

A. "It probably was, probably about 2-3 months after."

36. also gave evidence at trial as to her mother's questioning⁸³:

"Q. Can you remember your Mum asking you if Peter had ever put his penis in your mouth?

A. Yes.

Q. Did your Mum ask you if Peter had ever touched you on your clitoris or bottom?

A. Yes."

37. Reference is made in the evidential interviews by to locations that were named by her mother. For example, in second video interview⁸⁴ referred to being taken away by Mr Ellis and taken to a big room with lots of escalators and states that her "mummy" thought could have been the City Council. later referred to touching having happened at the City Council.⁸⁵

38. demonstrated at trial that she was capable of claiming that she remembered an event from infancy which in fact had been the subject of discussion with her mother. At trial was asked⁸⁶:

Q. "Can you remember talking into the tape recorder with your Mum back in November?"

A. "Yes"

Q. "Do you know when you were in the incubator?"

A. "When I was just born"

Q. "Can you remember being in the incubator?"

A. "Yes"

Q. "You can?"

A. "Yes"

Q. "What can you remember about that?"

A. "I can remember that we had wires coming off and kept kicking the tube out of our nose."

Q. "Has your Mum ever talked to you about when you were in an incubator?"

A. "Yes."

39. confirmed that she had discussed the fact that she was in an incubator with ⁸⁷:

Q. "Have you talked to your daughter about being in an incubator?"

A. "I have talked to her about how she appeared brave and strong and that is how we chose her name hich means strength."

Q. "Did you ever talk to her about her taking her nose out of a hose or needles that sort of thing?"

⁸³Source: Notes of Evidence at Trial, p218

⁸⁴Source: Second Interview, at page 16

⁸⁵Source: Second Interview, at page 18

⁸⁶Source: Notes of Evidence at Trial, p220

⁸⁷Source: Notes of Evidence at Trial, p236

A. *... were initially fed through a feeding tube and occasionally they would wriggle round and pull the feeding tube out as many premature babies are want to do and I can remember we told her that."*

40. From the hand-written notes prepared by Mr Williams it appears that in November 1992 *...* drove *...* close to the Crèche prompting a "disclosure" from *...* to her parents relating to a house that she alleged Mr Ellis took her to.⁸⁸

41. *...* subsequently recorded two interviews with *...* on audio tape. During this recording *...* directly and suggestively questioned *...* about an earlier unrecorded conversation during their drive near the Crèche⁸⁹.

42. Days later *...* replayed the tape for *...* and recorded a further interview with her during which it is submitted *...* appeared to indicate the pressure that she was under to "disclose" to her mother⁹⁰:

⁸⁸Source: Hand-written notes by *...*

dated 7/11/92 : 8.35 pm

⁸⁹Source: Transcript of *...* interview of *...* November 1992 an example of the questioning:

C: *"I remember ... when we were driving down Montreal Street past the Crèche and you remembered where the Crèche was and you saw that there was a sign that said "art classes"."*

B: *"Yep."*

C: *"And you wondered if there were art classes where the Crèche used to be and you had been thinking a lot about the Crèche after driving past it haven't you."*

B: *"Yes."*

C: *"And then on the way home you said that you thought you still had some more things to remember and talk about but you weren't quite sure. Do you remember telling me that?"*

B: *"Yes."*

C: *"And then I said that I had heard maybe a little girl had told someone that she saw you at a house that Peter used to take children to sometimes but that I wasn't sure whether she had got you muddled up with someone else or whether she was telling the truth or not and you said you didn't know."*

B: *"Im... yeah."*

C: *"Yeah... and then yesterday night you started remembering some more about a house didn't you?"*

⁹⁰Source: Transcript of *...* interview of *...* 11 November 1992, for example:

C: *Yeah. When you listened to the tape ... you know how you like listening to it again, the tape you made.*

B: *Yep.*

C: *Does it make you think of any other things.*

B: *Um yeah it made me think of this ...*

C: *...the time with the sprinklers*

B: *Yeah.*

C: *Yeah, are there any other things besides the sprinklers that it makes you think of.*

B: *...*

C: *No.*

B: *....*

C: *What do you mean not my business.*

B: *Well it's not my business to think of any more things that have happened.*

C: *I don't understand what you mean.*

C. SHARING OF INFORMATION

43. In addition to the parents with whom she had contact through the first informal support group, namely _____ and her partner, _____ and her partner, _____, and _____ parents, _____ also attended a support group that was established later in 1992 which also included the father of _____'s parents, _____ parents, and the mother of _____.

