certainly will.

10 How do I refer to you: Brother Timothy or Brother Graham, what do you prefer?

11 A. Brother Timothy or Brother Tim or Tim or Timothy, whatever you prefer.

12 **CHAIR:** Let's start with Timothy, it's a halfway house.

13 Welcome to the Commission, Timothy, thank you for joining us from Australia, we
14 appreciate that. First, I will start by asking you to take the affirmation.

15 **BROTHER TIMOTHY JOHN GRAHAM (affirmed)**

16 **CHAIR:** I shall leave you now with Ms McKechnie. Just as a matter – as we have said to all of
17 our witnesses, because we seem to be perennially short of time, we do have your extensive
18 brief of evidence in front of us, both Commissioner Alofivae and I have read it carefully
19 and even though matters may not be canvassed fully by counsel, we certainly have all that
20 evidence before us and have considered it carefully.

21 **MS McKECHNIE:** There may also be issues that come up and questions where there are
22 historical documents that we can draw the Commission's attention to at a later time.

23 **CHAIR:** Absolutely, yes.

24 **QUESTIONING BY MS McKECHNIE:** I just want to start by checking that you have your
25 brief of evidence in front of you dated 7 September 2021.

26 A. Yes, I do.

27 **Q.** You can see me and hear me clearly?

28 A. I can see you and hear you clearly, and I hope you can see me and hear me clearly.

29 **Q.** Yes, we can, Tim, thank you. Your brief of evidence has six briefing papers attached to it,
30 and it was structured in response to specific questions from the Commission asked by the
31 Brothers by counsel assisting. There are a number of matters you don't personally know
32 about and those are set out in the document. I am going to ask you questions today about
33 things that you do have personal knowledge of.

1 I would like to start by inviting you to outline your history in The Order and
2 introduce yourself in that way to the Commissioners.

3 A. Okay. Thank you, Sally. Yes, my name is Timothy Graham and I was born in 1959, which
4 makes me 62. I entered the Brothers of St John of God in 1977 and had a number of
5 placements, mainly in Australia, and from 2002 to 2005 in Christchurch in New Zealand.
6 My professional background, I trained originally in education and have a Bachelor of
7 Education, I also have an honours degree in psychology.

8 Q. If you could just slow down a little bit. I know I warned you about the signers and the
9 stenographer, but you cannot see them. If I go like this, just slow down a little bit.

10 A. Thank you. I have a master's in clinical psychology, a master's in theology, and I'm
11 currently doing doctoral studies in the area of ecological theology. In The Order, I served
12 as the leader of a number of communities. I have also been involved in the training of
13 Brothers, both before and after profession. And I have been a provincial counsellor and am
14 currently the Provincial of the last 15 years.

15 Q. Thank you, Tim. Tim's particular history in New Zealand is set out in paragraphs 3 and 4
16 of his brief.

17 Tim, there was some discussion yesterday in evidence about the fact you had been
18 Provincial for a longer time than is usual. Can you explain why you have been the
19 Provincial for so long and how long you anticipate you will remain Provincial?

20 A. That is the trend happening with religious life in the developed world. In most
21 congregations of religious and with diocesan priesthood is that the numbers are diminishing
22 significantly, and the groups are ageing. We haven't had a new candidate into The Order
23 for over 20 years and we have made the decision that it's not appropriate to take candidates,
24 even if they did a PM, they are not appearing into the future.

25 So the norm is that, in Australia and New Zealand, groups of religious are
26 decreasing in number and getting significantly older. There is no generation behind me to
27 take on the mantle going forward, so that's the reason why the most unusual situation that
28 I have had to four terms of office. We have a chapter coming up in May and I'm not
29 planning on standing again. I think 15 years is quite enough.

30 Q. Thank you, Tim. You have listened to the survivor evidence last week. I know in listening
31 to some of the evidence yesterday and we have been discussing some of the reflections that
32 you have had on that evidence and the written evidence that you have read. I would like to
33 invite you now to share your thoughts on that evidence and on this hearing with the

1 Commissioners before we begin the rest of your evidence.

2 A. I thought that this was such an important opportunity, but I would actually like to read what
3 I have written, if that's all right, Sally.

4 Q. You prepared that overnight, Tim. Yes, I'm sure the Commissioners will be comfortable
5 for you to read that.

6 A. I just think this is important. This is what I have written.

7 I have listened with a heavy heart to the testimonies of the survivors appearing
8 before this Royal Commission and I have reflected deeply on their written statements. On
9 behalf of all of the Brothers, I acknowledge the courage of these men and women and all
10 those whom they represent, who have been harmed in any way by the Brothers of St John
11 of God. I and the Brothers have heard your pain and your anger. I would like to take this
12 opportunity, again on behalf of all of the Brothers, to profoundly apologise to all who were
13 hurt and harmed in any way at Marylands and Hebron.

14 These services should have been places of nurturance and safety for vulnerable
15 young people. The fact that they were places of sexual, physical and psychological abuse is
16 horrific and indefensible.

17 I would also like to offer an unresolved apology to your families, your significant
18 others, hundreds of lay co-workers who served at Marylands and Hebron, and the co-
19 workers who have and who currently support the work undertaken by the Hauora Trust, the
20 areas of physical disability, the support of young people, families, the Māori people and
21 Pacific Islanders, and to the wider church and people of Aotearoa, New Zealand.

22 Q. Thank you, Tim. I would like to commence by asking some questions about the Brothers.

23 There is a significant volume of background information, Commissioners, in Tim's
24 brief.

25 Tim, why did you join The Order of the Brothers of St John of God?

26 A. I joined when I was a very young person and I guess I had a very strong sense, ideal sense
27 of trying to do some good in the world. I also believed that I had a call or an invitation to
28 explore the religious life. I joined the St John of God Brothers because I was attracted to
29 their work with people who were on the margins, particularly those with disabilities and
30 those who are struggling with mental health difficulties.

31 Q. For you, Tim, what does the vow of hospitality require?

32 A. I actually believe Dr Mulvihill summarises the vow of hospitality exceptionally well
33 yesterday when she spoke about being with those who are on the margins, being with those

1 perhaps whom society may not always support fully, being with them where they are and
2 where they need to be and supporting them in whatever way that we can. So Dr Mulvihill
3 did an excellent summary of the vow of hospitality yesterday.

4 **Q.** Given that vow, you have heard evidence from survivors that they are particularly angry
5 with the Brothers because of what subsequently happened. Do you have any reflections on
6 that?

7 **A.** I can absolutely understand their anger and I guess I share in that anger. The thing that
8 disturbs me is the sense of betrayal of those vulnerable young people, the sense of betrayal
9 of their families, the sense of betrayal of the Brothers they lived in the community with, the
10 sense of betrayal of the co-workers they worked with, just the whole litany of betrayal and
11 it makes me deeply sad and deeply shameful, and at times quite angry.

12 **Q.** There have been some discussions in evidence, Tim, about Brothers and the fact that there
13 are some priests within this Order. If you could briefly summarise, what is the difference if
14 you are a Brother in the Order or you are a priest? What can priests do that Brothers can't?

15 **A.** Priests, essentially – the difference is priests celebrate mass, they administer the sacraments
16 like confession, marriage, all those various sacraments that priests undertake. Religious
17 Brothers don't that have capacity or that facility.

18 **Q.** Were there any priests in The Order living in New Zealand at any point?

19 **A.** The first priest of The Order that lived in New Zealand – just let me check the date –
20 arrived in 1980.

21 **Q.** There is some evidence in your brief about the small number of Brothers who lived in the
22 community in New Zealand, and you were here from October 2002 to February 2005.

23 There are some documents in the bundle where you participated in some of the redress
24 interviews with Michelle Mulvihill, or Peter Burke, Brother Burke. Do you have any
25 memory of those interviews?

26 **A.** No, I don't have any strong – I don't have any memories of those interviews, no.

27 **Q.** And you heard the evidence or have read the evidence of Ken Clearwater yesterday and he
28 talked about making a phone call in 2002 and speaking to a Brother Timothy. Brother
29 Timothy Boxall was the Prior at the time in Christchurch for most of 2002. Did you have
30 any phone call with Ken Clearwater in 2002 in relation to a survivor?

31 **A.** I don't believe so, Sally, because citing Ken's own language in his testimony, I think
32 I would have remembered that conversation.

33 **Q.** Have you –

1 A. No, I did not have conversation with Ken Clearwater.

2 Q. Have you spoken to Ken Clearwater on the phone on other occasions?

3 A. I don't believe so, no.

4 Q. Leading now to the current status of The Order in Oceania, the Brothers haven't had an
5 active ministry presence in New Zealand for many years. There are two Brothers living
6 here in retirement. You say – in paragraph 41, you talk about the public juridic person and
7 the steps the brothers have taken given your diminishing numbers.

8 Can you briefly summarise for the Commission the current position of the
9 Brothers in Oceania and in terms of your future?

10 A. Yes. Our current position, as you stated, we have two Brothers in New Zealand, both of
11 whom are 75 and living in a retirement facility. We have 16 Brothers in Australia. I think
12 I may be the only – there may be two of us who are not on the old age pension. They are
13 also retired and living in aged care facilities – and we have eight Brothers in Papua New
14 Guinea. As I stated earlier, virtually all religious congregations in Australia have
15 significantly decreased in numbers over the last three decades and have significantly
16 increased in age, which has meant that for many of us we are unable to provide appropriate
17 civil and canonical governance of the services that were developed by those various
18 congregations.

19 Many religious congregations, including ourselves, have utilised the model of the
20 public juridic person to provide the canonical governance for our services.

21 The Catholic service requires two forms of governance, a civil governance
22 structure and a canonical governance structure. The civil governance structure's body is
23 quite easy in terms of setting up companies and all those things that you do in civil
24 corporate life. In terms of the canonical governance, the canonical mechanism of the PJP
25 [Public Juridic Person] provides that canonical governance apart from the religious
26 congregation.

27 In our case, in 2007 we merged our services in Australia and New Zealand into the
28 PJP called St John of God Australia Limited, which was set up by the Sisters of St John of
29 God some years ago, I can't remember exactly, but it was one of the first PJPs in Australia.
30 The Sisters also have handed their services over to the PJP. Just like ourselves, they are
31 ageing and decreasing in numbers. So, the PJP takes on the canonical governance and
32 responsibility of those services, including the services in New Zealand.

33 Because of New Zealand law, we have a separate trust, the Hauora Trust, which

1 refers back to the PJP and St John of God Australia and to the canonical structure in
2 Australia which is called the St John of God Health Care.

3 It is very hard to summarise simply something that is quite complex, but hopefully
4 I have achieved – that the Commissioners have some understanding. They can ask me any
5 further questions they would like. But it is quite a complex thing to get your head around –

6 **CHAIR:** It is also complex for us. Could you explain for us what a PJP is?

7 A. PJP stands for public juridic person. Sometimes it is called a mission juridic person. It is a
8 facility within canon law.

9 **Q.** It is a legal entity?

10 A. It is a canonical legal –

11 **Q.** A canonical legal entity. Thank you.

12 **QUESTIONING BY MS McKECHNIE CONTINUED:** In terms of the St John of God Hauora
13 Trust in New Zealand, do the Brothers have any direct control or influence over that Trust
14 in 2022?

15 A. We have no civil or canonical authority or no ownership over any entity in New Zealand.

16 **Q.** To clarify, particularly for the survivors listening, the Brothers still take responsibility for
17 all claims arising out of New Zealand where the Brothers were involved?

18 A. Any claims that occurred before in the services of New Zealand before 2007 are the
19 responsibility of the Brothers of St John of God. Any claims may, and I don't believe there
20 have been any – that occurred after 2007 are the responsibility of St John of God Health
21 Care, through the Hauora Trust. And excuse my pronunciation if that's incorrect.

22 **Q.** There haven't been any Brothers working in New Zealand since significantly before 2007,
23 have there?

24 A. The last Brother working in our services in New Zealand would have been during my time
25 in 2002 to 2005 and they would have been working as nurses in the hospital in Halswell, to
26 the best of my knowledge.

27 **Q.** Thank you, Tim. I would like to turn now to talk about Marylands. You have no personal
28 knowledge of the school, and that is set out in your evidence, and there is limited historical
29 information available, for reasons again that you touch on in your evidence.

30 Tim, we, using the Brothers' records, have prepared a briefing paper for the
31 Commission and I would like to take you briefly to that. I know you can't answer any
32 questions about how it was prepared, but I know you want to be open and transparent about
33 the numbers of claims and allegations with the Commission, so that's why I'm taking to this

1 document now.

2 It is briefing paper number four. Commissioners, you should have a copy of it in
3 front of you. It is in the bundle if we want to attempt to bring it up.

4 A. Yes, I have it.

5 **CHAIR:** Perhaps it would be helpful, Ms McKechnie, to read the number into the record.

6 **MS McKECHNIE:** CTH0015243. Commissioners, do you have that?

7 **CHAIR:** We have it on screen, yes.

8 **QUESTIONING by MS McKECHNIE CONTINUED:** Tim, the first table I would like to
9 discuss with you is table one, on page two of the document. That talks about the number of
10 complaints from Marylands. There are 118 complaints for which the Brothers have some
11 form of written record. Do the Brothers have complete records for the Marylands School
12 from this period?

13 A. No, I don't believe so because those records would have been transferred to the Education
14 Department when the school became Hogben College in 1985, I believe it was, so any
15 documents that would have been extant at the school, my understanding is would have
16 remained in their filing cabinets and had gone other to the Education Department when he
17 took control of the school.

18 **Q.** In terms of the written records the Brothers have of complainants coming forward, there are
19 some documents from 1977 which you have set out in your evidence, and I anticipate
20 Ms Anderson may have some questions for you.

21 In terms of the complaints in the more modern era, when did the first complaints
22 that you have a record of start to come forward to the Brothers?

23 A. I think the evidence yesterday of Dr Mulvihill said they first occurred in the late '80s but
24 the bulk of the complaints started coming through in the early '90s, to the best of my
25 knowledge, commencing in 1992.

26 **Q.** Commissioners, you have all of the particular statistical information in that regard.

27 Tim, if you turn over the page, table four outlines the forms of abuse identified.

28 Commissioners, the reason the numbers are larger here than 118 is where an
29 individual makes a complaint of different forms of abuse, it is counted in each column.

30 **CHAIR:** Yes.

31 **MS McKECHNIE:** You will see there that the sexual violation and sexual offending numbers are
32 distinct. We have, as with other statistics, Commissioners, used the New Zealand criminal
33 law distinctions between sexual violation and other forms of sexual offending.

1 **QUESTIONING BY MS McKECHNIE CONTINUED:** You will see the numbers of forms of
2 abuse and particularly the sexual offending at Marylands is very high. There has been
3 much evidence and discussion from survivors expressing concern about why these numbers
4 are so high. Do you have any insights into why the allegations of sexual harm are so high
5 at Marylands?

6 A. I don't have any personal insights or experience. But I guess from a theoretical perspective,
7 it may be that as a closed system, as it was in those days where there was not that much
8 oversight from outside the organisation, that that could account for it. I think if we look at
9 modern scenarios, there is a lot of accountability, a lot of transparency, there's a lot of
10 outside auditing of services these days which just didn't happen in those days,
11 unfortunately.

12 **Q.** Tim, I would like to take you now to table five, that sets out the details of the respondents.
13 That is the term that the Brothers and the wider church use in terms of the men accused of
14 harm.

15 There are three things I would particularly like to discuss with you in relation to this
16 table. Firstly, the number of Brothers who are respondents, so to confirm, the evidence that
17 there are 22 Brothers who have allegations against them from Marylands. You will see at
18 the bottom of that table, the information about how many of those men were alive at the
19 recorded first instance of an allegation and you will see there that of those 22, 13 of them
20 were alive, 10 were dead by the time of the first allegation, and three are unknown because
21 their accuser is unknown, so the respondent is unknown.

22 You have been the Provincial since 2007 and some of these men have remained
23 alive during your time. A number of them have died in the last 15 years, of course. What
24 abilities do you have, as the Provincial, to control or supervise men who have had
25 allegations against them?

26 A. The table indicates that there are four individuals currently alive. Of those four, three are
27 ex-Brothers and have been ex-Brothers for some decades. One is currently a Brother –
28 again in a similar scenario of retirement and ageing.

29 In terms of the three individuals who are no longer members of The Order, I have
30 no canonical or civil influence or oversight of them at all. The only person who I do have
31 some canonical oversight and responsibility for is the one Brother who remains in the
32 province.

33 **Q.** Two of the Brothers who are no longer in The Order are currently incarcerated in Australia

1 and will be in prison for many years. There was some concern in the survivor evidence last
2 week that when a man leaves The Order and is no longer a Brother, there was some
3 suggestion that the Brothers as an organisation no longer take responsibility for their
4 historical acts. Can you clarify, please, the position that The Order takes in relation to
5 those men?

6 A. Very clearly, whether they are a member of The Order or not, we still have responsibility
7 for their historical acts while they were a member and we have been engaged with
8 survivors in bringing to some, hopefully, successful resolution their complaints against
9 those individuals.

10 Q. Commissioners, we have provided some detail from the historical records in briefing paper
11 number five in relation to the dates of the first allegations against these 22 men and for
12 those who were alive, the steps that were then taken that we can see from the historical
13 record, so that document is before the Commissioners.

14 **CHAIR:** Yes.

15 **COMMISSIONER ALOFIVAE:** Ms McKechnie, can I check, you referred to the total number
16 of respondents as 22, but table five says it is 23.

17 **MS McKECHNIE:** Apologies, Commissioner. Yes, there is actually an updated version of this
18 that was provided to the Commission. 23 is the correct number.

19 **COMMISSIONER ALOFIVAE:** Thank you.

20 **QUESTIONING BY MS McKECHNIE CONTINUED:** There were further allegations found
21 through subsequent investigation. We have had some difficulties with archival resources,
22 not least of which because Sydney keeps going into lockdown.

23 So 23 is the correct number. I believe an updated briefing paper number five has
24 been provided as well.

25 Tim, I would like to talk about Hebron or what has been referred to as Hebron
26 Trust. There is a significant briefing paper, Commissioners, that sets out the formation of
27 the Trust, such as it was, clearly an informal structure for some time before it became a
28 Trust as such.

29 Tim, in briefing paper number six it sets out the harm and the allegations that the
30 Brothers have records of in relation to the Hebron Trust, if I could take you to that
31 document. We will get the CTH number for that, for the record, momentarily.

32 If you go to table one, this is the records of the number of complainants from
33 Hebron and there are 28 complainants for which the Brothers have records in relation to

1 Hebron Trust. To confirm, the only Brother who has allegations arising from Hebron is
2 Bernard McGrath, isn't he?

3 A. That is correct, yes.

4 **Q.** Commissioners, I am advised that this paper is not in the bundle but obviously the
5 Commission has it and we can provide that record to you.

6 Commissioners, there was one other man who has had an allegation against him at
7 Hebron Trust, he was a lay social worker and employed by the social services branch of the
8 Trust and had no association or relationship with the Brothers, so that data is set out in that
9 table for the Commissioners' assistance.

10 **CHAIR:** You say no association with the Brothers?

11 **MS McKECHNIE:** No. Commissioner, you will see from the history of Hebron Trust, Brother
12 McGrath essentially ran it very informally by himself. At some point later the Trust was
13 formalised, at which point the Brothers had some form of supervisory role in the Trust in
14 terms of its structure but as a matter of day-to-day work it was funded by the Department of
15 Social Welfare and other services and there were a number of lay employees, of which this
16 man was one.

17 It continued for a number of years after the arrest of Bernard McGrath in 1993 and
18 has had a number of forms since then.

19 **CHAIR:** Yes, I'm familiar with that.

20 **QUESTIONING BY MS McKECHNIE CONTINUED:** Tim, as part of this horrible and
21 difficult history, there has been some concern raised by survivors in their evidence, in this
22 hearing and in other hearings, about the way that congregations respond to and look after
23 men who have been accused of harm or have been released from prison. You set this out in
24 your evidence. But I would like you to summarise, as the current Provincial of the
25 Brothers, what approach you take to the supervision of men who have had allegations and
26 why?

27 A. Sure. We take the allegations that are made against Brothers very seriously. And I can
28 only speak about what approach we have taken during my time as Provincial. When an
29 allegation comes forward, either directly from the complainant or more typically through
30 their legal representatives, that is presented to the Professional Standards Committee.
31 I have always taken very seriously the Professional Standards Committee and have used it
32 to its fullest capacity, because I think that is best practice to draw in eminent outside people
33 for advice about what is the best and most efficient way and effective way and

1 compassionate way to deal with these often very complex matters.

2 So, when an allegation is made, it will come to the Professional Standards
3 Committee, and they will look at each case individually and discern an appropriate course
4 of action.

5 Typically, that will involve an investigation – whether it is a police investigation
6 that is undertaken and/or an investigation undertaken by the province through an external
7 investigative agency. Once that process – whether it is the police or an external
8 investigator – what their findings are will determine what then happens. Clearly, if the
9 police choose to charge the person, then that has its own course.

10 If the investigator substantiates the claims, then that also will have its own course.
11 If the events are unsubstantiated, again, that will have its own course. So, it is taken
12 individually case by case.

13 The example of – we are talking about – allegations – we are not talking about
14 people who have been jailed and have come out of prison, I'm assuming?

15 **Q.** We will move on to that in a moment. Before we leave the Professional Standards
16 Committee, who is on your Professional Standards Committee? We don't need their names,
17 just more the positions they hold.

18 **A.** Over the last 15 years we have had a range of people, from human rights commissioners,
19 ex-child commissioners from the UK, we have had eminent psychologists, forensic
20 psychiatrists, social workers, people working with the New South Wales Professional
21 Standards Office. Lawyers, both in the practical area of dealing with abuse matters and
22 also academic, quite senior academic lawyers, and we have had religious from other
23 congregations who are involved in this matter. And up until probably maybe four or five
24 years ago, we had a Brother on that Professional Standards Committee.

25 As best practice, I have not – I think I started off as an ex-officio member. As best
26 practice I didn't attend those meetings, I just dealt with the advice of that group. So that's
27 been the quality, I believe, of the Professional Standards Committee that we have tried to
28 develop around –

29 **Q.** Are they a decision-making committee or are they recommendatory?

30 **A.** They are an advisory committee, but I always think I would be very foolish not to take their
31 advice.

32 **CHAIR:** Sorry to interrupt, you, Brother Timothy. Has there ever been on that committee
33 anybody with what we refer to as lived experience? In other words, people who are

1 survivors, who have had experience of abuse, et cetera?

2 A. No, Madam Commissioner, we have not had a member with – a victim on our committee,
3 no.

4 Q. Thank you.

5 **QUESTIONING BY MS McKECHNIE CONTINUED:** Turning now to the approach you take
6 with men who have serious allegations or who have been released from prison following
7 convictions, and I appreciate most of those men now are deceased or no longer members of
8 the Order, but in your 15 years, what approach have you taken in relation to those men?

9 A. In my 15 years, we have had two Brothers who have been convicted and jailed, one in New
10 Zealand and one in Australia, there have been a number of others over whom I have no
11 jurisdiction.

12 In relation to those Brothers, as I say, one of whom is still currently in jail, we
13 have a range of safeguarding measures that we put – in place and I have listed them in my
14 evidence. I will probably forget some of them but there is a range of them. Clearly when
15 they come out, they have parole conditions. We had a safeguarding plan – they are entitled
16 to observe all the policies and procedures that the province has in place around
17 safeguarding. Because of the age nature, they will have regular visits and contact with a
18 healthcare worker from an external agency. They will have regular contact with the
19 pastoral care person, to provide social and pastoral support.

20 Q. Tim, sorry to interrupt, I'm conscious of time and, as you say, this safeguarding process is
21 set out in your brief.

22 It is controversial with some who are watching that some of the Brothers remain in
23 The Order, and you set out in your evidence why you have kept Brothers in the Order. Can
24 you explain to the Commission what motivates that approach?

25 A. Sure, and I can understand the concern that people might have from observing that. But I,
26 and I believe a number of other people in my profession, would argue that it is a socially
27 responsible thing to keep people who have been guilty of abuse within a system that
28 provides them with greater supervision, and I started to list some of those planks.

29 Some church agencies might choose to expel people from within it. If they do
30 that, as we mentioned before, they have no jurisdiction or capacity to put some supervision
31 parameters around them. I truly believe that to keep people who have harmed others,
32 particularly young vulnerable people, within the congregation is attempting, and hopefully
33 keeping, the community safer.

1 **Q.** Tim, there have been a number of allegations made against the leadership of St John of God
2 in the media and in the public and from some of the survivors last week, so I am going to
3 put some of those allegations to you, so you have an opportunity to respond to them.

4 First, Tim, have you ever covered up an allegation of abuse?

5 **A.** Absolutely not.

6 **Q.** Have you ever moved somebody after an allegation of abuse has been made against them?

7 **A.** Again, absolutely not.

8 **Q.** Dr Mulvihill gave evidence yesterday and she made a number of strong statements about
9 her opinions in relation to the Brothers, and I am going to put some of those to you as well.

10 She used the phrase "organisational denial", suggesting that The
11 Order does not acknowledge the impact that this harm has had on its victims. What is your
12 response to that assertion?

13 **A.** I really don't understand how Dr Mulvihill can make that claim. She was our professional
14 standards case manager for many years and the work that she and Peter Burke did was
15 pioneering, it was brave, it was very much focused around the care, the compassion and the
16 justice for victims.

17 I think the Brothers feel the pain and the anger of the victims very deeply.
18 Personally, daily I feel the sorrow and shame for what was done to these vulnerable young
19 people. And it has just been reinforced by listening to their evidence during this Royal
20 Commission. And I know the other Brothers – to claim that we are in denial – and we don't
21 care, I think it's grossly unfair. And grossly unsubstantiated. We know how we feel. We
22 feel very deeply about this.

