Report of an Inquiry into an allegation of sexual abuse against Archbishop George Pell

INTRODUCTION

The National Committee for Professional Standards (N.C.P.S.) is a body set up by the Australian Catholic Bishops' Conference to receive inter alia, complaints of sexual abuse by Catholic priests. I have been appointed as Commissioner by Archbishop Phillip Wilson and Brother Michael Hill (Chairpersons of N.C.P.S. - "the appointors") to inquire into an allegation by "C" ("the complainant") that at Phillip Island, in 1961, he was on several occasions sexually abused by George Pell, now the Catholic Archbishop of Sydney ("the respondent").

It is as well to set out part of para 2 of the Terms of Reference which requires me to "enquire into and report upon the Complaint in accordance with the following Terms of Reference:

(a) The Commissioner shall make such enquiries and hold such hearings as he considers are necessary and appropriate in order for him to be satisfied as to whether or not the complaint has been established".

The Terms of Reference further provided for Counsel to be entitled to appear for each of the complainant and the respondent, and for Counsel to assist me.

In the event a hearing was conducted on 30 September, 1, 2, 3 and 4 October 2002. The process adopted was similar to that of a Royal Commission or statutory Board of Inquiry.

The evidence of the complainant and the respondent was led by their own Counsel, but all other witnesses were led by Counsel assisting. Nearly all witnesses were cross-examined. A transcript of the evidence was taken.

Mr. Sher Q.C., who appeared with Mr. D. Allen for the respondent, submitted that, pursuant to the power granted by S.110 of the Evidence Act 1958, I should administer the oath to all witnesses. Counsel assisting, Mr. J. Gleeson, and Mr. M. Tovey Q.C., with him, Mr. H. Mason for the complainant, agreed, and, accordingly all witnesses were sworn.

The Terms of Reference provided for a hearing in camera; I am required to maintain confidentiality of "information obtained during the hearing.....". (except for the purposes of this report); the complainant and the respondent (and impliedly their solicitors and other advisers) are required to maintain similar confidentiality; the appointors are given a wide discretion as to the publication of this report; the complainant and respondent are permitted legal representation, and may give evidence and call witnesses; and finally, a copy of this report shall be given to the complainant and the respondent, who "shall not disclose the contents of that report to anyone save the professional advisers.....". By implication, the latter are also required to maintain that confidentiality.

Early in the hearing it became apparent that there was considerable doubt whether the alleged molestation of the complainant took place at a camp in 1961 or 1962. As will be seen, the complainant, who stated his belief that he went to only one camp (and that belief was much in issue) fixed the date by reason of the fact that a fire occurred nearby during the camp in question, and enquiries of the Country Fire Authority ("C.F.A.") showed that they had attended a fire in the vicinity on 13th January 1961 (during the 1961 camp); accordingly, the complainant fixed that as the date of the relevant camp. However, extraordinarily enough, there was also a fire nearby at the camp of 1962; this information was gleaned from Christus Rex, the monthly newsletter of Braybrook parish; included in the article is the information that both the complainant and the respondent were at that camp. To ensure that the merits of the complaint could be properly investigated, I sought, and in due course obtained, an amendment to the Terms of Reference so that after the expression "in 1961" was added "or 1962"

BACKGROUND OF THE COMPLAINT

The complainant was born on *** 1949. His second primary school was Christ the King in Braybrook. His mother was a strict and devout Catholic and was keen for the complainant to follow that path. He became an altar boy at the church.

At that time an agency of the Catholic Church conducted a holiday camp during the summer at Phillip Island. In January 1961 and 1962, altar boys from the Braybrook church attended, probably 42 of them in 1961, and somewhat more in 1962. The camps were supervised by Father Donovan, assisted in 1961 by 4 seminarians from Corpus Christi College, Werribee, and about 6 in 1962. The respondent was present on each occasion, although probably not for the whole of the week in 1961. There was a bunkhouse in which some of the younger boys and some seminarians slept, the remainder sleeping in army style tents, which are depicted in photographs. The only evidence as to the height of the tent is the estimate of the respondent that it was 5'6" to 6' (he is about 6"3" in height, and presumably would have been close to that height in 1961, when he was aged 19); the photographs suggest to me that the tent at its highest point might have been a little more than his estimate.

The complainant went to Grade 6 at the primary school, and then went to *** Technical School, he thinks in 1961. His recollection was that he attended the relevant camp "between schools", that is, in 1961. However, as has been stated, it is clear he was at the 1962 camp. He may well have been at both camps, although I should say now that I am satisfied that he was not the boy depicted upon the shoulders of the respondent in the photograph taken at the end of the 1962 camp.