44. _____ was also in contact with _____ the mother of _____ through her work, "and in the course of those discussions we may say how is _____ or how are you."⁹² It is submitted that _____ did not give clear evidence at trial as to the degree of information which was exchanged between her and _____. In cross-examination she was questioned as follows⁹³:

Q. Did you ever have a discussion with _____ about what your children had said after they started disclosing?

A. I can recall a discussion where I said they had begun disclosing but I don't know if I was more specific than that.

Q. Therefore its possible you may have been more specific?

A. No. I can recall _____ asked me whether her daughter had been named by any other children. No sorry that is not right. I can remember _____ asked me if other children and she named specific children, were involved and I can recall I said I wasn't at liberty to tell her. And because her daughter was a close friend of the children she asked about I think that alarmed her."

45. In re-examination _____ described one of the types of discussions she had with _____ but could not recall whether she passed on specific allegations to _____: ⁹⁴:

"Q. We have also had discussions about how on earth do we continue to work in a personally demanding and stressful area while this is going on in our personal lives and given each other support in that respect."

B: ~~It's not my business to think of any more things that have happened at the crèche, it's _____ business.~~

C: ~~Oh I see you think you've been doing enough remember. Why is it _____ business~~

B: ~~He can remember some things that what happened to and then he can't remember anything ... not much things have happened, he hasn't been talking about them lately.~~

C: ~~No but darling~~

B: ~~The judge won't know much."~~

⁹¹Source: Notes of Evidence at Depositions p366

⁹²Source: Notes of Evidence at Trial, p237

⁹³Source: Notes of Evidence at Trial, p233-234

⁹⁴Source: Notes of Evidence at Trial, p237

- Q. "Did you pass on to her details of the specific allegations which your children or other children had made?"
 A. "Not that I can recall."

46. At the depositions hearing [redacted] added that since leaving the Creche there had been two family visits that had included

47. [redacted] accepted that she had "occasional" contact with the mother of [redacted] and had discussions about the Creche inquiry "on more than one occasion."⁹⁵

48. [redacted] remained in contact with [redacted] during the course of the Creche investigation. At trial [redacted] stated that [redacted] went to the same school as she, lived just a couple of houses away from her, and that she saw [redacted] often, although she added that she did not play with him very often.⁹⁶

49. At depositions [redacted] stated that since leaving the Creche, her children had continued to mix with [redacted]⁹⁷ and at trial [redacted] described an incident at the beginning of 1992 where [redacted] and [redacted] went to the park with [redacted].⁹⁸

"I can remember [redacted] made one brief reference to Peter and we told him not to talk about it anymore, he didn't talk about what Peter had done to him but rather what he had enacted the night before out of excessive anger towards Peter. He had pretended to jump up and down on peter and threw him into a rubbish bin. What [redacted] said at that park was about what he had done the night before. He was on the on top of the jungle gym and shouted it out for all the world to hear in a voice full of glee."

D. OTHER SOURCES OF CONTAMINATION

50. It would appear that [redacted] was exposed, on at least one occasion prior to leaving the Creche, to another child masturbating. At trial [redacted] described an incident in the back of the car involving her children and [redacted].⁹⁹

On the way back in the car [redacted] was sitting behind the passenger seat, I was driving, [redacted] was in the middle of the back seat and [redacted] on the furthest side behind myself the driver [redacted] started masturbating and became very excited and giggly persuading the other children to have a look and [redacted] also became very excited and giggly, [redacted] was very frightened, very terrified, Adrian's penis was erect and [redacted] was putting his hands over his eyes - I was so frightened and we persuaded

⁹⁵Source: Notes of Evidence at Trial, p237

⁹⁶Source: Notes of Evidence at Trial, p217

⁹⁷Source: Notes of Evidence at Depositions, p361

⁹⁸Source: Notes of Evidence at Trial, p237

⁹⁹Source: Notes of Evidence at Trial, p225

to stop because of _____'s fear and I can remember that
didn't want to talk about it."

