Peter Ellis: The Case for a Commission of Inquiry

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The Peter Ellis case has been the subject of much debate since the Christchurch childcare worker was convicted in 1993. At least two books have been written about the case, which has been the subject of two formal appeals, a Ministerial inquiry, a Parliamentary inquiry, and three formal requests for a pardon.

Successive governments have resisted calls for a Commission of Inquiry into the case. This paper explores why those calls have been made and why they have been repeatedly rejected. Relevant advice from the Ministry of Justice is examined in detail. Special attention is given to the advice and role of Val Sim, who was chief legal counsel in the Ministry between 1998-2004. In 2002, Sim wrote a review of *A City Possessed:The Christchurch Civic Creche Case* for then-Minister of Justice, Hon. Phil Goff. She advised Goff that Lynley Hood's book did not disclose any new information that necessitated an inquiry into the case. Was that advice accurate? Was it impartial and was it in the best interests of justice? While readers can draw their own conclusions, it is argued that a Commission of Inquiry needs to be established. Unless otherwise stated, Sim's comments that are cited here appear in her review of *A City Possessed:The Christchurch Civic Creche Case.*[1]

The 'Moral' Panic and Satanic Ritual Abuse

A moral panic may exist when a person or group of persons is seen to seriously threaten societal values and interests. The media typically provide the impetus for a moral panic, disclosing information, often from so-called experts, that is usually biased and inaccurate, giving the subject greater coverage than it warrants, and generating unfounded and widespread concern.

Child sexual abuse in general and satanic ritual abuse (SRA) in particular have been popular subjects for the media. Though the former is clearly a serious problem and warrants media attention, the latter is unproven and appears to lack any substance. Nevertheless, in the 1980s and early 90s, the media promoted the idea that young children could be sexually and ritually abused at day care centres and elsewhere.

American journalist Debbie Nathan was among the first to publicly question the day care ritual abuse scenario. In 1987, she criticised the investigation and prosecution of Gayle Dove and Michelle Noble, childcare workers who were accused of sexually abusing young children. Titled 'The Making of a Modern Witch Trial', Nathan argued that the women were convicted "not so much by the State of Texas but by the state of hysteria" concerning allegations of child sexual abuse.[2] Dove and Noble spent more than two years in prison before their convictions were quashed.[3] In 1990, Nathan wrote 'The Ritual Sexual Abuse Hoax'. She argued that the term "ritual abuse" was adopted by prosecutors and social workers concerned that *satanic* abuse might engender public disbelief. It was necessary, she said, to come up with "sensible-sounding explanations for why ordinary people would suddenly get the urge to stick swords up toddlers".[4]

In 1993, sociologist Jeffrey Victor wrote a detailed account of moral panics, *Satanic Panic: The Creation of a Contemporary Legend*. He compared the SRA scare with other moral panics, such as the European witch-hunts, anti-semitic persecutions and McCarthyism (an anti-communist crusade of the 1950s led by Senator Joseph McCarthy). He concluded:

> The ritual abuse scare is the social creation of a late twentieth-century witch hunt. There is no verifiable evidence for claims about a Satanic cult ritual abuse conspiracy.[5]

More recently, sociologist Mary deYoung has noted that in the US, the last prosecution of a mass allegation day care case occurred in 1992. (Peter Ellis was arrested in 1992 and convicted the following year.) Between 1984-1992, there were more than 100 prosecutions of such cases in the US. While there were a number of convictions, only a handful withstood appeal. In arguably the most notorious case, five adult day care employees were alleged to have abused more than 350 children at the McMartin Pre-School in Manhattan Beach, California. One of those charged was a 78-year-old grandmother. Charges against her and two others would later be dropped. By the time the two remaining accused were due to stand trial,

> professional, public and media skepticism about the day care ritual abuse cases and the roles that social workers played in them had swelled. So did scientific skepticism, as well-designed and controlled empirical studies revealed just how easily young children can be led to make outrageously false allegations.[6]

In 1998, 'Satan's Excellent Adventure in the Antipodes' was published. Its author, Mike Hill, claimed that satanic panic came to New Zealand from the US via a coterie of self-proclaimed experts. One such "expert" was Pamela Klein, a rape crisis worker who visited New Zealand in May 1990. Klein believed that symptoms such as bed wetting and nightmares were evidence of sexual abuse. "Her credentials", Hill argued, "had been questioned by an Illinois judge, who stated that she was 'not a legitimate therapist' and was not licensed to practice".[7] (Jeffrey Victor says that in the same case referred to by Hill, the Court was presented with evidence that Klein had falsified her credentials.) Nonetheless, she was invited to New Zealand where she spoke about the devastating effects of child sexual abuse and ritual abuse. Among her audience were Ann-Marie Stapp and Jocelyn Frances, members of the Ritual Action Network - later renamed the Ritual Action Group (RAG). Stapp would later become spokeswoman for some of the parents and children involved in the Ellis case.