THE COMPLAINT

The details of the complaint are as follows: at the camp, during some form of activity in a tent (such as pillow fighting or wrestling), the respondent, while facing the complainant, put his hand down the inside of the complainant's pants and got "a good handful" of his penis and testicles. There were other altar boys in the tent at the time, who were participating in the other playful activities. The complainant was shocked, since before that incident he had regarded the respondent as "a fun person, a gentle person, a kind person, he was a terrific bloke". On each of the few occasions this occurred, the complainant pulled the respondent's hand away. On two occasions, in a tent, the respondent took the complainant's hand, and guided it down the front of and inside the

respondent's pants; the complainant pulled his hand away without having touched the respondent's genitals. In another incident, which "is not as clear as the other episodes", they were in the water, jumping the waves, when from one side the respondent put his hand down and inside the complainant's bathers and touched his genitals.

On another occasion, during a walk away from the camp at night, they were walking in Indian file when the respondent grabbed the complainant from behind and put his hand down and inside of the complainant's pants.

The complainant said that on each occasion in the tent, other boys were present, but the respondent so positioned himself that they may well have not been in a position to have seen it.

I should interpolate that other evidence showed that it would occasion no surprise that a seminarian would be in a tent occupied by the boys - it could be in fun, or perhaps to restore order or otherwise settle the boys down.

The complainant agreed that he then made no complaint to any person other than his friend "A" (who died in 1985).

The complainant said that on one occasion he saw the respondent similarly molest "A", who turned away and told the respondent to "fuck off".

The complainant said that apart from the physical opposition, he did not remonstrate with the respondent; indeed he said that the only conversation with the respondent that he could actually recall was of the respondent telling him (and, I gather, possibly others) that he had played football in the ruck with Richmond reserves. The respondent denied having said that; he had indeed signed to play with Richmond in his final school year, but had not in fact trained or played with Richmond. V.F.L. (now A.F.L.) records have no trace of the respondent having so played.

The complainant (and other witnesses, including adults) said that among the boys the respondent was known as "big George", understandably enough. The respondent was not so addressed to his face, and said he was unaware of the nickname.

The respondent was born on 8 June 1941; he ended schooling as captain of St. Patrick's College in 1959; he studied for the priesthood and was ordained in 1966; after various positions, he was in 1987, at the age of about 46, appointed Auxiliary Bishop of the Melbourne Archdiocese; among other posts he was a member of the Vatican Congregation for the Doctrine of the Faith from 1990 to 2000; in 1996 he was appointed Archbishop of Melbourne; on 26 March 2001 his appointment as Archbishop of Sydney was announced and he was installed as Archbishop on 10 May 2001 (these latter dates were to assume some importance at the hearing). On 20 August 2002 he took leave as Archbishop pending the outcome of this inquiry.

The respondent's general credibility was not challenged. Powerful evidence of good character was given by the present Archbishop of Melbourne, Archbishop Hart, (who has known and been friendly with the respondent for many years) and by other witnesses, none of whom believe the respondent would ever have been capable of committing the acts the subject of the present complaint (some of this evidence would not, of course, have been admissible in a criminal trial, but it is evidence to which I should give some weight. As will be seen, the question whether the rules applying in a criminal trial should have been applied was the subject of submissions by Counsel.)

The respondent wholly denied every allegation of having touched the complainant or "A" - the incidents never occurred. Of the numerous people who were at the camp either as adult helpers (including seminarians) or as altar servers, and who have made signed statements and/or who have given evidence, none was aware of any inappropriate behaviour by the respondent or any other adult.

The complainant said that he used to discuss the molestation with "A"; that one day "A" ran away from the camp; the complainant found him, and "A" said he could not stand any further molestation; "A" had a box of matches, and said he was "going to burn the place down"; they lit a fire which became a grass fire out of control but which was brought under control by the C.F.A. At the hearing it was proven that in fact the C.F.A. extinguished a grass fire in that area on 13th January 1961.

The complainant said that in about 1975 he had told his then wife (from whom he has been separated for some years) and much later his children, of the molestation; and that one night in about May 2000 he was watching television, when news came on concerning the respondent; that he immediately recognised his molester - "the same face and the same loping walk"; he was shocked - he did not think it right that someone who had acted as the respondent had should lead the Church; and accordingly, he complained to Broken Rites, a private organisation, said by Archbishop Hart to provide tenacious and powerful advocacy for those claiming to be victims of sexual abuse by priests. He was first interviewed by "B", of that organisation, when he identified the respondent as his molester. As will be seen, there arose a real issue as to the dates upon which the respondent was first interviewed by "B".

