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2 MR SPINKS: But again, what you are suggesting there is  
3 that the congregation makes a decision to shun a victim.  
4 If a victim or a survivor makes that decision themselves,  
5 then they understand the implications. There is not  
6 a situation where someone has disassociated because they  
7 are a victim of child sexual abuse. But we just wanted to  
8 make that point again.

9  
10 THE CHAIR: I think the real issue is that, for some  
11 people, the circumstances will be such that they just can't  
12 stay, and they will find it necessary, for their own  
13 survival, effectively, to disassociate. But the  
14 consequence of that is they are shunned and lose all of  
15 their prior social structure. That's the issue. And you  
16 heard the evidence that some people gave about that issue.  
17 That's the problem.

18  
19 MR SPINKS: If I could, your Honour, with respect --

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21 THE CHAIR: That doesn't happen in other parts of society,  
22 generally.

23  
24 MR SPINKS: Again, your Honour, with respect - and  
25 I certainly don't want to be protesting the point --

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27 THE CHAIR: Say what you believe to be true.

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29 MR SPINKS: Thank you for that. The Commission has  
30 consistently - and we respect the right of the Commission  
31 to draw the conclusions, and Counsel Assisting. The  
32 Commission has consistently failed to acknowledge that  
33 individuals who want to leave the organisation of Jehovah's  
34 Witnesses, no longer be an active member, can do that, by  
35 conflating someone choosing to no longer be an active  
36 member and someone specifically disassociating themselves,  
37 saying, "I just don't agree with the organisation anymore,  
38 I don't want to be a part of it" - they are two totally  
39 separate things. Again, with respect, we just make the  
40 point.

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42 THE CHAIR: That was inherent in what I put to you. But  
43 the consequence of disassociating, as we understand it, is  
44 that that person will be shunned. That means they will  
45 lose contact with family, friends, and everyone else who  
46 remains inside the Jehovah's Witness organisation; is that  
47 right?

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2 MR SPINKS: Again, your Honour, the person can --  
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4 THE CHAIR: Your colleague is nodding; is that right or  
5 not?  
6  
7 MR SPINKS: Because you have said "disassociated",  
8 your Honour, but he or she can choose to be no longer an  
9 active member of the congregation.  
10  
11 THE CHAIR: I understand that, but if they are so unable  
12 to cope with what has happened and the way they have been  
13 treated inside the organisation that they disassociate,  
14 then they lose all of their previous social structure; is  
15 that right?  
16  
17 MR SPINKS: That could be the case, and we respect their  
18 right to make that decision.  
19  
20 THE CHAIR: It is a pretty cruel way of dealing with  
21 someone, isn't it, who has suffered sexual abuse?  
22  
23 MR SPINKS: I could only repeat what I have said,  
24 your Honour.  
25  
26 THE CHAIR: I know, but it is cruel, isn't it; to take  
27 away, by reason of the rules that you impose, all of their  
28 social structure, that's cruel?  
29  
30 MR O'BRIEN: Could I just interrupt, your Honour?  
31 I believe the difference between disfellowshipping and  
32 disassociation, the congregation takes the action in  
33 disfellowshipping somebody, who is then shunned. The  
34 person who disassociates themselves, they are taking the  
35 action. Now, for whatever reason - I agree - not even with  
36 regards to being a victim, others make the same decision -  
37 they are actually the taking the stand to shun the  
38 congregation from themselves, and they understand the  
39 implications of that. Now, it is - I agree, it puts them  
40 in a difficult situation, but it is a choice.  
41  
42 THE CHAIR: You see, someone who comes to you and says  
43 "I was sexually abused", but because there are no two  
44 witnesses you don't accept that, you don't make that  
45 finding, they are left in a very difficult position, aren't  
46 they?  
47