23 **Q.** One of the other comments that Dr Mulvihill made yesterday was an allegation that in her
24 view you were outsourcing your empathy, which I took to mean that you are using lawyers
25 to respond to the complainants rather than responding to them directly. What response do
26 you have to that comment?

27 **A.** I find this a curious statement to make because a review of the files of the complainants that
28 have come forward in New Zealand, and a similar scenario has been happening in
29 Australia, was that the victims were opting for the civil litigation pathway, which is their
30 absolute right. What I have heard victims saying through this time is their lack of trust in
31 most institutions, whether that be the government and their departments or whether it be the
32 police, whether it be the legal system, whether it be the church, whether it be the Brothers
33 of St John of God, the lack of trust was palpable and real and raw. And so, my experience,

1 since I have been Provincial in 2007, and I believe it was happening in Brother Peter
2 Burke's time, was that victims were opting to go down the civil litigation pathway. And
3 virtually every person coming forward from New Zealand in my time has opted for that
4 pathway, which is their absolute right. I think it is indicative too that both – and I'm
5 assuming this is the case in New Zealand – but in Australia we have become a more
6 litigious nation and civil litigation has become more and more common and more and more
7 preferred, I'm assuming that is the case in New Zealand as well. Yes, that's probably
8 enough.

9 **Q.** In your experience dealing with people coming forward, do those complainants, do those
10 individuals, want to have a relationship with The Order?

11 **A.** That would vary from person to person. I'm not a lawyer so I only have a lay
12 understanding of civil litigation and my own experience of it. And my experience of it is
13 that our capacity to engage with victims is very limited and is usually determined by the
14 victims' legal representative, and it is limited to receiving the complaint; it is limited to
15 offering counselling, if the complainant wishes to have that; it is limited to a pastoral
16 meeting, if they would like that; and it is limited to a formal apology, if that's what they
17 would like; and it is limited to offering some financial redress agreed upon between the two
18 legal representatives.

19 I don't – the Brothers of St John of God have no power or authority over the
20 litigation process. Again, I reiterate, it is the absolute right of victims to choose that
21 pathway. The documents also indicate – that we have been open to reengaging with people
22 who have gone through that pathway, if they believe that their settlement wasn't – just. As a
23 layperson I find that a little bit difficult to understand because my understanding is that
24 lawyers are attempting to provide the most just compensation available and don't sign off
25 on that if it's not a just and reasonable redress. But again, I'm a layperson; I find it very
26 difficult to understand the complexities of the law sometimes –

27 **Q.** Tim, what approach do the Brothers take to legal advice for survivors or victims who
28 approach The Order?

29 **A.** We always pay their legal fees on top of their amounts that is agreed to through the civil
30 litigation process.

31 **MS McKECHNIE:** Commissioners, you have many, if not all – I think you have all – of the
32 records of these discussions between lawyers for the complainants in New Zealand. Grant
33 Cameron, as you heard yesterday in evidence, was prominent in the early 2000s and

1 Ms Cooper has been prominent subsequently, and the records of those discussions illustrate
2 how much control the lawyers put over those process.

3 We can refer the Commission to particular documents if that assists.

4 **CHAIR:** Yes, thank you.

5 **QUESTIONING BY MS McKECHNIE CONTINUED:** Tim, turning briefly to the counselling,
6 how many counselling sessions do the Brothers offer at the first stage of the process for
7 survivors?

8 A. I would not be able to answer that with accuracy, I would have to look at each case. But as
9 a clinical psychologist, the standard practice in Australia is to have 10 sessions of
10 counselling and then to review that, based on the opinion of the counsellor or therapist as to
11 whether further sessions are needed. Our approach would be to offer as many counselling
12 sessions as the individual's therapist believes is necessary and appropriate.

13 **Q.** I would like to step back a little bit in time and talk about Peter Burke and Michelle
14 Mulvihill and the approach that Peter took to redress. I know you weren't directly involved
15 in that process, but you set out some reflections from paragraph 248 of the evidence in
16 relation at the that approach. We heard quite a lot of evidence already in this hearing, Tim,
17 about an ongoing relationship that many of the survivors think that Peter Burke promised
18 them and a sense of ongoing support. By contrast, we have then heard evidence that when
19 you became Provincial, this approach changed. So, I'm going to ask you some questions
20 around that, so you can explain your thinking behind it and your memory of that process.

21 In 2007, you became Provincial. Now, yesterday there was some evidence from
22 Ms Cooper that The Order moved away from using Saunders Robinson, Lee Robinson in
23 Christchurch at that time. Can you explain why you took that decision?

24 A. My decision to do that was really quite simple and it was a geographic decision, in that I'm
25 based in Sydney, I'm not based in New Zealand, and the – it was more optimal for me to
26 use our lawyers in Australia, who would communicate with Saunders and Robinson in New
27 Zealand as applicable.

28 **Q.** There was also – Tim, there has been quite a lot of evidence about the sense of
29 disappointment that some survivors had that what they thought were promises from Brother
30 Peter weren't sustained or responded to. Do you have a response to that evidence?

31 A. Actually, I have been reflecting on that statement – those sentiments, and they are
32 regrettable sentiments and I feel very sad about them. I was trying to reconstruct in my
33 mind – we are going back 15 years now – and this relates to Dr Mulvihill's statement as

1 well, her verbal statement and her written statement, it suddenly occurred to me that she
2 and Peter, as I said before, did some remarkable pioneering work in this area and even
3 looking at Dr Mulvihill's analysis of sexual abuse in her statement, it indicates a high
4 calibre of understanding of this whole area.

5 However, and this again goes back to Dr Mulvihill's statement, I was struck on
6 reflecting at our meeting where Dr Mulvihill offered her resignation, but there was no
7 transition or handover from Dr Mulvihill's role as professional standards case manager,
8 there was no files were presented to me, there was no list of current cases that she and
9 Brother Peter were dealing with. I was just basically given a letter of resignation. And
10 I really don't know whether that could be considered as best practice.

11 **Q.** While we are discussing the resignation meeting, Tim, you have read Dr Mulvihill's
12 evidence describing that meeting –

13 **A.** Yes, I have.

14 **Q.** - and you heard her talk about it yesterday. Did you say the things in that meeting that
15 Dr Mulvihill gave evidence about? Did you talk about the Brothers being vulnerable and
16 worried about money? Did you and she have cross words in that meeting?

17 **A.** I have very clear recollections of that meeting. I have very clear recollections of how
18 I went into that meeting, which will be obvious, given Dr Mulvihill's both verbal and
19 written statements to the Royal Commission. I was aware that I would need to handle that
20 meeting with a great deal of sensitivity and a great deal of professionalism. The meeting
21 was very short. I chose to allow Dr Mulvihill to lead the process. The meeting was very
22 civil. There was no mention of any of the matters that have subsequently arisen during this
23 Royal Commission and in the media for the last 15 years. I very clearly refute what I said,
24 and I think I'm quoting Dr Mulvihill exactly, that this is one thing I don't have to do, given
25 how I went into that meeting with great sensitivity and great carefulness. I absolutely
26 refute that statement. There were no cross words. It was very civil and very polite. That's
27 my memory of that meeting.

28 **Q.** There has also been some statements made, both in the media and in this Commission,
29 about how Peter Burke lived in retirement – so he, to remind the Commissioners, retired in
30 2007 when you became the Provincial and he lived for a number of years before his death.
31 There was some suggestion that he was ostracised or alienated from the Brothers in that
32 period. Can you share with the Commission your engagement with Peter after his
33 retirement?

1 A. That is a viciously cruel thing to do.

2 Q. What was?

3 A. To make those allegations. There was a media – an article in a newspaper in Australia,
4 I don't remember which one it was, and I don't know whether it's part of the bundle of
5 evidence to the Royal Commission, and Dr Mulvihill featured prominently in that.

6 Brother Peter Burke, at the end of his nine years of Provincial, was burnt out, he
7 was physically and emotionally unwell. That's hardly surprising, given the sterling work he
8 did and the harrowing stories he had to listen to for a very long period of time. Peter was
9 Provincial for nine years, as was indicated yesterday. Clearly the Brothers had confidence
10 in him otherwise they would not have re-elected him or elected him three times. Peter
11 asked for a period of sabbatical after those nine years, which is a normal and natural thing,
12 it is something I gave him with a great sense of pride and with a great sense of gratitude.
13 He needed time to rest, to heal and recuperate –

14 Peter chose to have his sabbatical, which we agreed was a two-year period, to live
15 in the western suburbs of Sydney in amongst a group of people, of people on struggle
16 street, basically. He was enjoying his sabbatical period, I met with him regularly for meals
17 and for conversations, as did other Brothers. We didn't realise just how unwell Peter was.
18 He had a vascular catastrophe that virtually killed him instantly.

19 Before that, we were engaging in preparing him to go back and work in the drug
20 and alcohol unit at St John of God Hospital at Richmond, and drug and alcohol was his
21 great passion in life, and he was preparing to go back into that. So, I absolutely refute as
22 viciously cruel for anybody to make those accusations.

23 Q. Returning to Peter's redress approach, Tim, there is some suggestion that you changed the
24 approach when you became the Provincial. Was it a deliberate change?

25 A. I think I alluded before that victims were coming increasingly, before I became Provincial,
26 along the civil litigation pathway. I could count on my hand the number of people both in
27 Australia and New Zealand who have chosen either a church pathway or to come to us
28 directly. Virtually everybody has come through the civil litigation pathway. So, I didn't
29 change the process, the victims changed the process.

30 Q. Would you engage with victims if they came to you directly?

31 A. Yes. I can think of – one victim in Australia who has done that. Again, we try to meet the
32 complainants, the victims, where they want to be met; whether that is individually, through
33 coming to us themselves, whether it's through a church pathway, like Towards Healing or

1 Pathway to Healing in New Zealand, or whether it's through the civil litigation process.

2 Clearly, they have to have the choice. One choice, which has been left out of some
3 statements, is their choice to choose the civil litigation pathway, and quite clearly in our
4 case, in talking to other provincials, that is the trend. People don't trust institutional
5 responses, and they clearly don't trust church-based responses.

6 **Q.** Dr Mulvihill described this process critically yesterday and she used the phrase
7 "outsourcing your own empathy", which I took to be a statement about using lawyers to
8 respond to complainants.

9 **A.** I guess she is saying that victims are outsourcing their empathy as well, or whatever
10 feelings they have. No. As I say, I can't direct a victim as to which pathway they want to
11 choose. It is completely their choice and their right of choice.

12 **Q.** There are a number of differences between the Australian processes and the New Zealand
13 processes and Ms Anderson may have some questions for you about that later. But I am
14 very conscious that I can only have an hour with you today, so this will be my final
15 question now.

16 Yesterday there was some evidence about the fact that payments are lower in New
17 Zealand than they are in Australia and that's statistically established in the records. Do you
18 know why is that the case?

19 **A.** I can't give you a professional answer to that. You will probably need to ask the legal
20 profession that. Clearly the legal landscapes and the legal frameworks in Australia and
21 New Zealand are different. But as to why that is, you need to ask the legal profession.
22 I can't give you an answer to that.

23 **Q.** When you engage in these processes as Provincial, do you remember legal advice in
24 relation to settlements?

25 **A.** Yes. As I understand the civil litigation pathway, each of the respondents has their own
26 independent legal advice. We have our legal advice in Australia and the complainants, the
27 victims, choose their legal advice in New Zealand.

28 **MS McKECHNIE:** Thank you, Tim.

29 Would you like to go to the adjournment now, before Ms Anderson starts?

30 **CHAIR:** I will check with her. Does that make sense, Ms Anderson?

31 **MS ANDERSON:** I'm happy to lead on straight away and have the adjournment at the usual time.

32 **CHAIR:** Okay, so we will go through until at 11.30.

33 I will now leave you with Ms Anderson, counsel for the Royal Commission.

1 **QUESTIONING BY MS ANDERSON:** Good morning, Timothy.

2 A. What would you like me to call you, Ms Anderson?

3 **Q.** I am happy for you to refer to me as Katherine or Ms Anderson, whatever is convenient.

4 A. Thank you.

5 **Q.** I'm going to move through a few topics. But building on some of the content that
6 Ms McKechnie has taken you through, I am going to begin with some of the aspects
7 relating to the structure of The Order and how it functions globally and your role as
8 Provincial in that context.

9 Just confirming, although you have got people in the room there
10 with you, they are simply there to aid you in terms of passing documents should that be
11 necessary?

12 A. Yes, and just as personal support, as advocates or personal support.

13 **Q.** But the evidence and the discussion that we are going to have, this is about your evidence,
14 unprompted by anyone in the room with you?

15 A. That's correct, yes.

16 **Q.** In terms of – we have heard language and we see in the documents the reference to the
17 Superior General in Rome. Can you explain as you've – experienced, as in your role as
18 Provincial, how does a person in that role interact with you as a Provincial?

19 A. As an Order we would be quite decentralised, and the management of local issues is
20 completely the responsibility of the Provincial of the particular province. The Superior
21 General or Prior General, as we call him, would have set responsibilities outlined in the
22 constitutions of the Brothers and in canon law and his role. I report directly to the Prior
23 General. But in terms of the day-to-day management of the province, that is the
24 responsibility of the Provincials.

25 **Q.** We will come on to talk about the formality of that interaction. You also have the
26 Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life that has
27 some responsibility in relation to The Order. Can you explain how that congregation
28 interfaces or is involved with the activities of the Oceania Province?

29 A. In my understanding, that is a department of the Vatican that is responsible for religious
30 life. The interaction would be between that department and the Prior General in Rome.
31 I wouldn't have any contact with that Vatican department. So, the Prior General would
32 report to that department of the Vatican.

33 **Q.** If a Brother was wishing to leave The Order, is it the congregation that would be the formal

1 decisionmaker in giving the approval for a Brother to leave The Order?

2 A. If a Brother was in final vows, he would put his request to the Prior General to leave The
3 Order, who would then receive what is called the dispensation from the Vatican, from that
4 department in the Vatican.

5 Q. So it comes down through that channel?

6 A. Yes.

7 Q. At the higher governance level, there are chapter meetings. You attend them?

8 A. Yes, there is. There is a general chapter every six years and there is a provincial chapter
9 every four years. And as I indicated, we are coming up to our provincial chapter in May.

10 Q. It is the Superior General or Prior General that is convening those chapter meetings on a
11 six-year rotating basis?

12 A. He would be convening those, and he would also be convening the provincial chapters, and
13 he either attends or he delegates another Brother to attend on his behalf. It is – given the
14 distance from Europe, usually it is a delegated Brother who will be given the authority to be
15 the president of the chapter.

16 Q. Just explain the difference then between chapter meetings and provincial council meetings
17 that you have said the Prior General or delegate would also attend.

18 A. Chapter meetings, there was also a facility previously, and it hasn't been used for decades,
19 where each community would have a chapter meeting. So it was just basically a meeting of
20 the Brothers in that community, to discuss the matters of religious life or matters of the
21 service or whatever. So it was very much a local thing. That's distinct from a provincial
22 chapter at which the main action is to elect Provincial and his leadership team.

23 So the language gets very confused sometimes. It would be very difficult for
24 somebody who is not part of religious life to understand the complexities of all of this.

25 Q. I can agree with that entirely, Timothy, having looked through the documents.

26 A. And I can understand that. It must be very complicated to get your head around all of this.

27 Q. Yes. For example, we have seen a reference in one of the documents – I won't go to it now,
28 we don't need the detail particularly – to a discussion at a particular chapter meeting in
29 relation to an allegation of abuse about a Brother. My question is: how would we know
30 whether that is a local chapter meeting or the bigger – picture chapter meetings?

31 A. I don't know, I can't answer that without seeing the actual document. But my understanding
32 is that an issue such as a particular case of sexual abuse would not be discussed at a
33 provincial chapter meeting where the main purpose is electing the Provincial and setting the

1 strategic directions for the next four years. So without seeing the document I couldn't –

2 **Q.** Just as a general proposition, in your experience, a provincial chapter meeting would not be
3 a forum in which the abuse within The Order, whether in province or another, would be
4 discussed?

5 **A.** I don't believe so and I don't have any memory of that ever having occurred.

6 **Q.** At the higher-level meeting, which is the chapter meeting convened by the Superior
7 General, is that a forum in which the global situation in relation to abuse within The Order
8 would be discussed?

9 **A.** I'm thinking back to the last couple of – I have been to the last few general chapters.
10 I would hope that the issue of the sexual abuse in the church would have been discussed but
11 I would have to refer back to the minutes of that to give you an accurate answer. I don't
12 have –

13 **Q.** It would be your expectation that the minutes of those meetings would accurately record
14 any such discussions?

15 **A.** Yes, I believe so. But again, the general chapter, the main priority is the election of the
16 general leadership team and setting of the strategic directions for the next six years.

17 **Q.** It would be surprising, wouldn't it, if those strategic directions didn't address a critical issue
18 for The Order globally, in that there seems to be a high number of allegations of abuse
19 against Brothers around the world.

20 **A.** And what's happened since the last chapter is that the general chapter – the General
21 Government, sorry, has sent up a commission for ensuring that all provinces have
22 contemporary and best practice models of policies and procedures for dealing with people
23 coming through, and safeguarding mechanisms.

24 The Order occurs in many countries around the world and there are many levels of
25 approaches and sophistication to dealing with this issue. So The Order is trying to
26 encourage all of the provinces to have a best practice approach to this, to ensure the
27 safeguarding of vulnerable young people and adults.

28 **Q.** That explains, doesn't it, the very recent, I think 2021 or 2022 series of policies that your
29 Order now has, the Oceania Province, on risk management, on responding to allegations of
30 harm?

31 **A.** Yes, we have had policies and procedures in the Australian church and in The Order and in
32 the New Zealand church around Towards Healing, Integrity Commission, Pathways to
33 Healing. Those documents that you are referring to are the latest policies and procedures

1 that have been developed by Catholic Religious Australia as a response to the Australian
2 Royal Commission and to the recommendations of the Truth, Justice and Healing group
3 here in Australia. So those documents you have are the latest and we believe the best
4 practice available at this time.

5 **Q.** I'm just going to take you to the document I was referring to, because you might be able to
6 help me decode what chapter meeting might have been referred to.

7 **A.** I will do my best.

8 **Q.** It's document reference NZP0012941.

9 It is a statement that Brother O'Donnell made to NZ Police and I think you will be
10 familiar with that document.

11 **A.** Yes.

12 **Q.** It is just coming up there. I will take you to the relevant page in that. Just to orientate
13 Commissioners to this document, this is part of the series of interviews of Brothers
14 conducted in 2003, that you heard reference to yesterday.

15 Brother O'Donnell gave two statements to police. Just on page 13 of the statement,
16 the second paragraph, would you cast your eyes over that paragraph and let me know when
17 you are finished reading that paragraph.

18 **A.** Yes, Brother O'Donnell states in that that he wasn't sure – "it was conceivable that this
19 could have been discussed at a local chapter". I think I would need to find out whether we
20 actually had a provincial chapter in 1977. As I say, I entered The Order in 1977, so I don't
21 believe we did have a chapter in that year. So – I suspect what is being referred to is a local
22 chapter in the community.

23 **Q.** In preparing the information for the Inquiry that is fed into briefing papers numbers four
24 and five that Ms McKechnie has referred to this morning, would the records of any such
25 chapter meetings have been reviewed to glean any references such as this to discussions? –

26 **MS McKECHNIE:** Ma'am, I can answer that. They weren't, as we said in the submission when
27 we provided to the documents to the Commission. We have been quite open about the fact
28 they haven't been referred to in preparation of those documents.

29 **CHAIR:** Thank you.

30 **QUESTIONING BY MS ANDERSON CONTINUED:** Tim, perhaps one of the tasks that
31 I might invite you, would The Order be willing to have a look at records you hold of
32 chapter meetings, whether it is the general chapter, provincial chapter or local chapters, to
33 ascertain whether there might have been discussions of allegations in those earlier years?

1 A. I was under the impression that things like house chapter books have been supplied to the
2 Royal Commission, those that we have in our archives.

3 Q. It's not a question of whether the document has been supplied. It's a question I'm asking
4 around whether, when you have pulled together the information on the number of
5 individuals who have come forward and reported abuse, and the response to that, whether
6 that information has been part of what you have pulled together to provide those numbers
7 and also, of course, in the data, the spreadsheets that have been provided which outline
8 individuals who have come forward and what they have said happened to them and what
9 the response was.

10 A. I guess, Ms Anderson, you are referring to the data in the briefing papers. That was all
11 constructed by the – again, forgive me for my pronunciation, the Te Rōpū Tautoko – the
12 combined church approach in New Zealand. We supplied them with all our documentation
13 and those figures were devised by that group in New Zealand –

14 Q. Are you saying that you –

15 A. I don't know whether that answers your question.

16 Q. That's helpful. I suppose, one of the issues that arises, of course, Te Rōpū Tautoko is
17 providing information that – they have got their name on the front page of the briefing
18 papers. But of course, it is exclusively information relating to The Order of St John of God.
19 So are you saying that you haven't had a signoff capacity – in relation to The Order's data
20 that is referred to in those documents?

21 A. I don't understand what you mean by a signoff capacity?

22 Q. Before, for example, briefing paper number four was provided to us in June this year,
23 which outlines the number of complainants and information about the number of people
24 who have been subject to reports of abuse, have you approved that paper before the lawyers
25 have provided it to the Inquiry?

26 A. I believe so, yes.

27 Q. And that would be the same in relation to briefing paper number five?

28 A. I believe so, yes.

29 **CHAIR:** Can you return to the question that you originally asked, Ms Anderson, and that was the
30 question of whether, accepting that Ms McKechnie says that the provincial and other
31 chapters' records were not looked at, whether or not Brother Timothy would be able to
32 provide that information?

33 **QUESTIONING BY MS ANDERSON CONTINUED:** Yes, Brother Timothy, you heard the

1 Chair. We can work with Ms McKechnie after this hearing just to make sure that loop is
2 attended to.

3 A. As I said, I believe that such documents as were extant were provided.

4 Q. So the Professional Standards Committee is the current vehicle and we have seen and since
5 early 2000 it has been the vehicle or the place in which allegations of abuse are discussed
6 and records kept. So in the period before 2002, where would those discussions have taken
7 place?

8 A. I can't answer that. I wasn't involved before 2002. I couldn't give you a reliable answer to
9 that.

10 Q. You came into The Order in 1977. Is that when you professed your final vows or is that the
11 beginning of your journey into the brotherhood?

12 A. That was the beginning of my journey. I made first vows in 1979. I made final vows in
13 1985, I believe.

14 Q. So in those early years when you were in The Order, what is your recollection about, your
15 understanding about where any such matters would be discussed?

16 A. In relation to matters of?

17 Q. An allegation of abuse. If someone has come forward and reported to a Brother that there
18 has been an allegation of abuse, in your personal experience in those earlier years, where
19 would it have been discussed?

20 A. Well, my personal experience in those early years is that I had no personal experience or
21 knowledge of such matters. It would have been beyond the realms of my comprehension
22 that such a thing could have occurred.

23 Q. Just to finish off the point on discussions at the general chapter, which is where the global
24 leadership comes together, are you saying you don't have a recollection in the last 15 years
25 at that global level of there being a discussion about the sexual abuse crisis and how to
26 respond to it, and how the strategic direction of The Order needed to address that issue?

27 A. I don't have a specific recollection of that, no. Again, I would refer the Commission back
28 to whatever minutes. I don't have a specific recollection.

29 Q. In your written response to the Australian Royal Commission, you referred to a relatively
30 new requirement to notify Rome where a Brother was convicted of a sexual abuse crime.
31 Do you recall that?

32 A. Yes, I do recall that. That's the procedure and policy as required.

33 Q. Where is that policy and procedure laid down?

1 A. Policy and procedure is laid down in a document I believe that's called a motu proprio that
2 is issued by the Vatican. I'm not sure how you pronounce it.

3 Q. You are saying that is just in relation to convictions, not in relation to allegations?

4 A. I believe that's the case. I would have to go back and check that.

5 Q. In your time you have had to send some of that information off, haven't you?

6 A. In my time, in terms of convictions, I believe that requirement of the Vatican came in after
7 the two Brothers – I have had two Brothers that have been convicted, and that requirement
8 came in after their conviction and sentencing and jail terms. Going forward, if that were to
9 occur again, the process has evolved and that would be the requirement, yes.

10 Q. Just before we close for the morning adjournment, in relation to your role as Provincial,
11 what do you understand your obligations to be if there is a disclosure or allegation of a
12 failure to respond to a report of abuse?

13 A. What are my obligations, in terms of the historical report or a current report?

14 Q. Let's take them in two bites. First in relation to a current report.

15 A. I have never been –

16 Q. If somebody were to come forward now, saying, I told the Brother or the Prior back then
17 but nothing happened?

18 A. I haven't experienced that situation. I guess my approach would be to take that allegation
19 and take it to the Professional Standards Committee to seek their advice about what is
20 legally required in the various jurisdictions where we are and what approaches we could
21 take to dealing with that. But I haven't had to face that situation to date.

22 Q. And what – in relation to an allegation of abuse, you receive that, whether it is directly or
23 through an advocate on behalf of a victim or survivor coming forward, what steps do you
24 take in relation to that, just to briefly outline the current practice?

25 A. An allegation would come forward, it will be presented to the Professional Standards
26 Committee. Again, always victims or advocates are urged to take the matter to the police.
27 Clearly if it's a contemporary issue or against children, there are mandatory requirements in
28 both Australia and New Zealand. It's a little bit more complicated with historical stuff.
29 Some victims clearly don't want to engage with the police, but we urge them to do that; we
30 can't force them to do that. As I've said, in my time, the majority of people coming forward
31 have opted for the civil litigation pathway which has its own parameters and processes
32 which I outlined earlier.

33 Q. Just on that civil litigation pathway, do you accept that there is a distinction between

1 somebody issuing legal proceedings against The Order as civil litigation, compared to
2 engaging a lawyer to be their advocate in discussions about resolution outside of a court
3 process?

