

FILE NOTE

DATE: 11 March 1995  
BY: Jo Appleyard  
SUBJECT: CCC717480: CCC/Creche - Bede Cooper

This is how  
BC recalls it (59)  
Rights under P Act  
have not connected.  
GUFY

1. I first called Bede Cooper in the week before the hearing on the recommendation of Michael Deaker. I told Bede that my purpose in calling him was to give him advance warning that he might possibly be needed as a witness to appear on our behalf.
2. During the course of that conversation we discussed Mr Deaker's memorandum and Bede Cooper agreed with John Gray's recollection of the events which occurred on 3 September 1992 namely that the meeting involving the Police, DSW and Mr Deaker did not <sup>take</sup> place in Mr Gray's office although it did take place at the Christchurch City Council premises in an anteroom.
3. In about the third or fourth day of the trial we came to the view that we might possibly have to call Bede Cooper. I called him on either Wednesday or Thursday 1 or 2 March to arrange to meet him. He was busy on Thursday 2 and Friday 3 March and therefore I made an appointment to meet with him at 10.30 am on Monday 6 March 1995. I told him that at that stage it was looking a little more likely that we would need him as a witness although we had not made any final decision.
4. I meet with Bede Cooper in his office on Monday 6 March 1995 at 10.30 am. I told him that the purpose of his evidence would be to corroborate John Gray's evidence as it relates to the meetings on 2 September 1992 and 3 September 1992.
5. I took some notes of my conversations with Bede Cooper which are attached. Bede Cooper made the following statements to me (in no particular order):
  - (a) That the suspension of the licence was just a mechanism which had to be carried out first before the licence could be cancelled.
  - (b) There was no way that the creche would have reopened after a suspension because of the evidence the Ministry had. It therefore would not have made any difference what representations John Gray could have made on cancellation.
  - (c) Bede Cooper was quite indignant at the suggestion that John Gray could have in any way influenced the Ministry. He said emphatically that the decision to suspend and cancel was the Ministry's decision but they had to go through the formal process set out in the regulations.
  - (d) Bede Cooper said that he specifically told John Gray that he wouldn't be able to satisfy them that the creche should reopen.
  - (e) He also said that the Smart Report heightened their concerns in other areas especially regarding supervision of employees.
  - (f) Bede Cooper told me that the decision to cancel the licence was made before the meeting with John Gray on 2 September 1992 although the Ministry was aware that it had a procedure it needed to go through.

(low key)  
Smart  
Report  
Reference

- (g) He also told me that the issue of confidentiality was so highly sensitive that the Police didn't even want Michael Deaker involved by Grace Todd and Bede Cooper managed to convince them to liaise with Deaker because he had signed the letters of suspension and cancellation.
  - (h) Bede Cooper also recalls the City Council getting some flak from the Police at the meeting for not taking steps in relation to the creche following receipt of the Smart Report.
  - (i) Bede Cooper was very favourable towards the Smart Report and very critical of the Ero Report.
  - (j) He told me that when the Police had spoken to him they showed him letters from parents and affidavits. They identified the gender of the people under investigation as female and the number of staff as four.
  - (k) Bede Cooper remembers handing a memorandum to John Gray at the meeting on 2 September 1992 which set out the steps right through to cancellation that they wanted to follow.
  - (l) He also said that the Police had urged them to cancel the licence immediately on 1 September 1992. It was only because Grace Todd (who was a stickler for detail) insisted that the proper process must be followed that the meeting with John Gray even took place.
  - (m) To reopen the creche after a suspension the Ministry would need to be convinced that the children would be safe. Cooper told Gray that he would not be able to satisfy this requirement.
  - (n) He made it clear to Gray that he had received information (ie: affidavits) that had things in them that were so serious that they could not be convinced that the creche should re-open.
  - (o) He told John Gray that he had a "mission impossible" in convincing the Ministry that the Creche should reopen.
  - (p) He also made the comment that even after the licence was cancelled there was nothing to prevent any party including the City Council from applying for a new licence if they thought they could convince the Ministry that the children were safe.
  - (q) We talked about the Ministry's haste in proceeding to cancel the licence. He specifically said that suspension is not designed to cover this situation and the Ministry had the policy of not leaving licences suspended for any period.
  - (r) He talked again about the visit to John Gray merely being a courtesy visit to follow the procedures in the Education Regulations.
6. Straight after my meeting with Bede Cooper I returned to court to report to Tom Weston what Bede Cooper had told me. Tom asked me to immediately return to the office and prepare Bede's brief of evidence.
7. I returned to the office at approximately 11.30 and immediately dictated Bede's brief of evidence. When we returned from court at 1.00 pm it had been typed and I faxed it to Bede Cooper. The first draft of Bede Cooper's brief of evidence prepared from my notes and recollection is on the file.