1 MR O'BRIEN: If they choose not to report it to the  
2 authorities, then --  
3  
4 THE CHAIR: For whatever reason. If the organisation  
5 doesn't acknowledge that they were abused, that imposes  
6 a great burden on them, doesn't it?  
7  
8 MR O'BRIEN: If I could again respectfully say,  
9 your Honour, we don't disbelieve a person who makes an  
10 accusation. That's why we investigate every accusation  
11 brought forward by the elders.  
12  
13 THE CHAIR: Yes. But if there are not two witnesses, you  
14 don't accept it, do you?  
15  
16 MR O'BRIEN: Because scripturally we're not able to.  
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18 THE CHAIR: I know. And that, you would understand, can  
19 be very, very distressing for someone who has come to you  
20 with that complaint, can't it?  
21  
22 MR O'BRIEN: Certainly. We acknowledge being a victim is  
23 very distressing, whatever consequences come, yes, we  
24 agree.  
25  
26 THE CHAIR: And that can lead to a chain of circumstances  
27 where that person feels unable to do other than  
28 disassociate from your organisation; correct?  
29  
30 MR SPINKS: Could I respectfully, your Honour, say we  
31 don't want to be defensive and we acknowledge that  
32 disassociation or disfellowshipping certainly have  
33 implications. An individual can choose to be inactive.  
34 Could I use very briefly a parallel? In my careful reading  
35 of the issue papers from the Commission - and some of it  
36 I don't understand; most of it I have. It has been very  
37 well put together in the summaries - one reference said  
38 that reporting is low across the community. One study -  
39 we're not suggesting the Commission validated it, but it  
40 was just referenced - in this country suggested that only  
41 10 per cent of child abuse allegations - and I believe it  
42 was in New South Wales, but I will be corrected on that -  
43 lead to a conviction, and only around half of those lead to  
44 a custodial sentence.  
45  
46 I mention that simply to say that if, on an occasion,  
47 a victim of child abuse has felt that, where Jehovah's

1 Witnesses have taken a Bible-based stand, my heart also  
2 goes out to the thousands of victims who have come forward  
3 and asked for help, it has not resulted in a conviction or,  
4 if it has, only half of those result in a custodial  
5 sentence - so I just put it in the context that we are  
6 extremely aware of the damage that is done where the  
7 victim - it's compounded by the action that we, the police  
8 or the courts take. And in that context, we absolutely,  
9 absolutely agree with you.

10  
11 THE CHAIR: I understand what you say, but can I just ask  
12 you this simple question: why is it necessary, when  
13 someone feels that they can no longer abide the  
14 organisation and has to disassociate - why is it necessary  
15 to shun them? Why can't they keep having social contact  
16 with those people who happen to remain in the organisation?  
17

18 MR SPINKS: I say again - and we're going to appear very  
19 repetitive, and I apologise, your Honour, but the  
20 individual can choose --  
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22 THE CHAIR: No, no, why is it necessary for the  
23 organisation to tell all of its adherents, "You must shun  
24 that person"?  
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26 MR SPINKS: Because the individual has not taken the  
27 decision to no longer associate or to no longer be involved  
28 with congregation activities, which is their right; they've  
29 taken the decision to say, "I'm shunning the congregation,  
30 I'm no longer a part of the congregation. I've put it in  
31 writing." So the individual takes that action, and we  
32 understand the implications. When someone is  
33 disfellowshipped, the congregation takes that action. So  
34 the individual does not need to put themselves in a  
35 position where they are shunned. They can walk away. They  
36 can go to another congregation. That's their personal  
37 choice. But we understand and agree with the point you are  
38 making, your Honour.  
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40 THE CHAIR: You haven't answered the point, but we'll move  
41 on.  
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43 MR STEWART: Just answer the question, Mr Spinks. You  
44 have not answered his Honour's question. His Honour's  
45 question is: why is it necessary to shun the person who  
46 disassociates? And before you answer, can you clarify one  
47 thing: the person who disassociates, both you and Mr Brian