4 A. Yes, and we have always come to mediation before having to go to – I don't think we have
5 had one – no, we haven't had one case that's gone to court. It's always been mediated
6 before that.

7 **Q.** In your time as Provincial, there haven't been any legal proceedings issued by New Zealand
8 survivors against The Order, have there?

9 A. Most of the civil –

10 **Q.** Proceedings filed in court and served on The Order.

11 A. I can't answer that. I would have to refer to the files – I get a bit confused.

12 **Q.** Ms Cooper was –

13 A. Sorry, Ms Anderson.

14 **Q.** Ms Cooper was giving evidence that she comes forward, engages with your Australian
15 solicitors and there is a dialogue and a negotiation; it doesn't involve the issue of legal
16 proceedings, does it?

17 A. No.

18 **Q.** And that's quite different from civil litigation.

19 A. Again, as a layperson, I don't understand the difference. All I know is that the individual
20 comes forward with their legal representatives, they meet with our legal representatives and
21 we come to mutually agreed redress outcome. And what that means in terms of actual civil
22 law, I can't answer that.

23 **Q.** Just one question before we break for the morning adjournment. We have seen in relation
24 to the clergy, where there is an accusation against a Bishop, there is now a specific process
25 that that goes through, referral through to Rome. In relation to each of the provinces
26 around the globe, including your province, if there was an allegation against a provincial,
27 what are the processes that would apply in that circumstance?

28 A. The allegation of failing to act, you mean?

29 **Q.** It could be in relation to that, yes, but also in relation to an allegation of abuse. Let's take it
30 in relation to alleged failure to have acted appropriately in response to a complainant
31 coming forward.

32 A. I can't answer that. As I say, it hasn't been my experience. In relation to an accusation of
33 abuse against a provincial, he would be – applied the same standards and processes as any

1 other Brother. He would have to stand down –

2 **Q.** Who would make that person stand down?

3 A. Well, the person I would hope would stand down themselves as a matter of best practice
4 and as a matter of integrity. If he chose not to do that then I suspect it would be up to the
5 Prior General to indicate the importance of him standing aside while the appropriate
6 investigations were undertaken.

7 **Q.** And how would a survivor who had a concern about the conduct of the Provincial know to
8 go to the Prior General in Rome? Where would they find that information?

9 A. As I say, our experience is that people are coming forward with their own legal
10 representation and I presume that the legal representatives would be able to discern the
11 appropriate communication pathways and the appropriate communication channels.

12 **Q.** Thank you.

13 A. They are not alone in doing that.

14 **MS ANDERSON:** Madam Chair, that might be a convenient time to take the break.

15 **CHAIR:** Yes, we will take 15 minutes.

16 Brother Timothy, we will take a break and if you can be back in 15 minutes, we
17 would appreciate that. Thank you.

18 **Adjournment from 11.34 am to 11.52 am**

19 **CHAIR:** Brother Timothy, we have returned, and I invite Ms Anderson to continue. Thank you.

20 A. Thank you, Madam Chair. I have also altered the lights because I realise it is glaring off
21 the top of my head, so I didn't want to blind you.

22 **CHAIR:** Thank you.

23 **QUESTIONING BY MS ANDERSON CONTINUED:** Welcome back, Timothy.

24 A. Thank you, Katherine.

25 **Q.** I want to call up a document. It's exploring the issue of the relationship between the
26 province and Rome. The document reference is CTH0011764_00016. This is a document
27 – while it is coming up, I'll just explain, Timothy – it's a document the previous Provincial,
28 Peter Burke, has sent to somebody. It is not crucial for our purposes as to who was the
29 recipient of this. But the point in the first paragraph, just highlighted – in this letter,
30 Brother Burke is giving the recipient of this letter – correcting a perception and pointing out
31 that "the General Government of our Order in Rome is kept fully informed of the situation
32 in this Province and has on occasion responded to our requests for assistance in these
33 matters."

1 When you have taken over as Provincial from Peter Burke, is this a practice you
2 have continued in terms of keeping Rome updated about the situation in the province?

3 A. We have a meeting of provincials usually every year in Rome. We haven't had one, for
4 obvious reasons, for the last couple of years, and on each of those occasions I have had a
5 personal conversation with the Prior General and one of the chief topics of conversation is
6 this issue of the historical sexual abuse and the province's management of that. I would
7 also keep him informed via written communication on important matters that would require
8 his knowledge.

9 **Q.** What would be an example of an important matter that requires his knowledge?

10 A. It would be – for example, it would be criminal charges laid against a Brother. It would be
11 – that would be an example that I could think of. In terms of the day-to-day management
12 of the victims' claims, that's another local issue and we manage it within the province, and
13 that would be the requirement – as I said, there would be other organisations that are less
14 decentralised than we are, who have more communication and require more permissions
15 from their General Government than I am required.

16 **Q.** We see just that second part of the last sentence, that the central government of The Order–
17 and that is a reference, isn't it, to the Prior General; it's not a reference to the congregation?

18 A. Yes, it would be in the person of the Prior General, and the General Government would
19 include the Prior General and his four councillors.

20 **Q.** In the council. It says there that "the central government has on occasion responded to our
21 requests for assistance in these matters". Do you have any knowledge of what assistance
22 has been given by the Prior General before you have come on as Provincial?

23 A. No, I have no knowledge of that.

24 **Q.** Where would you think the records of that would be held within The Order?

25 A. Best practice would suggest that they should be in a file.

26 **Q.** So potentially there is a record of what's happened in this period?

27 A. In my time as Provincial, any communication going backwards and forwards between
28 myself and the Prior General is electronically stored on our server. I can't speak to what
29 Brother Peter did.

30 **Q.** Have you – in your time as Provincial in the 15 years, have you asked for assistance – from
31 Rome?

32 A. No, I haven't asked for assistance, but I have kept Rome informed, as I indicated before, on
33 important matters that they should be informed about.

- 1 **Q.** Would one of those matters historically have been the cost of legal defence of Brothers in
2 relation to extradition proceedings in Australia?
- 3 **A.** That happened in Brother Peter Burke's time, that particular example, so I –
- 4 **Q.** So you can't help us with that?
- 5 **A.** No, that was in Brother Peter's time.
- 6 **Q.** And in your time has the legal defence of Brothers facing criminal charges been met by The
7 Order?
- 8 **A.** Yes.
- 9 **Q.** And have you kept Rome informed about that?
- 10 **A.** Not about the specificity of it, no. I mean, The Order would require, like any citizen in
11 Australia or New Zealand, that the Brothers had adequate and appropriate legal
12 representation.
- 13 **Q.** Is that representation by an independent lawyer acting only for them, not acting also for
14 The Order?
- 15 **A.** Correct. The lawyer would be acting for them.
- 16 **Q.** But paid for by The Order?
- 17 **A.** Correct, because the Brothers have no personal finances.
- 18 **Q.** But you wouldn't be involved in giving instructions to that lawyer representing the Brother
19 charged?
- 20 **A.** Definitely not.
- 21 **Q.** I note that one of the mechanisms for scrutiny that could be initiated by the congregation
22 with the extremely long title that we have referred to – I'm not sure whether you have a
23 shorthand form by which you refer to it, Timothy – sorry, I was just asking, is there a
24 shorthand way that you refer to the congregation with the very long name?
- 25 **A.** We just say "The Order. You mean the Hospitaller Order.
- 26 **Q.** No, I'm talking about the Congregation for the Institutes of Consecrated Life and Societies
27 of Apostolic Life, so the Vatican congregation?
- 28 **A.** What do we call it? Just the "Institute for Religious Life" would be a shorthand.
- 29 **Q.** I will just use "Congregation" as a convenient shorthand, so if I use that, you know what
30 I'm talking about.
- 31 **A.** Yes, sure.
- 32 **Q.** So that Congregation could initiate something that is known as an apostolic visitation, are
33 you familiar with that?

1 A. Yes, I'm familiar with the concept and I don't know whether it's that Congregation that
2 would initiate it, I'm not sure.

3 Q. Could you explain to the Commissioners your understanding of what such a visitation
4 would involve?

5 A. The visitation would involve appropriate people, either directly from the Vatican or being
6 appointed from the Vatican, to investigate a diocese or a congregation or a particular
7 situation.

8 Q. But there have been some such steps in relation to the Oceania Province, in relation to the
9 numbers of victims and survivors coming forward, seeking to find out why that might have
10 happened?

11 A. Correct.

12 Q. And are you aware of any such visitation in relation to any other province within the global
13 Order?

14 A. I'm unaware of any instances of that, no.

15 Q. Just changing topic now, I'm going to move to some of the constitutional documents. I'm
16 first going to talk about the 1971 constitution because that is what would have been in place
17 when you first came into The Order in 1977.

18 A. Correct, yes.

19 Q. So that would have been the framework within which you were operating. The
20 documentary reference is CTH00015273. Just to orientate you, while that is coming up – it
21 is a weighty document, I'm not going to wade all through it, I'm just going to take you to
22 certain passages in it.

23 Some of the evidence from The Order is that before the 1990s you didn't have a
24 policy or procedure relating to how to respond to an allegation or a concern that a Brother
25 was abusing one of the people in your care; is that right?

26 A. Yes, I believe that would be correct and that would probably be correct for most dioceses
27 and congregations at the time.

28 Q. So this constitution is effectively the law of the Order at the time, isn't it?

29 A. Correct, yes.

30 Q. When you were coming into The Order in 1977, how would you have been made aware of
31 what your obligations were in relation to the law of the day for The Order?

32 A. When – in what we call a novitiate, which is when you come into the Order, I distinctly
33 remember having regular classes on the constitutions and general statutes of the orders. As

1 you indicate, they would have been those 1971 constitutions – . So we were given a
2 thorough education and grounding in those constitutions.

3 **Q.** You have the physical document in front of you, haven't you?

4 **A.** No, we're still waiting to get it.

5 **Q.** I will just bring up page nine, which is an introductory section.

6 **A.** I have it in front of me now.

7 **Q.** It might be easier if I could just orientate you to the document and then to the transcript,
8 without it all needing to come up on the screen. You see page nine is an introduction and it
9 is headed "The Rule of St Augustine". Can you explain what that rule symbolises?

10 **A.** A number of particularly older congregations traditionally, before the notion of
11 constitutions would have come into place, and I can't give you the historical context – but
12 originally, all of the congregations particularly followed what are called rules. You have
13 the four basic rules, there's the rule of St Benedict, there's the rule of St Augustine, there's –
14 the Dominican rule, and – the others elude me. But The Order has followed since its
15 inception- in the 1500s the rule of St Augustin –

16 **Q.** In the schooling that you talked about, you would have been schooled in your training in
17 this?

18 **A.** Yes, as well as the constitutions and general statutes.

19 **Q.** I am going to call up page 12 of the document, which is the beginning of chapter four
20 relating to chastity and fraternal correction.

21 **A.** Yes, I have it.

22 **Q.** Calling up on the screen, over the page, from paragraph 25 on the following page. Clause
23 25 here says is that "if you notice immodest conduct in any one of your brethren, the step
24 you should take is to warn him then and there so that the evil may grow no worse but be
25 corrected immediately."

26 The next clause is page 13, clause 26. The first step is to give a warning and then to
27 wait to see whether the immodest conduct – and can we agree that immodest conduct
28 would include a concern or having seen a Brother – abusing somebody in the care of The
29 Order?

30 **A.** Yes, we can agree that. Definitely, yes.

31 **Q.** So the first step, warn him, and then – so that the evil can grow no worse and can be
32 corrected immediately. Then in 26, "If in spite of this warning he is again seen to conduct
33 himself immodestly", he is to be treated as one wounded and who must be healed.

1 Then we see down at 27:

2 "Before speaking to others who may have witnessed his fault, you must speak to the
3 superior who can warn him privately and thus avoid that it be known publicly."

4 So this was the regime when you have come into The Order. Would you have
5 followed this prescription if you had been aware of a concern that one of your Brothers was
6 abusing or alleged to be abusing someone in the care of The Order?

7 A. I would have done that irrespective of what this very ancient document is saying. This
8 document goes back to the 400s, I suspect. But personally, if I had been aware or seen or
9 witnessed some of this behaviour, I would have done something about it.

10 Q. Would you have done something about it in accordance with the prescription here or would
11 you have done something else?

12 A. This is a document of its time, the spirituality of its time and that culture of its time, so this
13 is a very ancient –

14 Q. Yes, but you have come into The Order six years after this is the law of the land for The
15 Order and you have been trained in this, you have just said, through your –

16 A. No, the – sorry for interrupting.

17 Q. So you have been trained in the provisions of the constitution and this is part of the
18 constitution.

19 A. The rule of St Augustin is quite separate to the constitutions, as I indicated before. The
20 Order has been around for 550 years. Before the notion of constitutions would have come
21 into existence, the rule would have been the main organism for trying to organise the
22 communities and the religious life. As I say, it's more a document of its time but it's focus
23 that we focused on were the more spiritual aspects. The constitutions are the modern
24 documents that would have dictated how we approached situations or –

25 Q. It certainly physically forms part of this document, doesn't it?

26 A. Yes, it does.

27 Q. It is under the cover of the constitution and general statutes 1971.

28 A. Yes, that's –

29 Q. It is almost impossible, isn't it, that you weren't schooled in relation to this when you were
30 training?

31 A. Yes, absolutely, we were absolutely schooled in the rule of St Augustine and I said as a
32 precursor, as a foundation document for the modern constitutions that determine our laws
33 and our practices.

1 **Q.** So we see in this foundation document leading on to subsequent constitutions, as you have
2 just referred to it, this reference to "warning him privately and thus avoiding that it be
3 known publicly". So when you have come into The Order and trained in 1977, is it then
4 your understanding that it should be avoided having any public knowledge or transparency
5 over allegations being made against Brothers of immodest conduct?

6 **A.** That would never have been part of the training that we had, no.

7 **Q.** It's the words of the page. Tell me how I should interpret them.

8 **A.** If you ask me what I would do and my response is that if I had witnessed inappropriate
9 actions, I would have reported it.

10 **Q.** To whom would you have reported it?

11 **A.** Well, I would have reported it to my immediate local superior.

12 **Q.** We see the bottom part of clause 27, that if there is a denial then there is a process to prove
13 guilt, then there is an obligation on the superior to inflict such punishment as to bring about
14 the – to correct the behaviour. And if there is a refusal to submit to that then the Brother
15 must be sent away from our religion. So that is quite a strong process, isn't it, leading to a
16 Brother – being sent from the religion?

17 **A.** Yes, and it – as I said, it's a document of its time. If memory serves me, it was constructed
18 in the 400-s.

19 **Q.** In the time that we are dealing with, from the 1950s, the evidence you have provided on
20 behalf of The Order is that no formal disciplinary steps have been taken against any Brother
21 requiring them to be removed from the religion?

22 **A.** I can only comment on anything that happened after 1977. Whatever happened in the
23 1950s I really can't adequately comment on.

24 **Q.** After 1977, that's right, isn't it, that there haven't been any disciplinary steps taken in the
25 sense of expelling a person, a Brother, from The Order?

26 **A.** I believe Brother Bernard McGrath was strongly encouraged to leave.

27 **Q.** We will come to that.

28 Over on chapter seven, on page 16 of the document, which is the chapter relating to
29 obedience, so a strong requirement which, am I right, continues in the current constitution
30 of a requirement to obey their superior? That's then and now; is that right?

31 **A.** Yes. To obey appropriate direction.

32 **Q.** In your experience as Provincial, so you have effectively held this power for 15 years, of
33 requiring others within The Order to obey you, are there any limitations on the extent to

1 which obedience can be compelled?

2 A. My experience is that I have never actually had to go to requiring Brothers to be obedient.
3 My practice has always been to be in conversation with Brothers, to dialogue with Brothers,
4 to come to a mutual understanding of the situation, and a shared response. I have never
5 issued an obedience, in my memory.

6 Q. If you were to issue an obedience, what are the formalities required around that? Are there
7 any formalities?

8 A. There are formalities in canon law, and my overview – my memory of that would be that
9 you have to give written warning on three occasions and if the offence is still occurring
10 then the canon law gives you the capacity to expel the person from The Order. But that
11 would be for very serious offences –

12 Q. In relation to the content of what you can require obedience in relation to, is there any
13 subject matter that is off limit?

14 A. No.

15 Q. So, in relation to the Brothers in the early to mid-2000s who didn't do what Brother Burke
16 wanted, and we were taken to a document yesterday – I won't take you back to it, but it is
17 the record of the Professional Standards Committee where Brother Burke is recorded as
18 saying, "Tell the police I'll bring them", and of course that didn't happen, did it?

19 **CHAIR:** Is this in relation to the extradition? Perhaps you should give the Brother some context.

20 **QUESTIONING BY MS ANDERSON CONTINUED:** In relation to the extradition, the
21 Professional Standards Committee record that we looked at yesterday recorded that Brother
22 Burke's words were that he would tell police he would bring them, no need to extradite. Do
23 you recall that document from yesterday?

24 A. I recall that document. And I have a recollection of a conversation, it was a
25 contemporaneous conversation or a later conversation with Brother Peter. His very strong
26 hope would be that those Brothers would voluntarily go to New Zealand and be interviewed
27 by the police. But at the same time Brother Peter also recognised his responsibility to allow
28 those people, as is the right of every citizen in New Zealand and Australia, to have their
29 own individual legal representation. My understanding is that their legal representation
30 suggested to them that they follow the path that they chose. Brother Peter would have
31 preferred, and I would have preferred that they would do that. But the independent legal
32 advice suggested that they don't voluntarily go to New Zealand.

33 Q. And –

1 A. It is a great tragedy because if they had have gone to New Zealand, they would have saved
2 everybody a lot of time and heartache, and that would have been the Province's preference.

3 Q. I think you have gone on the public record, haven't you, saying that you don't think The
4 Order should have paid for the legal proceedings opposing extradition.

5 A. I don't recall saying that. I was horrified at what it cost.

6 Q. Are you able to share with us what your understanding of what cost was?

7 A. I can't tell you exactly the amount. I know it was very high. Which is the wont of legal
8 costs.

9 Q. Can you give us a ballpark?

10 A. No, it's hundreds of thousands.

11 Q. Possibly around a million?

12 A. Yes, I would have to check the records. I can't confirm whether that's the actual amount or
13 not.

14 Q. But you would have records where that precise number could be ascertained?

15 A. I'm assuming so, yes. I don't know.

16 Q. So Brother Burke, for reasons that you have had some ability to give us an insight into, has
17 weighed different matters and come down on the side of not forcing obedience in that
18 circumstance relating to the Brothers opposing extradition.

19 As a matter of technical scope of the power to invoke that obedience, is that
20 something that he could have compelled, just as a matter of technicality?

21 A. Yes, I believe he could have, yes. But he chose not to, clearly, for whatever reason.

22 Q. I am going to turn over to page 21 of the constitution documents, which relate to the
23 vocation of The Order. It is the previous page, page 21, article three. This is in addition to
24 the vows of obedience, chastity and – remind me of the third, Timothy?

25 A. Hospitality.

26 Q. Obedience, chastity?

27 A. Poverty, obedience, chastity and hospitality.

28 Q. This article here relates to the hospitality, doesn't it?

29 A. It doesn't relate to the vow per se, but it relates to the charism of The Order, which is its
30 distinctive character, which is hospitality.

31 Q. It is talking about there, isn't it, the concrete form of the hospitality for the relief of the
32 physical and spiritual sufferings of the sick, the poor and the needy. Is that consistent with
33 your understanding of the hospitality that you spoke of when Ms McKechnie was asking

1 you questions about that topic this morning?

2 **A.** I think I referred back to Dr Mulvihill's definition of that hospitality, which I thought was a
3 very accurate and a very succinct and clear definition of hospitality.

4 **Q.** But back when you have come into The Order in 1977 and been trained and schooled in
5 this constitution, this document would have influenced your understanding? I suppose my
6 question to you is: what's on – the words on the page here, does this accurately represent
7 what you understood the charism was at the time?

8 **A.** Yes.

9 **Q.** We know, don't we – and I won't go to the documents, that when St John of God was
10 looking at coming into New Zealand in the mid-1950s, it didn't want to take on the work of
11 the Picpus Fathers who had been running what was known as Marylands as a school for
12 delinquent boys because The Order didn't – see it as part of its work?

13 **A.** Correct, yeah.

14 **Q.** I'm just asking you, the delinquency – and it's a terrible word, of course, but it's really, if we
15 take it as a reference to those who have perhaps behavioural issues or social needs, how
16 was it with this charism that – the words on the page here – what – the Picpus Fathers were
17 doing wouldn't fit with this?

18 **A.** From this distance historically, my understanding of the word "needy" would apply to
19 young men who were – what was the phrase you used, sorry? Delinquent. As you say, we
20 wouldn't use that term today. My understanding is that the Brothers had no experience in
21 dealing with providing services for young men and boys who had – I think we would call
22 them emotional behavioural issues these days, and their experience had been working with
23 children and young people with intellectual disabilities.

24 **Q.** But it wouldn't necessarily be right, would it, to equate a mental disability with sickness?

25 **A.** No, in the terms of today's understanding, absolutely not. But I'm a psychologist and I have
26 seen the evolution of psychological understanding of various conditions, medicine has done
27 the same thing. We have evolved in terms of how we approach these things and an
28 intellectual disability and/or a mental disability wouldn't be seen as a sickness today, but
29 probably in the 1950s and 1960s society would have considered it as such.

30 **Q.** Just moving on from the constitution document for the moment, standing back, can we
31 agree that we can see a cultural practice articulated in that document of information about
32 immodest conduct of a Brother being held quite closely, only to be spoken about with the
33 superior?

1 A. I guess it's what you define as immodest conduct. I –

2 Q. We are talking here about abuse, so as defined in the Inquiry's terms of reference.

3 A. Yes. And – I don't know what rule of St Augustin specifically would – be – it – would be a
4 whole range of immodest conduct, whatever would be understood by that term in the 400s.

5 **CHAIR:** The question I think related to what should be done with it, with the knowledge of
6 immodest conduct, however it was. Should it be kept close, according to the constitution?

7 A. No, I don't believe it should. It should be referred to a superior, someone who has greater
8 authority than yourself. I mean, I was asked what I would do and that's what I would have
9 done, if I had witnessed immodest conduct, particularly if it was the sexual abuse of minors
10 and vulnerable people, my own personal integrity would demand that I had to do something
11 about it.

12 **CHAIR:** Yes.

13 **QUESTIONING BY MS ANDERSON CONTINUED:** I am going to turn now to two
14 documents in 1956 that you have been advanced notice that we were going to discuss here.
15 I will read the document references into the record, CTH0011779_00056, and the second
16 letter is the same first numbers, _00054. I am not going to call up on the screen the
17 handwritten letter. But you have had an opportunity to read that.

18 A. I have, yes.

19 Q. Can we agree that it is a letter written by Brother Thaddeus in 1956?

20 A. Yes. I'm aware that is the case.

21 Q. Also known as Lebler, so that is the two names he held.

22 A. Thaddeus was his religious name, his baptismal name was William Lebler.

23 Q. This is a letter written some five months after the first intake of the boys into Marylands,
24 because the first group started in November the previous year. He is writing to the
25 Provincial in Australia and he is asking to be relieved from his office at Marylands. He
26 talks in that letter, doesn't he, of being afraid to approach his superior?

27 A. Yes, I have read that, yes.

28 Q. And that superior is Brother Berkman – or Berchman, how would we pronounce that?

29 A. Berchman.

30 Q. Also known as Brother Moynihan; is that right?

31 A. Yes.

32 Q. Do you think it's fair to characterise what is being discussed in that letter as a pretty
33 hierarchical and miserable culture at Marylands at that time?

1 A. I don't know whether it's in this letter or the response where the behaviour of the superior
2 was described as "tyrannical".

3 Q. So it certainly doesn't look like a happy place at that time, does it?

4 A. Doesn't appear to be, no.

5 Q. That's a proper inference to take from that correspondence?

6 A. It would appear so, yes. It would appear that there was obviously some clash occurring
7 between these two men, some personal dynamic, I don't know what – I can't tell you what
8 the clash would be about.

9 Q. We are going to pull up the reply, mercifully typed, so easier to read, which is the _00054
10 number. It is dated 19 July 1956.

11 We have a technical issue, so I will read the relevant parts into the record as a way
12 of dealing with it – Timothy has a copy of it in front of him – just to orientate the
13 Commissioners and those listening.

14 It is a reply back from the Provincial. Can we confirm who the Provincial would
15 have been at that time?

16 A. Yes. I only got this document a couple of days ago. As you would appreciate, I have been
17 focused on watching the victims and listening to the victim statements so I'm not quite sure
18 who the Provincial was in 1956.

19 Q. But we can agree it was from the Provincial at the time?

20 A. Yes. It's not signed, which is – but yes, it would have been from the Provincial, yes.

21 Q. It addresses:

22 "The only course open to a religious is in all difficulty to have recourse to their own
23 superior."

24 The advice going back to William Lebler, Thaddeus, is you must go to your
25 immediate superior. And then it goes on to say:

26 "Unfortunately a lot of damage was done to the young work, the Prior and the
27 Bishop at Christchurch. The information came to me through the Brothers discussing your
28 letter, evidently with you, what you wrote was passed on."

29 What we see here, and this is the point I want you to focus on, it says:

30 "You can learn from this how dangerous and wrong it is to write or discuss
31 anybody."

32 Among the things said were the difficult and impossible Prior, et cetera. And then
33 at the bottom of that first page, Timothy, it says:

1 "If the Prior is what we are led to believe, when the time comes as a canonical visit,
2 before God you are bound to condemn him to the major superior."

3 So the point I'm drawing – testing with you is whether you agree that this is a strong
4 admonition from the current leader of the time not to put in writing anything reflecting
5 badly on a Brother. Do you agree that we can take that inference from this letter?