51. Prior to any allegations being made _____ had been educated by her parents concerning unwanted touching, specifically in reference to Mr Ellis's tickling of them¹⁰⁰:

"I remember talking to Peter when the children were quite little at the old site, the Wombles were in the upstairs part and there was a narrow stairway to get up to it and Peter would play a game where he prevented the children getting up or down the stairs and he would tickle them and not let them pas[t] and neither of the children liked this, they didn't like being tickled and we talked to Peter about this and he said he would. We told the children their bodies were their bodies and they had control over who was allowed to touch them or not touch them, there is a pre school tune to that effect and we taught them that tune. After I spoke to Peter Ellis about that as far as I know the tickling stopped till much later when they were at the Big End at the new site."

52. _____ was also exposed to a book containing sexual abuse themes prior to her first Specialist Service Unit interview¹⁰¹:

"Prior to their March interviews I had read them a book, there was a book at the creche What's Wrong with Bottoms which is a very general books (sic) about indecent exposure by a boy's uncle and I think I recall reading that to them at the creche. Prior to _____ first interview we were advised not to read them any books so we didn't, but then given the message it was OK and probably sensible to read it to them, we did that after first interview, What is Wrong With Bottoms and another book the Very Touching Book. From reading those books I don't think they have references to things] being yucky in the, scary yes. The Very Touching Book, it has nothing in it about penises in mouths or anything of that nature. It simply talks about children's genitalia being private. And that sometimes adults touch children in ways that don't feel good to the children and that adults try to get the children to keep that secret. In the book this is ref. to as secret touching and that is a phrase that we often then referred back to."

53. At the depositions hearing _____ also referred to books called "Safe about Bottoms" which was at the Creche and "Secret Touching" which was read to the children following Specialist Services interview in December 1991.¹⁰² _____ also indicated at trial that she had read the children a further book called "Daniel and his Therapist".¹⁰³

54. At trial _____ confirmed that her mother had read her such material prior to her talking about Mr Ellis¹⁰⁴:

¹⁰⁰Source: Notes of Evidence at Trial, p223

¹⁰¹Source: Notes of Evidence at Trial, p227-8

¹⁰²Source: Notes of Evidence at Depositions, p367

¹⁰³Source: Notes of Evidence at Depositions, p369

¹⁰⁴Source: Notes of Evidence at Trial, p217

"Q. Can you remember your Mum reading you a book called *The Very Touching Book*?

A. Yes.

Q. Can you remember that?

A. Yes.

Q. That was before you started talking about Peter wasn't it?

A. Yes."

55. Following the commencement of the Creche investigation and first Specialist Services Unit interview commenced therapy in March 1992.¹⁰⁵

56. It would appear that had access to newspaper coverage of the Creche Inquiry¹⁰⁶:

"Access our children had to TV and media coverage of the inquiry, we don't own a TV. They have occasionally seen TV at the Lyttle house but I doubt whether they would have seen anything to do with the inquiry on that. They wouldn't have seen press coverage unless on the front page and we tried to keep it from them but they like reading headlines."

E. THE SSU VIDEO RECORDED INTERVIEWS

57. Mr Ellis was convicted on two counts relating to

(a) Unlawful sexual connection of the girls' mouth with Mr Ellis's penis at the Crèche, the allegation being recorded in interview 1 (9 March 1992);

(b) Indecent Assault in that he touched her vaginal and anal area with his hand at the Crèche, the allegation being recorded in interview 1 (9 March 1992).

58. was formally interviewed three times by the Specialist Services Unit (on 9 March 1992; 6 October 1992; 9 December 1992). The interviews were conducted by Sue Sidey with Colin Eade as the monitor for the first interview and Cathy Crawford for the second and third interviews.

