

- Q. "Did you raise the tapes of _____ with your supervisor? "
- A. "I don't think I took the tapes to supervision. I don't think I did take those tapes. I don't think I discussed that particular case in supervision."
- Q. "What was the purpose of your discussing particular tapes with your supervisor?"
- A. "To clarify certain parts of the disclosure for its reliability"

101. At trial Mr HARRISON asked of Ms SIDEY why topics were not further explored with a child in interview when the interviewer had information that would tend to suggest that the evidence of the child had been contaminated. When Mr HARRISON asked the interviewer why she did not pursue information about contamination as vigorously she responded that children are not able to accurately report such conversations and in any event even if there was leading the subsequent disclosure and detail validated the tainted questioning. Ms SIDEY stated at page 285:

- Q. "Can you just clarify what your role as an interviewer is?"
- A. "To gain information from the child. To present to the Court, Family Court, criminal Court."
- Q. "Would that be why you would not spend much time on questioning the child about whether other people have talked to them about what they are telling you about?"
- A. "No I don't see the connection, that is not why. I think for me it is because I have never found as I said before a child who can accurately report those sorts of conversations."
- Q. "I am asking you if this is the reason why you do not ask them about where they may have found or alternative sources for what they are telling you?"
- A. "I do, I ask them how do you know that. Particularly if they disclose in very general terms, i.e. Peter did wees in the children's faces, I would ask how do you know that."
- Q. "Again you wouldn't spend 40 mins questioning them are they sure about where they heard it from or did they hear it from this or did people ask them this partic. question?"
- A. "No I wouldn't because I think the actual disclosure and detail about that itself is the validating element. "

102. When Mr Harrison asked about topics within the interviews that were not followed up by the interviewer the response from the interviewer tended to be that they "forgot". For example, in the evidence of Ms MORGAN the interviewer is asked by Mr HARRISON about the interview of _____ at page 261:

- Q. "Ref. to _____ in her interview when you were asking her about the incident of her being poked in the crutch, she ref. to it happening when the other teachers were down the other end looking after the deaf children?"

- A. "Yes at one point she did mention that."
 Q. "At that stage you would have known about the Civic Creche and the nature of its business. "
 A. "Yes I did."
 Q. "You would have known at that stage there were no large group of deaf children being catered for at the Civic Creche?"
 A. "I would have assumed not yes."
 Q. "Was it merely an oversight on your part as to why you didn't question the child further as to the relevance of the deaf children?"
 A. "Yes it was."
 ..
 Q. "You didn't ask . any leading questions about deaf children did you?"
 A. "I don't think I asked her anything about deaf children."

THE FAILURE TO MAKE FULL DISCLOSURE

103. The Wood Commission highlighted the need for full disclosure to be made by the Police and Prosecution in mass allegation cases, the rationale being that any weakness need to be available for use at the trial if thought relevant by either side. Obviously there is no direct evidence from the Depositions and Trial Transcripts of failure to make full disclosure so that if this Inquiry is to limit its considerations to material available only through Deposition and Trial Transcripts then it clearly cannot consider this aspect, despite the fact that the topic is identified as a key factor in ensuring that injustice does not arise in mass allegation cases.
104. If, however, the Inquiry is prepared to consider the topic then the following matters of non disclosure are matters of particular relevance:
- (i) The non-disclosure of Detective Eade's sexual approaches to the mother of a complainant child, this non-disclosure being relevant to the requirement that an investigator be neutral and objective and a failure by his superiors to immediately remove him from the case;
 - (ii) The non-disclosure of documentation demonstrating parental contamination:

- (a) A New Zealand Police Report Form signed by Detective Eade and dated 19 March 1992;
- (b) A Report dated 12 August 1992 recording the contents of a meeting at which high ranking Police Officers were present together with specialist interviewers, social workers and Mr Christopher Lange of the Crown Solicitor's Office (later Junior Counsel at Trial);
- (c) The non-disclosure of photographs of the Creche taken by lay persons and removed from the Creche premises by the Police. These photographs demonstrated that the toilet area, the area alleged to be where the abuse at the Creche had taken place, was clearly visible from the main Creche room;
- (d) The non-disclosure of photographs taken by the Police at the Creche in September 1992 identifying SRA material was present at the Creche during the course of the investigation and had been borrowed by a Creche mother, this being a relevant matter to contamination.