6 A. I'm sorry, there was a blimp towards the end of that conversation, so I missed the last bit of
7 the conversation.

8 Q. I will go back to that. I'm asking you whether it is fair to draw an inference from the
9 language of this letter that the current Provincial of the day, the leader, is strongly almost
10 rebuking Brother Thaddeus for writing down his concerns about another Brother.

11 A. My reading of that reply was the concern of the Provincial at that time, the scandal that it
12 was causing, and it says it is in the local church and that the Bishop – clearly the Brother in
13 question was severely criticising and obviously speaking to various people, and it spoke to
14 me again of a fairly dysfunctional – relationship between those two people. I note that the
15 Provincial at the time then says if the behaviour continues, then at the canonical visit, that
16 needs to be come out and will be dealt with by –

17 Q. Yes, we will come on to that. That's the second element. In terms of the words on the
18 page, "You can learn from this how dangerous or wrong it is to write or discuss anybody",
19 so in terms of the leader sending a message, "Don't write or discuss concerns about another
20 Brother," do you think that's a fair inference to be taken from this letter?

21 A. Well, that's what the words state, yes.

22 Q. And then clearly a role in the canonical visit, and just to orientate Commissioners and those
23 listening, that is when the Superior General or the Prior General from Rome comes and
24 does a visitation to each of the relevant communities; is that right?

25 A. There are two forms. There is a general visitation which is the one you describe, which the
26 constitutions state have to, – the current constitutions state have to – happen every six years,
27 and a provincial visitation, which is conducted by the Provincial, which is to happen every
28 term of the Provincial, currently every four years.

29 Q. So that reference in this letter to "major superior", which of those two options would you
30 say this falls into?

31 A. I would say he would be referring to – a major superior, Provincial is a major superior, the
32 General is a major superior. My reading of that is he is referring to himself as Provincial.

33 Q. "So don't write to me about it but raise it with me when I come on my formal visit."

1 A. Yes. That seems quite bizarre. I can't give you an answer as to what – whoever was the
2 Provincial at the time, why he would write that. But it was of the language of the time, the
3 spirituality of the time.

4 Q. Understood. You have come into The Order 20 years after this letter?

5 A. Yes.

6 Q. What was your understanding as to – you said that you would inform your superior if you
7 had concerns about anyone in the care of The Order being abused.

8 A. From this perspective, that's what I would have done. At the time I have no– I have no
9 personal knowledge or experience of any of that behaviour occurring. So I'm speaking
10 from the hindsight of today as to what I would have done at the time. But at the time I had
11 no knowledge or experience of any offending behaviour.

12 Q. Just turning to– we can call it up if you need to have it available– the Brother O'Donnell
13 statements that he gave to the police. I don't think we need to turn to them, but let me ask
14 you the question and see whether you need to –

15 A. Yes, I'm familiar with that document.

16 Q. He is one of a number of Brothers who have given a similar nugget of information to the
17 police. Quoting from him, he said:

18 "In my experience, no allegation of sexual misconduct involving Brothers of The
19 Order was ever documented and would currently be held in the archives or any other
20 documentation held within The Order."

21 A. That's correct, yes. There is no documentary evidence alleging that.

22 Q. Do you see that what he is articulating when he is speaking to police in the early 2000s
23 appears to be a continuation of this concept that we see in the constitution preceded by the
24 1956 letters, which is limitation on who should be spoken to about a concern of abuse and
25 don't write it down, which is very consistent with the letter that we have just been
26 discussing, isn't it?

27 A. My – again, it probably would have been better if I had that in front of me. My
28 understanding of what he said is simply that there were no documents in our archives that
29 indicated evidence of offending. Again, I probably should have had that document in front
30 of me.

31 Q. I'm happy to bring it up now for you.

32 A. Okay, sure. Thank you. NZP0012941.

33 CHAIR: Which page of that?

1 **MS ANDERSON:** I'm making sure I have got the right document. It is page five.

2 **CHAIR:** Thank you.

3 **QUESTIONING BY MS ANDERSON CONTINUED:** It is the third paragraph. You will see,
4 as I quoted:

5 "In my experience, no allegations of sexual misconduct involving Brothers of any
6 Order was ever documented."

7 That is the point I am asking you about, as a cultural practice of the Brothers, of not
8 creating a written record of allegations.

9 A. Again, looking at the sentence, my response to that would be that Brother Brian is
10 attempting to say that there are no documents existing in our archives that are recording
11 allegations of sexual misconduct.

12 Q. Because the records were – that could be that the records weren't made or they weren't
13 kept, one or the other?

14 A. Well, it could be either. And you would probably need to ask Brother Brian what he
15 exactly meant by that.

16 Q. So when you have come into The Order in 1977, what have you understood about putting
17 matters– concerns about the conduct of other Brothers in writing?

18 A. I have never had the need to have to do that.

19 Q. Had you had the need, are you able – do you think you know what would have been the
20 acceptable practice in the day?

21 A. If I had the need, I believe I would have gone and spoken to whoever was my immediate
22 superior and left it to them to deal with it at the appropriate, –in the appropriate way and at
23 the appropriate level.

24 Q. Yes, but –

25 A. You must remember in 1977 –

26 Q. You go.

27 A. In 1977, I was– I think I was 18 at the time and very, very new to the religious life and to
28 The Order. But as I reiterate, I have never had the opportunity to have to draw the attention
29 of an immediate superior to any inappropriate behaviour of a Brother.

30 Q. The point I'm putting to you is that Brian O'Donnell's statement and other evidence
31 indicates that there was a cultural practice of not writing down – so as you say, you would
32 go and tell your superior, but the question of records being kept of what happened in those
33 discussions, that has proved to be a bit of an Achilles' heel for The Order, hasn't it, when

1 you have been pulling together information for this Inquiry about who knew what when in
2 terms of allegations of abuse against various Brothers?

3 A. And my response is I don't believe there was a culture of not writing down things. But
4 I don't accept that there was a culture of that. As I say, I was – if there was, I was
5 completely unaware of it.

6 **Q.** Coming back to your time with the Christchurch community, so you have come in as Prior
7 in October 2002?

8 A. Correct.

9 **Q.** That's a few months after the stories have broken in the Christchurch press in June of that
10 year about the allegations about the Brothers?

11 A. Correct.

12 **Q.** At that time when you joined in 2005, did your role as Prior require you to have any
13 involvement with the Hebron Trust?

14 A. In 2002 –

15 **Q.** Using that term loosely.

16 A. Well, Hebron Trust didn't exist at that stage. It was Waipuna which was a successor of the
17 Hebron Trust. In my written evidence, I worked in a volunteer capacity with the staff,
18 supporting the staff in whatever way I could in terms of formation opportunities, attending
19 their weekly meetings, so I was just basically trying to support the staff. I didn't have any
20 real involvement with the clients, which at that time were mainly– I think that– I'm not
21 quite sure what they do today but they were still doing work with people on the streets and
22 it was moving towards young mothers and families, Pacific Island work and Māori work.

23 **Q.** So you were in Christchurch as the Prior?

24 A. Correct.

25 **Q.** You are on the Professional Standards Committee of the day, and that role, you have got
26 some involvement with the matters relating to Marylands.

27 A. Yes. I don't know whether– I would have to look at the records whether I was actually on –
28 the Professional Standards Committee at the time. You may have that in front of you. I'm
29 not sure. But I was in Christchurch and a long way from Sydney where the meetings would
30 have occurred.

31 **Q.** Are you saying that if your name is on a meeting as having attended, you would have
32 attended by phone or something?

33 A. No, I think if my name was on the meeting, I would have attended.

1 Q. Physically travelled to the meeting?

2 A. –Yes, I would have.

3 Q. Also in that early period, when you were here in Christchurch after the stories broke, you
4 were involved with meetings with The Order's lawyers here in Christchurch, weren't you?

5 A. I'm assuming I would have been. I don't have any concrete memories of that.

6 Q. I am going to call up document CTH0015935. This is not a letter that was sent to or from
7 you, it is a letter between Brother Burke and lawyers. I think that is the wrong document,
8 that I wasn't intending to look at, at this point. I will come back to that.

9 Just to recap, and we will finish this topic. As Ms McKechnie took you through, you had
10 been in some meetings with survivors when you were in Christchurch and had taken on the
11 role of Prior?

12 A. Yes, as I say, I don't have strong memories of that and I presume it was with Brother Peter
13 Burke and with Dr Mulvihill, but I don't recall those meetings.

14 Q. You don't recall your engagement with the lawyers at the time about the response of what
15 was coming forward after that June 2002 period?

16 A. I don't have specific memories of that, but clearly the documentation says that that
17 occurred. But I don't have any memories of that.

18 **MS McKECHNIE:** In relation to the letter my friend has just taken Tim to, it is a 17 September
19 2002 letter, which refers to a meeting with Brother Timothy. That may well be Timothy
20 Boxall, who was the Prior at the time. Tim didn't take up his role until 2002.

21 **CHAIR:** We don't have the letter in front of us at the moment.

22 **MS ANDERSON:** I will come back to that.

23 **CHAIR:** We will come back to that, and that point can be clarified, if necessary, at that stage.

24 **QUESTIONING BY MS ANDERSON CONTINUED:** Turning now, Timothy, to the
25 information provided by The Order in what has been referred to as briefing paper number
26 four, that is a document which summarises the nature and extent of reports of abuse at
27 Marylands.

28 A. I have been given –

29 Q. I am going to ask you some general questions about it at the moment.

30 A. I had it in my pile, but it has gone.

31 Q. While somebody locates the document, perhaps even after the lunch adjournment. But we
32 have established that you have signed off on this document. The first version came to the
33 Inquiry in June this year and then the information was updated in December, wasn't it, just

1 before the Christmas break?

2 A. That's what Ms McKechnie says, yes.

3 Q. We know, don't we, there was a change in the number between the version of briefing
4 paper number four provided in July relative to that provided in December?

5 A. That would appear to be the case, yes.

6 Q. And the suggestion that Ms McKechnie proposed was that this was a result of difficulties
7 with the archives under COVID conditions in Sydney. Is that your explanation for the
8 changes that were made?

9 A. My— I can't give you a specific undertaking as to why those things were made but what
10 I do know is I had two professional standards staff members possibly —going— risking
11 COVID infections, trying to secure the data for the Royal Commission at a time when
12 Sydney was in a complete lockdown. So— they went above and beyond trying to get that
13 data to the Commission in a timely manner.

14 And I would have to say, these ladies are not young ladies either, so I think we
15 owe them a debt of gratitude for doing that and hopefully the Commission can appreciate
16 the lengths they went to, to get that material to you. As we know, when we are
17 experiencing it ourselves, very difficult times.

18 Q. A number of changes were also made to briefing paper number five, which deals with who
19 knew — what The Order knew about different Brothers in terms of allegations of abuse
20 against them. Again, significant changes to that document between the June and the
21 December version provided.

22 Can we agree that number five briefing paper changes reflected the fact that
23 various reports of abuse recorded in other documents had been captured and added to the
24 information available to the Inquiry at that time?

25 A. That would appear to be the case, yes.

26 Q. For example, information in Brian O'Donnell's police statements were used to change
27 information in briefing paper number five about when was the first date of certain reports
28 of abuse?

29 A. I'm assuming, as the material that was handed —

30 **MS McKECHNIE:** If I can assist, there is a series of correspondence between myself and
31 Ms Anderson explaining these changes. Brother Timothy is not on the administration of
32 these matters. We can bring those to the attention of the Commission if that assists.

33 **CHAIR:** I think it is important that Brother Timothy have an opportunity to speak to it. But if it

1 needs clarification.

2 **MS McKECHNIE:** Some of the matters were changed in part because the Commission changed
3 the questions they were asking in relation to the information, and a number of matters
4 which I doubt Brother Timothy is aware of. I don't want him to mislead the Commission
5 through –

6 **CHAIR:** He can tell us if he doesn't know. If he does know, Brother Timothy, I'm sure you will
7 tell us.

8 A. Madam Commissioner, I don't know.

9 **CHAIR:** That's fine.

10 **QUESTIONING BY MS ANDERSON CONTINUED:** In the number of allegations– number
11 of individuals that have come forward with reports of abuse that are identified in briefing
12 paper number four, whether it is the June or the December version, the proposition I'm
13 putting to you is that this practice of not actually recording in The Order's documents when
14 allegations of abuse have been made creates a difficulty for you – leaving aside briefing
15 paper number four – it creates a difficulty for The Order in accurately knowing who has
16 been the subject of allegations. Do you agree with me on that?

17 A. Going back to my previous statement, I don't believe there was a culture of not recording.
18 My reading of that material is that there are not documents extant in our archives. And
19 clearly looking at the sentence, it could be read in either way. My position is that I believe
20 that the statement of Brother Brian O'Donnell refers to the fact that in our archives those
21 documents aren't there, not that there was a culture of not recording. No, I don't support the
22 notion, from my practical experience and knowledge, that there was a practice of not
23 recording. The facts –

24 **CHAIR:** Can I just clarify this. You have made that point very clear already, Brother Timothy,
25 that you don't believe there was a culture, that was put to you and you reject that and I have
26 heard that. The question is, do you accept that however it happened, there was little, if any,
27 documentation of allegations made that could be found in the archives, for whatever
28 reason?

29 A. Oh, yes, I accept that.

30 **CHAIR:** And I think what Ms Anderson is putting to you is that, for whatever reason that was not
31 there, that has made it very difficult to actually find out precisely what was known at what
32 stage?

33 A. Yes, I could absolutely agree with that.

1 **CHAIR:** Okay. Thank you.

2 **QUESTIONING BY MS ANDERSON CONTINUED:** I am going to turn to a different topic,
3 just before we pause for the lunch break. I am going to call up document CTH001.0245.
4 This, Commissioners, is a letter in October 1977 to Brother Moloney at the Vatican
5 pharmacy from Brian O'Donnell.

6 So just to orientate everyone to this. I think we will be able to agree the factual
7 context of this letter. You are aware, of course, aren't you, because you have referred to it
8 in your brief of evidence, of some letters received in 1977 by Brother O'Donnell raising
9 allegations. Can we agree that Brother O'Donnell's evidence is that he received letters in
10 1976 or 1977 – and you discuss this in your evidence –

11 A. Yes, I do.

12 Q. – relating to allegations relating to both Bernard McGrath and Rodger Moloney; is that
13 right?

14 A. Correct, yes.

15 Q. And we know and we can agree, can't we, that his evidence is that he destroyed whatever
16 letters he had received?

17 A. My understanding of his evidence was there is one letter that was received and that he
18 subsequently destroyed it. My understanding also is the existence of this letter was
19 volunteered to Brother Brian.

20 Q. We will come on to talk about the letter in detail. Just in terms of context-setting for the
21 purpose of this letter, Brian O'Donnell has received one or two letters – and I agree there is
22 some uncertainty as to the date and number of letters – but he is very clear, isn't he, in his
23 statement to police that he destroyed – he says he destroyed both letters.

24 A. Correct.

25 Q. What we see in this letter here is after that process there is a letter to Rodger Moloney
26 where what is being said is that:

27 "After careful inquiries into the allegations made, he is convinced they were
28 completely unfounded. More than that, he is sure they were the work of a ruthless and
29 vindictive member of the teaching staff."

30 So that's what he is conveying to Brother Moloney, who by this time has been
31 moved from the Christchurch community to the Vatican pharmacy.

32 A. Yes, that's what it says.

33 Q. And he says in his 2003 statement to police that he believed at the time that this was

1 mischief-making. So consistent messaging from him as to what he understood when he
2 received these letters with the allegations against Moloney and McGrath.

3 A. Could you repeat that? Because we had a blimp again in the middle of sentence.

4 Q. Sorry. Perhaps the technology is also ready for the lunch adjournment.

5 A. Maybe!

6 Q. I was just noting that in the 2003 police statement that Brother O'Donnell gave, he also said
7 that he believed that allegations back then were mischief-making. So it is that consistent
8 perspective as to the motive behind writing the letters with the allegations of abuse.

9 A. That would appear to be his position, yes.

10 Q. And so there is clearly no record in your archives of this 1977 allegation, is there, because
11 the letters – you have not been able to locate them, have you, a letter or letters?

12 A. No, Brother Brian has indicated he destroyed them.

13 Q. And you have not made a record of any of the steps that he took in relation to investigating
14 those allegations?

15 A. Contemporaneously he didn't, no. But in his statement to the police he outlined the steps he
16 took, as I understand.

17 Q. We will come to that, because I think it is later on in that 2016 interview.

18 A. I'm not sure.

19 Q. We will come to that later. Just to close this point off, while we wait for the pause, he has
20 not made any record of the allegations that are held in your archives? You don't think that
21 is consistent with the practice of not keeping a written record making aspersions about the
22 conduct of a Brother?

23 A. I think clearly that wouldn't have been the best practice. But I don't think you can infer
24 from one example that that was the culture, in my opinion.

25 Q. In your counting, in your briefing paper number 4, how many complainants have come
26 forward, are matters like this sort of undocumented but in the institutional knowledge of
27 The Order captured in the data that you have provided both in those briefing papers and in
28 the data?

29 A. Clearly you will be coming back to this, but my understanding of the letter is that there was
30 no victim was named, as well as there was no behaviour named.

31 Q. But we don't know because the letters weren't kept.

32 A. No, we don't. We are relying on Brian O'Donnell's report of the episode.

33 Q. That's right.

1 A. That is true.

2 Q. And he has not provided any written statement about this to the Inquiry, has he? You
3 haven't asked him to do that?

4 **MS McKECHNIE:** He has, ma'am. There was a natural justice letter by Brother O'Donnell a
5 couple of weeks ago. I have a copy of my screen at the moment where he refers to those
6 matters. It went to Mr Powell, solicitor assisting.

7 **QUESTIONING BY MS ANDERSON CONTINUED:** That's an entirely different matter. Just
8 to close before the break, this is my last question, Timothy, before the lunch adjournment.
9 Your evidence is that you don't have any direct knowledge of matters back in the day
10 relating to Marylands and Hebron, but there are however some Brothers in The Order who
11 do have first-hand knowledge, even if not on the ground like Brother O'Donnell. That's
12 right, isn't it?

13 A. First-hand knowledge of being at Marylands or Hebron?

14 Q. Events at Marylands at that time?

15 A. I couldn't indicate who those people would be.

16 Q. Brian O'Donnell has received a letter in 1977 relating to Marylands. That's right, isn't it?

17 A. This is the letter, yes, the letter you are referring to, correct, yes.

18 Q. In terms of providing evidence on behalf of The Order, he has not provided his firsthand
19 evidence relating to those events. We have got your evidence in relation to that.

20 A. I know there's police statement evidence too, I think.

21 Q. Yes, we have got documentary evidence, yes, we do.

22 A. Yes.

23 **MS ANDERSON:** I leave the point there. Perhaps we will take the lunch adjournment, Madam
24 Chair.

25 **CHAIR:** Very well. How long do you wish that to be, given timing?

26 **MS ANDERSON:** If we could come back at 2.00, I would appreciate that extra as to timing.

27 **MS McKECHNIE:** I support that, ma'am. If my friend needs more time today –

28 **CHAIR:** Yes, let's come back at 2 o'clock.

29 **Lunch adjournment from 1.03 pm to 2.06 pm**

30 **CHAIR:** Thank you, Ms Anderson. Welcome back, Brother Timothy. We are ready to go again.

31 A. Apologies, you have my shiny head back again.

32 **CHAIR:** I think we can manage that. We all shine in different ways, and your head is your
33 feature.

1 A. That's fine.

2 **QUESTIONING BY MS ANDERSON CONTINUED:** Timothy, just backtracking a little bit,
3 we had a discussion earlier about your time when you were Prior at Christchurch in late
4 2002. The document that I was going to discuss with you then, I'm going to call up, it is
5 CTH0015935_00014. It is coming up on the screen.

6 Before I discuss the contents of it, again this is legal correspondence between The
7 Order's lawyers and Brother Burke. Before we go into the content of this and your
8 knowledge at the time in relation to this letter, just to confirm that The Order did make
9 available to the Inquiry a number of documents for which legal privilege was claimed.
10 That's right, isn't it, that you allowed the Inquiry to look at those documents?

11 A. I would have to refer that to Ms McKechnie. Is that acceptable?

12 **Q.** Can I just ask you, before Ms McKechnie gets to her feet, are you looking at someone in
13 the room there for answers, Timothy?

14 A. No. I'm looking at you, actually.

15 **Q.** You give the instructions about what's to happen in relation to The Order's documents,
16 don't you?

17 A. Ultimately, yes.

18 **Q.** The question arose as to whether the Inquiry could have access to documents for which
19 legal privilege had been claimed. That's right, isn't it?

20 A. I presume, yes, it would be.

21 **Q.** And the outcome, which I will ask you to confirm came from your instruction, was that the
22 Inquiry could access the privileged material and look at that material?

23 A. I believe that's the case, yes.

24 **Q.** And the position is that for some of the material that the Inquiry saw that was subject to
25 legal privilege, you have agreed that privilege is waived and they can be referred to in this
26 hearing? That's right, isn't it?

27 A. I understand that's the case, yes.

28 **Q.** You understand that's the case. That would have been your instruction, wouldn't it?

29 A. Yes.

30 **Q.** And there are two other —

31 **CHAIR:** I'm sorry, we have a technical issue at the back. We have a system here where if there is
32 a problem, somebody stands up with a stop sign at the back of the room and that has
33 happened.

1 Do you need time to – two minutes?

2 **QUESTIONING BY MS ANDERSON CONTINUED:** There is a category of documents that
3 are subject to legal privilege and The Order has in fact waived that privilege so they can be
4 discussed and used by the Inquiry. That's right?

5 A. Yes.

6 **Q.** And that's a decision that you have made?

7 A. That would be the decision that I'm assuming that the church response would have
8 recommended that, and I would have agreed to it.

9 **Q.** And there's another category of documents which have been labelled as extended waiver of
10 privilege, so privilege hasn't been waived but the Inquiry can use those documents – they
11 are not available in the hearing bundle, they can't be displayed on the screen but we can
12 discuss them. That's your understanding of this second category of privileged documents?

13 A. Yes.

14 **Q.** And again, it's your decision in relation to what comes within that category?

15 A. It is ultimately my decision, yes.

16 **Q.** And then there is a third category of documents for which legal privilege is maintained and
17 which cannot be used by the Inquiry or discussed or referred to in our dialogue with you
18 today? That's right, isn't it?

19 A. Yes, that would be correct.

20 **Q.** And again, that's your decision as to which category applies to which document?

21 A. That wouldn't be my decision. That would be the decision of the church response, I'm
22 assuming, I will take their advice –

23 **Q.** But these are The Order's documents.

24 A. Yes, and ultimately I will take their advice as to which document should go where.

25 **Q.** Whose advice?

26 A. I would imagine the church – the combined church response. I struggle because I'm very
27 loath to use the Māori term because I know I'm going to get it wrong and I don't wish to do
28 that.

29 **Q.** Are you saying it is a decision of someone in Te Rōpū Tautoko who has made a decision
30 about which privilege category –

31 A. They would advise and ultimately I would make the decision.

32 **Q.** Right so it is your decision as to which documents fall into which category?

33 A. Ultimately, yes.

1 **Q.** And the document we are about to look at is one of those documents for which you have
2 fully waived privilege. That's right, isn't it?

3 **A.** Yes, if that's what you say, that's correct, yes.

4 **Q.** We're not seeing Ms McKechnie scrambling to her feet so I think we can be safe there.

5 **MS McKECHNIE:** I believe this was a document attached to Lee Robinson's brief of evidence,
6 where the Brothers waived privilege before any of these machinations were discussed.

7 **CHAIR:** Okay. So we have no problem in referring to this otherwise privileged document
8 because privilege has been waived.

9 **QUESTIONING BY MS ANDERSON CONTINUED:** That's right. People might be curious as
10 to why we're looking at legal correspondence in this context.

11 You have been Prior at Christchurch in October 2002?

12 **A.** Yes, correct.

13 **Q.** My question to you is you are not a recipient of this letter. But as your role as Prior would
14 you have been involved at this time in discussions with both Brother Burke and the New
15 Zealand lawyers about the approach to be adopted at this time?

16 **A.** No, I don't believe so. And I'm looking at the date of the letter, which is 10 October.
17 I arrived in October in New Zealand and I don't remember the exact date. But no, I don't
18 think I would have been involved in this conversation.

19 **Q.** So is it the case that although you are the Prior of a local community affected by the
20 allegations of abuse coming forward, the decision-making in relation to how to respond is
21 coming from Head Office in Australia?

22 **A.** Correct.

23 **Q.** Taking you to the second paragraph, just highlighting that paragraph, beginning "Before
24 outlining", clearly this is the timeline where people are coming forward with allegations to
25 The Order, and we have had evidence about that. What the lawyers are saying at this time,
26 the advice to the Provincial, is:

27 "... place on record that we believe it is in The Order's best interests that
28 proceedings are not issued by any of the complainants for the reasons we discussed at the
29 meeting."

30 Just calling out the second and third bullet points as to the reasons, noting there:

31 "With proceedings comes Discovery of all documents, which would mean that the
32 Order would" need to disclose everything in relation to abuse issues and correspondence it
33 may have received over the years in relation to possible abuse by McGrath, Moloney and

1 others.

2 And concern was expressed about the possibility of exemplary damages due to the
3 gravity of the abuse and "There is evidence that the possibility of the abuse was brought to
4 the notice of The Order previously and was not acted upon."

5 In terms of your role as Provincial for the last 15 years, have considerations like this
6 influenced your decision-making about whether to engage with private settlements or to
7 allow matters to go through the courts?

8 A. The position that we've taken, as I've explained previously, when a victim comes forward
9 through their legal representation – and again, I'm not a legal professional, I don't
10 understand this, but I'm understanding – my understanding is that it is preferable to mediate
11 the issue without having to take it to court, so for a whole lot of reasons of not clogging up
12 the court system, et cetera, et cetera, et cetera, not retraumatising victims who are having to
13 go through a court case – a whole lot of reasons that the two sets of lawyers would be
14 discussing with each other, I would hope, to minimise the trauma that would be placed on
15 people who are already struggling to deal with the trauma from the past.