8. At approximately 5.30 after I had returned from court I telephone Bede Cooper to see if he was happy with the brief. He specifically told me that I had done a very good job of putting down what he had told me and in getting it all straight. He suggested a number of changes and these will be apparent from the differences between the first draft and the second draft. In particular "mission impossible" became "impossible mission".
9. He told me that he was going to Greymouth the next day and wanted me to fax the final versions with the changes to him before he left at 10 am the next day. This was done and I was left with the impression that he would be in court to give his evidence as soon as he could travel over from Greymouth the next morning.
10. On the basis of the evidence on Tuesday 7 March we decided that we would call Bede Cooper to clarify some matters and we informed Counsel for the other parties and the court that Bede Cooper would be called on Wednesday morning.
11. When we returned to the office on Tuesday night there was a message for us from Neil McAteer from Crown Law Office in Wellington. Cathi McCrostie informed me that Mr McAteer had received Bede Cooper's brief of evidence from someone in the Ministry (not Bede Cooper himself) and that he had redrafted Mr Cooper's evidence substantially.
12. I immediately rang Neil McAteer who advised me that as a result of his redrafting we probably would not want to call Mr Cooper
13. Mr McAteer specifically told me that he had spoken with Bede Cooper and "this is the evidence he was now prepared to give" Mr McAteer was very firm on this.
14. I then received a facsimile of the redrafted brief and Tom and I went through it.
15. It was immediately apparent that the Ministry of Education were back-peddling. They had taken out all the references to cancellation and given the impression that they went to the meeting with John Gray to consult with him and that they did not have a predetermined idea that cancellation would take place
16. They had also taken out specific comments made to me by Bede Cooper and in particular the "impossible mission" comment.
17. In addition there were slight changes to the evidence which although not material to our case indicated that Mr Deaker had a hand in redrafting Bede Cooper's evidence. When I had spoken to Mr Deaker a few weeks previously he had told me that he recalled a meeting in John Gray's office on 3 September 1992 with the Police that took place at a coffee table away from John Gray's desk. Mr Deaker said that while the meeting was going on John Gray sat at his desk.
18. I had specifically asked Bede Cooper about this on the telephone and he had told me that this recollection was that the meeting with Mr Deaker, the police etc took place in a separate room in the Council's premises but not in Mr Gray's office.
19. When the redrafted brief came back to us Mr Deaker's version of events was included.
20. We then rang Neil McAteer back and Tom spoke to him. Tom explained that we were not aware that Crown Law would be involved in attending Mr Cooper's evidence and that the impression we had been left with at 5.30 the night before was that apart from the changes Bede Cooper suggested to me that the brief was in order. Neil McAteer confirmed to Tom that he had spoken to Mr Deaker about the evidence.
21. Tom explained to Mr McAteer that he was in a very difficult position given the timing.

22. I had also asked Bede Cooper to telephone me at 5.30 from Greymouth but he did not so. We informed Mr Panckhurst that we would not be calling Bede Cooper and I left a message for Mr Cooper that he would not be required to attend to court.
23. The next morning while we were in court (10.30 am) I was handed an urgent message from Grace Todd at the Ministry of Education. As we were in the course of our submissions I asked Marshall Wright to return the call.
24. Grace Todd informed Marshall Wright that as far as the Ministry of Education in Christchurch were concerned they were expecting Bede Cooper at 10.30 that morning to discuss the revised brief and that he would be in court by 11 am. Grace Todd told Marshall Wright that Bede Cooper had not seen the redrafted brief. (Although that does not mean that he had not discussed it with Mr McAteer).
25. I have left a message with Bede Cooper at the Ministry of Education for him to call me as I would like to find out what on earth happened here.

JO

I have since spoken to Bede.  
He was fairly in the middle saying he was happy  
with some of the changes made by McAteer  
but not others. He did not elaborate on the  
particular changes

fo 13/3