The Non-Disclosure of Detective Eade's Sexual Approaches to

105. The Inquiry is referred to a New Zealand Police Report Form signed by Detective Senior Sergeant J A ELL, dated 7 July 1992,¹³² and headed "Restricted" recording a telephone conversation on 2 July 1992 and subsequent meeting on 6 July 1992 which he had with a mother of one of the complainants ("Mother 'A'"). Mother 'A', in the meeting of 6 July 1992, outlines that she had been involved in the Crèche investigation from the outset and that her first contact with Detective EADE was around late November 1991. Her comments are recorded as follows:

"From the commencement of the investigation, numerous contact took place between the investigating Detective (Detective EADE) and her, her children and her partner, [blacked-out] stated that the first sorts of things that occurred that she thought was inappropriate was about March 1992 when Detective EADE had told her in quite a reasonable amount of detail, were the problems that he had experienced within his personal relationships. It is clear from [blacked-out] comments regarding this matter that she see this type of talk by Detective EADE in his professional role as

¹³² See annexure 'K' to the Affidavit of Robert Andrew Harrison dated 12 November 1998.

being inappropriate but to some extent understandable because of the close relationship that can develop between, as she put it, client and professional. Of greater concern to her were conversations involving sexual innuendo.

She stated that the first such conversation took place, she thought, some time in early May and that there were basically three related telephone conversations. She claims that on the first occasion, either she had rung Detective EADE or he had rung her and within the conversation he had made comment to her about what he liked to do with women and how he liked to please them. [Blacked-out] stated that this made her feel very uncomfortable and for a while she did nothing but, as she put it, tried to do what women often do, blame themselves for the comments.

She stated that about a week after that first telephone call she again had occasion to ring him or he had telephoned her and she challenged him over the comments that he had made and explained to him that she thought his comments were inappropriate and that it made her uncomfortable. He responded by apologising along the lines that he had not intended her to think that his comments were directed at her and further, that with all that she has had to go through, it was inappropriate for him to say that sort of thing to her.

Subsequent to this call, another telephone call took place some days later and towards the end of that telephone conversation Detective EADE made comment that after the investigation was all over he would like to take her out for dinner and then take her back to his place.

106. As a result of the telephone calls Mother 'A' decided to withdraw her daughter as a complainant in the case. It is further recorded:

"[The parents] were both strongly of the view that punitive action was of little or no value on its own and were aware that behaviour of this type (accepting that it occurred) can be considered and [sic] indicator of a person working under stress or not coping."

107. It is submitted that the above Report Forms are of the utmost relevance to Mr Ellis' case, including to the issues of prosecutorial bias and credibility of the New Zealand Police investigation, and that both the New Zealand Police and Crown Solicitor's Office at Christchurch were obliged to disclose these documents to Peter Ellis' trial Counsel.

108. Furthermore, it is submitted that Peter Ellis was met with unhelpful resistance from the Crown Law Office to disclosing this material to Mr Ellis when Counsel for Mr Ellis, on 2 April 1998, specifically requested:

"Any information held by the New Zealand Police or the Crown Solicitor's Office regarding a complaint by Eade. against Mr Colin Eade."

109. On 24 April 1998 the Crown Law Office advised Counsel for Mr Ellis:

"[T]his office does not hold that material, and has no power to obtain it. This material will not be disclosed other than pursuant to an order under s389(a) of the Crimes Act..."

110. However, a refreshing change of attitude by the New Zealand Police meant that this material was provided by the New Zealand Police on 29 September 1998 as a result of an Official Information Act and Privacy Act request dated 3 July 1998. It is submitted that the stance adopted by the Crown Law Office is symptomatic of the Criminal Justice System's inability to accommodate the investigation necessary in a case such as Mr Ellis', even when a potential miscarriage of Justice has been recognised by the His Excellency the Governor General.

The Non-Disclosure of Documentation

111. It is submitted that the New Zealand Police and / or the Crown Solicitor's Office at Christchurch failed to disclose documents which clearly highlighted the parental contamination of the child complainants' evidence throughout the investigation.

112. The Inquiry is referred to a New Zealand Police Report Form signed by Detective C K EADE and dated 19 March 1992.¹³³ This document was not disclosed to Mr Ellis' trial Counsel and was only provided to Counsel for Mr Ellis on 29 September 1998 as a result of the Official Information Act and Privacy Act request of 3 July 1998. The Report Form states at page 2:

6. *From the out-set, both Susan SIDEY and I have encouraged the parents to discuss concerns in a non leading way and to record conversations with their children.*

7. *This hasn't prevented some parents from directly questioning their children about ELLIS."*

¹³³ See annexure 'B' to the Affidavit of Robert Andrew Harrison dated 12 November 1998.

113. It is submitted that this document was of vital importance as it demonstrated that at an early stage of the investigation, in March 1992, there was already parental contamination taking place and that this was recognised by the New Zealand Police.

114. The Inquiry is also referred to a document headed "Civic Crèche Enquiry Meeting" and dated 12 August 1992¹³⁴ which appears to record the contents of a meeting between Chief Inspector McMEEKING and other high ranking officers, specialist interviewers, social workers, and Mr Chris LANGE of the Crown Solicitor's Office. This document was not disclosed to Mr Ellis' trial Counsel and was only provided to Counsel for Mr Ellis on 29 September 1998 as a result of the Official Information Act and Privacy Act request of 3 July 1998. Under a heading, "Discussion", it is recorded:

"Detective EADE addresses the meeting. Experiencing difficulty with parents who are in a frenzy and persuading them not to pull their children out of the enquiry. It has been stressed to parents not to question their children inappropriately but this is not being adhered too [sic] and becoming something of a concern.

...

About a week ago a child by the name of [blacked-out] (who previously disclosed minor indecent assault) disclosed to his mother being taken to different places, another house and maybe the Masonic Lodge, and ritualistic incidents occurring. Six weeks ago the Masonic Lodge was brought up when another child was walking past the building and said to his mother that he had been down there, indicating a ramp that goes down to an old boiler room. A number of children have been taken to the intersection by parents and they have said yes I have been there.

[Blacked-out] parents have been reading literature on ritualistic abuse and this is a concern.

...

...The parents questioned him and he disclosed indecent acts that were consistent with what other children had said. [Blacked-out] parents have questioned him a great deal. Colin will analyse this see exactly what they are saying to [blacked-out]. The parents have been asked to keep notes of their questions and answers.

A further interview was arranged for [blacked-out] yesterday but when they arrived the mother had a book with her regarding ritualistic abuse. Because of our concerns the interview did not take place. Colin has read some of the book and some things are similar to what [blacked-out] has disclosed. It is possible that his parents have been shaping his answers for him. [Blacked-out] has had no contact with any other crèche children.

¹³⁴ See annexure 'C' to the Affidavit of Robert Andrew Harrison dated 12 November 1998.

Yesterday [blacked-out] mother advised that [blacked-out] had disclosed that some other teachers were involved. Of concern, is the fact that [blacked-out] mother found out last Thursday about [blacked-out] latest disclosure and had been quizzing [blacked-out] over the weekend.

115. The Inquiry is also referred to the previously undisclosed document headed "Civic Crèche Enquiry Meeting" dated 12 August 1998¹³⁵ where at pages 2 and 3 Detective EADE is recorded as stating:

"[Blacked-out] parents have been reading literature on ritualistic abuse and this is a concern.

...

"[Blacked-out] described ritual abuse and other teachers being present...

...

A further interview was arranged for [blacked-out] yesterday but when they arrived the mother had a book with her regarding ritualistic abuse. Because of our concerns the interview did not take place. Colin has read some of the book and some things are similar to what [blacked-out] has disclosed. It is possible that his parents have been shaping his answers for him..."

The Non-Disclosure of Photographs of the Crèche by Lay Persons

116. Three years after the Trial Mr Winston WEALLEANS, a long time supporter of Peter Ellis and husband of a female Crèche worker, discovered a box of Photographs on 21 November 1996 at the Christchurch City Council amongst the Council's Crèche file in a carton also containing High Court and District Court exhibits from the case. In a separate file Mr WEALLEANS discovered a document headed, "Records removed By Police 4/9/92". Included in this list is an item, "box of miscellaneous photographs."

117. The importance of the photographs is that:

- (i) They demonstrated in a compelling way that the sexual abuse that was alleged to have taken place in the toilet area was highly unlikely to be true. It is clear that the toilet area was visible during the normal day to day activities of the Crèche and thus if the abuse was to have taken place in the way described by the children at Trial or at Depositions the Crèche adults and other visitors to the Crèche would have inevitably noticed the activity or noticed unusually extended periods of

¹³⁵ See annexure 'C' to the Affidavit of Robert Andrew Harrison dated 12 November 1998.

time in which the toilet area would be closed off. Ellis would have had to expose himself to an unbelievably high risk of discovery, one that given the nature of the parents, staff and the children at the Crèche would have been absurd.

- (ii) At trial children gave evidence of a variety of sexual activity and indecencies taking place in the toilet area. Convictions in respect of these activities were recorded involving

The evidence frequently contained assertions that Mr Ellis engaged in the obscene activities not merely with one child at a time but several. Some of the allegations involved physically painful experiences and all of them would have required the toilet area and the children to be extensively cleaned afterwards. The dimensions of the toilet area, the locality and the new photographic evidence, which clearly demonstrates an open door policy for the toilet area, shows that it was exceedingly unlikely that Mr Ellis could have offended in this way without being caught, if indeed it was not entirely impossible.

- (iii) Whilst it is true to say that visibility of the toilet area was raised both at Trial and Appeal, the photographs produced by the Crown were selective and projected a sterile and unfair image of the real Crèche. They did nothing to show the unlikelihood of this offending taking place there. A site visit to the scene when all evidence of the Crèche at work and play was removed could hardly capture the scene as these photographs do.

- (iv) The fact that these photographs were taken prior to the allegations supports the genuineness of the "open door" position in relation to the toilet area.

- (v) The photographs are also highly relevant to show the innocent images of the circle game and dressing up as witches and magicians. These images formed part of some of the children's allegations against Ellis and the Jury were invited

to give them a sinister interpretation when the Police well knew that an innocent interpretation was available.

118. These photographs were of considerable significance in relation to the eight Counts on which Mr Ellis was convicted which concerned incidents that were said to have occurred in the toilets at the Crèche (these were Counts 3, 6, 16, 20, 21, 22, 27 and 28).
119. The Inquiry is referred to the relevant extract of cross-examination of Detective JENKINS by Mr Harrison (trial Counsel) at trial transcript pages 316 to 318:

"Ref. now to photographs of the actual Civic Crèche itself 7004 booklet A2, you have taken a series of photographs 14, 15, 16, 11, 8, of the interior of the Big End?

Yes.

But you have seemed to miss taking a photo that actually shows the door to the toilets?

No I believe that photograph is in there but the door is open.

Are you ref. to photo 17?

That is correct.

Why is there not a photograph in the booklet that shows the entire wall of where the toilets are situated including the door?

That would be the way the photographs were taken, I don't think there would be any particular reason for it. In assessing the best way to show a scene it is my duty to direct that particular photographs are taken and it simply my opinion as to how they should be.

You would have had some knowledge of the allegations of the Civic Crèche inquiry prior to the scene investigation?

Yes.

You would know there were allegations of incidents in the toilet area?

Certainly.

You would know throughout most of the year the usual practice was for the door to the toilets to remain open, do you not think it would have been important to have the door to the toilets open and photographs taken showing how much you can see of the inside of the toilets from the general play area of the Crèche or Big End?

The door is open in photograph 17.

In your other photographs 16, 14, 15 you can see the general area of the Crèche can't you of the Big End?

Certainly, there would be a no. of inadequacies about the photographs but nothing would be deliberate in that, it is very difficult. to depict a scene such as that particular. bldg in a totality in photos.

Do any photos show the sink beside the door to the toilets?

You mean hand basins on the back wall.

No the sink directly to the left of the door if you look at ph. 17 it would be out to the side?

Not from that view no.

The sink I am ref. to is in the main area of the Big End?

Yes.

You recall it?

Yes. Do you mean the sink outside the door to the toilets from the Big End.

Yes, the kitchen sink section I am ref. to is here?

Yes.

There is no photograph of this area at all is there from this side of the Crèche?

The photographs that I indicated should be taken show the parts I felt were relevant to the inquiry and I found that there was no importance placed upon that particular bench, however it is shown in the plans.

If someone was standing here and the door to the toilet was open they would have a full view of this lobby area?

Certainly.

If they were standing around here they would still be able to see people coming in and out of these two doors?

Its not easy but a concerted effort would certainly give you a view.

Did you at any time try and establish the range of view from the pre school room looking into the toilets when the door was open?

Yes.

Why were no photographs taken of those particular angles?

That would be an oversight. There may well be photographs in a no. of other proofs that were taken but that would certainly need to be taken into account.

The Non-Disclosure of Photographs of the Creche taken by the Police

120. The Police Photographs include some which appear to be photographs of an office and depict a number of articles or extracts from books about sexual abuse. One of these extracts relates to ritual abuse of children.

121. On the top of one of the articles captured in the June 1998 Photographs¹³⁶ there is a hand-written note stating:

"Borrowed from

Pse Return"

¹³⁶ See annexure 'A' to the Affidavit of Robert Andrew Harrison dated 19 April 1999.