The complainant said that the latter encouraged him to press a claim, through the police, and to claim compensation. The complainant did not want to go to the police (for reasons which will later become apparent) and was not looking for compensation, so he let it lie.

In about 2000, after attending with a friend, "D", a meeting of Alcoholics Anonymous, at which sexual abuse was discussed, he told "D" of the molestation, and was advised by him to consult his parish priest.

In May this year he decided to make a formal complaint; he discussed it with his friend, Father "F", the parish priest at *** and he thereafter was referred to the N.C.P.S., where he was interviewed by "G", the executive director. I shall need to return to this interview; it suffices now to say that he then made a complaint substantially similar to that given in evidence, although, it should be noted, he spoke in general terms of more incidents than he referred to in evidence.

THE NATURE OF THE PROCEEDINGS

I have said that the proceedings were conducted in a manner similar to that of a Royal Commission or Board of Inquiry. On the first day of the hearing, during the complainant's evidence, the complainant was asked by junior Counsel whether he had later spoken with his wife about the molestation. Mr. Sher, intervened, stating that "you are not bound by the rules of evidence, this is not a Court of law," but then submitted that the evidence should be admitted subject to objection, to be later debated. Similar objections were made in respect of the evidence of later complaints, to "D", "B" and "G", and to the evidence of Mr. "H", an altar boy at the camp.

In his final address, although not specifically abandoning his earlier concession that the inquiry was "not bound by the rules of evidence," Mr. Sher submitted that the question of admissibility should be considered as if the inquiry was a proceeding "analogous to a criminal trial". He underlined the obvious fact that "an adverse finding would be nothing short of disastrous for (the respondent) and the Church".

He first referred to authority for the proposition that in an inquiry such as this, where an adverse finding would have such grave consequence for the respondent, the rules of natural justice should apply. I accept that - indeed, it was common ground, and it is accordingly unnecessary to refer to those authorities. The Terms of Reference, in themselves, go most of the way in ensuring that those rules are applied. In the event, no controversial or damaging evidence was admitted which was not given by a witness who attended, and was cross examined.

Mr. Sher, in support of the proposition that the inquiry should be regarded as analogous to a criminal trial, referred to the judgement of Gobbo J. in Anderson v. Blashki [1993] 2 V.R. 89, where an application was made to set aside a coroner's finding that a nurse had assaulted a patient, and thereby contributed to her death.

Gobbo J. in referring to the standard of proof, referred to "the classic statement" of Dixon J. in Briginshaw v. Briginshaw [1938] 60 CLR 336, at pp 362-3 (part of which is set out later in this report), and later, in the passage now relied upon, came to consider a separate submission "that the coroner must have drawn an adverse inference from the plaintiff's failure to give evidence.....". In discussing the inferences that might legitimately be drawn from such failure, his Honour said (at p.97):

> "Given the nature of the allegations, it would be proper to apply by analogy the rules in a criminal proceeding and I do not propose in any event to draw an adverse inference against the plaintiff in the circumstances of this case from her failure to give evidence".

I do not see this dictum as supporting the proposition that the whole of this proceeding, whether or not it should be regarded as analogous to a criminal proceeding, should be governed, so far as admissibility of evidence is concerned, by the strict rules of a criminal trial. As will be seen, Mr. Sher submitted that I should not admit the evidence of witnesses speaking of the complainant's complaint, but in doing so relied upon authorities which in fact dealt with the strict rules of a criminal trial.

In my opinion, I cannot at the same time be "not bound by the rules of evidence," and then feel bound to apply them in a particular aspect. Rather, as I think, I should consider whether the evidence is the best reasonably available, the fairness of giving it consideration, and the weight to be attached to it.

THE STANDARD OF PROOF

This is an inquiry, not an adversarial process in which the complainant bears the onus of proof. However, my task, as set out in the Terms of Reference, is to decide "whether or not the complaint has been established". Clearly enough I could not be so satisfied unless I were satisfied that the version of the complainant is truthful and substantially accurate. I do not believe that there is here any room for the possibility of mistake, whether by misinterpretation of innocently intended acts by the respondent, or otherwise.

No counsel has suggested that the acts complained of might have been accidental, or playful and lacking any sexual context. Although the respondent was only a young man at the time (19 years) it could not be said that for him so to act with an 11 year old boy was innocent play, and neither the respondent nor his counsel suggested it could be so categorised.

