END RITUAL ABUSE

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A Judicial Summary Of The Christchurch Civic Creche Case

Now that the Ellis Appeal is over, *ERA* is able to give an overview of the processes and judgements of the judicial system. There is quite a lot of information, hence a separate section from the *ERA* newsletter three. What follows is a series of extracts and articles that hopefully summarises events following the finding at a depostions hearing that five creche workers had a case to answer to.

ELLIS CO-WORKERS DISCHARGED

Below is the high court judgement (abridged) from Judge Williamson on the discharge of four of Ellis' co-workers.

DEPOSITION HEARING.

Five creche workers namely Marie Keys, Janice Buckingham, Gaye Davidson, Deborah Gillespie and Peter Ellis were charged with offences arising out of the police inquiry into the Christchurch Civic Creche. The charges were laid during March 1992 (Ellis was arrested) and in October 1992 (the four women were arrested). A deposition hearing took place in the district court, Christchurch between November 1992 ending February 1993. A prima facie case was established by Judge Anderson, and all five offenders were committed to high court for trial. Because the judgement has a suppression order on it, I am enable to give reasons as to why Judge Anderson came to this decision. I am informed the suppression order remains on this judgement for a long time.

Deborah Gillespie was charged of doing an indecent act in a public place in October 1993

On 15 March 1993 Deborah Gillespie was discharged after the Crown had advised the court that the complainant was no longer available to give evidence.

PRE TRIAL HEARING .

On the 5th and 6th April 1993 a hearing under section 347 was heard re - Marie Keys, Jan Buckingham and Gaye Davidson. Oral judgement was heard 6 April 1993 By Judge Williamson. It states:

"A six year old child says that the three accused creche workers (named above) stood around and encouraged another creche worker to sexually abuse children. The accused deny any involvement. They now ask this Court to order that no indictment be presented against them."

THE CHARGE: After a lengthy preliminary hearing the prosecution have filed a draft indictment containing one joint charge against the three Accused. It is in these terms:

> "that between 1 February 1989 and 1 March 1991 at Christchurch were parties to an indecent act upon (child X) a boy under the age of 12 years committed by Peter Hugh McGregor Ellis at an unknown address."

The allegation is that the Accused were parties to the crime committed by Peter Ellis. It is said that they actively encouraged him by their presence and by their actions in dancing around in a circle, taking off their clothes and pretending to have sex. I have already made an order directing that this charge against the Accused be tried separately from those against Peter Ellis because, in my view, there were risks of prejudice or oppression with a joint trial. Stated shortly the facts which the Crown case is based are that child X was taken from the Creche to an unknown address. It may have been the house which is involved in other charges and which is mentioned by the witness, namely ..... At that address it is alleged that there were, in addition

to the children, a number of adults, including persons called Andrew, Robert, Peter's mother and the Accused. It is said that there was a circle drawn on the floor and that the children were placed in the middle of that with the adults standing on the outside. Some of the adults were dressed in either black or white clothes; that the children in the middle of the circle had their clothes off; and that they were told and encouraged to kick each other; that during the course of this child X was kicked in the genitals by other children; that the female Accused were on the outside of the circle and that they watched these events and laughed. It is said also that subsequent to the kicking, an adult, referred to as Andrew, obtained a needle-like object and inserted it into child X's penis. They are the allegations.

EVIDENCE.

The only evidence of the Accused's actions is contained in an evidential videotaped interview of child X. At the commencement of that interview the child promised to tell the truth.

I have viewed the relevant portion of that interview more than once. It covers some nine pages of the transcript. During the course of the evidence child X drew a circle on a piece of paper and showed the position of the adults who stood on the outside of the circle around the naked children. He also showed the position of two of the Accused who he said pretended to have sex. During this part of the interview the child also used two dolls to illustrate what he meant by pretending to have sex.

There is no supporting evidence from any other person who was named by child X. There is no evidence of any reasonably contemporaneous complaint by any child who was said to be present at this incident. There is no evidence of any physical injury being observed on child X at that time or later.

SUBMISSIONS

Counsel (Gerald Nation) for the Accused argues first that no jury, properly directed, could bring in a verdict of guilty against them and secondly that it would be unfair and oppressive to put them on trial. In support of his first submission he contended that there were conflicts within the child's evidence; that there was a lack of behavioural indicators consistent with the abuse that he said he suffered; that there is a lack of any evidence as to physical injuries consistent with such abuse; that there is a lack of credibility generally in statements child X made in response to his mothers questioning; that there is conflict with the evidence of two other children named by him (children referred as Y and Z; and that there is conflict with other evidence of witnesses called for the prosecution; and that there is complete conflict with the evidence given by the Accused at the depositions.