59. Only the first interview of was played to the Jury. There was no defence request for the video taped second or third interviews to be played to the Jury.

THE ALLEGATION THAT PETER ELLIS PUT HIS PENIS INTO MOUTH

¹⁰⁵Source: Notes of Evidence at Trial, p226

¹⁰⁶Source: Notes of Evidence at Trial, p230

LACK OF INTERVIEWER FOLLOW-UP - CONTAMINATION

60. It is clear that _____ came to the interview prepared to talk about Peter: "Mm. What have you come to talk about today?" _____ replied "To talk with you about all the things that Peter did" (at page 6). The interviewer did not follow-up with _____ how she knew that that is what she had come to talk about that day.

SUGGESTIVE QUESTIONS

61. _____ told Susan Sidey about tickling and then went on to describe Peter Ellis as "a very mean man and he wants children to feel scared" and that she felt "scared" (at page 6/7).
62. When pressed _____ described tickling and taking and eating a gherkin from _____ lunch box (at page 9).

THE DETAIL OF THE ALLEGATION THAT PETER ELLIS INSERTED HIS PENIS INTO _____ MOUTH

63. The detail surrounding the allegation was extracted from _____ using suggestive questions, for example:

Q: "Yeah and um whereabouts, who saw that happen. Who knows that happened, that he put his penis in your mouth."

indicating to _____ someone else was to be named as having witnessed the alleged events. _____ responds "Marie". The interviewer did make some attempt to follow up this information:

Q: "Marie knows that happened"

A: "Yep."

Q: "How does Marie know that happened"

A: "Because she um was just going into the door of the toilets to check what Peter was doing and she saw him putting um his penis, making children put his penis in their mouth."

Q: "So how do you know she saw it"

A: "Because um I was, I ran out and I telled her that" (at page 10).

As Dr Parsonson points out, given the serious nature of this allegation and the allegation that it had been witnessed by an adult there was an obligation on a competent neutral interviewer to have this checked.

64. The interviewer did not follow up with _____ the apparent inconsistency. The interviewer had asked _____ who knew that Peter Ellis put his penis into _____ mouth to which _____ replied _____ but then went on to describe how _____ ran out of the toilets and told her.

65 stated that two other children, , and were present in the toilets too when Peter Ellis put his penis into mouth and that the touching had happened in the "area where the toilets were" (at page 11).

66. then stated: "And it made us feel scared and we wanted to tell someone" to which the interviewer suggestively responded "Im hym and you told Marie." (at page 12). did not say that she had told Marie about this incident, it may or may not have been the incident that she was alleging earlier. An open-ended question would have elicited a more reliable response.

67. The interviewer does not explore the topic of who had been told or witnessed the alleged incidents further with . Clearly the interviewer has suggested to I that Marie knew about being touched whereas the information that had initially given the interviewer was that Marie had walked into the toilet and had witnessed Peter Ellis putting his penis into children's mouth's.

68. It is of note that the interviewer, at critical points in the interview, responded "right" after had spoken. This creates the difficulty in that the interviewer used "right" to indicate "correct" and was thus affirming the information that was providing. For example, see at page 12:

Q: "What did Marie say when you told her"
A: *She said alright I'll try and stop Peter doing that and she tried to but he pretended not to listen again."*
Q: *Right and where did you get the scary feeling"*

69. Additional details are elicited from through the use of suggestive multiple choice questions, for example (at page 13):

Q: *Yeah did it [his penis] move or stay still*
A: *It stayed still*
Q: *And was it um soft or hard or floppy or hanging down or.*
A: *Floppy and hanging down.*

70. The interviewer did not attempt to ask any open-ended questions of to elicit contextual information, for example, where the other children were at the time this was supposed to have occurred, whether it happened to I before or after it was supposed to have happened to the other children, the relative body positions of Peter Ellis and for instance whether they were standing or sitting when this was supposed to have happened. At page 19-20 of the interview transcript the interviewer asked about where Peter Ellis clothes were when it stopped:

Q: "And um you know after, in the times when he put his penis in your mouth"

A: "Yeah"
 Q: "What happened when it stopped, what happened to his clothes when it stopped"
 A: "He pulled them up and zipped them up again and he then walked out of the toilets and took us with him."
 Q: "Where did he take you"
 A: "Um outside the gate and some secret touching out there"
 Q: "What sort of secret touching happened outside"
 A: "Tickling us"
 Q: "Whereabouts"
 A: "Um my tummy and back and there"
 Q: "Is that secret touching or a different sort of touching"
 A: "Different sort and he also hitted us and kicked us to hurt us so we tried to go inside" (at page 19-20).