There is a wealth of authority upon the standard of proof required in civil and criminal proceedings.

I must bear in mind that the acts attributed to the respondent amounted to the crime of indecent assault, which, at that time, was punishable by imprisonment for a term of up to 10 years (Crimes Act 1958, s.68 (3)); s.68 (4) renders irrelevant the question of consent of a male under the age of 16 years.

Although this is not a criminal proceeding requiring proof beyond reasonable doubt, I must bear in mind that serious allegations are involved, and that an adverse finding would in all probability have grave, indeed devastating, consequences for the respondent.

In Briginshaw (supra) the High Court considered a divorce case, where, under s.68 of the Marriage Act 1928 (Vict), the Court was required to consider whether it was "satisfied that the case of the petitioner is established" (compare the present term of reference quoted above). In that case Latham C.J. said at p.343:

> "The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness or importance of the issue".

> In an often quoted passage at p.362 Dixon J. said:
> "The seriousness of an allegation made,..... and the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proof, indefinite testimony, or indirect inferences".

> His Honour had said, at p.361,
> "When the law requires proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found".

> McTiernan J. at p.373 seemed to draw no distinction between the standard of proof required in a case of alleged adultery and a criminal trial when he said:
> "It is impossible to say that (the judge) ought to have felt that degree of satisfaction which the law requires the tribunal to have before finding a spouse guilty of adultery while he was oppressed with a reasonable doubt".

In Helton v. Allen [1940] 63 CLR 691 Dixon, Evatt and McTiernan J.J., at p.712 approved of the above quoted passage of the judgment of Dixon J. in Briginshaw and went on to say:

> ".....reasonable satisfaction is not independent of the nature of the fact to be proved so that the more grave the allegation the greater should be the strictness of the proof demanded".

In the same judgment, at p.711, their Honours said:
".....the degree of proof required in a civil trial depends upon the magnitude of the thing that is in issue and when a crime is in issue you will not lightly find that a crime has been committed and according as the crime is grave you shall require a greater strictness of proof".

In Rejfek v. McCleary [1965] 112 CLR 517 the High Court said, at p.521,

"..... proof of fraud should be clear and cogent such as to induce, on the balance of probabilities, an actual persuasion of the mind as to the existence of the fraud....

The clarity of the proof required, where so serious a matter of fraud is to be found, is an acknowledgement that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved...."

The Court went on to say that the mind "has only to be reasonably satisfied", and there is not a need for the "moral certainty" required for a criminal conviction.

In my opinion, the allegations here under consideration are far more grave than an allegation of fraud.

Those references lead me to the conclusion that if, at the end of my consideration of the evidence, of the credibility of the witnesses, and of the submissions of counsel, I entertain any real doubt as to the accuracy of the complainant's version, I would not have achieved the degree of satisfaction required to hold that the complaint has been established.

EVIDENCE PUT IN SUPPORT OF COMPLAINT

The evidence relied upon as giving some support for the complainant's version is as follows:

1. & 2. The evidence of the fire and of Mr. "H".

3. The evidence of complaint to Mrs. "C", Mr. "D", Broken Rites and "G" (as rebutting suggestions of recent invention, and of motivation in that the complainant might have been seeking compensation, and as evidence of consistency).

1. & 2. The evidence of the fire: As has been stated the complainant fixed the date of the relevant camp by the information from the C.F.A. that they attended a nearby fire on 13 January 1961.

"H", a patently honest witness, said that he left Christ the King school at the end of 1960, and the 1961 camp was the last he attended. "A", the complainant and the respondent were among those present. He remembers various frolicking activities, and a night walk where the boys were spread out.

However, no-one at the inquiry suggested that the references in the Christus Rex parish newsletter of February 1962 were other than accurate, and the lengthy note of the 1962 camp included "H"'s name among the altar boys present. It follows that his honest recollection as to the date of his last camp is in all probability mistaken, a fact which underlines the great difficulty of fact finding in relation to incidents occurring 40 years ago.

He said he had a clear recollection of "A", who, although about seven months younger, "always tended to look after me a bit and he came up to me and he said to me one day, "just watch out for Big George", and thereafter "I didn't get too close to him".

He did not ask what "A" meant because "it was the way he said it. I assumed".

The respondent's evidence that the boys or at least some of them - were "worldly wise" is relevant to this aspect, and may well explain why "H" did not see the need to ask "A" about the reason for the warning.

As to the weight, if any, which should be given to the evidence of "A"'s warning it should be said that the respondent was a very popular figure with the boys: there was no contradiction of, indeed there was support for, the complainant's evidence that the respondent was kind and gentle. Thus, he was no disciplinarian, nor given to violence. "A", accordingly, had no reason to think that "H" was at risk of a belting or some other unpleasant punishment.