16 Q. So the consideration of not having to have heard in open court information relating to what
17 The Order knew and when, your evidence is that has not influenced your decision-making
18 about how to respond to survivors coming forward?

19 A. I would go back to the point I made previously, that really the survivors have to chart their
20 own journey through this. What is it that they want? If they wish to take it to an open court
21 then we would be happy to engage in that process. But I think, you know, again, as has
22 come out through survivors' evidence, that there is a great distrust of a whole lot of
23 institutions in both our countries.

24 Q. But this is certainly at the time the legal advice was cautioning The Order against having
25 matters aired in open court and having to discover documents.

26 In terms of survivors charting their own path, do you agree with me that of course
27 it is important that victims and survivors are able to choose the mode or the method through
28 which they engage with The Order? Do you agree with that?

29 A. Absolutely, yes, absolutely.

30 Q. And because of the power imbalance between The Order and themselves, it is quite natural
31 that many of them will want legal assistance through that process?

32 A. I think it is imperative that they do have legal assistance.

33 Q. I'm going to turn now to a document which is in the second hybrid category, for which

1 privilege has partially been waived and we can discuss. For the people there, I will give
2 you the CT reference, the two numerical sequences, CTH0018408 and it's The Order
3 number system 013.R282.303. We cannot call it up on the screen because it is in the
4 category where you and I can have a conversation about it. Have you got that document
5 with you?

6 A. They are looking for it now.

7 **Q.** While we are waiting for the hands to find the right document, I will orientate you and the
8 Commissioners to what this is. This is a transcript of an interview in December 2016 with
9 Brother Brian O'Donnell and it is a transcript by Matthew Geraghty, I think is how you
10 would pronounce his name. You are familiar with that name, aren't you, Timothy?

11 A. Geraghty might be the pronunciation, I think. I'm not sure who the individual is – I don't
12 know.

13 **Q.** Do you know what his role is?

14 A. Not off the top of my head, no. But I know that's how you would pronounce that name,
15 Geraghty.

16 **Q.** This is a transcript that, amongst other things – I will wait for you to have the document –
17 talks about a couple of aspects relating back to events in Christchurch in both 1977 and
18 1992. I will wait for you to have that document.

19 A. They seem to be having some difficulty locating the document at the moment.

20 **Q.** This is a document, Timothy, that came to the Inquiry on 8 February, the day before the
21 hearing started on the ninth.

22 **MS McKECHNIE:** We can have the document emailed electronically from here, and it will
23 arrive – Tim, is Greg with you?

24 A. He has stepped out of the room.

25 **Q.** We can have it emailed to Australia and it will be with you in 30 seconds, if Ms Anderson
26 has another question, if that's the simplest way to –

27 **CHAIR:** That makes practical sense. Are you happy with that?

28 **MS ANDERSON:** Yes.

29 A. It is going to be emailed.

30 **CHAIR:** To whom will it be sent?

31 **MS McKECHNIE:** Who should we send it to, Tim, which of the legal team is in there –

32 A. To Greg.

33 **CHAIR:** It should be with you very shortly.

1 **QUESTIONING BY MS ANDERSON CONTINUED:** You would have made the decision to
2 release this document to us on 8 February. Do you recall this is the day before the hearing?

3 A. I don't recall it specifically but I would have given approval for that ultimately, yes.

4 **Q.** The Inquiry had asked for this document because we had seen a reference to it in some
5 other documentation. That's how we came to ask for it. I will just wait 30 seconds to see
6 whether it has arrived.

7 **MS McKECHNIE:** If I can assist the Commission, the complexity with this document is it was
8 prepared in the context of litigation in Australia where the insurance company which was
9 involved in some of the matters for the Brothers has stepped in subrogation and has
10 undertaken this interview. In the time available we were not able to establish whether or
11 not they also held legal privilege in the document and therefore would need to waive it.

12 **CHAIR:** Yes, it's a complicated legal provision.

13 **MS McKECHNIE:** It is a complicated legal provision. Rather than the Brothers particularly
14 wanting to withhold it, we were unable to clarify the situation in time.

15 **CHAIR:** I don't know if that implication was even made. But the fact is you now have that
16 document, Timothy; is that right?

17 A. Yes, that's correct. I have it in my hands now. Matthew Geraghty would be the lawyer for
18 Catholic Church Insurance, I believe.

19 **QUESTIONING BY MS ANDERSON CONTINUED:** If you turn to page six of that document,
20 Timothy, the bottom half of that page, you see the beginning of the discussion about events
21 relating to Brother Rodger Moloney and Bernard McGrath in 1977.

22 A. Yes, that's in the bottom quarter of the page.

23 **Q.** We can agree that what has been recorded here is that the letters weren't kept at the time
24 because Brother O'Donnell regarded it as an anonymous letter and thought it was a trouble-
25 causing letter. So that's consistent with statements to the police, isn't it?

26 A. It appears so, yes.

27 **Q.** He says that he didn't take it seriously, didn't take it very seriously. That is at the bottom,
28 the last paragraph on page six.

29 A. Yes, that's what he says.

30 **Q.** Then just looking through the document, you can see that he is asked questions about what
31 steps he took to inquire into the allegations. So he goes to Christchurch, doesn't he?

32 A. Yes, that's what he states.

33 **Q.** But he doesn't interview Bernard McGrath, does he?

1 A. That's what he states.

2 Q. And he didn't tell Brother Rodger Moloney that there was an allegation against him, did he?

3 A. I presume that's what it says in the transcript. I can't locate that exact reference but
4 I presume it's there, otherwise you wouldn't ask me the question.

5 Q. Correct. If we just come down to the bottom of the page, the third to last section, BO being
6 the initials for Brother O'Donnell, so the one step that is taken in relation to Bernard
7 McGrath is for O'Donnell to have a conversation with Moloney, who says there was no
8 basis for that in his knowledge of Bernard, was such that it was a ridiculous kind of
9 accusation to make against him, given the sort of relationship he had with the boys. So
10 that's the explanation at the time.

11 A. Correct, yes.

12 Q. Over the page, the fourth section down, you can see he says he thought the best thing to do
13 with an anonymous letter was to get rid of it, to destroy it, because of the harm it could do.

14 Drawing you back to the proposition I put to you earlier, right back from the
15 constitution and the letters sent in 1956 about not putting concerns in writing because of –
16 and here we have the articulation that one of those considerations is because of the harm it
17 could do. Do you accept that that is a cultural practice within The Order not to record
18 matters because it could harm a Brother?

19 A. Well, I think I stated before, I don't accept that. I accept that this was an appalling lack of
20 judgement and should never have occurred. The letter should have been kept and the
21 letter – the existence of the letter only came to light because the man informed the police
22 himself. It is not good practice, it doesn't look good and it should never have happened.
23 And I'm sure if Brother Brian was in that situation today, he would have acted differently.

24 Q. What I'm putting to you is the proposition that concerns about harm to Brothers have driven
25 a practise within The Order of not writing down or keeping a record of when somebody has
26 come forward with an allegation against a Brother.

27 A. I think I have answered you previously by saying I don't believe that culture existed. And
28 equally that it wasn't the practise but we are talking about, you know, the practise of 40, 50
29 and 60 years ago.

30 Q. I am just going to come to a more contemporaneous letter, CTH0008553. This is a letter
31 that you have written to Mr Fulton and Ms Ferguson in February 2020. I'll just give you a
32 moment to read that.

33 Can I summarise in relation to the second paragraph – and see if you agree with

1 me – that you have been invited to give some comment to these journalists in Australia but
2 you haven't considered it appropriate to do that because of the Royal Commission here in
3 New Zealand. Do you agree with that summary?

4 A. Correct, I do agree with that, yes.

5 **Q.** If we call out the next paragraph, beginning "In 1977", you are telling these two reporters
6 about the 1977 anonymous letter, saying:

7 "The letter sought the transfer of the Brothers away from Marylands and cited
8 incidents of alleged sexual misconduct as the basis for their transfer."

9 I'm curious about the basis on which you have put in your letter that the letter itself
10 sought the transfer of the Brothers.

11 A. I would have to go back to Brother O'Donnell's statement to the police about what was in
12 the letter. I'm not sure whether it was that or verbal – verbal conversation I would have had
13 about this matter.

14 **Q.** If you had that verbal conversation, would you have kept a record of it?

15 A. No. As I say, I don't know whether that is in his police statements or not. I would have to
16 check that.

17 **Q.** Do you agree that somebody reading this letter might take from it that you were actually
18 looking at the letters and describing them in your summary here?

19 A. Well, the letters – from Brother Brian's testimony, don't exist, were destroyed by him,
20 erroneously, and unfortunately in hindsight.

21 **Q.** You don't say that here, do you?

22 A. No.

23 **Q.** It reads like you are summarising letters that you have looked at?

24 A. It could be read as that, yes. That wasn't my intention. The facts are that the letter doesn't
25 exist.

26 **Q.** And in the last sentence, you say:

27 "It was determined that the allegations set out in the letter could not be sustained
28 and in the circumstances no further action was deemed appropriate."

29 I'm just interested in that language you have used about there having been a
30 determination that the allegations set out in the letter could not be sustained.

31 A. The determination from reading that I would take to be Brother Brian's personal
32 determination as Provincial at the time. And that they could not be sustained because of the
33 lack of detail, lack of a victim's name, the lack of a return address, or the –

1 **Q.** And the lack of an investigation?

2 **A.** No. Well, the lack of investigation as would occur today. The investigation was – in the
3 previous transcript, Brother Brian took a form of investigation that he believed was
4 appropriate.

5 **Q.** But that involved not talking to the person who was accused, one of them, and not telling
6 the other that they were the subject of an allegation and that document confirms he didn't
7 speak to anyone else.

8 **A.** Not best practice.

9 **Q.** But do you agree with me that it could be taken from the sentence "It was determined that
10 the allegations could not be sustained", is a much stronger statement than the way Brian
11 O'Donnell had put it in the transcript in 2016 that we have just looked at together?

12 **A.** Yes, that sentence could be read as such. But that was not my intention.

13 **Q.** So what were you intending?

14 **A.** My intention was that Brother Brian dealt with that in 1977 in a way that he saw as
15 appropriate, which would clearly not be considered appropriate in the current
16 circumstances, in the current – in 2022. Brother Brian dealt with this matter in the way
17 Brother Brian believed it needed to be dealt with, which I keep reiterating.

18 **Q.** By saying he didn't take it seriously, which is quite different from determining the
19 substance.

20 **A.** My point is it wasn't – it wasn't best practice.

21 **Q.** Just coming down to –

22 **A.** And that cannot be denied.

23 **Q.** - the last paragraph on that, beginning, "Mr", we will come on and talk in more detail about
24 events in 1992 relating to allegations concerning Brother Bernard McGrath at that time.

25 What you are saying then is that as a result of the investigation in 1992 – so the allegations
26 come forward in August 1992 and you are saying as a result of the investigation
27 Mr McGrath was withdrawn from the ministry.

28 **A.** It actually says the protocol withdrew Brother – ex-Brother McGrath from the ministry and
29 the allegations were then investigated.

30 **Q.** Your evidence in your witness statement is that you haven't been able to locate, have you,
31 any record of that investigation?

32 **A.** If those documents haven't been tendered to the Commission then we haven't been able to
33 locate them.

1 **Q.** Just moving on now, to focus just a little more on Brother Moloney. In terms of what you
2 know now, what you describe as not best practice back in 1977 when the allegations come
3 forward, including in relation to Brother Moloney, that Brian O'Donnell hasn't taken any
4 steps at that time in relation to the investigation, so knowing what you know now, how does
5 that fit – and potentially you have known it at least since 2016, when you had the transcript
6 of this interview, if not earlier – what would the protocol be to apply in terms of failure to
7 act, now that this has been in your knowledge for a period of time in relation to the actions
8 Brother O'Donnell took back in 1977?

9 **A.** I don't have a response to that. I mean, I would have to go – I don't know what the answer
10 to that is.

11 **Q.** I am going to move to have parts of briefing paper number five called, which is
12 CTH0015243. That is the updated version, December 2021. I will call up the first page,
13 the cover page. The title is a summary of what The Order's response, knowledge and
14 treatment of other alleged offenders was. We can see the notation here, which is different
15 from some of the other briefing papers, that it has been marked "Confidential: Not for
16 publication". Again, would it have been your instruction to have this paper treated in that
17 way?

18 **A.** No.

19 **Q.** But when the Inquiry has pushed back and said, there is no basis for imposing
20 confidentiality, would you have been the decision-maker? Because we have had formal
21 confirmation come through – it was initially challenged as to why it was in the bundle and
22 now this agreement that it properly is in the bundle and available to the Inquiry and core
23 participants.

24 **A.** I rely on the lawyers for the church response to advise me on what is the best decision to
25 make, and I – and whatever they advise me, I accept. For greater detail around this, you are
26 going to have to ask counsel for the church response. For them to take it on notice and
27 provide it to the Commission later on. But I can't at this stage give you any real
28 information about that.

29 **Q.** Okay, we will move on from there. I am going to have brought up paragraph 86.

30 **CHAIR:** I take it that confidentiality has now been lifted from this; is that right?

31 **MS ANDERSON:** It simply cannot be imposed on the Inquiry, Chair.

32 **MS McKECHNIE:** Ma'am, if I can assist, this document was provided in completely unredacted
33 form to the Commission, to assist with identification – as you have heard, Brothers have

1 multiple names, so this document was provided with all of those details. It is not our
2 normal practice to provide evidence which includes material that would need to be GRO
3 redacted, so this is marked separately because it did include that information. Now this
4 document has GRO protections and can be appropriately in the bundle.

5 **CHAIR:** I see. All right. Where are we going on this, Ms Anderson?

6 **QUESTIONING BY MS ANDERSON CONTINUED:** Just to orientate everyone, each relevant
7 Brother is dealt with separately. In the discussion of Brother Rodger Moloney, this is the
8 reference to the 1977 matter that we have been discussing. Again, the words I'm interested
9 in testing with you, Timothy, is:

10 "The records the Order hold indicate that some within the Order were aware in 1977
11 of allegations..."

12 Do you not ascribe the knowledge to the Order as a whole back at that time?

13 A. No –

14 **Q.** There's a distinction between.

15 A. I was a member of the Order in 1977 and I had no knowledge of this matter.

16 **Q.** But the Order, speaking in the sense of the institutional knowledge of the Order, it was
17 certainly aware?

18 A. I can't comment on that. As I said, I was in the Order in 1977 and I had no awareness of it.

19 **CHAIR:** The Provincial at the time had awareness; is that right?

20 **MS ANDERSON:** That's right.

21 A. Clearly –

22 **QUESTIONING BY MS ANDERSON CONTINUED:** Turning to paragraph 88, which is the
23 first paragraph after the discussion the 1977 events, we see here we have a record that a
24 formal complaint was made in December 1999 but you didn't have any record regarding the
25 content of that complaint or whether in fact it related to Brother Moloney. So that's the
26 evidence being provided in this section of the report, isn't it?

27 A. That's what it states, yes.

28 **Q.** I'm just going to take you through what might have been known between 1999 and 1997.
29 Again, I'm going to refer to you a document that is in this extended waiver of privilege
30 category, Timothy, so we can discuss it but I can't display it. Looking at your version in
31 front of you, do you have that?

32 A. No.

33 **Q.** It is CTH0016578.

1 A. I have the document in front of me now.

2 Q. Can we agree this is again a letter between lawyers and Brother Burke, this is timed
3 in August 2002?

4 A. Correct.

5 Q. And the subject matter is "Previous allegations against McGrath and others". That is the
6 subject title of the letter, isn't it?

7 A. Correct, yes.

8 Q. And the lawyers are being asked what matters were raised with us at the time McGrath was
9 investigated in 1992/93. So we are on the same page?

10 A. Yes.

11 Q. And then the fourth paragraph down is discussion that during those 1992/93 investigations
12 it was clear that Bernard McGrath felt that he was not the only person involved in the
13 allegations and that at that time, in 1992/93, he did mention that Brother Rodger Moloney
14 was also involved in such activities. And while there was no discussion of detail, he made
15 the point on two or three occasions that Rodger Moloney was by no means innocent in
16 respect of the matters that occurred at Marylands.

17 Do you agree that it is a proper inference to be taken from this letter that what the
18 Order knew back in 1992/93, when McGrath was being questioned or the Order was
19 involved with matters relating to that prosecution, that information had come forward in
20 that context relating to concerns about Rodger Moloney?

21 A. Well, that's what the letter states Bernard McGrath was alleging, yes.

22 Q. We don't need to bring it back up on the screen but the paragraph that I took you to in
23 briefing paper number five, paragraph 88, that moves straight from knowledge in 1977 by
24 some to a complaint received in December 1999. That's right, isn't it?

25 A. There was a complaint in 1997 that was dealt with by Brother O'Donnell, as we have
26 discussed, and then there is a complaint, a formal complaint, received in December 1999 –
27 I think I said – I should have said 1977, sorry, and a formal complaint received on 6
28 December 1999 against Rodger Moloney.

29 Q. But this briefing paper is about the Order's knowledge, about what it knew when, isn't it?

30 A. Yes, and the Order in the form of Brother Brian O'Donnell in 1977 received this letter that
31 we discussed previously, he investigated it in a manner that he thought was appropriate and
32 clearly by contemporary standard it wasn't appropriate.

33 Q. So why do you think it is that what the Order knew in 1992/93 about Brother Moloney is

1 not referenced in this sequence of knowledge?

2 A. Again, I'm not familiar with the second document that you have put forward.

3 **CHAIR:** Just a moment, Ms McKechnie.

4 **MS McKECHNIE:** I'm loath to do this, but Saunders Robinson are in a slightly unusual position,
5 we are the instructing solicitors for Mr McGrath's criminal lawyers. Now, it's not clear
6 from this record who knew what in 1992/93 as opposed to this letter in 2002. We can do
7 some investigation of Mr Robinson in terms of whether this information was shared with
8 Mr McGrath in his criminal prosecution context or with representatives of the Brothers in
9 that period.

10 **CHAIR:** I'm sure you can elucidate. But as I understand it, the information is coming from a
11 letter from the lawyers to Brother Burke; is that right?

12 **MS McKECHNIE:** That's right.

13 **CHAIR:** So Brother Burke in 2002 – who is saying that there were allegations against McGrath
14 investigated? Was it the lawyers telling Brother Burke?

15 **MS ANDERSON:** Yes, yes.

16 **MS McKECHNIE:** I only raise this, ma'am, because of that complexity, that Saunders Robinson
17 were instructing solicitors for Nigel Hampton QC who acted for McGrath in the 1993
18 prosecution and they may have held the information in that context.

19 **MS ANDERSON:** We will deal later and separately with what appears to be a conundrum about
20 the Christchurch lawyers acting for the Order but also acting separately for the Brother.

21 **CHAIR:** Yes. But what we have here is a statement of fact which may or may not be disputed but
22 the allegation is that McGrath was investigated in 1992/93 and in the context of that told
23 somebody –

24 **MS ANDERSON:** That's right.

25 **CHAIR:** - that Moloney was by no means innocent.

26 **MS ANDERSON:** That's right.

27 **CHAIR:** That's the allegation.

28 **MS ANDERSON:** We probably can't take it further than that at the moment in terms of who
29 knew but certainly there was knowledge, it appears from this document, in 1992/93 of
30 allegations regarding - relating to Brother Moloney.

31 **CHAIR:** Right. And any clarification which can be produced to assist us on that would be
32 gratefully received.

33 **MS McKECHNIE:** Noted, ma'am.

1 **QUESTIONING BY MS ANDERSON CONTINUED:** I am going to now discuss with you,
2 Timothy, a document which again has limited waiver of privilege, so it won't come up on
3 the screen. The reference is CTH0018406.

4 Just while we are waiting, Timothy, this is a document again received by the Inquiry
5 the day before the hearing started, and you would have approved its release to the Inquiry at
6 that time?

7 A. Correct.

8 **Q.** And because your memory will be quite recent in relation to this, the Inquiry had asked
9 for –

10 **MS McKECHNIE:** Ma'am, this is another document we are going to need to email to Australia.
11 We have received confirmation from Mr McAllister that they don't have it. Ms Anderson,
12 can you repeat the number and we will find it and send it to Australia.

13 **MS ANDERSON:** CTH0018406, and the Order's number is 013.R282.0302.0003.

14 **CHAIR:** It is another one of these 30 seconds across the Tasman.

15 **QUESTIONING BY MS ANDERSON CONTINUED:** I can use that time. Timothy, the
16 document will be familiar to you because you have only very recently authorised its release
17 to the Inquiry. Just to recap, in documents the Inquiry had received, we observed
18 references to certain investigation reports into Brother McGrath and we asked for copies of
19 those to be provided to the Inquiry. Those reports themselves have not been provided to
20 the Inquiry but there was agreement to release to us one transcript that had been attached to
21 one of those investigation reports.

22 Have I accurately summarised and do you agree that that is the sequence leading to
23 us having this document?

24 A. If that's the sequence, I don't – I'm not aware of the total sequence but clearly I'm
25 responsible –

26 **MS McKECHNIE:** Ma'am, I can confirm that is an accurate description of what happened. The
27 investigation documents relate to Australian allegations so they are not within the scope but
28 this particular document relates to McGrath and accordingly it was put –

29 **CHAIR:** Ms McKechnie has confirmed that that sequence that Ms Anderson set out is correct.

30 **MS McKECHNIE:** Ma'am, the document is proving slightly difficult to find. It may be we can
31 return to it once Mr Hart has confirmed to me that he has sent it to Australia. He's still
32 looking for it.

33 **MS ANDERSON:** We will just give it 30 seconds and see what happens.

1 **QUESTIONING BY MS ANDERSON CONTINUED:** Just to refresh your memory while you
2 are waiting, Timothy, this is a transcript of an interview with Bernard McGrath when he
3 was in prison in Australia in 1997. Does that help you recall what it was you authorised to
4 be released to us on 8 February?

5 A. Sorry, it doesn't help.

6 **MS McKECHNIE:** Ma'am, we have found a copy of it – the efficient solicitors Mr Megan has
7 found it. We are just waiting for it to download and we can send it over.

8 **CHAIR:** It will come hot off the press any moment, I should think.

9 **MS McKECHNIE:** Apologies, ma'am, it is a 60MB document so it's taking some time.

10 **CHAIR:** It's quite a large –

11 **MS ANDERSON:** The document is not too large, it will be the redactions that are taking up the –

12 **CHAIR:** Okay. Is there a specific page that you are going to refer to that might make –

13 **MS ANDERSON:** Yes, pages six and seven and the front page.

14 **CHAIR:** The front page and pages six and seven, if they could be provided to Brother Timothy,
15 that would be very helpful.

16 While we are waiting, Brother Timothy, just as a matter of interest, when you
17 became Provincial for the first time, is any training given to you – I mean does anybody,
18 the General Prior or does anybody else or is there a book that says what you do when you
19 are a provincial, that sets out your obligations?

20 A. Back 15 years ago, no. You trained on the job, as it were. No. I understand that in more
21 recent times, after the provincial chapters, the general Government of The Order does hold
22 a workshop for new provincials to try to help them come into the job. It can be a bit
23 overwhelming when you first for start, given all the issues you have to get a handle on
24 pretty quickly, particularly when you are engaged with a sensitive issue like responding to
25 allegations of this type or sexual abuse.

26 **Q.** That's exactly what I had in mind because it seems to me, when you took over from Brother
27 Burke, you had this body of information and ongoing proceedings and negotiations that you
28 inherited; is that right?

29 A. Well, particularly with Dr Mulvihill's resignation, it left a void in terms of managing that,
30 because there was no handover, there was no documentation given to me, there was no list
31 of current cases. So there was the difficulty of knowing what had happened, which is
32 clearly not best practice. And equally the problem with Brother Peter was that he was burnt
33 out, he was physically and emotionally unwell, so I really couldn't refer to him. So we

1 were left hanging in terms of, you know, how do we adequately respond going forward to
2 active cases?

3 **Q.** What I was really thinking about was at a higher level. Direction from on high or directions
4 about protocols for dealing with allegations of sexual abuse, for example, which were very
5 much in the air at the time. Did anybody give you any assistance or help in a general way,
6 rather than just the specific files, about what should and could be done?

7 **A.** The expectation as I understood it from the general Government of the Order would be that
8 you would follow the protocols and procedures that, that were relevant in your country.
9 We were lucky in Australia and New Zealand because we had well developed and evolving
10 policies and procedures that we had developed.

11 **Q.** I think we have filled the time. Is the document available?

12 **A.** Yes.

13 **QUESTIONING BY MS ANDERSON CONTINUED:** Before you move through that
14 document, this was an attachment to an investigation report that would have been – the
15 investigation report itself and the attachments would have been held by the Order; is that
16 your understanding?

17 **A.** Yes. That's my understanding.

18 **Q.** Looking at the front page, you can see that it doesn't say anything other than it's a statement
19 by Bernard McGrath. It doesn't say who has taken the statement.

20 **A.** No, I'm not looking at that document. I'm looking at something related to the St John of
21 God Brothers and the victims. This is not the right document.

22 **CHAIR:** Do you want to leave that point and come back to that after the break and maybe over
23 the break you can get that sorted out?

24 **MS ANDERSON:** Yes.

25 **CHAIR:** Okay.

26 **QUESTIONING BY MS ANDERSON CONTINUED:** Just to recap without necessarily calling
27 it up again on the screen, from briefing paper number five, we have established that it has
28 moved from knowledge in 1997 by some in the Order and then the different language in
29 paragraph 88 that you have got a record of a formal complaint in December 1999, but you
30 say that you don't hold any record regarding the content of the complaint or whether the
31 complainant named Brother Moloney. That's what is being said there, isn't it?

