

THE QUEEN

v.

PETER HUGH McGREGOR ELLIS

SECOND REPORT OF COUNSEL APPOINTED BY THE COURT

May it please the Court:

Since my first report of 27 July 1994 I have:

1. Received a fax from Mr Panckhurst dated 1 August, a copy of which is attached.
2. Viewed the three video taped interviews of Zelda Cypress conducted by Lynda Morgan on 9 April 1992 and 28 May 1992 and read the transcripts of those interviews. I have viewed exhibit 65 (6044/3) and being a yellow sheet dated 7/4/92 and headed "*Zelda's List Interview One with L Morgan*" and exhibit 66 (6044/4) being a yellow sheet headed 7/4/92 "*Zelda's Body Parts Interview One and Interview Two*". Subsequent to the preparation of this report I have seen the fax from the Registrar Mr Thatcher to Raymond Donnelly of 2 August 1994 to which is attached copies of exhibits 6045/3&4 and 6046/3-7. These were not available to me before my meeting with Zelda but I do not consider that to have been a disadvantage of any significance.
3. I have read the evidence of Dr Karen Zelas at page 399 and Dr Le Page at page 583. These and the interview materials referred to in 2 above were provided to me by Mr Stanaway.
4. I met with Zelda and her mother on 2 August 1994.

Zelda's mother's Statement of Zelda's Reasons for Lying in Interview

I apologise for not having covered this explicitly in my previous report. I had noted the second sentence of the first paragraph of the Court's Minute of 26 July, namely: *"This is to the effect that the child now says that she made allegations against the appellant because she thought that the interviewing social worker wanted her to answer questions in that way."* When interviewing Zelda's mother on 26 July 1994 she informed me that Zelda had said that her replies were those which she thought her mother wanted. I refer to page 2 of the proof of evidence which accompanied my first report and in which I included the paragraph: *"I questioned Zelda why she had kept telling lies and she said that it had just got bigger than she wanted it to. She said she thought that I wanted that to happen meaning that she had given the replies which she thought I wanted. She said that it started with a wee story but it then got bigger. She appeared to be confused."*

I asked Zelda's mother on 26 July whether, as recorded in the Court's Minute, Zelda had said that she had answered as she did in order to provide the answer which she thought the social worker wanted. Zelda's mother said that was not so and if the Registrar had reported her discussion with him in that way her comments had been misinterpreted. I checked that with her on two occasions on 26 July. Following receipt of Mr Pankhurst's letter I again put the point to her on 2 August. Her answer remained the same.

Interview with Zelda on 2 August 1994

I interviewed Zelda together with her mother. Her mother gave Zelda the option partway through the interview of departing and leaving her with me alone. Zelda declined. The interview took place in my office. This was a deliberate decision made in conjunction with her mother on the basis that she had not been particularly forthcoming with me at the last interview in her home. It was hoped that if the informality of her own home did not cause her to be open, then possibly the gravamen of visiting my office might have that effect.

I commenced the interview by a general discussion about my office; the view from the window and what her plans for the balance of the day were which included her part in a school play. I then talked about the court process relating to Peter and her part in it including particularly her current role. She clearly understood the concept of good and bad touching together with the consequences for Peter in having been sent to jail for bad touching of children, including her. She accepted the principle of punishment for bad touching and accepted that it was right that a teacher who performs bad touching on children should be sent to jail as a punishment.

I then again took up with her the concept of lies testing by way of example her knowledge of those principles which was sound. As, I thought, a good example of the truth she volunteered the statement that she was present in my office.

I then discussed with her the importance of her telling the truth to me about Peter and the desirability of finishing her involvement with Peter by getting everything straight. She agreed with that as a principle.

I then turned to the interviews with Lynda Morgan. She could remember Lynda Morgan and was able to tell me that she knew her as Morgan. She said that the only true statement made in the interviews was that Peter had said that he would put her in a cage but that he had said that in a nice and not a nasty way. She denied that Peter made her feel scared and denied that he had said that he would run away with her. She then said she couldn't remember the contents of what she had said at the interviews and I tested this by asking her about her ninth birthday which had taken place on 1 May 1992, that is between the second and third interviews. She could remember her birthday including the fact that she had celebrated it at The Pancake Palace together with a list of the children that had celebrated it with her. I suggested to her that if she could remember her birthday, she must be able to remember the interviews. She responded by saying that she could remember the interviews but not that which was said in them.