In respect of the second submission concerning fairness and oppression, Counsel for the Accused says first that there is real and significant risk that child X's allegations against the three women Accused are total fabrication, primarily because of intense and confrontational questioning by his mother; and secondly, that there is a risk that the child's evidence and performance at the trial would be seriously affected by the continued pressure he has been under since .....1992 both from his family and from contact with a therapist; and thirdly, that as a matter of principle and policy, it is not appropriate for the criminal jury process to be used as a way of testing allegations of abuse by very young children in circumstances where experts indicate that there is a real risk that what the child might be saying is unreliable.

Each of those grounds which have been argued in detail are rejected in the contentions for the Crown. Counsel for the Crown contends that there in fact other reasonable explanations for the many criticisms made of child X. He points to the need to judge this child's evidence in terms of the child's age and development. In this respect he also referred to the views of the two specialist psychiatrists who have made affidavits. In effect he suggests that Counsel for the Accused is trying to turn the clock back and to reimpose a requirement of children's evidence in child abuse cases. This formal provision of the law was repealed by s 23AB of the evidence Act.

Counsel for the crown emphasised that judges should be slow to be seen interfering with what is really the proper role of a jury.

The vital evidence given in regards to this charge on the above accused was given in Child X's 4th interview. Child X was interviewed in May 1992, three times in August and one in October. Many of the matters relied on in support of the grounds for this application, such as perceived conflicts within the interviews, the conflicts with the other witnesses and some of the stranger claims concerning trapdoors and ovens I do not find persuasive because they may be explained. It will be ultimately

for a jury to assess those matters.

The three aspects which are significant in my opinion, however, are first that two of the other children who were named as being present and who refer in their interviews to vaguely similar incidents do not mention the Accused women as being present. These are the children I have previously mentioned as Y and Z.

The second aspect of the evidence is that the identification of the three Accused as being present and involved only came in the fourth interview of child X. Of itself the delay in making such an allegation by a young child may be explainable. Indeed the law recognises that there may be good reasons. (s 23AC of the evidence Act.)

The third aspect of the evidence is that the fourth and fifth interviews of child X contain more bizarre and wilder type of allegations which do not have any firm base in common human knowledge or experience of child abuse or even of perverted criminal activity. I do not suggest that such events cannot and do not happen, but they must be very rare and consequently may require a greater strength of evidence than usual to support them. In the fifth interview child X implicates two other female workers from the creche. They and other persons named in that interview have not been charged.

OVERALL CONCLUSION

My overall conclusion in this case is that no indictment should be presented against the three Accused for this charge. There are three reasons which have persuaded me to that decision.

First, the evidence against them is insufficient weight to justify their trial. I have already indicated the three aspects of the evidence which, even if the witness is truthful, affect the weight to a significant degree. In my opinion a verdict of guilt would be unsafe because there is insufficient evidence upon which a jury could properly reach a verdict of guilty.

Secondly, the potential for prejudice against the Accused is so great that they might be convicted for the wrong reasons. A criminal trial is all about proof. Criminal trials relate to specific acts and not to overall moral blameworthiness or professional incompetence. In this case it must be a real fear that a jury may judge the three Accused on the basis that they should have been alerted by Peter Ellis's sexual statements or activities, or by what the children had been saying to them or by the need to protect very young children who were in their care.

The third reason is that the unavoidable delay in their trial on this charge may result in hardship to the now 7 year old child X who would have to give evidence twice, and to the Accused who would have to wait until the other trial of Ellis is completed.

NOT ONE OF THESE THREE REASONS THAT I HAVE JUST SET OUT WOULD BE SUFFICIENT IN MY VIEW IN ITSELF. Considered in combination, however, I am of the view that they oblige me to allow this application.

ORDER

For the reasons that I have set out at length, the three Accused Gaye Davidson, Marie Keys and Jan Buckingham are now DISCHARGED."

Comments the writer would like to make:

1) The question is often asked by people why would a judge make a decision that there will be two trials, one for Ellis and one for the women, and the women's trial would come after Ellis's trial, then giving one of his reasons for discharging the women was because the potential for prejudice against the Accused is so great that they might be convicted for the wrong reasons... Furthermore he states that the unavoidable delay in the trial for the women may result in hardship for the 7 year old child X who would have to give evidence twice, and to the Accused who would have to wait until the other trial of Ellis is completed.

2) The question is often asked, do other children have to corroborate what another child says, or another adult corroborate what the child is saying. In this case Child X talked of the "circle , the adults and the abuse, and he named children and adults. Because the children Child X named did not articulate as clearly the episode of the circle abuse, therefore what child X disclosed had less credibility so it seems. The law in fact states that corroboration is not necessarily imperative.