In his signed witness statement which he confirmed, Mr. "H" said "he presumed there was a sexual context of the warning".

Mr. Sher submitted that I should take no notice of this evidence, which, he said, would not have been admitted in a criminal trial. The latter part of the evidence would not have been admitted in a criminal trial, and even in this different proceeding it must, I believe, be put aside. Evidence of what an 11 year old boy "assumed" about a possibly misunderstood "warning" is no sound basis for adverse findings in an inquiry of this nature.

I have had more difficulty in deciding whether any weight should be given for the fact of the "warning". Not without hesitation, I have decided that, given the very serious nature of this proceeding, and the possible ambiguity of the warning, I should put it aside.

As to the weight which might be given to Mr. "H"'s evidence that "A" admitted lighting the fire, it goes only to support the complainant's version that "A" was upset about the respondent's behaviour towards him. This inquiry is not, of course, investigating the question whether "A" was molested, and the only evidence of that came from the complainant. There is, in my opinion, too tenuous a connection for that evidence to go into the scales against the respondent.

"H", when asked how the fire started said:

"Well, "A" <u>probably</u> told me he lit it actually" (underlining mine);
and when asked whether he had heard that "A" "had gone missing" he replied,
"Now that you say it, I can, but I hadn't given it much thought beforehand."

I could give little weight to the first quoted passage; the second, must, I think, be discarded for although I am not bound to reject evidence merely because it is hearsay, the evidence is only that he "heard" of "A"'s absence, and we do not know how far removed was that hearsay.

There is, accordingly, nothing which can be found in "H"'s evidence upon which I can safely rely as supporting the complainant's version.

DELAY IN COMPLAINING

As has been stated, the complainant first complained to anybody in the Church when he spoke to Father "F"; the latter arranged the meeting with "G", which took place on 11 June 2002. Accordingly the first formal complaint was made more than 40 years after the event, and it follows that the respondent thereafter first heard of it.

Common sense and high legal authority tell us of the unfairness which may arise from long delay, because of the difficulty in defending such a stale complaint.

In R v. BWT (2002) 54 NSWLR 241, to which Mr. Sher referred me, the Court of Criminal Appeal re-affirmed the requirement that where in a criminal trial a feature of which is substantial delay a Longman [(1989) 168 C.L.R. 79] direction must be given. The judgment of Wood C.J. at C.L. brings together a number of High Court authorities, and at pp.214-247 points to the various forensic difficulties which arise when there has been long delay. I do not intend to set out the passages referred to; it is sufficient to quote from Longman, where at p.91 Brennan, Dawson, and Toohey J.J., say:

> "Had the allegations been made soon after the alleged event, it would have been possible to explore in detail the alleged circumstances attendant upon its occurrence, and perhaps to adduce evidence throwing doubt upon the complainant's story or confirming the applicant's denial. After more than 20 years that opportunity has gone and the applicant's recollection of them could not be adequately tested".

As Mr. Gleeson pointed out, these cases do not say that no conviction can stand where there has been long delay - they do no more than make it clear that a trial judge must give the jury an adequate warning where delay might cause forensic difficulty.

Of course, a victim's case might be sorely prejudiced by long delay - in this case, if the complainant's account is accurate, "A" would have been a crucial witness (as stated earlier, he died in 1985) but, if the respondent's account is accurate, "A" might have put an end to the complaint.

Most cases of sexual abuse concern activity between the abuser and the victim in the presence of no other person. In such a case, there may not be a host of surrounding circumstances which can be subjected to forensic scrutiny. But this not such a case: these alleged incidents, without exception, occurred in the presence of other boys. The complainant cannot remember who they were; obviously enough, if the incident occurred in a tent, the account of the other occupants might be crucial, as being able to point to the likelihood of the event having occurred in their presence.

Accordingly I accept as correct (as do the other counsel in this inquiry) the submission of Mr. Sher that I should give myself a warning along the lines of what would be required in a criminal trial. To say that is not to change my view that the strict rules of a criminal trial do not apply, but to acknowledge that common fairness demands that to keep such a warning in mind.

THE EVIDENCE OF COMPLAINT

The first complaint was said to have been made to Mrs. "C", the wife of the complainant, in about 1975, that is, some 14 years after the incident. She separated from the complainant about 10 years ago; they see each other occasionally (she has lived in *** for some time) in relation principally to visits by or matters concerning their off-spring.

Mrs. "C" said that in about 1975 or 1976 the complainant told her that when he was an altar boy at a camp at Phillip Island he had been interfered with by a "big bastard called George". He said that "A" was involved in it".

She had a clear recollection of the conversation; she was shocked by it; she could not recall how the subject first arose, or the conversation immediately preceding the statement. After that, the matter was "swept under the carpet" and was not further discussed until much more recent times.

Although Mr. Sher offered a number of criticisms of her evidence as to interest and recollection ("how could she remember a common name like "George" after all those years"), as I indicated during the final address of Mr. Sher, I regarded her as impressive witness, who had a clear recollection of a startling statement.

As stated, Mr. Sher objected to the evidence; the principal thrust of the submission was that upon the authorities, evidence of a complaint could not be admitted unless it was made at the first opportunity - R. v. Freeman [1980] V.R.I.

It is perhaps a moot point whether the evidence would have been admissible upon a criminal trial to rebut a suggestion of recent invention. It was the complainant's version that, although he always knew his molester as "big George", it was not until he saw the respondent on television in the year 2000 that he identified the respondent as "big George". (There can be no doubt that "big George" was the respondent).

At pp.149-150 of the transcript, Mr. Sher was addressing remarks to me relating to the issue of when the complainant first identified the respondent as "big George", and, at p.150 referred to the date "when he actually did identify Dr. Pell for the first time, which is recently we say".

I must confess that when I heard that remark I thought it was a suggestion of recent invention which even on a criminal trial would have rendered the evidence admissible, but upon a reading of the transcript, I think Mr. Sher would have had an answer to that - he was not suggesting recent invention of an allegation of molesting by "big George", but a more recent invention of the complainant's recognition of the respondent as that man.

Be that as it may, it is clear that suggestions were made that the recent claim is motivated by a desire for compensation. The evidence of Mrs. "C" would have been admissible to rebut that. In 1975 there was no compensation scheme such as is now in place (the establishment of an Independent Commission and an independent chairperson of a compensation panel were the initiatives of the respondent in 1996); the evidence of other witnesses support the proposition that compensation was first mentioned when the complainant first spoke to "B". There really could be no valid suggestion of any evidence pointing to a desire for compensation in 1975.

In any event, whether or not this evidence would have been admitted in court, common sense, dictates that in relation to complaints of wrongful behaviour, whether criminal or tortious, the circumstances in which and the time at which the complaint is made, as well as the contents of it, may be helpful. For that reason alone, I would regard the evidence as part of the material before me to examine.

As to motive, it should be noted that extensive enquiries made on behalf of the respondent have unearthed no evidence of any other matter or incident which might have aroused spite or malice on the part of the complainant towards either the respondent or the Church. On the other hand, the respondent has had a strong motive to push memory (if there ever was memory) of these fleeting incidents by a 19 year old into the recesses of the mind, from which there could be no recall.

CREDIBILITY OF THE COMPLAINANT

The complainant's credibility was subjected to a forceful attack. By the age of about 20 years, the complainant had an alcohol problem; at some later stage, he had become an alcoholic; in 1984 his wife took him to an Alcoholics Anonymous meeting, but he had not been drinking then for about 18 months. He has attended such meetings intermittently ever since; it appears that he has not had any problem with alcohol since 1979.

The complainant has been before the court on many occasions, resulting in 39 convictions from about 20 court appearances. Most of the convictions involved drink-driving or assaults, between 1969 (when he was aged 20 years) and 1975. In 1982 there were two convictions for S.P. betting, and another similar offence in 1986. In 1984 he was twice fined for contempt of and failure to answer questions of the *** Commission. In 1995 the complainant pleaded guilty in the County Court to three counts of trafficking in amphetamines, and was sentenced to imprisonment for 3 years and 9 months, with a non-parole term of 2 years, which he served. The sentencing judge, in referring to mitigating factors, appeared to accept evidence that the complainant had overcome his addiction to alcohol, had been a good father, and had been "willing in the past to help those less fortunate than yourself out of difficulties by a generous donation of your time and energies".

The *** report, part of which was tendered in evidence, referred to the deceptive practices engaged in by the complainant in conducting various bank accounts (knowingly aided, so it appears, by some bank officers) with the aim of concealing the profits of his illegal bookmaking activities. The complainant had also evaded taxation.

That is a record notable more for alcohol and violence than dishonesty. However, there is sufficient evidence of dishonesty to demonstrate that the complainant's evidence must be scrutinised with special care. It would be difficult to be satisfied about his version against that of the respondent unless some support were to be found in the evidence of other witnesses, or in circumstantial evidence.