I then showed her exhibit 65 (6044/3) and went through the list of eleven points set out on that sheet with her. She said that they were not true apart from the first. She did not expressly accept that she had said the balance of the points resorting to "*I can't remember*". She accepted though in general terms that she had told Morgan that Peter had done bad touching on her. She also accepted from me that she had said the specific things listed but said that they were not true. She stated as her reason for choosing this time for telling her mother of the lies was her wish to make a new start. She said she meant by this that she wanted to stop lying and work harder at school. I asked how her school work was progressing and she said she had been doing well. She did say she was unhappy at school as a number of children did not like her.

I asked if she had been thinking of Peter recently. She said she had not. I asked what had caused her to think of Peter on Monday 25 July 1994. She did not volunteer an answer. She agreed that it might have been the telephone discussion which her mother had with Anne but said it was the discussion about lies and the wish to start over that caused her to speak. She said she had been worried about Peter. I asked if she thought it was fair that Peter was in jail. She replied "*no*". When asked why not, she said "*because I told lies about him*". She said she was worried about him because she didn't want him to spend any longer in jail.

I asked her on a number of occasions in a number of different ways why she had lied at the interviews. On each occasion she replied "*I don't know*". At first she did not agree that a person would have a reason for lying, but whilst ultimately accepting that was so she did not give any reason for her own lies. She denied that she had answered as she did in order to please her mother. She denied that she answered as she did in order to tell the interviewer what she wished to hear.

She said that she first knew about good and bad touching from a book. She said that she had simply made up the detail of what she had complained of. I tried to elicit from her whether she had any concerns about the way in which she was interviewed, but she

revealed none to me. She said that she liked Morgan and was quite happy to go to the interviews. She made no criticism of anybody for leading or assisting in any way what she had said at interview.

I showed her exhibit 66 (6044/4). She did not recall the exhibit. She did not recall marking the body picture. She said she did not recall saying that Peter touched her breasts and vagina with his hand and fingers. She said that those things did not happen. She accepted from me that she had said those things on the video and again could not say why she had said they had happened when they had not.

She became tearful but would not say what was making her unhappy. She said she did not know what had caused her unhappiness. She said she was not afraid of me. She was not afraid of Peter. It was not because of Peter. She then whispered to her mother that she was scared that she would be mad with her. Her mother and I reassured her. She became more composed but could still not offer any explanation for why she lied nor accept any proposition as to why she might now be saying her complaints were not true when in fact they were.

I tested her statement that she had lied from a number of different angles over a considerable span of the interview coming back to it from time to time after having pursued other points. She was adamant that she had lied. She did not accept other possible explanations which I put to her, including the desire to be rid of any involvement with Peter; a perception that a clean start would solve her other unhappinesses; a wish to help Peter.

I referred to the possibility of her seeing the video tapes of the interviews but she quickly said that she did not want to see them. She would not be drawn to give a reason for not wanting to.

The interview lasted approximately one and a quarter hours. The above is necessarily a potted version of the meeting and not a transcript of it. My comments are, however, representative of the discussion and, I hope, answer the questions raised in paragraphs 3 and 4 of Mr Panckhurst's fax to me of 1 August 1994.

In conclusion, I summarize the position as follows:

- (a) Zelda has withdrawn her allegations against Peter in their entirety. She admits only to his saying that he would put her in a cage but says that this was not a threatening statement. She has been totally consistent in that regard in both interviews which I have had with her.
- (b) Despite her consistency on the fact of lying, she is quite inconsistent about a number of surrounding factors, including her degree of recall of the creche, the interviews, Peter, and giving evidence in Court. Having viewed the videos, I did not find her explanation that she made up the details of her complaints convincing.
- (c) If indeed she did lie in the interviews and in Court, she expressed, and I discerned, no plain reason for her actions. She expressed no concern about the

interviewer or the interviews beyond the bare retraction of lies and the desire to “*start over*”. I have been unable to draw any broad conclusions as to the part which the interview process may have played in encouraging or inducing lies.

- (c) If particular expertise is needed to discern the workings of a child’s mind in such circumstances then I do not have it. From the perspective of a Barrister of modest experience in assessing accounts of the past and one reasonably interested in and experienced in people, particularly children, I find myself remaining in a position of doubt. This may not be sought from me, but my conclusion despite that doubt is that Zelda is a very unhappy, confused young girl, much troubled by her part in this case. I think she has chosen to withdraw her allegations as a means of removing the case and its effects from her life, coupled possibly with the wish to help Peter who undoubtedly was a close friend. She is probably troubled by the haziness of her recollections of her time at creche 6 and more years ago. Having said that, I know that I have not been able to plumb the depths of Zelda’s mind and therefore appreciate that my view is one formed on an incomplete foundation. Therefore the value of my reports is probably in their factual narrative rather than my subjective conclusion.

If I can be of further assistance, will the Court please advise.

DATED at Christchurch this 2nd day of August 1994.


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Nicholas Till