3) Comment made by the judge in the "third aspect of the evidence" has made it clear that because bizarre and wilder type of allegations that do not have any firm base in common knowledge or experience of child sexual abuse or even perverted criminal activity, it does not mean that or suggest that such events cannot and do not happen. That is a point that is of some importance . The bizarre may appear unbelievable, but the judge in deposition, the judge and jury in the trial, and the three judges in the appeal all took a look at the whole

picture of the case, and still at the end of the day found Peter Ellis guilty' and lets not forget that the judge in the deposition hearing found a prima facie case on all five charged. (The fifth being Debbie Gillespie.)
4) The three accused were discharged for three reasons, but not one reason on its own was sufficient for their discharge. I think this says a lot.
Lets also remember that child X had not even given evidence on these women. The way the law works in NZ is that when a prima facie case has been established it does not remain like that until trial. These three women had the opportunity through law to apply under section 347 (pre trail Hearing) to have the charges dropped.

COURT HEARING ON COSTS.

An application was submitted to the High Court by Davidson, Keys, Buckingham and Gillespie on costs and heard by J. Williamson on 29 October 1993.

The four former workers at the Christchurch civic creche seek an award costs following their discharges in criminal proceedings.
Cost of an accused in criminal cases are often met by a grant of legal aid. They are paid regardless of whether an accused is successful or not. If an accused is ACQUITTED OR DISCHARGED the court may order such sum as it thinks just and reasonable towards the costs of the defence. When an accused has been in receipt of legal aid it will only be in a rare case that an award will also be made for an amount of costs under the Costs in Criminal Cases Act 1967. Counsel for these Applicants (Gerald Nation) contends this is such a case. In effect he seeks $40,000 in addition to the $55,274.91 already paid in legal aid. The Crown opposes the application.

Approach to costs application.

Section 5 of the costs in Criminal Cases Act 1967 confers a broad discretion on a judge as to whether or not to award costs. The mere fact that a person has been discharged even after a long or complex trial is not of itself a ground for making or refusing an order. (S.5 (4) To decide whether to make an order in a particular case and the amount of such an order, a Court must have regard to every factor affecting that particular case. It is also obliged, where it is appropriate, to give consideration to the following seven matters specifically set out in S.5(2):
a) Whether the prosecution acted in good faith in bringing and continuing the proceedings.
b) Whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant in the absence of contrary evidence.
c) Whether the prosecution took proper steps to investigate any matter coming into its hands which suggested that the defendant might not be guilty.
d) Whether generally the investigation into the offence was conducted in a reasonable and proper manner.
e) Whether the evidence as a whole would support a finding of guilt but the information was dismissed on a technical point.
f) Whether the information was dismissed because the defendant established (either by the evidence of witnesses called by him or by the cross-examination of witnesses for the prosecution or otherwise) that he was not guilty.
g) Whether the behaviour of the defendant in relation to the acts or omissions on which the charge was based and to the investigation and proceedings was such that a sum should be paid towards the costs of his defence."

It must be emphasised that, while those seven circumstances are particularised, the Court's discretion is not fettered or limited by them.

Sub miss ions.

The matters raised by the Counsel for the Applicants indicate the wide ranging nature of his submissions. They relate to the point at time of which the Crown Solicitor was involved; statements made by the Crown Solicitor to the Court and to Counsel during the course of the depositions hearing; the importance attached by the police to information which eventually had little evidential value; the actions of the police in relation to the closure of the creche; the general attitude of some police officers to some of the Applicants; the apparently bizarre nature of some of the allegations made by some children to the police, the tactics of the defence in cross-examining parents and child interviewers at length as well as the reactions of Counsel for the Crown to applications for bail; the productions of tapes; and the admissibility of some of the evidence. It was suggested that the "tactics" employed by defence Counsel were ultimately successful and that they effectively saved the costs and risks of trial. Further it was submitted that the parents, police and Crown Solicitor should have given the initial allegations and evidence the same type of careful and objective consideration ultimately given by this court.

In replying to these submissions Counsel for the Crown has canvassed the same matters. He has also argued that the accused are trying to "top up" the legal aid payments to their Counsel and that they have treated these applications as yet another opportunity to express, for the benefit of the media, their critical views of the Police, child interviewers and the justice system. Further he comments that the Applicants have not stated that payments, if any, they have received from extensive media interviews and appearances.

The Applicant's Counsel says that if the Crown wished to make the last submission, "they ought to have obtained evidence to support it. As it stands it is a matter entirely of conjecture."

The Crown also argues that the applicants have persisted in an unrealistic approach to the offences committed by Ellis and that the primary obstacles to the viewpoints espoused by the Applicants" Counsel are:

1) The co-worker Peter Ellis, has now been convicted of acts of sexual abuse of children who attended the creche.

2) The principal witness against the Applicants Davidson, Buckingham and Keys, namely child X, has been accepted by the jury at Ellis's trial as essentially truthful although his evidence was not accepted as sufficient in relation to the "circle incident".

3) The Applicants' evidence at the trial of Peter Ellis to the effect that there had been no opportunity for him to have committed the offences was rejected by the jury.

Legal Aid

The factual position about the Applicants' legal costs as described in Counsel's memorandum is as follows:

The Applicants were each granted legal aid subject to the following contributions.