The attack mounted by Mr. Sher in this regard was put under ten headings, two of which I intend to discuss; they were numbered 7 and 8 - when did the complainant first recognise the respondent as "big George"?; and the significance of his statement to "B" and to "G" that at the time of recognition, the respondent was officiating at a public function while wearing a purple robe.

When the complainant first spoke to "G" on 11 June 2002 she made notes of the interview and later typed a draft from her notes. The first draft included this sentence:

> "One night I was sitting at the television and it was announced that Archbishop George Pell had been transferred to Sydney and I looked up and was confronted by big George".

(It will be recalled that the respondent was appointed to that post on 26 March 2001 and was installed on 10 May 2001. The complainant maintained throughout that the recognition came in the year 2000).

"G" again met the complainant on 16 or 17 June 2002, when they discussed the typed draft; the complainant suggested alterations, which "G" wrote onto the draft in her handwriting. The reference to Sydney was deleted but he added that when he recognised the respondent, the latter was wearing a "purple long robe".

In cross examination of the complainant the following exchange occurred (p.34-35):

Q: "Did you ever say those words or words to that effect?

A: No, I thought "G" put in a few things in that document that didn't agree with me..."

and a moment later he added

> ""G" was leading me when I was talking to her. She was, you know, she was sort of, leading me rather than me doing the talking".

In evidence "G" cannot recall having been told about Sydney but said "I presume that there was something like that in my notes, otherwise I wouldn't have typed it..."

In cross-examination "G" said she was concentrating more on the details of the abuse and would not have given "major attention" to the matter now under discussion.

"G" was a witness of truth; I think it unlikely that she led the complainant into the reference to Sydney, but it is possible that in the type of interchange they were having, there was a discussion about the Sydney appointment as being a help in fixing the time at which the complainant first recognised the respondent.

For reasons I shall state in a moment, I think it probable that the recognition occurred in 2000; that by the time of the second meeting with "G" the complainant knew that the reference to Sydney was wrong (which is why he corrected it) but he could not at this inquiry bring himself to admit the error. He thereby did some damage to his credibility.

The reason I am satisfied on the probabilities that the recognition occurred in 2000 is that I accept the evidence of Mrs. "C", and "D" as to their conversations with the complainant. Mr. Sher objected to their evidence but, even in a criminal trial, the evidence would be admissible as rebutting the recent invention suggested by Mr. Sher (at p.150).

Mrs. "C" said that in about July 2000 the complainant rang her expressing astonishment that he had just recognised his molester as "George Pell". She did not know who that was so she asked, and was told by the complainant that "he is an Archbishop".

She fixed the date, first, by believing it was more than two years ago and secondly, by the fact that she had then just started a new job, and that was in July 2000, a job about which she was "bit agitated". I have earlier said that I accept Mrs. "C" as an honest witness, and I believe that she is probably correct in fixing the date of the relevant conversation.

"D" has been a friend of the complainant for over 20 years; they met at an Alcoholics Anonymous meeting; they meet every few months, perhaps at a meeting, perhaps for dinner or coffee. In June or July 2000, after an A.A. meeting, they went to Williamstown cafe for coffee, where the complainant told him that at a camp years ago George Pell had molested him (he described the act complained of); "D" suggested the complainant should seek counselling from his parish priest.

"D" was able to fix the date of this conversation by the fact that someone else spoke at the A.A. meeting about sexual abuse with a "passion" that was unusual, and also by the fact that on that night a totally unrelated event occurred - another person went to hospital and "didn't come out alive". "D" was somewhat emotional about this aspect, which was a major event for him, and was reluctant to give details, which, of course, I lacked power to prise from him. I acknowledge that this made it difficult for Mr. Sher to test the accuracy of his recollection. However, I regard "D" as an honest witness and I think he is accurate in his fixing of the date of the conversation.

Mr. Sher, although objecting to the admission of the evidence of "B", in the end used it as a springboard for the attack on the complainant's credibility. "B", (who has a ***), a former ***, carries out research on church sexual abuse, and is involved with Broken Rites; he sometimes interviews people complaining of sexual abuse. He said that on 2 May 2000 the complainant telephoned Broken Rites and he, "B", answered the telephone. The complainant, then identifying himself only as "***" , spoke of abuse at an altar boys' camp roughly 40 years ago; that he first referred to the molester as "George" and later

in the conversation he said he had realised that it was George Pell. "B" said that he took "scrappy notes", and later that morning met the complainant for a cup of coffee. When he returned home, he wrote out a three page note of the conversation (Ex.AR2).

