

MINISTER'S OFFICE

-- 7 JUN 1995

DISPATCHED

Ms Gaye Davidson  
Spokesperson  
The Civic Child Care Inquiry Organisation  
P O Box 8186  
Riccarton  
**CHRISTCHURCH**

Dear Ms Davidson

#### **CHRISTCHURCH CIVIC CRECHE INQUIRY**

Thank you for your letters of 24 May 1993 regarding your call for an official inquiry into the investigation of sexual abuse allegations in relation to the Christchurch Civic Creche case, the closure of the creche, prosecution of some of the creche workers and other matters.

*I had initially delayed making any decision on the matters raised in your original correspondence pending the conclusion of the legal proceedings involving Peter Ellis. That appeal appears to be concluded although the possibility exists of counsel for Peter Ellis seeking special leave to appeal to the Privy Council. The employment case is continuing with the appeal by the Christchurch City Council against the decision of the Employment Court. Be that as it may, my view is that the time is opportune for a determination of the issue of an inquiry on its merits.*

Firstly, let me assure you that the issues raised in your correspondence, has been carefully considered by me and by Government. Consideration has also been given to the legal judgments of the High Court and Court of Appeal in all the criminal trial process involving the women creche workers and Peter Ellis, and the Employment Court, the present law, the events surrounding the prosecution and investigation and the closure of the creche, procedures relating to investigations in New Zealand and overseas, and overseas inquiries.

I wish to inform you that the view of the government is that an inquiry into these matters is not appropriate.

As a general statement of the government's position, the comments below are relevant. In considering the issues raised, and in particular whether there has been any unfairness in the treatment of the former workers, the Government is conscious that the concerns have been the subject of extensive scrutiny and judgment by the High Court and the Court of Appeal and latterly

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by the Employment Court. Where the Courts have determined issues in the course of legal process, governments in the past have not considered inquiries desirable unless there is serious public concern or evidence of abuse of the court process or a failure of the legal system itself. The Thomas Royal Commission is a case in point.

In this case too, there is no evidence that the actions of Government agencies were unlawful or improper or of a nature that an inquiry is warranted. An inquiry is not usually considered appropriate unless the matter is one of significant public concern or interest, which cannot be dealt with by way of ordinary administrative action or by legal remedies available to private citizens. The principles for such inquiries were set out succinctly in the Report of the Royal Commission on Tribunals of Inquiry, November 1996 (the Salmon report):

“The history of inquiries to which reference has been made shows that from time to time cases arise concerning rumoured instances of lapses in accepted standards of public administration and other matters causing public concern which cannot be dealt with by ordinary civil or criminal procedures but which require investigation in order to allay public anxiety.”

You will be aware of the history of the proceedings, so I will not go into detail. At pretrial hearings before the High Court in 1993 the four women concerned (Marie Keyes, Gaye Davidson, Janice Buckingham and Deborah Gillespie) were discharged. An application by them for legal costs against the Crown was subsequently made and rejected. In summary and considering the criteria set out in the Costs in Criminal Cases Act 1967, Williamson J concluded that the prosecution was brought by the Police in good faith, there was sufficient evidence at the time to warrant the commencement of the prosecution, the prosecution was conducted in a reasonable and proper manner, and the prosecution took steps to investigate matters which suggested the defendants might be not guilty.

The concerns raised about the investigation of the case including the interviewing of child complainants, were also addressed at a later stage by the Court of Appeal in the criminal trial brought against Peter Ellis.

In this case too, it is important to remember that the Court discharged the accused who accordingly have been acquitted of the criminal charges. In a real sense, therefore, the justice system can be seen to have worked and to have taken into account matters of fairness to the women concerned in the decision to discharge them. In the employment case too, the women have been vindicated in their personal grievance claims against their former employer by an award of compensation. This is not a case where there is concern as to an unfair conviction or it can be said that the judicial process failed.

The Government has also had regard to the destabilising effect that any inquiry would have had on these parents and children who attended the creche and were involved in the investigation and the community in Christchurch generally.

In relation to your specific points, I am not in a position to comment in any detail as these concern the activities of other agencies. Your letter lists a number of concerns:

1. Firstly children who have not been victims of any sexual abuse have been treated as victims of sexual abuse;

2. Secondly children who may have been victims of some form of abuse, have been treated as the victims of a very different form of abuse which has not occurred;
3. Thirdly there is evidence that a significant number of children have received counselling on the basis that they have been victims of ritualistic satanic abuse (This is despite the fact that this was not part of the Police case or the prosecution);
4. Fourthly you allege that parents of children who did not disclose abuse have been encouraged in a variety of ways to believe that abuse had occurred.

As you are aware 118 children were interviewed in the investigations relating to the Christchurch Creche. The interviews were conducted by DSW workers in CYPS Specialist Services Section trained in evidential interviewing. The interviews were conducted under the overview of the Police and Dr Karen Zelas, an acknowledged expert in the field of sexual abuse. The interviews at the time were controlled by the Evidence (Videotaping of Child Complainants) Regulations 1990. There were in addition general procedural guidelines of DSW/Police for the investigation of child sexual abuse based on best practice which were operating. It is important to stress that the interviews undertaken in Christchurch covered both diagnostic interviews (requiring a more searching inquiry at the early stages before disclosure is made) and evidential (where disclosure has been made and the purpose is to formally record the story for evidential purposes). This is important as this fact affected the number of interviews in some cases in the Creche investigation.

The effect on children and parents involved in the investigation is not precisely known. I am informed that there was follow up of children who gave evidence in the trials in the form of monitoring and support offered by one full time social worker who also acted as a broker for other services available.

In relation to the allegations of ritualistic satanic abuse, the CYPS has indicated that it will require further investigation of the specific details of any case. CYPS staff have an obligation for the care and protection of certain young persons, and staff are aware that abuse can occur in systems larger than the family system and recognise the effects. However the statutory task is still to investigate and to act only on the basis of reasonable evidence.

Social workers in CYPS may validly in terms of the Children, Young Persons and Their Families Act 1989 "form a belief" about a child or young person's need for care or protection regardless of the existence of a prosecution or disclosure. There should be reasonable grounds for this belief.

You have raised concerns regarding the closure of the Creche. Firstly, that the Creche which provided work for 13 people and environment for 55 families has closed thereby depriving persons of their jobs, and depriving children and families of a facility. Secondly, that the closure of the Creche unfairly casts suspicion on all workers associated with it affecting their future employment prospects and taints children who had been at the Creche.

It is not appropriate for me to make any comment on this matter as it concerns the actions of the Christchurch City Council, the employer of the creche, and the decision of the Employment Court is being appealed by the Council. The actions of government agencies in the closure has been considered by the Government in coming to its decisions. It is considered that if these actions have been improper in any way, this is a matter for the exercise of existing legal and other remedies.

You have questioned the assumptions on which investigations into sexual abuse are conducted in New Zealand. In particular:

1. That contrary to the approach recommended in England, in New Zealand the Police, evidential interviewers and other agencies proceed on the basis that any allegation of sexual abuse ought to be believed. There is a vital distinction which is recognised in England between taking the allegation seriously and believing the allegation.
2. It is argued that because of this basic approach investigators in sexual abuse cases are not taking sufficient care to inquire into the background to sexual abuse allegations.
3. It is argued that once a charge is laid based on such allegations, attitudes against the alleged perpetrator harden and it becomes difficult for the defence to discover any innocent explanation for what is alleged. If the matter is not investigated fully and objectively at the outset there is a sharply increased chance of injustice occurring: the case will be resolved simply on the credibility of the complainant in court. Even if the matter is resolved in favour of the defendant, considerable damage will be done to both the alleged victim and the defendant.

I am informed that the assumption of belief is correct only in contrast to an assumption of disbelief. In this way it is the same as taking the complaint of abuse seriously as referred to in the Orkney Inquiry. The assumption of belief is not relevant for evidential and diagnostic interviewing. The focus of these two types of interview differ. The purpose of the evidential interview is firstly to enable a child or complainant to tell his or her story in a non threatening situation; and secondly to record that story in such a way that it can be used in evidence in a court if need be.

In 1993 a review was conducted into practice, procedure and guidelines in the sex abuse area by a working party involving Police and NZCYPS personnel with experience and knowledge in this area. The review was a natural evolution as legislation and knowledge of best practice changed. The current draft guidelines are the result. I am informed that the CYPS would not disagree with the approach taken by the Orkney Inquiry and is willing to review the current draft guidelines to ensure that these ideas are sufficiently represented.

It is a regretful fact of life that where criminal charges are laid against a principal offender in relation to sexual abuse, those persons associated with him can suffer through the association. The legal system can remedy the situation through the present tools available to it - by excluding evidence, discharging persons charged and compensating them for any wrongs committed and so on. Little can however be done to change human nature or people's prejudicial attitudes resulting from negative publicity surrounding these events.

Yours sincerely

Signed P. EAST

Paul East  
Attorney-General

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