Davidson	$ 7,500.00
Buckingham	$12,500.00
Keys	$ 4,000.00
Gillespie	$ 1,250.00

The District Legal Services Sub-Committee fixed the total remuneration for the Applicants' Counsel up to the end of depositions in a sum of $43,220.00. Later the Committee approved the Applicants' Counsel charging a further $40,000.00. This approval was granted pursuant to S11(3) of the Legal Services Act 1991

which states:

> "Nothing in subsection (2) of this section or in section 77 of this Act prevents the solicitor or counsel for an applicant to whom criminal legal aid is granted from taking, with the approval of the District Sub-committee, any additional payment from the applicant in respect of that aid".

By virtue of S.77 of the Legal Services Act 1991 an Accused's solicitor or counsel is not entitled to take any payment or other benefit in respect of legal aid except where that payment is directed or authorised under the Act S 11(3) provides authority because it contains a power for a District Sub-committee to authorise a further payment to a solicitor or counsel. It appears that the purpose of this provision is to enable a flexibility to meet unusual circumstances since in the normal case the criteria for a grant of legal aid and the fixing of a contribution would mean that an Applicant for aid would not be in a position to make any further or additional payment.

The applicants had already been adequately represented and the agreed additional payment was not the result of a willingness of a third party to supplement the legal aid or to a change in circumstances of the Applicants. The proposal is that the additional amount will be met by the public purse. The applications to the District Legal Services Subcommittee for approval recorded that the Applicants' financial positions were no better at that time than when the grants of legal aid was made. Instead the ground put forward for approval to the additional fee was that contained in the following paragraph from the Applicants' letter of 3 April 1993 as follows.

"The background to their being charged and the fact that they have all been discharged primarily because the Crown did not have the evidence available at trial on which it would be appropriate to proceed against them, means that there is now a very real prospect that the High Court will be persuaded to make a substantial order for costs in their favour. Where such an order for costs might be obtained it is appropriate that the amount which the Applicants might seek in costs from the police not be limited by reason of the severe limitations placed on the level of remuneration available where people are legally aided".

The Applicants each completed a letter containing their consent to their solicitor obtaining approval for a further charge of $40,000.00. In that letter they stated: "Although we do not know how we are going to pay this further liability unless we obtain a significant order for costs against the police or receive an indemnity from the Christchurch City Council, we agree that when Wynn Williams and Co should be able to hold us liable for these further costs."

For the High Court preliminary applications a total sum of $14,909.19 was sought by the Applicants' Counsel. The District Legal Services Sub-committee paid $11,445.78 but they also approved Counsel charging the balance of $3,464.39 to the Applicants. Again there is no suggestion that the Applicants are in a position to pay the additional amount. Indeed the consent to this procedure holding them personally responsible for the costs states that their financial positions are such that they would have grave difficulty in paying the amounts unless contribution was made by other persons. Some legal work was not within the grant of legal aid and consequently the Applicants also agreed to be liable for additional fees of $1,575

($393.75 each).
In summary it is claimed that the Applicants have made contributions towards their legal aid and agreed to or incur liabilities amounting to the following sums:
Davidson
$21,548.21
Buck ingham
$25,048 21
Keys
$19,548.21
Gillespie
$12,435.35
The total fees payable to the Applicants' solicitors for their work for the Applicants in the District and High Courts was $101,073.90 (ie $89,843.57 net). They have received from the legal aid fund a total of $55,274.91. The balance remains a liability from the Applicants. Payment is apparently dependent upon the success of this application or of proceedings against the Christchurch City Council. There is no evidence than an application has been made to the District Legal Services Sub-committee for increased fees on the basis that the amount they have fixed is inadequate. (S 12 of the Legal services Act 1991).

Seven specific factors

a)GOOD FAITH The Applicants submit that the prosecution did not act in good faith in bringing and continuing the proceedings. They rely upon an alleged lack of objectivity by various detectives, remarks made by one detective to one of the applicants and the attitude of some of the police officers to the acceptance of flimsy evidence. I have read and considered these allegations.
The judge states " In view of the evidence of the children and the consultative procedures followed by the police I consider that the only conclusion which can be reached is that the prosecution did act in good faith."

b)SUFFICIENT EVIDENCE At the time the proceedings against the Applicants Buckingham, Davidson and Key were commenced the prosecution relied on the evidence of child X. I reviewed the strength of that evidence and the submissions made in respect of it in my oral judgement, No 3, of 6 April 1993. Although I will not restate the points made in that judgement I have regard to them when considering this application. My view at that time was that child X so far as it related to the Applicants' involvement in the "circle" incident. I then decided that, because of three aspects of child X's evidence, it would be unsafe to base a verdict of guilty on it.

The test under this paragraph is one which must be considered on the basis of an "absence of contrary evidence". The initial commencement of the proceedings is at issue rather than the ultimate outcome. In early interviews child X had appeared to be clear and reliable but at the time of later interviews he seemed under pressure. Expert advice was sought by the police. They were advised that, given the child's age and development, his formal evidence was sufficient upon which to base a prosecution. By the time of the discharge applications there was further evidence available in the form of conflicting evidence from two experts. The evidence of the circle incident available to the prosecution cannot be judged in hindsight. I am conscious, however, that I have had the opportunity to see child X giving evidence at the trial of Peter Ellis and to hear him cross-examined about these matters. I have also heard and seen other children who made similar allegations of group abuse but who did not identify those involved. I have also heard other witnesses at the trial. Child X was an apparently sound and bright witness. No doubt he

would have impressed the police officers who decided to prosecute. Even if they started with considerable scepticism I conclude that they reasonably considered they had sufficient evidence to warrant the commencement of the prosecutions against the Applicants Davidson, Buckingham and Keys. In stating that conclusion I emphasise that I am not altering the opinion I expressed on 6 April 1993 and nor am I indicating that, in my view, the evidence at the time of the discharge was sufficient to support a conviction at trial.

Counter balancing arguments have been put by Counsel for each side. For the Applicant Gillespie it is submitted that the police deliberately endeavoured to introduce inadmissible evidence which would have denigrated Gillespie's character and that, further, police should have appreciated, even before the depositions, that child M was not going to give evidence at trial. Counsel for the Crown, however, says that the police could not have been aware of those matters at the time of commencing the prosecution and that, to some degree, the ultimate withdrawal of the witness and absence of evidence was a result of the manner in which defence conducted its case coupled with excessive media exposure. The judge states: "Overall and despite the criticisms properly made I have reached the conclusion that the prosecution did have sufficient evidence to commence the proceedings against the Applicant Gillespie as well.

c) and d) PROPER INVESTIGATION The primary contention of Counsel for the Applicants is that the police did not approach their inquiries with an open mind but rather with bias against the Applicants. It is contended that in spite of their co-operation the Applicants' contentions were not properly investigated by the police. The Crown says that all relevant factual matters raised by the Applicants were investigated and that the defence case was substantially a general denial rather than the raising of specific matters which would have required further investigation.

Part of the argument concerns a letter written by the Applicants' Counsel to the police subsequent to the charges and initial statements. In this letter dated 29 October Counsel for the Applicants invited the police to make further inquiries by way of interviews with the Applicants. He stated:

"For that reason if we can be assured that they will be interviewed by a senior detective who is prepared to objectively enquire into what they have to say about the allegations, rather than to simply pursue a line of inquiry which is intended to try and find evidence to support the police case, then each of the defendants would be available for interview by the police immediately. If at this stage the police are of the view that the evidence they have collected is such that the case must proceed to depositions, then obviously there would be no point in there being such further inquiries."

The Crown's view of that letter was that it purported to limit the ambit of any investigation by them to matters of an exculpatory nature and that no questions which might tend to implicate the Applicants could be asked. Counsel for the Applicants refutes this view.

In judging whether the investigations were conducted in a reasonable and proper manner, regard must be had to the fact that these

complaints and resultant prosecutions were based upon the evidence of very young children. They also must be seen in the context of a large inquiry involving a number of persons and with considerable pressure from all sides to bring the matter to a conclusion. While in an ideal world every item reflecting on a particular problem would be investigated and weighed with equal care, the practicalities of time, expense, delays and human nature demand a standard judged on reasonableness and propriety.

e)TECHNICAL POINT It is common ground that this criteria does not apply.

f)DEFENCE CROSS-EXAMINATION AND EVIDENCE Again this criteria is not strictly applicable. The Applicants did give evidence at depositions but ultimately the reasons why the charges did not proceed were either because the child complainant was not available or the evidence was not sufficient, in the context of potential prejudice and delay, to warrant the matters proceeding.

g)APPLICANTS' BEHAVIOUR Again it is common ground that there was nothing in the way that the Applicants conducted themselves with regard to the proceedings which would disqualify them for an order for costs in favour.

h)SUMMARY QUESTIONS If the matter is considered under the heading of the two questions posed by Hardie Boys J in the Margaritis case then my view on the first question is that the prosecution was reasonably and properly brought and persued. In a case where young children have completed evidential interviews alleging sexual abuse and there is no clear reason why the prosecution should reject that evidence, it would be difficult to form the view that they should not persue the matter, at least, until some evidence is made available to them which would establish the contrary. In this case the various issues raised concern the weight, or worth, of the evidence.

Ultimately a decision about these aspects, involving assessments of fact and degree, are ones to be made by the jury.

On the second question I conclude that the Applicants did not bring the charges on their heads by their own conduct. Their involvement in the charges was a direct result of the serious allegations made against them by children formerly under their care.

Fundamentally the parties approach this application and the proceedings generally from different starting points. The Applicants claim that the child complainants have not told the truth but have been influenced by a form of hysteria created by parents, social workers, child interviewers and police officers. On the other hand their opponents start from the proposition that the child complainants are substantially telling the truth and consequently that the officials and police have been acting properly in order to safeguard the interests of the children. Depending upon the starting point used, varying conclusions may and have been reached about many ancillary matters, including the tests in S.5(2) already referred to.

As had been seen in a number of the reported decisions the answers to the two questions and to the seven criteria do not finally dispose of the matter. The judge must ultimately exercise his or her discretion. I do so having regard to the combined effect of all of the matters which I have heard and observed. After weighing them carefully I am of the view that this is NOT a case for an award of costs. The applications are accordingly refused.

THE SENTENCE OF PETER ELLIS

Below is the sentence given to Peter Ellis, delivered by judge Williamson on 22 June 1993.

The circumstances of these 16 crimes, the effects upon the child victims; and your own personal background and history, have to be weighed up in arriving at an appropriate overall sentence.

Two points must be stated clearly and firmly.

First, the jury's verdicts of guilty were the result of a careful consideration of detailed evidence and submissions presented by both sides. Their verdicts were obviously correct.

Secondly, it would have greatly assisted the child victims of these crimes, and indeed yourself, if you had faced up to the truth about yourself and sought help at an early stage.

The jury were in a unique position in this case. Unlike almost all of those who have publicly feasted off this case by expressing their opinions, the jury actually saw and heard each of the children. They also heard your own evidence and that of other former Christchurch Civic Creche workers. The jury disbelieved you. THEY BELIEVED THE CHILDREN AND I AGREE WITH THAT ASSESSMENT.

I am aware from the depositions and the evidence that a number of other children complained of sexual abuse by you, but that for various personal reasons it was not wished that they give evidence at the trial and the Crown did not proceed on charges in relation to them. In view of the evidence that was given at the preliminary hearing and the trial, there must be a grave suspicion that there were a number of other acts of abuse in addition to those contained in these 16 crimes. I completely disregard those suspicions in sentencing you. The sentences are based on the acts which you have been proved to have done and not on suspicion of guilt of other offences with what you have not been charged or upon which you have been acquitted.

As well as considering the circumstances of these 16 offences, it is necessary to stand back and to consider the total criminality involved.

The sixteen convictions are made up of three sexual violation for which Parliament has provided a maximum sentence of 14 years' imprisonment. Eight relate to indecent assault for which the maximum is 10 years' imprisonment. Five relate to the doing or inducing of indecent acts on children under 12 years of age for which the maximum is also 10 years' imprisonment. Those maximums, in themselves, indicate the gravity of this type of offending.....

Part of my task is to consider aggravating and mitigating factors. Counsel have urged on me various points concerning those factors. In my view there are four principal ones.

First of all, the main victims were very small children.

Secondly, the offences were committed over a very long period of time, that is between December 1986 and May 1991.

Thirdly, you were in a position of special trust.

Fourthly, crimes of this type are prevalent.

I will deal with three of those factors in a little more detail. The first of them, that the victims were small children. The 7 children involved in these crimes are not the only ones to suffer because of your conduct. They are certainly the principal victims. At the time of the offences they were aged 3-5 years, that is very small children, without the ability or skills to protect themselves. Many of the effects of sexual abuse on these children were the subject of evidence at the trial and these effects have been summarised and brought up to date in detailed victim impact

reports that have been presented to the Court and which I have read. These recount how as the significance of those actions was appreciated by the children they suffered the obvious repercussions of headaches, tummy aches, night terrors, fear and anxiety and sleep disturbances, but also some of them show signs of what might be termed psychiatric disorders connected with sexual abuse such as depression, lack of confidence, self esteem, as well as eating and sexual disorders. The children have had some therapy, as Mr Harrison (Ellis's lawyer) urges on me, and may need more which hopefully will do a lot to alleviate the symptoms..... Part of the seriousness which arise from the children's young age is that it is very difficult to prove offences involving such young victims. When they have been proved, the Court must act to deter others.

The second factor , that is the position of trust. There is no doubt that people trusted you..... The crimes which you committed are flagrant although insidious breaches of that trust. Perhaps it is not surprising that some of your well publicised and televised creche workers are still claiming that you would not have had the opportunity to be able to commit these crimes even though the evidence that the Court heard, including your own, realistically established that there were such opportunities.

The final aggravating factor I want to mention is that of prevalence because the necessity to impose deterrent sentences for this type of conduct has been emphasised recently in a number of cases. It is said that these offences rob children of their innocence and some of the joy of their childhood. Seven years ago the Court of Appeal emphasised this point to sentencing Judges by saying individual judges may be sceptical about the prospects that heavy sentences would deter other potential offenders, but that the purpose of punishment could not be safely ignored by those judges.

In your case it is the combination of these aggravating factors that I have outlined which results in these crimes having to be treated as very serious ones of their type. To mark the gravity of the offending overall; and the continuing nature of such offending involving young children by a carer, I will order that some of the sentences are served cumulatively or consecutively.

I have divided the offences into four categories.

The first category is the 3 offences of sexual violation. The sentence I impose is one of 4 years' imprisonment. Those sentences are to be concurrent with each other.

The second category is one of 2 offences of indecent assault involving the placing of your penis on the vagina or anus of a child and 1 indecent act involving your placing your penis in the mouth of a child. The sentence imposed is one of 3 years' imprisonment. These sentences are to be concurrent with each other but cumulative on those in the first category.

The third category are 6 offences being 4 of indecent assault and 2 of indecent act involving the touching of a child's vagina or a penis or urinating on a child. The sentence I impose is one of 2 1/2 years imprisonment on each. Those sentences are to be concurrent with each other and concurrent with those sentences in the second category.

The fourth category are the 4 offences committed at an address outside the Creche, being 2 of indecent assault involving you putting you penis against a child's anus, and the encouraging of another person to place his penis against a child's vagina. I impose a sentence of 3 years' imprisonment on each. These sentences are to be concurrent with each other but cumulative on those in the second category.

The effect is a total sentence of 10 years' imprisonment. From the 10 years I deduct 3 weeks to cover the period that you have already spent in custody.

THE PETER ELLIS APPEAL

The written judgement of Ellis's appeal is 42 pages long. Instead of writing the whole judgement out, I have used the article that was in the Evening Post, September 1994 written by Wendy Ball. This gives a clear understanding what the judges decided upon and why they did so.

Child Abuse Case: A Salutory Lesson

"The protestations of innocence by child abuse Peter Ellis were part of a cynical strategy to discredit children's evidence."

On September 8 the Court of Appeal announced its judgement of Peter Ellis's appeal against conviction and sentence. The appeal was dismissed as "none of the grounds of appeal had been made out".

The court expressed some doubt about the credibility of the retraction of one child complainant, but gave Ellis the benefit of the doubt by acquitting him of the three convictions relating to this child's evidence However the sentence of imprisonment imposed on Peter Ellis is upheld.

This case is one which has drawn extreme public comment because of a variety of factors - such as the initial involvement of women co-defendants, the number of children involved, and the so called "bizarre" nature of some of the allegations.

Despite Ellis's conviction this comment has continued, but it is so hoped that now that the Court of Appeal has upheld the conviction we will begin to see a more accurate and balanced approach to the case in particular, and to the whole area of child abuse.

It is also to be hoped that people's understanding of the nature of child abuse will increase, and that as a result our children will be safer.

There were two main grounds for Peter Ellis's appeal and the Justices (Cook, Gault and Casey) were unanimous in their decision.

1) That the verdicts were unreasonable in that the evidence of the complainant children was not credible - appeal dismissed.

2) That there had been a miscarriage of justice - appeal dismissed.

The argument by Ellis's counsel was that essentially the verdicts were unsafe because they relied on children's evidence. The court placed this appeal ground into two sub categories.

a) Circumstantial improbability: It was stated by the court that "Great risks of detection may have been run, but that is not uncommon in cases of indulgence in a perversion."

b) The interview process (including each child complainant's evidence.) Interviewers are required to act within the guidelines set down in the Evidence Amendment Act 1989 regulations when doing evidential interviews with children.

A major part of the defence during the trial and also an appeal issue was the conduct of these interviews and the training and professionalism of the interviewers. The Court of Appeal judgement stated: "The professionalism of the three women who conducted the interviews is obvious from the transcripts and they gave evidence of their training and experience in this field.

"There was criticism about some of their questions and of the way some evidence was elicited, but we are satisfied that this is of no real moment.

"As the Courts have said in a number of cases, when dealing with young children some coaxing and guidance is necessary to bring them to a point of disclosing abuse which many of them find

embarrassing or distasteful and would rather forget It is unreal to expect them to behave as mature adult witnesses and launch into their evidence with only minimal guidance in examination-in-chief."

The Court of Appeal has dismissed once and for all the arguments put repeatedly by the defence in this case, arguments which have been purposefully manufactured into public myths by Ellis Supporters and elements in the media, that the children lied about the abuse, that the interviewers put words in their mouths, that their parents pressured them into disclosing things that never happened.

The Appeal Court has stated unequivocally that the children's evidence was credible and went into considerable detail to say why It is now clearly established that the children were telling the truth. The truth was so frightening and distasteful that it was difficult to tell.

If children lie, they do it to get out of trouble not to get into it. The abuse which the children disclosed was beyond the worst imagination of the parents or police. They could not have made it up or been induced to say it. But if they had, then the interview process, analysis of their videos by expert witnesses and cross-examination in court by the defence would have revealed this.

In delivering their judgement on the children's credibility and the way the interviews were conducted, the Appeal Court repeated the words of the High Court Judge in sentencing Ellis, saying the defence had given them no grounds to disagree "The jury were in a unique position in this case. Unlike almost all of those who have publicly feasted off this case by expressing their opinions, the jury actually saw and heard each of the children. They also heard your own evidence and that of the other former Civic creche workers. They disbelieved you. They believed the children and I agree with that assessment."

The Court of Appeal stated: "Our overall judgement of the case is that after this long (high Court) trial the jury were fully justified in their conclusion that charges against the accused had been established beyond reasonable doubt..... The Jury deliberated for more than two days and brought in carefully discriminating verdicts that can be seen as conservative. The claims that the evidence of the children was contaminated by interviewing techniques, parental hysteria, or the like lack any solid basis. The whole matter has been very thoroughly and competently examined by counsel at the appeal hearing and as a result we have no misgivings about the outcome of the trial"

The appeal judges also examined the defence's submission that there were miscarriages of justice in the way the High Court trial was conducted. They concluded that there was no miscarriage of justice.

This judgement makes New Zealand much safer for two important groups of people. First and foremost, children are safe from Peter Ellis as long as he remains in prison. Secondly child care workers are safe from false allegations of abuse (however rare these may be) because, as can be seen by the above commentary, the judicial system has its own safe guards in place, and under the most rigorous judicial scrutiny, these safeguards were upheld.

Ellis's continuing protestations of innocence are, at best, self-deluding lies. After all child abuse is a crime which has no mitigating circumstances. You cannot argue that you have done just a little bit of it, or did it under duress. If you did it, you did it. You can only either admit to it, or deny it completely. At worst these protestations are part of a cynical organised strategy to discredit

children's evidence in order to keep the world safe for other child abusers. The last objective is being well served by those who continue to support Ellis after the court judgement.

There is a problem in believing disclosures of sexual abuse by children. These disclosures are too horrible and the last people who want to believe things have happened to their children are parents.. This is why many parents did not understand the signals their children were sending them while they were still at the creche. This is why parents could not understand their children's terror, their extreme inhibitions, their low self-esteem and dysfunctional behaviour. They did not know other parents were going through the same thing. This is why parents did not want to believe the first halting disclosures made to them more explicitly once the children had left the creche and thus felt safe enough to speak.

Parents hoped these initial disclosures were the sum of the abuse, and were then shaken again by increasingly appalling revelations of cruelty and emotional manipulation, which came once the children began to understand that the threats of physical violence made against them and their families should they speak may not come true.

When told that some of his former creche friends had spoken of the abuse, a young boy now living in Australia said "So they are all dead now".

Now New Zealand society is confronted with the reality behind this case and is having trouble taking it in. Without consciously realising it, many people seek to avoid its implications. It shakes our sense of ourselves as a civilised society and it raises the sewers beneath into full view. We focus instead on the victims who cannot answer back, the children. But the reality is that preschool children are being abused in day care centres. Over the months ahead perhaps some commentators will take the time to read the court judgement. Perhaps the public, will also understand the violence and fear that secured control of the children and which still affects them.

The consistent repeating in media by Ellis supporters of the arguments put by the defence, that the children lied, that words were put in their mouths, that they were pressured into disclosing things that never happened, has manipulated the public into thinking that a case which was in fact characterised by an overwhelming burden of proof against Ellis was borderline.

The necessary suppression of much incriminating evidence in the interest of a fair trial also allowed this impression to be fostered. From some of the media it appeared that the children and their parents were on trial, not the defendant and his associates. No one asked the questions: What interest do people have in making these allegations that children lie? Why are some of those who failed to keep the children safe now attacking the children? Why are people continuing to question a convicted paedophile's guilt?

The civic creche parents are concerned that other children never suffer their own children's fate. With this in mind they want the public to realise that child sexual abuse does exist in our community, and that the only people who can testify to its existence are the children - the abused children. If we do not believe them the firm legal foundation for the protection of all New Zealand's children, which has been laid by the Court of Appeal in Ellis's case counts for naught.

NOTICE

E.R.A wishes to inform readers that our funding that we received from Lottery Grant is running out. We received $1300 from Lottery Grant in November 1994 for the postage and production of the newsletter. We will be applying for more funding in the next several months.

A lot of our research has been added expense. This is what the subscriptions have been going towards.

Our mailing list stands at 150 and subcriptions paid so far do not reach that number.

E.R.A would ideally like to continue sending the newsletter free of charge, but unfortunately we cannot keep the standard up or the frequency of newsletters if we operated that way. It costs approximately $300 each time we send out the newsletter.

Could readers please consider paying the subscription at your earliest convenience. It has been realised that a number of organisations and counsellors have found our newsletter valuable, and often request information on certain issues of ritual abuse.

More adult survivors are coming forward and joining the support group that we run. Informing and educating people on ritual abuse and surrounding issues has increased our work and mailing list slowly but surely.

We need all of your support. Thankyou.

Secretary of E.R.A.