32 **A.** That's what's stated there, yes.

33 **Q.** And effectively you have pieced in information together through this particular person

1 coming forward in 2017? That's the last sentence.

2 A. Yes, that's what it states there.

3 Q. Then it says that if he wasn't named in that complaint, then the next record you have got is
4 in March 2002.

5 A. Yes, that's number 90 in this document.

6 Q. The topic I'm going to explore with you is the curious statement in paragraph 88 that you
7 have a record of a complaint but you didn't know which Brother it related to at the time.

8 A. It is indeed a curious record, yes.

9 Q. I'm going to take you to a document which I think is in the bundle and not subject to
10 waiver, CTH0018375_0001. Or number one might be the cover page and it is number two.

11 A. Yes, I have that document in front of me.

12 Q. This relates, doesn't it, to events in December 1999 that crossed the divide between New
13 Zealand and Australia, where Donald Ku has come forward to the Dunedin Abuse Protocol
14 and disclosed the abuse of him at Marylands. Do we agree that is what this is about?

15 A. Yes, that is what this fax is about, yes.

16 Q. It is a draft letter from the Dunedin Abuse Protocol Committee to Brother Peter. We don't
17 have a record of a final letter sent or received, but you can see at the second to last
18 paragraph on the first page of the draft letter, the reference to the complainant repeating
19 details of vicious beatings by Brothers McGrath and Moloney as part of coercing him into
20 sexual activity. And point number 2, also concerning Brother Moloney, who the
21 complainant alleges had actively aided and abetted the abuse by Brother McGrath.

22 I'm just going to walk you through a series of documents and then we will come
23 back to the question.

24 **MS McKECHNIE:** Before we do that, can I clarify this document has been provided by the
25 diocese of Dunedin relatively recently to the Commission. This letter, the cover fax and the
26 draft letter as far as we are aware are not in the St John of God file, so this is – you'll see
27 from the 006 number, this is a Dunedin diocese document rather than a St John of God
28 document. So I don't think Brother Tim has seen this before.

29 **CHAIR:** That's the issue. The question is that he may not have seen it.

30 **MS ANDERSON:** As I said, it is a draft letter and we don't know if it was sent and we don't know
31 if it was received.

32 **CHAIR:** Yes, right.

33 **QUESTIONING BY MS ANDERSON CONTINUED:** Taking you to CTH00178870001, you

1 can see on the screen this is a letter dated 16 December 1999 from Peter Burke to Sue
2 France at the Dunedin Protocol Committee. It relates to this complaint by Donald Ku.
3 Third to last paragraph, you can see Brother Rodger Moloney, who remembers Mr Donald
4 Ku, emphatically denies that he actively aided and abetted the abuse by Brother McGrath
5 and that he is anxious to be interviewed and for the committee to hear his version of events.

6 Do you agree that it is a proper inference to take from this letter that at this stage, in
7 December 1999, Brother Burke was aware that a complaint had been made that involved
8 Rodger Moloney?

9 A. Yes, clearly that's what the document says.

10 **Q.** And again this is a document that has come from the Dunedin diocese – if you look at the
11 numerical sequence at the bottom of the document – so the recipient of the letter has a copy
12 but it doesn't appear that the Order has a copy of this letter.

13 When you have gone to look at Brother Moloney's file for the purpose of the
14 knowledge report, briefing paper number five, you haven't seen this information, have you?

15 A. If it's not on his report, we don't have a copy on his report.

16 **Q.** Coming through to CTH0016176_0001, this is a letter from Dr Mulvihill to Brother Burke
17 in February 2000. I will just give you a moment to read that on screen, if you haven't got
18 the copy.

19 Can we agree this letter is a reporting letter from Dr Mulvihill to Brother Burke
20 about conversations she has had with Sister Sue France from the Dunedin Protocol
21 Committee relating to this allegation relating to Moloney?

22 A. Yes, that's what this letter appears to be.

23 **Q.** And it names Brother Rodger Moloney in the letter, doesn't it?

24 A. It does, yes.

25 **Q.** On the last page, it is copied to Brother Teehan and a couple of other people, including The
26 Order's Australian lawyers. That's right?

27 A. Yes, and Ms Zita Antonios was on the Professional Standards Committee.

28 **Q.** So Brother Burke, and one other Brother, a member of your Professional Standards
29 Committee, and a lawyer, is seeing a document at this point in time in December 2000
30 indicating that there is a complaint about Brother Moloney?

31 A. Yes.

32 **Q.** You agree with that. Then taking to you CTH0017890, it is a faint document, but you see
33 the enlargement on the screen. It is a 15 March 2000 letter from Dr Mulvihill to Sue

1 France again, noting that there is going to be an interview of Brother Rodger.

2 A. Yes.

3 Q. You see there is a reference in numbered paragraph three:

4 "The Professional Standards Committee will be meeting during April and will make
5 recommendations in relation to the complaint against Rodger and in relation to other
6 matters raised by Mr Ku.

7 A. That's what it states, yes.

8 Q. Clearly it is being treated that there is knowledge, isn't there, at this point within the Order
9 of a complaint relating to Brother Moloney?

10 A. Yes, that states there's knowledge and they are instigating an investigation of the complaint.

11 Q. Then we see a June 2000 document, CTH0018389, this is on the screen, Timothy. You can
12 see again it is a fax from Dr Mulvihill to Sue France in Dunedin, attaching a written
13 response to the complaint against Rodger Moloney.

14 A. Yes.

15 Q. In page 2 of that document is the statement provided by Rodger Moloney responding to the
16 allegations Donald Ku has raised.

17 A. Correct.

18 Q. Over at paragraph 20, the last paragraph on the next page, he is saying at that time he had
19 no idea that any Brothers might have been involved in any abuse of any kind. If he had
20 known, he would have taken immediate action to stop it.

21 A. That's what he states.

22 Q. Knowing what you know now, how credible do you think that statement is?

23 A. Not very.

24 Q. Then moving to CTH0017895, it is from Sue France to Bishop Len Boyle in August 2000.
25 It says in that very first paragraph that the Bishop has been informed that the investigation
26 has now concluded and that both the Abuse Protocol Committee found the complaint to be
27 credible as did the St John of God Brothers and that there has been a settlement.

28 So we have got the sequence of events outlined there. Just reflecting back on that
29 sequence of documents, do you agree that the Order had knowledge of allegations relating
30 to Brother Moloney and knew that the allegations related to Brother Moloney in relation to
31 the complaint received in December 1999?

32 A. Well, the document trail, yes, points to that.

33 Q. Is there an issue with the central holding of information that means that something as

1 significant as that could have been overlooked in the no doubt careful preparation of the
2 evidence to the Inquiry about what was known in relation to allegations relating to a range
3 of Brothers?

4 A. I have to say, my mind is a bit overwhelmed by all the various documents that have been
5 presented to me. I'm finding it hard in my mind to keep track of it all. So could you restate
6 the question again, please?

7 Q. Is it fair to summarise the documentation that we have just looked at, that clearly the Order
8 knew from December 1999 and into early 2000 that the complaint related to Brother
9 Rodger Moloney?

10 A. Yes, and it also indicates that processes were in place to investigate that between Dunedin
11 and Brother Moloney and Dr Mulvihill.

12 Q. Yes, but you haven't got any record that you have been able to produce to the Inquiry, have
13 you, of that?

14 A. And I can't explain that. I mean, you would have to ask the person responsible for that, one
15 of whom is dead and the other is Dr Mulvihill. Why that information is not on the file,
16 I can't tell you.

17 Q. Wouldn't be that normal practice –

18 A. Clearly it should be.

19 Q. Whose job would it have been to put information relating to this complaint on Brother
20 Moloney's personnel file? Is that the right place for it to be held?

21 A. Yes, this is where it would be and the responsibility for that would be either Brother Peter
22 and/or Dr Mulvihill to hand it to Brother Peter's secretary to place in his file.

23 Q. Are you suggesting it is simply a matter of accidental procedure that has led to the Brothers
24 not actually having a record of a complaint relating to Brother Moloney in 2000, or in
25 1999?

26 A. Well, I can't answer that question. As I say, the only person who could provide some light
27 on this view would be Dr Mulvihill. Unfortunately we can't ask –

28 Q. Dr Mulvihill was an external consultant, wasn't she? She wasn't running the Order's filing
29 system.

30 A. No, she wasn't.

31 Q. I'm going to turn now to the actual settlement agreement with Donald Ku,
32 CTH0014744_00009. Just in context, dealing with the document that we have just looked
33 at, Timothy, it confirms to the Bishop in Christchurch that both the protocol committee in

1 Dunedin which has run its process and St John of God concur that the complaint is upheld.
2 Do you agree that is what the correspondence we have looked at said?

3 A. Yes, I do.

4 **Q.** And the date of this document is August 2000. If we scroll down to background E on page
5 two of the document, we have got the Trust here saying it has been unable to make a
6 comprehensive enquiry in respect of the claims but acknowledges there may be some form
7 of grievance and wishes to apologise for any such wrong and harm. Then recital E:

8 "On an ex gratia basis, and without the ability to fully investigate the claims by
9 Donald and therefore without the ability to fully accept the claims or deny the claims, has
10 agreed to pay a lump sum ..."

11 So there appears to be a practice where there has been conclusions reached about
12 the upholding of the claims but the language here in this deed of settlement is at odds with
13 that, isn't it?

14 A. Could you rephrase the question, please?

15 **Q.** Do you see any inconsistency in the language of the settlement deed which says, "We
16 haven't been able to investigate and therefore cannot decide whether to accept the claim or
17 deny the claim", is inconsistent with the letter that we have just looked at from Sue France
18 advising the Bishop that both the Protocol Committee and St John of God had found the
19 complaint upheld?

20 A. Yes, I do. I do see that now, quite clearly. And I'm not sure who Malley & Co are, the
21 solicitors, this is clearly a process of civil litigation. I'm assuming that's Donald's lawyers.
22 I don't know.

23 **Q.** No, that was Mr Lee Robinson's earlier firm, before he moved to –

24 A. Okay. Thank you. Right. That's clearly inconsistent with what appears to have been an
25 investigation with the Dunedin diocese and the Brothers through Brother Peter Burke and
26 Dr Mulvihill. I have no idea why he would write that.

27 **Q.** I'm also right, aren't I, that it doesn't identify in the settlement deed which Brother the
28 complaint relates to?

29 A. This is highly unusual, isn't it? I would agree.

30 **Q.** Well, the question is, when did it become unusual? Certainly we will be looking at some
31 later settlement deeds by comparison. But do you think this is consistent with this theme
32 that I picked up in the earlier document about not putting anything in writing that might
33 harm the reputation of a Brother?

1 A. And each time you've asked me that question my response has been I have no knowledge or
2 experience of a culture of that kind.

3 Q. We won't call it up on the screen, but in terms of – you confirm that on page three of the
4 document there is what can be referred to as effectively a confidentiality clause? Paragraph
5 five on page three of the document.

6 A. My understanding too is that at some point in time in Brother Burke's time that this issue of
7 confidentiality clauses became quite contentious and that the Order in its latter experience
8 in dealing with victims has been insistent on that.

9 Q. Yes, Brother Burke made some very public statements after the June 2002 Christchurch
10 press article, didn't he, that the Order would no longer have confidentiality clauses in the
11 agreements, and it may not be on the version you have got, but Brother Burke has signed
12 this agreement.

13 A. Yes.

14 Q. So this is practise two years before the Christchurch media story.

15 A. Again, I'm not a legal person. But in normal deeds of release, confidentiality clause is a
16 standard clause. Clearly this is a different area of redress and the Order took the stance
17 after this period of not insisting on that with claimants coming forward.

18 Q. Just looking at – it will now be very familiar to you, Timothy, paragraph 88 of the number
19 five briefing paper, which says that you didn't hold any record regarding the content of the
20 complaint or whether Brother Rodger was named. Do you wish to make any correction to
21 that statement there?

22 A. Which paragraph?

23 Q. Paragraph 88. Page 23.

24 **MS McKECHNIE:** Ma'am, Brother Timothy didn't prepare these documents. The documents
25 were prepared by his solicitors. And the document you have just been taken to, the
26 settlement agreement, is the one referred to in paragraph 88, which doesn't name Brother
27 Moloney, which is why the paper says that at the time there is a record of the settlement but
28 doesn't name the Brother. The other documents that you have been taken to, we received
29 and the Brothers only received some time after the date of the briefing paper, in September
30 2021. So at the time the briefing paper was prepared those Dunedin diocese documents
31 were not in the possession of the Brothers.

32 **CHAIR:** You say these documents came to light after the briefing paper was prepared?

33 **MS McKECHNIE:** Yes, many months later, which is why the briefing paper hasn't been updated

1 in the meantime.

2 **CHAIR:** But it can be updated now?

3 **MS McKECHNIE:** I think Ms Anderson has just spent the last half hour doing that.

4 **CHAIR:** That's right.

5 Do you wish to pursue that any further, Ms Anderson?

6 **MS ANDERSON:** I am going to turn now to a perhaps two documents before we take the break.

7 Just for the record, the sequence of events that have been outlined to the Inquiry are not
8 necessarily accepted at this point but we can deal with that separately, rather than taking up
9 precious cross-examination time.

10 **CHAIR:** Yes.

11 **QUESTIONING BY MS ANDERSON CONTINUED:** Document CTH0012181 is a letter of 13
12 October 2008, Timothy, sent by you to a person who was corresponding with you about
13 Brother Rodger Moloney. This is after Brother Moloney had been convicted in New
14 Zealand.

15 A. Correct.

16 **Q.** You agree that is the sequencing there?

17 A. Yes. Correct.

18 **Q.** You say in the second paragraph that he has had a very positive personal and professional
19 relationship with most of the Brothers of the province over the years and it is your belief
20 that this situation remains unchanged.

21 A. Yes, that's what I stated.

22 **Q.** I'm curious to understand what's happened here with a Brother who has been convicted of
23 offending, that the relationship remains unchanged with the Order. Is that what you
24 intended to convey?

25 A. No. My – the context of this letter was I received a number of letters from friends of
26 Rodger Moloney going back 50 or 60 years, who were deeply upset, deeply confused,
27 deeply conflicted, about what had happened to one – to a very dear friend of theirs. And
28 the intention of this letter was to try and offer them some pastoral support. Their main
29 concern, from memory, was what was going to happen to him, are you people going to
30 abandon him and kick him out? This was their big concern.

31 As I stated previously, my approach has always been to ensure the safeguarding of
32 the community and to ensure the safety of the individual, not to abandon these people but to
33 provide them with the structures and systems that are going to both essentially protect the

1 community and protect the safety of the individual. The intention was to try and give some
2 comfort to these people who would have been elderly people, that we would do our best to
3 try and care for Brother Rodger Moloney once his prison sentence has finished within those
4 parameters.

5 **Q.** Just looking at the paragraph beginning "Irrespective of the personal beliefs of many", the
6 reality now is that a jury has decided he should be accountable.

7 **A.** Clearly there would have been two or three of these old friends. His personal belief was
8 that he was not guilty and their personal beliefs at the end of the day are their personal
9 beliefs.

10 **Q.** I understand that.

11 **A.** What matters –

12 **Q.** From your recollection of the time, did the Brothers within the Order at that time accept
13 that the outcome of the criminal trial was correct?

14 **A.** I believe they did, yes. They accepted the outcome of the criminal trial as correct.

15 **Q.** So when you say in the next sentence of that paragraph "The judicial system under which
16 we operate is less than perfect," what are you referring to there?

17 **A.** My memory would have been that these individuals would have been complaining about
18 the outcome of the trial. And in hindsight, if I were to write that letter again, I probably
19 wouldn't include that sentence.

20 **Q.** We are just going to come down to the last paragraph on that page. We can see there, can't
21 we, that you are unhappy with the coverage in CathNews about the prosecution and you are
22 describing CathNews reporting as a great problem and quite sensationalist, and saying,
23 "Rather than supporting Catholic organizations in this painful issue, they appear to harm
24 our collective interests."

25 **A.** Again, that's another – sorry.

26 **Q.** What are the collective interests you are referring to there?

27 **A.** The collective interests would have been the interests of the church.

28 **Q.** And what is that interest or interests?

29 **A.** Well, I guess – this paragraph is probably representing my ongoing frustration with media
30 coverage. That's my personal opinion. And in hindsight I would not put that in again.

31 **But –**

32 **Q.** We see in a number of documents a bit of irritation with the media coverage. But again, the
33 collective interests of the church in this context of abuse and a prosecution, what was your

1 understanding, what did you think those collective interests were?

2 A. The collective interests, coming from that, would be the expectation of a fair and balanced
3 reporting of issues of sexual abuse which have become repeatedly and in an ongoing matter
4 quite sensational. I mean, all – this is only my personal belief – all I would like from the
5 media is a fair go, a balanced representation. And even as much as last Sunday, again that
6 doesn't seem to have happened.

7 **Q.** You weren't intending to refer there to the concern about the collective interests and the
8 reputation of the church?

9 A. No. Again, if I had written that letter again, I wouldn't add that sentence in. It looks
10 terrible. But that's not my intention.

11 **CHAIR:** Before you – are you going to stop?

12 **MS ANDERSON:** That would be the place to take the break.

13 **CHAIR:** I have a question that I would like to ask of this letter if this is the last you are going to
14 look at the letter. Could we go back to the paragraph you referred to earlier, where it refers
15 to the outcome of the trial, the one starting "Irrespective."

16 Brother Timothy, you have told us that the reason for keeping Brothers who have
17 been convicted of criminally assaulting children in their care, keeping them close and
18 keeping them within the Order was to be protective, as I understand your evidence, to be
19 protective so they can learn and not be a danger or create a risk to others in the future. Am
20 I right in you saying that?

21 A. Yes. Yes, correct.

22 **Q.** Right. Okay. In this paragraph you say:

23 "However, what is at stake now is the support and care required by Rodger from all
24 in his life to bring him through this experience relatively unscathed."

25 What do you mean by that?

26 A. Again, I was responding – excuse me, I have a cramp in my leg just at the moment.

27 **Q.** Do you want to stand up?

28 A. No, it's okay. The main focus of this letter was trying to provide some comfort and some
29 pastoral support of these long-term friends who would have been in their 80s at this stage,
30 who were very anxious, very upset about all of this. And I guess the – quite clearly the
31 main aim with Brother Rodger after he came out of jail would have been ensuring the
32 safety of the community. But equally, as an elderly man with severe health problems, of
33 which he subsequently died, "relatively unscathed" would mean trying to provide some

1 privacy and security for him from the media, so that an elderly man with health issues can
2 live the remainder of his days with some privacy and some safety.

3 But I want to reiterate that quite clearly the main focus is putting parameters
4 around people coming out of jail that are going to ensure as best as we are able that they
5 don't re-offend.

6 **Q.** Brother Timothy, I wonder if you could think about this at the moment from the perspective
7 of an elderly and infirm survivor who has suffered at the hands of Brother Moloney.

8 **A.** Oh, yes.

9 **Q.** How do you think they would view this statement?

10 **A.** They would be very unhappy about it. But quite clearly this letter was never meant for
11 anybody but Mr Morgan.

12 **Q.** But you must have meant what you said in the letter.

13 **A.** Yes. I'm in a difficult position. As a Provincial, as a religious and as a Christian, I'm
14 clearly compelled and wish to support people who have been harmed. The unfortunate –
15 well, we are also required to support people who have done the harm. That's a very
16 difficult position to be in.

17 **CHAIR:** All right, I think we will leave it at that point. We will take the afternoon adjournment
18 for 15 minutes. Thank you.

19 **Adjournment from 3.38 pm to 3.56 pm**

20 **MS McKECHNIE:** Ma'am, before we resume, are we able to clarify, so Brother Tim is aware of
21 what is going on, the timing for the rest of the afternoon? I understand there is to be a
22 prerecorded video and that may be something that has moved, if Ms Anderson needs to go
23 to 5 o'clock.

24 **CHAIR:** We discussed the prerecorded video this morning. It is vital that that be kept in its time
25 for the purpose of the survivor who will be watching.

26 What are your views on this, Ms Anderson?

27 **MS ANDERSON:** Thank you, Madam Chair. I think it is important that we keep to 4.45 for the
28 video, given the arrangements that were made in place for the person to view that at the
29 time. I am intending to go now to 4.45 and we will stop at that point for the video. Then
30 I think we can confer at that point as to whether we might need to take a 15-minute break
31 and come back for another period that the parties can agree, people here today can agree
32 would be sensible or we need to make some other arrangements. There is certainly the
33 potential to –

1 **CHAIR:** Of going over.

2 **MS ANDERSON:** Yes. I think it would be sensible to take a break at 5.00, after the video
3 evidence, and then to come back with anything further.

4 **MS McKECHNIE:** Commissioner, that is certainly something I can explore with Tim but he has
5 been up very early Sydney time and been sitting in the chair here for a long time so the
6 capacity for him to give continue to give evidence long after 5.00 is quite limited. If Ms
7 Anderson is able to focus her questions in the next 45 minutes, that would be appreciated.

8 **CHAIR:** Again, everybody is caught in terrible dilemmas here. Is Brother Timothy able to come
9 back tomorrow, for example?

10 **MS McKECHNIE:** I understand he has a medical appointment tomorrow and I don't understand
11 it is Ms Anderson's intention that he return tomorrow.

12 **MS ANDERSON:** I certainly canvassed the option of availability either on Wednesday or with
13 the alternative of Thursday. So let's just see where we get to and we can make the decision
14 at the time after we have heard the recorded evidence.

15 **CHAIR:** The thing is, Brother Timothy, I appreciate this is long and tiring and I think we all feel
16 that, but you will get a break at our New Zealand time 4.45 because there will be a 15-
17 minute presentation by a survivor at that point, that will not involve you, you will have a
18 break then. You may take a few minutes after that. So there will be an opportunity to have
19 a break at that stage and then we will revisit it. But one way or another we have to get
20 through this evidence.

21 A. Yes.

22 **CHAIR:** All right, Brother Tim?

23 A. Yes, absolutely. I'm more than happy to go to whatever time it takes today to arrive at an
24 appropriate point of conclusion.

25 **CHAIR:** We don't want all to be falling off our perches but we do want, as I say – I am grateful
26 for that indication, thank you very much.

27 Yes, Ms Anderson.

28 **QUESTIONING BY MS ANDERSON CONTINUED:** Timothy, returning to the document we
29 had an issue with in terms of having it available to you, that is CTH0018406, I take it you
30 now have it?

31 A. Yes, I do.

32 **Q.** We have agreed, haven't we, that this was released to the Inquiry on 8 February and it has
33 been described to us as having been an attachment to an investigation report commissioned

1 and prepared for The Order.

2 **CHAIR:** Do we have a date on this document?

3 **MS ANDERSON:** The document is dated 14 March 1997 and it is an interview of Bernard
4 McGrath in prison in Australia.

5 **CHAIR:** Right.

6 **QUESTIONING BY MS ANDERSON CONTINUED:** The point I want to clarify before we get
7 into the content is that The Order held this document and held this information in this
8 document?

9 A. You are saying that this document was in the files, is that what you are saying?

10 **Q.** That is the basis on which it has been provided. It was an attachment to an investigation
11 report, yes.

12 A. Well, I guess that that must be the case.

13 **Q.** So the statement is taken in the context of an investigation, so we can assume it is
14 discussing with Mr McGrath some allegations relating to a complaint that relate to
15 Australia and we don't have that information, it has been of course redacted from the
16 document we received. But we see on the front page an understanding of the basis on
17 which the statement is being provided. Could I get you to read out that last sentence?

18 A. This is the current investigation, not the covering letter.

19 **Q.** It is the transcript. I am at a loss –

20 **MS McKECHNIE:** If I can assist. Tim, turn through the pages to the document that begins in the
21 old style typing, "McGrath/Bernard c/o Complex of Prisons." Ms Anderson doesn't have
22 the investigation document that you have in front of you because it relates to an Australian
23 allegation.

24 A. Okay, I have that.

25 **CHAIR:** It is a typed-up statement in the old form; is that right?

26 **MS ANDERSON:** As an attachment to an investigation report, yes.

27 **CHAIR:** Right. So you have that, Brother Timothy –

28 A. Yes.

29 **CHAIR:** And you have it, Ms Anderson.

30 **QUESTIONING BY MS ANDERSON CONTINUED:** We can't display it but we can talk
31 about the contents of it. As I said, 14 March 1997 interview while he is in prison. Could
32 you read that first paragraph out so we can have that in the record?

33 A. The paragraph starting "I provide"?

1 Q. Yes.

2 A. "I provide this statement on the understanding that it is to be a privileged document for the
3 use of Caroll & O'Dea solicitors acting on behalf of St John of God Brotherhood in civil
4 litigation. Any admission of criminal behaviour is given on the understanding that it is a
5 result of an inducement that will not be used against me in any criminal proceedings."

6 **MS McKECHNIE:** Another note, Tim. The document that you have in front of you is not
7 redacted. The one Ms Anderson has is redacted. So she will take you to the paragraph
8 numbers. When she is referring to redactions, you don't have that copy because it was far
9 too many megabytes for us to send through to you quickly. There will be a degree of
10 confusion between you when you talk about that.

11 **MS ANDERSON:** If we just can get on, that would be really helpful.

12 **CHAIR:** If we can get on, I'm sure you will be able to explain that, Ms Anderson.

13 **QUESTIONING BY MS ANDERSON CONTINUED:** Turning to page 4 of the transcript. I
14 must say, even the paragraph numbers are redacted on my version, so I will endeavour to
15 give directions. The very last sentence on that page says he wasn't the subject of a
16 complaint until 1992. This is Bernard McGrath saying he wasn't the subject of a complaint
17 until then.

18 Then the paragraph over the page – sorry, turning to page six, again the very bottom
19 of that page, he describes returning to New Zealand because there were six complainants
20 involving 11 charges and five of those charges related to matters and he disputed the other
21 matter, and this records:

22 "I'm aware that another Brother had a relationship with this person and not myself."

23 So he is disclosing in 1997, isn't he, in this investigation report, that another Brother
24 had a relationship, which is of course not the right word at all to use, with somebody at
25 Marylands?

26 A. Yes, that's what he states.

27 Q. Do you see the handwritten note above?

28 A. Yes.

29 Q. And that's –

30 A. I have seen that.

31 Q. According to Mr McGrath, this was Rodger Moloney?

32 A. That's what it states, yes.

33 Q. So in that context, this is a further layer, isn't it, where The Order has got information at this

1 point, even if we've had the dispute about what it knew in 1993, an investigation report
2 coming forward in 1997, where Brother Rodger Moloney is being identified. We don't
3 know when the handwritten note was recorded there.

4 A. No.

5 Q. But it's a very unfortunate practice, isn't it, in documents of not naming the Brother, unlike
6 in the police statements of course, where names are clearly recorded.

7 A. This is a transcript from Bernard McGrath, who didn't name the Brother. For what reason,
8 I can't – I can only surmise.

9 Q. It's an obvious question for someone taking a statement from him, "Who are you referring
10 to?"

11 A. Yes.

12 Q. The Order would want to know, wouldn't it?

13 A. They would. I can't understand why an investigator wouldn't push that question.

14 Q. Perhaps the handwritten note confirms they had pushed it and come back with the answer?

15 A. I don't know whose handwriting that is or when it was put in, I have no idea. It's certainly
16 not my handwriting and certainly not Peter Burke's handwriting.

17 Q. I wasn't suggesting it was. But do you accept that in 1997, or whenever this handwritten
18 note was added to the copy of the report received by the Brothers, that there's a reference
19 here to Rodger Moloney?

20 A. There is a reference to Rodger Moloney and again I have no idea when it was put into the
21 document.

22 Q. Might that be something – because obviously we don't have access to those investigation
23 reports that might be able to be clarified for the Inquiry, so are you agreeing to take active
24 steps to assist us with whose handwritten note that is and when it was put there?

25 A. I'm sure that Sally and whoever else is involved in Australia can investigate that to the
26 degree they are able.

27 Q. So just drawing this topic to a close, so we have got the suggestion in 1993 that there was
28 information conveyed by Bernard McGrath at that time in relation to offending by Brother
29 Rodger Moloney. We have got a reference in this 1997 document and as we have seen, the
30 December 1999 complaint clearly identified Moloney, because he has given a statement in
31 response to it. Can we agree that at none of those three intervals was any steps taken to
32 remove Rodger Moloney from the possibility that he could be harming others?

33 A. I don't – again, I wasn't involved at a level of professional standards with this. And I'm not

1 sure what policies or practices or parameters were put around Rodger. And I can't give you
2 any – any direct answer to that.

3 **Q.** Well, you do say in briefing paper number five that you have approved before it has come
4 to the Inquiry that steps were taken in 2002 after concerns about Brother Rodger Moloney
5 were raised.

6 **A.** Yes, and this was in 1990 –

7 **Q.** Seven.

8 **A.** 1997, yes.

9 **Q.** Do you think there is indication of a failure to act in relation to information The Order held
10 relating to Brother Moloney prior to 2002?

11 **A.** That's a question I think you would need to ask to those who were involved in this process
12 at the time, one of whom you can't because he is deceased.

13 **Q.** I'm asking you in your position as – you're Provincial, you have been the leader, you
14 understand The Order?

15 **A.** Yes.

16 **Q.** If we assume for the moment this happened under your watch, at a theoretical level, if the
17 same facts arose, that information was held somewhere on a file in The Order that a Brother
18 had been named and no steps were taken, what do you think is the proper conclusion to
19 draw about that in terms of adequacy of response?

20 **A.** In my time, we initiated the process of best practice, process of risk management of
21 individuals who had had an accusation made against them. I'm not sure whether Brother
22 Rodger Moloney was alive at that time. It was quite clear that if this had happened since
23 I had been Provincial, it probably would have been dealt with more effectively. If a
24 Brother's name came up, there is a clear procedure as to how we would deal with that.

25 **Q.** But also clear evidence that there hasn't been a procedure applied before 2002 in relation to
26 Brother Moloney?

27 **A.** Well, I would understand that there were procedures in place and if they weren't followed,
28 I can't tell you why they weren't.

29 **Q.** I am going to turn back the clock a little bit to the time period 1992, and our discussion is
30 again going to be based on documents, in the same way that you have relied on documents
31 in preparing the parts of your witness statement that describe the timing of complaints
32 relating to Bernard McGrath.

33 Before we move fully into 1992, just going back to 1997, we know that the

1 Provincial at the time received an anonymous letter and we also know that Bernard
2 McGrath was transferred across to Australia within quite a short timing of that, depending
3 on the precise facts.

4 A. I think just a small correction, I think it was 1977 not 1997.

5 Q. Thank you for that correction. Quite right.

6 Do you have any knowledge as to whether the transfer was as a result of the
7 allegation being made?

8 A. No, I have no knowledge of that.

9 Q. McGrath was in Australia between the period 1977 and 1986 when he came back to New
10 Zealand. Have you been able to find anything that explains the reason for his transfer back
11 to New Zealand in 1986, including whether it was a result of a complaint received in
12 Australia?

13 A. My understanding of why ex-Brother McGrath was transferred back to New Zealand was
14 purely for operational reasons, and I'm assuming it was to respond to the Bishop of
15 Christchurch's request to support street kids. I have no direct knowledge. I'm just
16 assuming that's why he was sent back to New Zealand at the -- (overspeaking) --

17 Q. Based on what The Order knows, in the sense that it is information that The Order holds
18 and you will have looked at when preparing your evidence, there is no -- are you saying he
19 was not transferred back or it is unlikely he was transferred back here as a result of an
20 allegation in Australia?

21 A. I have no personal knowledge or experience that that is the case and I have not cited any
22 documents that indicate that.

23 Q. When he came back to New Zealand in 1986, he was effectively able to reside other than at
24 the monastery with the other Brothers, wasn't he?

25 A. That seems to be the case, yes.

26 Q. Is that very unusual that a Brother would live outside, on a permanent basis, the religious
27 community of which they have been transferred to?

28 A. In 1986, yes, I think that would be unusual.

29 Q. We just don't know why that was enabled, do we?

30 A. No.

31 Q. But we can agree it effectively gave him a large degree of licence to be in control of his
32 daily routine, access to individuals?

33 A. Yes, I would agree with that statement.

1 **Q.** And there is evidence that there was a complaint in May 1992 in New Zealand, wasn't
2 there?

3 **A.** Do you have the specifics of that complaint for me?

4 **Q.** I can take to you a couple of documents. CTH0016507. There seems to be a glitch with
5 that being in the system. I will take you to CTH0014213. As you can see, this is from
6 Sister Mary-Ellen McGuinness, she was involved with the Hebron Trust at the relevant
7 period. If we scroll down we see the date of 24 May, where she describes returning from
8 Sydney and had someone tell her that they wanted to see her urgently and there were
9 allegations being made against Bernard McGrath. So that is in her documentary record.

10 **A.** Yes, that's correct.

11 **Q.** And we can't go to it but the document I have referred you to indicates it is a document
12 from Brother Terry Teehan, some years later, referring to the 1992 date. So there is
13 consistency across those records.

14 Now, in your evidence you say that Bernard McGrath was moved in August 1992.
15 So my question to you is, if The Order was aware in May 1992 that a complaint had been
16 raised, why was action not taken at that time?

17 **A.** I'm not sure what happened between the May date and the August date because I wasn't
18 involved in this process. I don't know whether – I don't know what happened, what the
19 leadership team did in those few months. But clearly he was withdrawn from the ministry
20 because that was in one of the survivor's statements from Hebron.

21 As I say, when I read particularly the witness statement, I was heartened by the
22 actions of the co-workers in terms of ensuring his removal, ensuring – supporting the
23 victims and the staff. So what happened after he was removed from ministry, between
24 whatever date it was in May until he was returned, when did you say, to Australia
25 in August?

26 **Q.** I think what we are coming to, Brother Timothy, is there was absolutely no evidence that he
27 was removed from his activities in New Zealand prior to events that we will come to
28 in August 1992. So the point I'm making to you and I'm taking you through is there is a
29 time lag in the timeframe and a question as to which complaint actually resulted in the
30 action that was taken to take him back to Australia and send him to New Mexico for
31 treatment?

32 **A.** I'm unable to answer those questions directly because I was not involved at that time, I was
33 not the Provincial at that time and I would only be guessing. I can't provide you with

1 concrete data.

2 **Q.** Do you have a copy of Mr Lee Robinson's evidence that has been provided to the Inquiry?

3 A. Is that in the –

4 **Q.** It is one of the evidence provided for this hearing. Mr Robinson hasn't been called.

5 A. I have read that but I don't know whether I have a copy in front of me.

6 **Q.** I will just summarise and I'm sure Ms McKechnie will correct me if I have got it wrong.
7 He refers to first hearing – being surprised to hear of allegations about McGrath, and this is
8 a quotation:

9 "In approximately May 1992, McGrath came in our offices at Malley & Co without
10 an appointment and advised me that there had been allegations of sexual abuse against him
11 and from people who were working at Hebron. I provided some professional advice to
12 Bernard McGrath in respect of the matters that he spoke to me about."

13 Then over the page, he confirms that McGrath was removed from Hebron on
14 7 August, returned to Sydney following further allegations of abuse. And he says he can't –

15 **MS McKECHNIE:** If we can assist the Commission, because clearly Tim knows nothing about
16 this. There is a briefing paper attached to Tim's brief which sets out these events. The
17 historical records show that unfortunately Bernard McGrath convinced the young man to
18 withdraw his complaint.

19 **MS ANDERSON:** I really object to the interruptions and the taking up of the time that is
20 preciously evaporating for clarifications from the bench.

21 **MS McKECHNIE:** If he can't answer my friend's question –

22 **CHAIR:** If he can't answer, he can tell us. It's his evidence, not yours; I have to say that. And
23 you know that.

24 **MS McKECHNIE:** I am trying to assist, ma'am.

25 **QUESTIONING BY MS ANDERSON CONTINUED:** I am assuming you have read all of the
26 evidence for this hearing provided by the church?

27 A. Yes.

28 **CHAIR:** Just for clarity, Brother Timothy, if you don't know, you will obviously tell us, won't
29 you?

30 A. Madam Chair, I don't know.

31 **CHAIR:** That's fine. If you don't know, that's all you have to say, you don't know.

32 **QUESTIONING BY MS ANDERSON CONTINUED:** So that is the factual evidence and the
33 narrative here.

1 I'm returning to a topic that we touched on very, very lightly. At this point Malley
2 & Co are The Order's lawyers and Bernard McGrath has come in and had a discussion with
3 The Order's lawyers about abuse allegations against him and what Mr Robinson is saying is
4 he can't disclose the advice he gave McGrath at that time because of legal privilege for his
5 relationship with the Brother. I am putting to you that it doesn't seem like adequate practice
6 for The Order's lawyers to be treated as lawyers advising individuals accused of abuse. Do
7 you agree with that?

8 A. I absolutely agree with that. And clearly Mr McGrath has gone in to see Mr Robinson and
9 perhaps Mr Robinson should have directed him to a different lawyer. But that doesn't seem
10 to have happened. Quite clearly the best practice is that there should be separate legal
11 representation for The Order and for the alleged perpetrator.

12 Q. Thank you. I am going to go to document CTH0012039_00064. Do you have that
13 document with you, Timothy?

14 A. They are still searching for it.

15 Q. Would it assist if I gave the reference number for the church's coding system?

16 A. They have found it.

17 Q. We won't be able to display it on the screen, Commissioners, but I will specify the
18 information that you need to know. This is a handwritten series of notes, headed "Special
19 issues", and the date at the top right on page one is 11 August 1992. It is a phone call
20 received by Marilyn at KG [Kendall Grange]. Timothy, can I have you confirm that KG
21 would be a reference to Kendall Grange?

22 A. That's correct.

23 Q. And it is followed by a phone call by Brother Julian the same evening. Then a further
24 correspondence with a person directly who has made the allegation, and then we have got a
25 series of references to discussions with Brian Lucas the following day.

26 Over on page three of that document, we can see the reference to having been
27 advised by Brian Lucas to ask Julian – a reference to one of the Brothers – to go to New
28 Zealand to collect B and withdraw him immediately.

29 Then at the bottom of that page, there is an action plan: Julian to inform B and
30 withdraw him, inform the community, inform Mary-Ellen, who is the person whose
31 document we have just looked at, and request she take over Hebron temporarily.

32 At the bottom we have:

33 "Investigate previous allegations again in New Zealand in past few weeks."

1 So it appears, doesn't it, that the urgency and action that we know happened
2 in August 1992 was a result of a person coming forward in Australia with a complaint
3 relating to Kendall Grange.

4 A. That would appear to be the context, yes.

5 **Q.** It appears to be right. So there does seem to have been – you can probably draw a
6 conclusion from the documents that allegations in May for whatever reason did not result in
7 Bernard McGrath being asked to stand aside or withdrawn and that occurred later in
8 relation to a different allegation.

9 A. That appears to be what this handwritten memo seems to be inferring, yes.

10 **Q.** Going to document CTH0015170, this is a letter – just to orientate yourself while it is
11 coming – in February 2021 between lawyers for CCI [Catholic Church Insurance] and The
12 Order's lawyers, addressed to Howard Harrison.

13 If we call up the last paragraph in the quotation, this is recording when there was
14 notification under the insurance policy of a complaint relating to Brother McGrath, and
15 Brother A, who is referenced here as Brother McGrath, as we will come to, and it identifies
16 the first allegation being 11 August 1992, so that is consistent with the handwritten file note
17 we have just looked at in terms of the date?

18 A. Yes.

19 **Q.** It relates to Kendall Grange and not to events in New Zealand?

20 A. Correct.

21 **Q.** And then over the page there is reference to a third allegation on 16 December 1992
22 relating to Hebron. So we see that is coming differently in the sequence there. You can see
23 the conclusion by the author of this letter, at Deakins:

24 "Given the history of Brother Bernard McGrath, [Brother A is in fact Brother
25 Bernard in referring to the deductible in relation to the policy]."

26 In terms of events between May and August 1992, and of course we don't know at
27 this stage who might have been harmed in New Zealand at Hebron in that interval, would
28 you agree that there appears to have been a failure to act in that time period?

29 A. From the documentary evidence, that would appear to be what is suggested, yes.

30 **Q.** Whose accountability within The Order would that failure to act fall to?

31 A. Ultimately all responsibility falls to the Provincial of the day.

32 **Q.** Who would have been the Provincial in 1992?

33 A. I believe that in May 1992 Brother Joseph Smith was elected.

1 **Q.** And he is still a member of The Order, isn't he?

2 **A.** Yes, yes.

3 **Q.** And does he hold any official positions within The Order?

4 **A.** He is currently a general counsel with our general Government in Rome, responsible for the
5 English-speaking provinces.

6 **CHAIR:** Did you say in Rome? Sorry, I just didn't hear that, Brother Timothy.

7 **A.** If he's not based in Rome, he is a member of our general Government in Rome but he
8 resides in Australia.

9 **CHAIR:** Thank you.

10 **QUESTIONING BY MS ANDERSON CONTINUED:** Under your current protocols in place
11 under your leadership, what are your responsibilities in relation to a failure to act in that
12 May 1992 to August 1992 period?

13 **A.** Well, again, I mean I think it would be important to have a conversation with Brother
14 Joseph about what actually happened in that time. We are only going from the
15 documentary evidence. There is no context in that, there is no clarification. I'm not sure
16 what he did in that time and natural justice would require that that conversation should
17 occur. And the documentary evidence is what it is but what are the contexts around that?

18 **Q.** I'm talking, aside from the Royal Commission and the Inquiry here, imagine a world where
19 the Inquiry is not up and running and it has simply come to your attention that there was a
20 period where an allegation was known but no action was taken and the person is a current
21 living member of The Order, what are the protocols and the processes that should apply in
22 that circumstance?

23 **A.** I think I would like to refer to a canon lawyer to advise me what would be the best practice
24 for that.

25 **Q.** Aside from practice under canon law, do your current protocols and policies that you have
26 talked about not address that?

27 **A.** I don't think it addresses failure to act. But it – clearly Brother Joseph did act and acted
28 decisively.

29 **Q.** He acted at a later point, didn't he?

30 **A.** He did and I can't explain what happened between May and August and I don't know what
31 other information he would be able to provide. But clearly he did act and act decisively.

32 And –

33 **CHAIR:** Brother Timothy, do you think that this warrants investigation by The Order?

1 A. I honestly don't know, Madam Chair. I would like to seek some advice.

2 **CHAIR:** Seek some advice. All right.

3 **QUESTIONING BY MS ANDERSON CONTINUED:** We know, don't we, that after Bernard
4 McGrath was convicted in New Zealand in 1993 he, as you describe it I think, voluntarily
5 applied to leave The Order.

6 A. Yes.

7 **Q.** That's a process that involves effectively an application by the relevant individual but
8 supporting documentation from The Order.

9 A. Yes. He has to apply to the Holy See through the Prior General in Rome.

10 **Q.** So it is the congregation we have talked about that actually is the decisionmaker in respect
11 of that application, isn't it?

12 A. Correct. I understand that in –

13 **Q.** Sorry, you go.

14 A. I was going to say that, like all these professional standards issues have evolved.
15 I understand now that the criminal serious matters such as this warrant instant dismissal
16 from The Order, as it should be.

17 **Q.** Just calling up CTH011875, this is a package of documentation relating to the
18 secularisation of Bernard McGrath in 1996. Do you have that document?

19 A. Yes, I have it.

20 **Q.** I am going to move through to page seven of this document. First I probably need to
21 properly orientate you to it. The component of the document I am looking at begins on
22 page 4. This is the application by the Provincial sending a report of temporary solemn
23 vows, asking for dispensation from those vows. Am I right that once dispensation is
24 granted, the Brother is no longer a member of The Order?

25 A. Correct.

26 **Q.** Turning over to page four, which is observations that are included as part of the application,
27 we can see there that the application is signed by Brother Joseph Smith as Provincial
28 in September 1996?

29 A. Correct.

30 **Q.** If we can call out paragraph 24 on page seven of that document, it is described as an urgent
31 request for both Brother Bernard "and for the sake of the Order", as he is having to leave to
32 face further charges of sexual abuse.

33 Just to landscape this in time, he has been prosecuted in New Zealand in 1993, been

1 convicted in December 1993, after returning from offshore a few months before; he has
2 served his time; he has left prison and he is now facing charges in Australia, and he ends up
3 in prison in 1997 in Australia, which is where the transcript – the statement that we have
4 looked at before was taken for the purpose of your investigation. So the request is urgent,
5 indicating that he is going to face further charges and asking for urgency for the sake of
6 The Order.

7 My question to you in relation to that is: what "sake of the Order" do you
8 contemplate might be being referred to there?

9 A. I couldn't say what Brother Joseph's intention was with that phrase. I would only be
10 making a guess. I couldn't definitively tell you what his intention was from that phrase.

11 Q. But we can follow that up directly with him, can't we?

12 A. I'm assuming that counsel can follow that up, yes.

13 Q. I'm going to take you to – I'm conscious of finishing in time, so I will be precise.

14 CHAIR: Okay.

15 MS ANDERSON: Possibly a moment or two before.

16 QUESTIONING BY MS ANDERSON CONTINUED: CTH00855 – one question before we
17 turn to that document, Timothy.

18 When Bernard has taken the voluntary secularisation process, it is also right, isn't,
19 that he received a payment in 1996 at that time to see him on his way from The Order?

20 A. I can't read that very well from here.

21 Q. Before we turn to the document, my question is separate to the document. He has been
22 secularised in 1996. And The Order has a practice, doesn't it, of making payments to assist
23 those who are leaving The Order?

24 A. That's correct, yes.

25 Q. And consistent with that practice, that applied to Brother Bernard when he took this
26 voluntary secularisation in 1996?

27 A. Correct, because he would have no independent resources once he leaves The Order. So it
28 was seen as pastorally appropriate to provide those people with some adequate financial
29 start in their secular lives.

30 Q. So no distinction drawn between those who have been convicted of sexual offending and
31 other Brothers leaving for other reasons?

32 A. I'm unaware how much money was paid to Brother Bernard so I can't comment on that.

33 Q. Just looking at the document you have physically and on the screen –

1 A. I do, yes.

2 Q. - this is correspondence between yourself and Bernard McGrath in 2019.

3 A. Yes.

4 Q. It is referring to your view of the media's treatment of the Brothers over the last 25 years.
5 And you are asking Bernard to keep the Brothers in his prayers as The Order prepares for
6 the accountability process in New Zealand through the Royal Commission.

7 A. Yes.

8 Q. In terms of the ongoing relationship between you as Provincial and Brothers who have been
9 convicted and are no longer part of The Order, can you explain why that relationship by
10 correspondence might occur?

11 A. I have a very clear recollection of this letter. Bernard wrote to me because he had been
12 approached by the ABC to participate in the programme which I think was – I forget the
13 name of it – Sarah Ferguson, a three-part documentary in which he was featured, asking me
14 whether he should participate, and I basically said to him, "You need to remember how the
15 media has treated you in the past and you need to make the decision about whether you
16 wish to participate in that process or not."

17 Q. And he did go on to participate in that process, didn't he?

18 A. He did, yes, he did.

19 Q. Just in terms of the relationship and the reference to prayers, does it strike you that
20 survivors might find it odd that you were having a dialogue with Bernard McGrath of this
21 nature?

22 A. They may find that difficult. But I have asked lots of people to pray for us in this process
23 and to pray for the victims and to pray for the Royal Commission, that it will be able to
24 chart a way forward, so that actions like Bernard's can never occur again.

25 Q. Just one final short question. My proposition to you is that The Order's knowledge of
26 McGrath's offending has strongly influenced your response to survivors coming forward in
27 the sense of preferring to have private settlements rather than have traversed in an open
28 court system what The Order knew about Bernard at relevant times.

29 A. I think I've stated on a number of occasions already today that I have to deal with the
30 choice of complainants as they come forward to me and overwhelmingly they have adopted
31 this process of civil litigation, which I respect, and the parameters and landscape of that
32 civil litigation I have no control over. But I respect the right of those claimants to follow
33 that process. And it seems to me – again, I'm not a lawyer, I don't understand the law,

1 I don't understand that the first principle is to try to attempt mediation outside of a court
2 situation and if that's not acceptable to the claimant, then it will proceed into open court.
3 Again, I'm not a lawyer but I understand – I understand the judges I think expect that some
4 mediation has been attempted before it gets to court. That's my understanding.

5 **Q.** Thank you, Timothy. We will draw that to a close now. It is timely to move to the –

6 **CHAIR:** Brother Timothy, we are going to stop. I'm not sure whether we are going to close it or
7 pause you, but you can take a break because for the next 15 minutes we will be hearing
8 from a survivor through a videolink.

9 **MS ANDERSON:** We will have a discussion over the break, after the video evidence.

10 **CHAIR:** Yes, we will take a break after the video and we will let you know how we are going to
11 proceed after that.

12 **[Video played of Trevor McDonald's statement]**

13 **COMMISSIONER ALOFIVAE:** Good afternoon, Trevor. My name is Sandra Alofivae and I'm
14 one of the Commissioners here with the Inquiry. Thank you very, very much for your
15 courage in being able to provide this prerecord for us. It's very, very valuable and
16 everything that you have shared with us, we can see that it's come at an enormous cost to do
17 the prerecord, we hear it in your voice, we can see it in your physical demeanour and we
18 can understand it in your spirit. I want to say that you are very generous in your spirit and
19 that you are actually still thinking of others that might be worse off than you,
20 notwithstanding the horrendous things that you actually suffered as a young person at
21 Marylands and what you have been able to share with us.

22 Your evidence, Trevor, is being added to a number of other very courageous
23 survivors who are coming forward and it is actually helping us to understand in a lot more
24 detail, it's giving us the clarity to understand what actually went on, so we can do exactly
25 what you are asking: how do we actually get this to stop; what are the recommendations
26 that we need to be putting forward that is actually going to make a difference?

27 So I'm hoping you are going to stay with us on this journey, Trevor, as we continue
28 in our quest to be able to get and to be able to understand the bigger picture and the
29 landscape.

30 If you have been following the evidence today, I hope that you are also getting some
31 good wellbeing and that you are looking after yourself at this time. So go well and no
32 doubt we will still be in touch with you. Thank you, Trevor.

33 **CHAIR:** Shall we –

1 **MS ANDERSON:** If we take a 15 minute break, that will be helpful.

2 **CHAIR:** I am grateful to Brother Timothy for his indication that he is prepared to carry on.

3 **MS ANDERSON:** I am conscious that Mr Wimsett is here today and he has permission to cross-
4 examine Timothy Graham as well, so we might interpose him, to make sure that we can
5 accommodate that today.

6 **CHAIR:** Yes, to give him some time as well. Absolutely, yes. Let us know when you are ready
7 to start again.

8 **Adjourned from 5.05 pm to 5.20 pm**

9 **CHAIR:** I believe we have a plan of action. Ms Anderson?

10 **MS ANDERSON:** Thank you, Madam Chair. We are going to move to have Mr Wimsett in
11 cross-examination and then we will have time for questions from the Commissioners at the
12 conclusion of that, with the expectation that we are not running past 6 o'clock.

13 **CHAIR:** Yes, I think that is very humane for all concerned. Thank you to all of those loyal
14 people who have lasted through the day with us, I hope you can last for another short while.
15 I think that is appropriate. At the end we will have a discussion with you, Brother
16 Timothy, about where we go to from here. Let's get on. Mr Wimsett.

17 **QUESTIONING BY MR WIMSETT:** At this stage, I'm going to step in and ask some
18 questions, probably for the next 10 minutes or so, and then I'll move over to Madam Chair,
19 who may have some questions for you.

20 I want to ask you some questions about early 2007 when you were elected as the
21 Provincial.

22 A. Correct, yes.

23 Q. It was at that time that Peter Burke and Michelle Mulvihill stopped working directly with
24 the victims or survivors.

25 A. Correct.

26 Q. And elected with you at that time on to the leadership team were people that had been the
27 subject of allegations of abuse.

28 A. They had been the subject of allegations, yes, which following investigation proved to be
29 unsubstantiated.

30 Q. What about GRO-B? Was he elected at that time?

31 A. He was, yes. And he previously worked for another agency in the centre of Sydney who
32 cared for young people. An allegation was made against him by a female adult, which was
33 investigated by that agency and the investigation indicated that the allegations were not

1 substantiated. The matter was not taken by the person to the police. And in terms of
2 natural justice and presumption of innocence, the matter was finalised by that external
3 agency. So when he was elected, yes, that was the case, but it was an unsubstantiated
4 (unclear).

5 **Q.** So it wasn't a policy at that time to prevent those facing allegations from taking leadership
6 positions?

7 **A.** If the allegation had have been substantiated, he would not have been in a leadership
8 position.

9 **Q.** Did you accept that Dr Mulvihill was upset or angry at the leadership team that had been
10 elected?

11 **A.** I can – I hear that she was angry. I don't understand what her anger was about. Again,
12 I can only deal with facts. In fact in that case with GRO-B, the investigation was
13 undertaken by an external agency who was not working for the Brothers at the time. That
14 investigation was not substantiated, or allegation was not substantiated.

15 **Q.** Has he subsequently been convicted?

16 **A.** He has, absolutely. And when the allegation was made, he stood aside and underwent the
17 normal processes of a police investigation.

18 **Q.** But that process didn't apply when he was elected?

19 **A.** No, because there was no police involvement. There was an accusation, a civil accusation,
20 and to the best of my knowledge it was made to this agency. It was investigated by them
21 and it was proved – it was found to be unsubstantiated.

22 **Q.** So after Dr Mulvihill and Peter Burke ceased their work, was there quite a significant
23 change in terms of how victims or survivors were dealt with?

24 **A.** And I have spoken to this issue on a number of occasions today. And as I've stated very
25 clearly, the victims, even towards the end of Brother Peter and Dr Mulvihill's time, were
26 increasingly choosing the option of a civil pathway. Virtually all of the people who have
27 come forward in my time have chosen that option. We haven't changed our process;
28 I would suggest that the victims have elected to change the process.

29 **Q.** But did you step away from the pastoral process which Peter Burke had instigated?

30 **A.** We attempt to be as pastoral as possible within the limits of the civil litigation process,
31 which I had -- (overspeaking) --

32 **Q.** Can I ask you to look at document CTH0018285. This is a letter dated 30 August 2008
33 from parents regarding their son and were seeking to make contact with you, based on

1 previous representations by Peter Burke. Do you see that letter?

2 A. Yes, I can see it quite clearly, yes.

3 Q. They believed that Brother Burke may have been in ill health and no longer involved, so
4 they are writing to you for some sort of update.

5 A. Correct, yes.

6 Q. And then CTH0018292 is your reply, a letter from you dated 11 September 2008. You say,
7 "You are correct in what you say, that Brother Peter Burke is no longer involved in these
8 matters"?

9 A. Correct.

10 Q. And you say that this is now going to be dealt with by the Professional Standards Office in
11 Sydney and not by you?

12 A. That's correct. And the reason for that is that following Dr Mulvihill's resignation and
13 Brother Peter's ill health, the process was left in a state of limbo. I don't understand why
14 there was not a period of handover or of – I'm trying to think of the word here – a period of
15 handover or a period of, a four-week period where we could work towards what was going
16 to take the place of Dr Mulvihill, who was going to take the place or what process when
17 Dr Mulvihill retired. She retired instantly on the date, I'm sure you know the date, and
18 I was struggling to try and work out how we are going to keep this process alive. In
19 Sydney, the Professional Standards Office was a service offered by the church to handle the
20 issue of complaints from people who had been abused.

21 Q. So The Order went from a very hands-on approach of Peter Burke being directly available
22 to victims, to essentially outsourcing it to Sydney, to the greater organisation in Sydney?

23 A. Yes, that's correct. And as I reiterate, I don't believe it's best practice not to have a process
24 of transition, not to have a handover model and not to be provided even with a list of active
25 cases. That's the limbo I found myself in.

26 Q. I will come to the list of cases that you had. And multiple people remained on your
27 committee that dealt with complaints, didn't they?

28 A. They would have, yes.

29 Q. You had Howard Harrison, for example?

30 A. Correct.

31 Q. Who worked with Peter Burke and then with you?

32 A. Correct.

33 Q. Zita Antonios, before and after?

1 A. Correct, a Human Rights Commissioner.

2 Q. And you had a person whose name was Jennifer Threlfo, who was a provincial secretary,
3 who also had documents and records?

4 A. She took the minutes, I understand. She certainly took the minutes in my time.

5 Q. And you had lawyers in Christchurch who provided you with the list of all ongoing
6 complaints?

7 A. I'm not aware of that list.

8 Q. CTH0015940, letter dated 13 August 2007 from Saunders Robinson lawyers, attention
9 Brother Timothy Graham:

10 "We enclose a schedule of ongoing complaints compiled from the various files we
11 hold and documents provided to us by the Order."

12 Attached to that letter is a list of extremely itemised complaints, at the end of the
13 letter. We don't need to go in closer. But what that includes is the name of the victim, the
14 name of the perpetrator, the alleged conduct, settlements that might have been suggested or
15 made previously, being given to you as a form of handover document from The Order's
16 solicitors.

17 A. Yes, that's what it states.

18 Q. So you had people available to you on the committee who had institutional knowledge and
19 you were provided with information with this about victims.

20 A. That's what the documents appear to say, yes.

21 Q. Did you in fact hand over or outsource this victim engagement with the head professional
22 standards body of the church in Sydney or did you subsequently change your mind and
23 decide to keep it inhouse? What actually happened?

24 A. As I say, at that period we were in a state of flux. I sought assistance from the Professional
25 Standards Office in Sydney to help us through that period. And I can't give you the times
26 off the top of my head but ultimately we employed a professional standards case manager
27 to handle the cases going forward.

28 Q. So you told that victim's parents in Timaru that they should deal with the Professional
29 Standards Office in Sydney but in fact you didn't do that ultimately. Is that the evidence?

30 A. My advice to them was to get in contact with Michael Salmon, who was head of that, to
31 help expedite their matters, their concerns.

32 Q. Did you ultimately change your mind about that being the process?

33 A. As I say, we were in a state of flux. I needed a process that was going to help keep these

1 claims alive and going until we could work out what we were going to do after
2 Dr Mulvihill's resignation. And ultimately – and this would have been in consultation with
3 the Professional Standards Committee – it was seen as desirable best practice to engage a
4 professional standards case manager that could deal with The Order's claimants.

5 **Q.** If one looks at CTH0015978, a file note from HGH, that's Howard Gerard Harrison. Is that
6 right?

7 **A.** Correct, correct.

8 **Q.** He was a committee member for quite some time on your internal committee that dealt with
9 complaints.

10 **A.** Correct.

11 **Q.** He is making a file note here about a particular complaint that has been made relating to
12 New Zealand where he says:

13 "We are looking at getting rid of this for \$3,000 plus \$2,000 for costs."

14 It is fair to say that this one was never referred to the Professional Standards Office
15 in Sydney, was it?

16 **A.** I don't know that for a fact. All I know, there's a file note, I presume to me. And I think
17 Mr Harrison would say that the last sentence is probably very ill-advised and probably if he
18 was writing this note again he would not include it. And in 2009 the normal practice is to
19 present –and Mr Harrison would have been on that committee.

20 **Q.** And CTH0016441, this is a letter dated 18 October 2009 from your lawyers that you are
21 now using in Sydney, which is Mr Harrison's – sorry, to your lawyers, to Mr Harrison on
22 your committee.

23 **A.** Correct.

24 **Q.** And it is lawyers talking to each other, the St John of God lawyers dealing with lawyers for
25 victims in New Zealand?

26 **A.** Correct.

27 **Q.** So were you referring complaints to the Professional Standards Office in Sydney, like you
28 told that victim's parents, or were you dealing with them yourself, as seems to be the case
29 by this document and the previous one and others I could show you?

30 **A.** We would have been referring the cases to the Professional Standards Office, for whatever
31 period of time that occurred. What legal correspondence goes on between two lawyers is a
32 process that supplements that. I mean, the Professional Standards Office was not engaged
33 in the actual civil dispute of cases, they were there to try and be pastorally present to the

1 victims and to help them to work through their complaints to their satisfaction. Two
2 lawyers writing to each other really doesn't have a lot to do with the Professional Standards
3 Office.

4 **Q.** What you said in your letter to the Timaru victim's parents was, "Don't deal with me, deal
5 directly with the Professional Standards Office in Sydney"?

6 **A.** Because as I stated in that interim period when we were trying to keep the process alive,
7 because of Dr Mulvihill's resignation and Brother Peter Burke's serious health issues, I had
8 to have a process that would keep things moving. And I think that my experience of the
9 Professional Standards Office in Sydney and of Mr Salmon's approach to these matters
10 I always found to be very compassionate and very just. In fact, he has participated with
11 Sonja Cooper in some mediation of some of her clients over the years.

12 **Q.** I want to ask you some questions, perhaps in the time I have available as a final topic, but if
13 one looks at WITN0627002, on the second page of that, this is an example of the kind of
14 document that Peter Burke was giving victims when he met with them with Dr Mulvihill,
15 where he would say that the St John of God Order would pay all associated costs in relation
16 to counselling for a particular victim. You are familiar with these types of documents that
17 he was, or he did, authorise with Dr Mulvihill?

18 **A.** Yes, I am.

19 **Q.** If one looks at WITN0831025, this is a letter from you dated 26 May 2008, saying to a
20 victim that you were putting a stop to The Order paying for his counselling costs.

21 **A.** Yes, I have that in front of me.

22 **Q.** If you go to the bottom of that letter, you offer to pay for a few more, "but The Order is not
23 in a position to accept any further invoices".

24 **A.** As you would appreciate, that letter is from 14 years ago or thereabouts. This matter would
25 have been presented at the Professional Standards Committee and their advice – I can't give
26 you the full details of what that would be – I'm not sure how many sessions this particular
27 individual had.

28 **Q.** You would agree that Peter Burke's offer came without any conditions or timeframe?

29 **A.** Yes. Yes.

30 **Q.** And you would agree that if it was a victim or survivor like the one we have just heard
31 from half an hour ago, that offer would be perfectly reasonable to pay counselling for the
32 rest of his life?

33 **A.** Yes. And, I don't know, but this – I would have a regret about this now.

1 **Q.** Because was your intention to withdraw much of the generosity that had been offered by
2 Peter Burke, assisted by Dr Mulvihill?

3 **A.** No, that was not my intention.

4 **Q.** Can we agree that you made no attempt to dissuade her from resigning?

5 **A.** Dr Mulvihill came into my office with a letter of resignation that stated quite clearly that
6 she believed it was time to move on and I respected that choice.

7 **Q.** I have been reminded about timing, so I will finish there. Thank you, Madam Chair.

8 **CHAIR:** Thank you very much, Mr Wimsett.

9 The Commissioners have some questions, which we hope to wind up by 6 o'clock if
10 we can. Thank you very much.

11 We will start. Commissioner Alofivae will ask you some questions, Brother
12 Timothy.

13 **COMMISSIONER ALOFIVAE:** Brother Timothy, I'm conscious it's been a long day for you, as
14 it has been for us here. Just a couple of questions, if I may.

15 **A.** I'm sorry, Commissioner, I can't see you.

16 **CHAIR:** A flick of a button should do it.

17 **COMMISSIONER ALOFIVAE:** Can you see me now?

18 **A.** Yes, I can.

19 **Q.** Brother Timothy, in your evidence this afternoon and throughout the day, you have
20 described a process where a complaint can be made by a Brother, often it goes first to the
21 Prior, who would then take it up to the Provincial. We have seen in the case of Marylands
22 that complaints were made about Brother McGrath to Brother Moloney but they weren't
23 necessarily then going up to the Provincial. We have seen other examples where, like in
24 the incidents where the Provincial was Brother Joseph in 1992, where things moved and
25 happened very quickly.

26 Knowing what you know today and upon reflection, and what you knew then, what
27 were some of the safeguards that you might have moved to in actual fact put in place to
28 ensure that this situation didn't arise again? Because you were still operating, say, in
29 schools in Australia.

30 **A.** During my time, you mean, Madam Commissioner?

31 **Q.** Yes.

32 **A.** From 2007 in my time as Provincial we haven't operated any services. Services were –

33 **Q.** Thank you. Still knowing what you know, was there any attempt by The Order to in actual

1 fact have a look at this situation seriously and actually look at your internal processes
2 around how you would actually want to improve in this particular respect?

3 A. It did. In terms of transparency and accountability, yes, we have documents that you have
4 in your bundle that, you know, have been developed by Catholic Religious Australia
5 around safeguarding, around professional behaviour, around conduct. There is a whole
6 series of documents that are the basis for our dealing with – as I say, we are not running any
7 services, we are basically dealing with the Brothers' religious life. I'm not sure whether that
8 answers your question. Please tell me if you would like some supplement. My brain is
9 getting a little bit tired at the moment.

10 Q. Yes, I fully appreciate that.

11 A. As yours is, I expect.

12 Q. It's been a long day for all of us.

13 A. Yes.

14 Q. What I want to understand is was this a learning tool? What happened at Marylands, you
15 have been in New Zealand and you understand that we have a particular context here in
16 terms of Aotearoa with Te Tiriti, we have Indigenous people.

17 A. Yes.

18 Q. You also have the same in Australia with your Aboriginal community.

19 A. Yes, correct.

20 Q. What you can you in actual fact point to that would then give some comfort to other
21 nations – in this case, it was only New Zealand, Australia and Papua New Guinea that you
22 were in?

23 A. Yes.

24 Q. Where you have taken those learnings on board. I can't quite – if you could offer some
25 comments here.

26 A. Yes. And I have a very strong response to that, Madam Commissioner. I look at the
27 service at Waipuna and I was always deeply struck by how sensitive and how respectful
28 they were to Māori culture, Māori values, Māori world view, and the same with Pacific
29 Islanders, because the service at Waipuna was dealing with significant numbers of Māori
30 peoples and Pacific Island peoples, usually young peoples, unmarried mothers, and I was
31 always struck at how they respected those values and those cultural beliefs and those
32 cultural practices. As an Australian, it really struck me about how a service like Waipuna
33 was really serious about that and something that we as Australians could learn.

1 **Q.** I was really asking, did it translate then into further policies where you actually specifically
2 referred to Indigenous populations?

3 **A.** And those services at the time were being run by trust boards. Waipuna had a trust board
4 who would have been very aware of that. They had a whole series of CEOs who were
5 deeply committed to that, staff, both Pākehā and Māori and Pacific Islanders who were
6 aware of that and were deeply committed to that process that occurs in Aotearoa and New
7 Zealand. As I say, I was always very impressed with that.

8 **Q.** I'm not sure we have seen that translate further into the redress process that then followed.
9 But we can leave that at that point.

10 Just one more question, if I can. It just goes back to some questions that
11 Ms Anderson had asked you around August 1992 here in Christchurch, where it was
12 Brother Joseph Smith who was the Provincial. And just for ease of reference, it's
13 paragraph 176 in your affidavit. I am just referring to paragraphs 176, 177 and 178.

14 **A.** Yes, I have those numbers there.

15 **Q.** What we can surmise from those three paragraphs is really that when a complaint was made
16 and it reached Brother Joseph Smith, who was the Provincial, he acted immediately. In
17 fact, I think if you look from the timeframe, 11 August to 15 August, which is a period of
18 four days, Brother McGrath was essentially removed from New Zealand.

19 **A.** Yes, that's what the paragraph says.

20 **Q.** Then in paragraph 177 you said:

21 "While it appears that an investigation was carried out into this allegation, the
22 Order does not hold any records of what this investigation involved."

23 At paragraph 178, you then refer to a deed of settlement being entered into for this
24 particular victim or survivor.

25 My question really is, I appreciate you can't answer or you can't talk on behalf of
26 Brother Smith or know what was in his head, but your own reflection, because it's a very
27 small turnaround period of only a matter of weeks, really, August to September, did you
28 think it was odd that there was no actual record of that particular investigation, yet you
29 were still able to achieve a deed of settlement, something like two or three weeks later?

30 **A.** Yes. Clearly I would expect there would be more documentation and I can't tell you what
31 or where or how. In terms of today's standards – and in those days, in 1992, the church in
32 Australia and New Zealand and around the world was struggling to try to work out the best
33 way to deal with these problems. There was no manual of policies or procedure. That all

1 evolved over time to the situation where we find ourselves, which is hopefully a place that
2 is going to minimise these dreadful events ever happening again. I can't tell you why there
3 is no documentation.

4 **Q.** A final point. Who would you have expected to undertake that investigation?

5 **A.** In 1992 or now?

6 **Q.** No, 1992.

7 **A.** 1992, who would I have expected?

8 **Q.** Yes.

9 **A.** Now – from my position now, I would expect an external investigator to be taken on board
10 to investigate the allegations and to provide a ruling on whether they were substantiated or
11 unsubstantiated. Clearly in this day and age you would be taking the matter to the police or
12 encouraging the victim to go to the police and make a complaint, and I think that's been our
13 practice from that period onward.

14 **Q.** Thank you, Brother Timothy. No further questions from me.

15 **A.** Thank you.

16 **CHAIR:** Now from me. I fear I may go a little over 6.00 but I will do my level best.

17 You just referred then to prevention in the future. So my first set of questions
18 relates to the current operations of the Brothers of The Order of St John. What contact does
19 The Order now have with disabled children in the current – right now?

20 **A.** None.

21 **Q.** None whatever?

22 **A.** No.

23 **Q.** So obviously none in New Zealand. Any in Australia?

24 **A.** None in Australia, no. Madam Chair, I think the reality of these matters is that the Brothers
25 are very old, they are basically in their late 70s and 80s, they are retired, they are not
26 engaged in active ministry so -- (overspeaking) --

27 **Q.** So there is no active ministry. In Papua New Guinea?

28 **A.** In Papua New Guinea the Brothers, they are all national Brothers, they deal with – they run
29 a small service in Papua New Guinea with the support of St John of God Health Care in
30 terms of policies and procedures and the actual programme development for adults with
31 long-term psychiatric problems who often are homeless. So they are not dealing with
32 children.

33 **Q.** They are not dealing with children?

1 A. No.

2 Q. Can I come on now to the past, which we inevitably have to cover. I want to ask you just
3 about the oversight or perhaps the lack of it.

4 In paragraph 32 of your brief of evidence you talk about canonical visitations.
5 You say there that the purpose "is to check in with the Brothers' spiritual observance as
6 individuals, and the spiritual 'health' of the community". So this is plainly a pastoral care of
7 the Brothers, these canonical visitations. Is that right?

8 A. More so an assessment of the health of the community, both relationally and spiritually.
9 And that too from the period of when these visitations would have occurred at Marylands,
10 before 1977, they have evolved over the years to where most of – all of the services from
11 The Order would have had lay boards, lay CEOs, lay key staff, and those canonical
12 visitations in latter years would have included those people and other external agencies,
13 whether it be government agencies that are involved in supporting those services, whether
14 it's state boards or psychological services –

15 Q. Okay. I don't want to cut you off, but the canonical visitations was to check on the
16 Brothers' spiritual health and the spiritual health of the community but it was not to look at
17 the way the community was performing the services that it was there to perform. What you
18 are saying is that was left to other agencies, government departments?

19 A. No, I'm saying that in the early days of Marylands the people who were running the
20 services were the Brothers. And I have looked at some of the canonical visitation reports,
21 and you would have those, and they have made comments about, you know, usually
22 favourable about the state of the infrastructure and the service being delivered to the
23 children. But in those early days of Marylands, the Brothers, particularly the Prior, was in
24 charge of the services. So there was no – they were intermeshed together. In latter years,
25 those were also taken on by lay people, boards and the structures we have now, which
26 makes them more apparent, more transparent and more accountable.

27 Q. It didn't stop the abuse, though, did it?

28 A. No. Yes, until the '80s.

29 Q. That's right. Clearly, when it was closed.

30 Just going on then to – and I raised this yesterday – we have heard so much
31 evidence about hopeful parents sending their children to Marylands to get a better life,
32 children with disabilities, children with neurodisabilities, whatever, looking for a good
33 education for these children with some special needs. And yet it didn't happen, did it?

1 These children did not get an education.

2 A. I found – I'm a teacher originally myself and I found that evidence very difficult to hear,
3 very upsetting. As I say, I didn't join The Order until 1997 – 1977 and I don't have any
4 direct knowledge or experience of what happened at Marylands or –

5 **Q.** But you accept, Brother Timothy, that the children did not get the education they deserved.

6 A. Yes.

7 **Q.** That's correct, isn't it?

8 A. Yes, in these early days, that would appear to be what the evidence is saying.

9 **Q.** And Dr Mulvihill said, and she recognised as a psychologist that some children came and
10 they had deficits of learning, of emotional development and the like, which could in proper
11 care have been rectified and built upon. But that didn't happen either, did it?

12 A. In this period we are talking about, that would appear that's the case. As I say, I can't talk
13 from direct personal experience.

14 **Q.** No, I understand that. But I think the evidence is pointing pretty clearly and it seems – to
15 me, it seems incontrovertible but I want to give you the opportunity to say if you differ
16 from that point of view.

17 A. I can only talk about the last few years of Marylands, which I believe was a different
18 institution. It saddens me, as an educator, that that was the case. Deeply saddens me.

19 **Q.** Saddened the survivors as well.

20 A. Absolutely.

21 **Q.** My colleague has just referred you to something about investigations. I just want to refer
22 you to paragraph 155 of your statement which tries to address the question of why was
23 Marylands School the subject of substantial abuse. And you quite candidly say you don't
24 have an adequate answer for. You say in paragraph 156:

25 "While as an Order we have sought to respond to all victims who have approached
26 us, we have not undertaken any formal or independent assessment of any kind as to why the
27 Marylands School was the centre of such abuse."

28 Can I ask you why that has not happened?

29 A. Again, I can't answer that. I can only surmise. I don't know.

30 **Q.** Does it not seem reasonable that an institution that is under such attack – and you yourself
31 have explained your concern about the way The Order is viewed by the media and
32 portrayed in the media – would not an independent number investigation to get to the
33 bottom of it, run by – instigated by yourself, would that not have been a positive forward

1 looking step to try to find out what had gone wrong, to avoid it in the future?

2 A. In terms of the broader society and church, yes, it would have. Hopefully this Royal
3 Commission is going to be one part of that process as well. Yes. I guess our focus has
4 been on trying to respond to those victims that are coming forward –

5 Q. And similarly –

6 A. - in the best way we can.

7 Q. Sorry, let me let you finish.

8 A. In the best way that we can, trying to be as just and compassionate as we can with what are
9 often very difficult cases. Again, what saddened me listening to the evidence, the evidence
10 of the victims, is how often that was repeated in other places, which would be just adding
11 terrible harm on terrible harm.

12 Q. On a similar note, you say in paragraph 232:

13 "Since the late 1990s, the Order has developed a general understanding of the
14 impacts of sexual abuse."

15 But again you say it has not "undertaken any formal assessment into the impacts
16 of this offending on survivors of Marylands School and the impact on their family/whānau,
17 hapū, iwi or community."

18 You say it is because you have been focusing on responding to complainants. My
19 question is: if you don't fully understand the impacts, if you have not done the formal
20 investigation into that, how can you properly respond to complainants?

21 A. That's a very good observation. And that's something we need to consider. We are open to,
22 you know, trying to participate in this process, so that this can never ever happen again.

23 Q. Yes. My final questions really relate to the overall picture that we have been learning about
24 and not just through this hearing but through all of the survivors we have heard in private,
25 and have approached us in other ways.

26 We have heard of boys being routinely abused by several different Brothers over the
27 decades. We have heard of Brothers engaged in mutual sexual relationships which were
28 known about, observed, witnessed by at least some of the children at Marylands. We have
29 heard of boys having seen that abuse and having been the victims of abuse, going on to
30 abuse each other. Truly horrifying evidence.

31 Can you accept that what happened at Marylands was the development of a culture
32 of sexualised abuse, in other words a systemic virus that invaded that whole community
33 through its lifetime?

1 A. The evidence very clearly supports that and it just – it just fills my heart with shame.

2 Q. Thank you for your evidence, Brother Timothy. As we say, it's been a long day for
3 everybody. And I appreciate longer for you because you have been in Sydney. We
4 appreciate the evidence that you have given us, the contribution you have made to the
5 documentation, which no doubt will still continue.

6 I have just got one last question. That is, should the inquiry require it, would you be
7 prepared and be open to making yourself available at a later stage to answer any questions
8 that may arise?

9 A. As I have made myself available, I would be prepared to do that.

10 Q. Thank you, we would be very grateful. As yet we don't have any firm plans but it would be
11 good, given the importance of your evidence as the Provincial, I think it is important that
12 we keep that door open. So I'm very grateful to you for doing that. Thank you.

13 That brings us to the close for the day, I think, Ms Anderson.

14 **MS ANDERSON:** Madam Chair, yes. The karakia and waiata and then we will all be pleased to
15 conclude the day formally. And just to remind people it is a 9.45 am start again tomorrow
16 morning.

17 **CHAIR:** Very well. Thank you, Ms Anderson, thank you to all counsel who have participated
18 today. Would you please rise for the karakia and waiata.

19 **[Karakia mutunga by Ngāti Whātua Ôrâkei]**

20 **Hearing adjourned at 6.10 pm to Wednesday, 16 February 2022 at 9.45 am**