71. The interviewer failed to follow up the issues that arose from the responses [redacted] gave. For example, it appeared that [redacted] was describing occasions of different days (whereas earlier she had said that it happened lots on one day) and it appears that later [redacted] was alleging that there were other children present while she was supposedly being abused in this way but these are not identified as [redacted] and [redacted] (whom [redacted] has said earlier was there).

72. At page 21 the interviewer returned to the allegation of the penile insertion and asks "Okay and [redacted] so how do you know what happened to the other kids, the penis in the mouth part" [redacted] replied "Because I was there when it happened to them". [redacted] then identifies [redacted] as children it had happened to, that she had told [redacted] that they could run outside and tell the other crèche workers and that they had told [redacted], sometimes Marie, sometimes Jan and Gaye "lots of times" using the following words (at page 22):

"Peter is doing secret touching to us, could you please help us to stop him and so we went in and he, and they tried to help us to stop him but he just kept on pretending not to listen and he kept on doing it."

The interviewer failed in her obligation to have this vital evidence checked, an obligation consistent with a neutral and unbiased interviewer.

73. It is submitted that the interviewer did not attempt to elicit any detail of this event, such as obtaining any contextual detail from [redacted] about her conversation with [redacted]. In addition, the inconsistency with [redacted]'s earlier statement that she had run out and told Marie who came back in and witnessed the penile insertion was not put to [redacted]. Given that [redacted] had said that it happened lots of times on one day, it would have been important to ask open questions of [redacted] to ascertain her account of events.

THE ALLEGATION THAT PETER ELLIS HAD TOUCHED [redacted] VAGINAL/ANAL AREA

74. Having alleged that Peter Ellis put his penis into [redacted] and other children's mouths' the interviewer then asked [redacted]

- Q: *So what was Peter doing in the toilets with the kids.*
A: *He was trying to make us put his penis in our mouth.*
Q: *Im hym was he doing anything else in the toilets with the kids or not.*
A: *He was touching our private parts"*
Q: *"Whereabouts are your private parts"*
A: *"Just there and there (indicates genital area and bottom)"*
Q: *"Have you got another name for those"*
A: *"Bottom and clitoris" (at page 14).*

These questions are direct and suggestive.

75. In response to direct questions [redacted] stated that this had been done to "um all what children that were there in the toilet" and in response to the direct question "did that happen to you or not" she replied "it happened to me". In response to further direct questions [redacted] alleged that Peter Ellis touched her through her clothes, hit "us" on "our" back, kicked "us" on the bottom (at page 14/15).

76. The interviewer failed to ask any open questions of [redacted] in relation to these additional allegations.

77. Given [redacted] use of the adult term "clitoris" and "anus" the interviewer ought to have made enquiries of [redacted] and of the parents as to the source of [redacted] apparent knowledge of sexual anatomy.

THE DETAIL OF THE ALLEGATION THAT PETER ELLIS TOUCHED ANAL/VAGINAL AREA.

78. In response to a relatively open question "and when his hand was on your clitoris whereabouts were your clothes" [redacted] responded: "Well on us but he just tried to do it like that, through our clothes" (at page 15). The interviewer persisted:

- Q: *"Through your clothes"*
A: *"Yep"*
Q: *"Okay so"*
A: *"Yeah"*
Q: *"Um could you show me on the doll what happened."*
A: *"He went like that"*
Q: *"So it was on top of your pants is that right"*
A: *"Yeah"*
Q: *"Okay was it always on top of your pants"*

to which [redacted] responded: