

## PART II: CONTAMINATION : SPECIFIC ISSUES

8. Before dealing with the individual cases, it is necessary to make some general comments in relation to issues that arise from the Court of Appeal discussion of the contamination issue. As far as is relevant to the parents' situation the following topics emerge:

- Best practices

- Mass allegations
- Parental questioning
- Parent/Parent contamination
- Official meetings

### Best Practices

9. All interviewers were well qualified and followed recognised interviewing techniques. Those techniques were acceptable world-wide at the time. The Court of Appeal accepted that the interviewing techniques adopted in this case were the recommended techniques widely endorsed at the time of the interviews.
10. While it may be the case that knowledge of interviewing techniques has improved, the criticisms that have been made by Peter Ellis relating to the interviews could not have been made with the same force in 1993. As recognised by the Court of Appeal (page 19) *“the adverse factors of delay, possible parental or other outside contamination, and the use of focused questions (not open-ended) were all known and appreciated at the time of Trial, and importantly were directly addressed, extensively so at Depositions.”*
11. The interviewing techniques used in this case were arguably ahead of their time, for example interviews were recorded, carried out by specialist interviewers, and specialist units were operating in the Police and Social Welfare.
12. The evidential interviews in these cases were not “disclosure” interviews in the usual sense. That is, they were not interviews that sought disclosure of abuse for the first time (compared for example, with disclosure of abuse that had arisen in the context family situation). This may have some significance in terms of what one might “normally” be expected to see of a child’s demeanour in the course of interviewing. What arose here was disclosure to parents first followed by evidential interviews. In effect, the evidential interviews were the means by which the children made their “statements”.

13. As submitted by the Crown, it is appropriate to treat mass allegation cases in the same way as any other case of child sexual abuse but with particular awareness and recognition of issues such as contamination. Those particular issues can be, and have been addressed in this case through the use of joint agency co-operation and planning and the general awareness of the risks that contamination carries. There is nothing different in interviewing children who are part of a mass allegation as opposed to interviewing any child the subject of sexual abuse. However, those involved in the process need to be aware of the inherent risks of possible contamination. All reasonable steps should be taken to avoid any contamination however it would be wrong to impose unrealistic requirements on families dealing with children who are the victim of sexual abuse. Families must be free to talk to their children and deal with issues in an appropriate way. Families will also need to seek support and information from friends and appropriate agencies. The realities of the situation must be recognised. To impose a standard that parents can not discuss matters would be unrealistic and would be unlikely to be observed in practice. A realistic and balanced approach must be adopted.
14. In this case the risk of possible contamination was known and appropriate steps were taken to avoid any contamination. Further, these issues were all extensively dealt with at trial. All parents were aware of the risk of contamination and the dangers inherent in discussing the allegations with their children or others.
15. The suggestion has been made that because of the fantastic details that occur throughout some of the children's allegations, they are unlikely to be true. In fact, as noted by the Court of Appeal, the studies do not show that the presence of fantastic details marks an allegation as false. Further, the nature of the abuse in these cases is entirely consistent with matters haven arisen in the context of "play".

### **Mass Allegations**

16. In relation to these issues the parents rely on and adopt the Crown's Submissions. However, the following additional specific comments are made.
17. It is accepted that care needs to be taken when dealing with a mass allegation situation. In this case, the necessary care was taken. The underlying factors giving rise to the need

for care were all extensively addressed both at Depositions and at Trial. In this case, the nature of the mass allegation meant that particular care was taken by the investigating authorities to guard against contamination. The fact that this was a mass allegation situation meant the families were in fact informed, and aware of the possible risk of contamination from a very early stage.

18. As acknowledged by the Court of Appeal (page 30),

“..no new contaminating factor is involved in mass allegation cases; the fact that there are mass allegations merely tends to heighten the effect of known factors, thereby compounding the problems of unreliability.”

19. One of the significant features of a mass allegation of sexual abuse of children is the effect the media has on the matter. The Court of Appeal referred to the potential effect of media in the context of contributing to 'hysteria' (CA page 30). It should be noted however, that in this case the publicity pointed strongly towards disbelieving the children and thereby pointed towards retractions. In fact these children did not retract. This is not a case like many others where the media has encouraged or reinforced the allegations.