The date appearing at the top in red pen is 2 May 2000; the bulk of the writing is in black; "B" said this was his practice, and that side comments were in green. Although his credibility was forcefully challenged by Mr. Sher, I have no reason to disbelieve him on that aspect.

The part of his notes which gave rise to considerable debate at this inquiry was where it is said:

> "When George Pell <u>became</u> Archbishop I recognised his media photos as the George from the altar boys camp...." (my underlining).

It will be remembered that the respondent became Archbishop of Melbourne in 1996 and of Sydney in 2001. This encouraged Mr. Sher (who invited me not to accept any of this witness' evidence) to accept at least that part which quotes the complainant as having said "when George Pell became Archbishop...."; it followed, Mr. Sher submitted, that the complainant must have been referring to the Sydney appointment in 2001; that the complainant did not therefore recognise the respondent in 2000 as he claimed; that "B" must have inserted the date "2 May 2000" much later; and that this severely damaged the complainant's credit.

I have already said that I accept the evidence of Mrs. "C" and "D" that the complainant identified the respondent in 2000. He could not, accordingly, have been referring to the Sydney appointment; the Melbourne appointment was then some four years old. If the word in the notes had been "was" instead of "became", so that the note read: "When George Pell was Archbishop", there would have been no issue. The issue might have arisen out of a simple mistake in "B"'s notes, which, it will be recalled, were not taken contemporaneously with the interview. I remain far from persuaded that this issue damages the complainant's credit.

"B" was not a satisfactory witness in the sense that it was difficult to get him to concentrate on merely answering the question put to him. He seemed at times too much at pains to provide possible explanations for terminology appearing in his notes which were not the words of the complainant. But I cannot accept the proposition that the date was falsified.

The question whether, in the year 2000, the complainant might have seen on television the respondent wearing a purple robe arose at the hearing. At some formal functions the respondent wears a purple robe partially covered with a white surplice; one surplice is laced around the lower part, through which purple may be seen. The respondent, and Father "J", the priest then responsible for ensuring that the respondent was at all times appropriately dressed, gave evidence of the occasions upon which the respondent wore a purple robe; counsel for the respondent tendered evidence of searches of the tapes of television shows, evidence which was tendered to point to the unlikelihood of the complainant having seen the respondent on television, in a purple robe, at any relevant time. I do not intend to canvass this evidence; but I do not accept it as disproving that at some time around the middle of 2000, the complainant observed the respondent on television.

One difficulty in attacking the complainant's credit on the question of the purple robes is that he is colourblind, although that aspect was not investigated, and we heard no detail of the type or extent of his colourblindness. In any event, colourblind or not, he may be mistaken about the purple robe; the answer might be in the evidence given by the respondent himself - that in a news item, an old clip might be used; the answer might lie in the fact that after recognising the respondent the complainant took much more notice of media publicity about the respondent and may have seen him in a purple robe on other occasions, leading to confusion as to what he was wearing on the particular occasion. I cannot reach satisfaction either way as to whether the complainant is correct in this aspect; however, in my opinion, it matters little, for the reason that, as I have said, the evidence of Mrs. "C" and "D" fixes the date with reasonable accuracy.

The other criticisms of the complainant's credit made by Mr. Sher do not persuade me that he is a liar. They do no more than demonstrate that in dealing with the peripheral circumstances which (unlike the alleged molestation) had no particular significance at the time, the long delay produces somewhat unreliable recollection.

Except in relation to the interview with "G", I did not form a positively adverse view of him as a witness. The fact that I think his evidence concerning the "G" interview was unsatisfactory does not lead to a finding that the whole of his evidence must be rejected, but it does mean that where credit assumes the very great importance that it does in this case, I must view all his evidence with caution. As Mr. Sher correctly submitted, the incidents themselves were simple and short in their description, they do not easily admit of extensive testing, so that it is on peripheral matters that credibility must be tested.

I accept as correct the submission of Mr. Tovey that the complainant, when giving evidence of molesting, gave the impression that he was speaking honestly from an actual recollection.

However, the respondent, also, gave me the impression that he was speaking the truth.

CONCLUSION

In the end, and notwithstanding that impression of the complainant, bearing in mind the forensic difficulties of the defence occasioned by the very long delay, some valid criticism of the complainant's credibility, the lack of corroborative evidence and the sworn denial of the respondent, I find I am not "satisfied that the complaint has been established", to quote the words of the principal term of reference.

I so advise the appointors.

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Hon. A.J. Southwell Q.C