#### **Parental Questioning**

20. A constant theme of complaint by Mr Ellis has been that the children's evidence was contaminated as a consequence of questioning by their parents. This issue too was one of the grounds advanced in support of a pre-trial application to rule the children's evidence inadmissible. In dealing with this application Justice Williamson noted at page 11 of an oral judgment (No 2) dated 25 March 1993 and after noting that two of the principal complainant children did not appear to have been questioned to any extent prior to the interviews, as follows:

“Ideally the evidence of complainants in cases of this nature would arise clearly and precisely and without any previous questioning. Such a position however would be unreal. It just does not happen. Victims of sexual crimes are affected by emotional and relationship factors to such a degree that, even entirely genuine and truthful evidence, may be given hesitantly and only when the right occasion presents itself. It would be a somewhat false and artificial standard for Courts to impose in such cases a requirement that parents should have no detailed communication with their child about such

matters prior to any admissible evidential interview. The need for the child to be interviewed only arises usually when some relevant information has been given to the parent or to another carer. Understandably parents would discuss such matters with a child who was worried or who was about to attend an interview. The problems may come, however, from the nature and extent of the parent child communication. As usual with such matters, it will be a question of degree. Courts have to weigh, although not with fine scales, the effect that such communications may have had on evidential interviews. In the gross case where parents or investigators have effectively prepared briefs of evidence for children to memorise or recount later, then, of course, it would be unfair to allow that evidence to be given at trial. When a child has been misled or tricked into saying things at an interview that also would be improper. ... On the other hand where parents have just asked natural and appropriate questions, even if they are direct or leading, prior to an interview, then such procedure may be fair since it would be unlikely to lead to false testimony. It is when more extensive questioning has taken place that decisions have to be made about whether a Judge should exercise a discretion to exclude evidence having regard to the extent of any risk that that evidence is untrue. There was extensive questioning of some of the children in this case and that is a factor that I must have particular regard to in considering this application”.

#### **Parent/Parent Contamination**

21. Sharing of information between parents was a further ground relied upon by Mr Ellis in the pre-trial application for a ruling that the evidence of the children was inadmissible.
22. Justice Williamson dealt with this subject at page 13 of the Oral Judgment No. 2 (referred to above) as follows:

“After the initial meeting some of the parents of the crèche children set up a support group. Counsel for the accused Ellis was critical of the activities of this group and particularly of steps taken by  
in making information about some children available to the parents of others. This exchange of information clearly occurred. The extent and significance of it, however does not appear to me to support the sinister picture drawn by counsel. Generally the parents of the complainants who gave evidence at the depositions and who were extensively cross-examined do not appear to have been unduly influenced by the sharing of information. More importantly, the question for the Court is whether the children’s evidence has been affected by this conduct. Again this question returns to the necessity for judgment about the reliability and truthfulness of the children’s evidence. I am unable to determine on the depositions and the exhibits that the sharing of information between parents has had the effects contended for by counsel”.

23. It was suggested by Counsel for Peter Ellis in the Court of Appeal that parents inappropriately questioned their children with information they had received from other parents. A number of points need to be made in response to this suggestion:

- The parents were not conducting “interviews” as such. The analysis of the individual cases that follows shows that in most cases there was either no parental questioning or such questions as were put were entirely what would be expected in a family situation and did not have the effect of contaminating the children’s evidence. Further, this issue was the subject of extensive cross-examination at Depositions and at Trial.
- In some cases, the parents kept a careful record or notes of discussions with their children. For example, mother of children P and Q at Deposition p 373.
- The official meetings provided the parents with guidelines on how to question children and alerted parents to the issue of contamination.
- None of the parents saw the evidential interviews until after the Trial, if at all.
- The effect of the submission made by Counsel for Peter Ellis on Appeal was to suggest that the parents “wanted” their children to make disclosures. Nothing could be further from the truth. As is clear from a reading of the Depositions and the Trial notes, it is obvious these parents were all hoping their child was **not** a victim. Far from “encouraging” the children to disclose, the parents did not want their children to disclose.

24. It is important to emphasize again the importance of not imposing a requirement that families cannot discuss matters of this nature with their children. To do that would be to impose an artificial and impractical standard that would never be met. What must be achieved is an awareness of the risks associated with possible contamination from detailed and direct questioning. That was achieved in this case, principally from the advice given to the parents at the public meetings about these dangers. The parents were careful to follow the advice that was given.

### Official Meetings

25. Complainant parent attendance at meetings has been the source of complaint on behalf of Mr Ellis from an early stage of the prosecution. Prior to Trial Mr Ellis brought an application seeking an order excluding the children's evidence, relying, inter alia, on an allegation that the manner in which the evidence was obtained resulted in unfairness to Mr Ellis. The meeting at the beginning of December 1991 was described by Counsel for Mr Ellis as "*totally inappropriate to the nebulous and innocuous remark which had triggered it.*" The complaint went on to assert that the Police should have reassured the parents at this meeting that nothing was amiss and that the effect of this meeting, and the further meeting in 1992, was to create a climate of fear in parents so that they became a "*hyper-vigilant group of parents of pre-school children*".
26. It is submitted that Justice Williamson in dealing with this application in oral judgment (No. 2) dated 25 March 1993 aptly summarised the submission made on behalf of Mr Ellis. At page 10 Justice Williamson stated in response to a submission that the calling of the meeting was inappropriate, as follows:

"The evidence however, does not support this criticism or the more detailed ones associated with it. The meeting was called by an official group of parents after consultation with the City Council who had the overall responsibility for the crèche. The child of one of these parents had said to his mother that he did not like Peter's black penis. Naturally this had concerned the mother. There is related evidence that the accused had said he had blackened another person's penis using a pen. The mother complained to the crèche controllers. She spoke to the Police, and her son was then interviewed twice by the Specialist Services Unit of the Department of Social Welfare. It was at a time between these interviews that the parents called the meeting. Representatives of the Police and the Specialist Services Unit were invited to this meeting to advise the parents. The purpose seems to have been to educate the parents. It was not a meeting called by the Police in order to commence their investigation."

Further on page 10, His Honour noted:

"Part of the complaint as to the procedures is that the Police should have reassured the parents at this meeting that nothing was amiss. In my view, it may well have been irresponsible for them to have done so without having had an opportunity to investigate the possibility in detail. Overall the

evidence does not support counsel's submission that the effect of this meeting and the subsequent one in March 1992 was to create a climate of fear in parents so that they became such a group as is described in one of the articles attached to Dr Le Page's affidavit as a "hyper-vigilant group of parents of pre-school children". Indeed the suspicions which provided the real foundation for counsel's submissions may equally be explained as arising from natural concerns of the parents and from entirely proper steps taken in alerting them to potential problems which may affect their children."

27. It was said by Counsel for Peter Ellis at the Appeal that parent support group meetings were held at which there was a free exchange of information, that a mindset of widespread abuse was commenced and that the official meetings fostered hysteria.

28. That is not correct. The professionally supervised meetings enabled parents to become informed and educated on the risks of contamination and to deal with any concerns they had. Again, this issue was extensively dealt with at Depositions and Trial. A reading of the Depositions and Trial transcripts will show that the extent of possible contamination in individual cases were all identified and addressed.

29. The submissions made by Counsel for Peter Ellis at the Appeal allege that "hysteria" developed. That submission is misconceived. It is not reasonable to expect that parents in a situation such as this would have no contact, either with other parents or with their children (in relation to the abuse). Parents cannot be expected to be isolated either from their friends or from their families. In fact, in these cases there was very limited contact. But even the limited contact that there was has been characterised as "mass hysteria". The parents, with the encouragement and oversight of the agencies, developed support groups to avoid the very problems that are now the subject of objection and which are referred to as the basis of the claim of "mass hysteria".

30. In reality the parents and the professionals were very careful to ensure there was no contamination. They set up separate support groups to ensure that the parents with children who were complainants were not meeting with the parents of children who were not.

31. As far as the "official meetings" were concerned, far from being a vehicle for the exchange of information and the source of contamination, they were a mechanism to



ensure the parents knew how to act and were aware of the possible risks of contamination.

32. Regard must be had to the realities of the situation. The parents in this case are concerned parents who have dealt with these issues in a real situation. They continue to deal with these issues. It would be wrong and totally unrealistic to expect victims of sexual abuse or their families to deal with these matters in a clinical fashion. Equally unreal, to impose a requirement that parents should have no detailed communication with their children about such matters prior to interview.
33. It is also quite understandable and “normal” for parents to need to discuss these issues with friends, to seek support and reassurance. In this case some of the parents had known each other for a number of years and had longstanding friendships. It would be artificial to impose a requirement that friends have no communication with each other about such traumatic and distressing issues.