With financial assistance and support from various Government agencies, RAG disseminated information about ritual abuse. One paper of note, written by Stapp and Frances, was presented at a Family Violence Prevention Conference in Christchurch in September 1991, just weeks before a child attending the Christchurch Civic Creche reportedly made an ambiguous comment about "Peter's black penis". The paper left little to the imagination.

> Ritual Abuse is physical, sexual and psychological abuse that is systematic, ceremonial and public…[n]ot much is known at this time in Aotearoa/New Zealand, about ritual abuse that has occurred outside the family. In the United States, ritual abuse occurs without parents knowing, at pre-schools, day-care centres, churches, summer camps, and at the hands of baby-sitters and neighbours. It is likely to be so here in this country….[a] child who has been ritually abused will have been subjected to a systematic process of de-humanisation - their bodies invaded through their eyes, ears, nose, mouth, vagina/penis and rectum. They will likely have been forced to have sex with animals, had their bodies smeared with excrement, drink blood and urine, forced to watch and participate in the sacrifice of animals, eaten the flesh and organs of animals, often their own pets, and seen photographs of themselves doing all of this.[8]

The views of Stapp and Frances and other members of RAG received widespread publicity in the weeks and months prior to the police investigation into the Christchurch Civic Creche. Days prior to the conference at which Stapp and Frances presented their paper, the *Dominion Star Times* published an article about ritual abuse. The article lent credibility to RAG and was written on the basis that ritual abuse was real. Headlines such as 'Satanic sexual torture more than a nightmare','Satanic ritual abuse in NZ – US therapist', "'Floodgates to open' on abuse", each of which appeared in late-1991, were published without any critical analysis of the issues involved. The media accepted and promoted claims of ritual abuse, which was regarded as widespread.

At no stage during his summing up did the Ellis trial Judge, Justice Williamson, refer to SRA or moral panics. Sir Thomas Eichelbaum, who charied the Ministerial inquiry into the Ellis case, briefly mentioned SRA when studying the report of the Royal Commission into the New South Wales Police (at para 5.4):

> The Report noted that rarely, if ever, was any objective evidence found to confirm the allegations of SRA… The Report referred to an investigation into SRA in NSW in 1990, called "Task Force Disk". In its details there were curious similarities with allegations in the Ellis case…No prosecutions resulted, the evidence of the children concerned being regarded as too contaminated to use. …. There was a 'note of caution' with reference to the USA tendency to suppress details of ritual or Satanic conduct for fear that it might discredit the prosecution: 'Fairness dictates the need for full disclosure of any SRA elements…'.[9]

Ellis' legal counsel, Judith Ablett Kerr, informed Eichelbaum that Christchurch, in 1991, had been "fuelled by allegations of a paedophile and pornography ring and by allegations from visiting American child abuse specialists that 'satanic ritual abuse is occurring in New Zealand'."[10] She quoted Mitchell Whitman, a US abuse therapist, who visited Christchurch in August 1991. The Press newspaper informed readers that, according to Whitman, satanic ritual abuse "posed as great a risk to children as sexual abuse…It is up to society to uncover the practice."[11] Ablett Kerr advised Eichelbaum of RAG's presence in Christchurch in September 1991 (see above) and she informed him that Dr Astrid Heger, from the US, visited the city in November 1991. The local media reported Heger's claim that 1 in 3 or 4 girls, and 1 in 6 boys, were sexually abused. Heger claimed that children did not lie about sexual abuse, which, she said, was under-diagnosed and under-recognised.[12] (Heger, whom the local media referred to as a child abuse expert, was heavily involved in the notorious McMartin daycare case. She made numerous diagnoses of sexual abuse by measuring girls' hymenal openings. Research has shown that this is not a reliable means by which to diagnose sexual abuse.)

Eichelbaum would have been aware that allegations of ritual abuse were a feature of the Ellis case. He would also have been aware that jurors heard few of the details concerning these allegations.[13] One child who made such allegations was Tommy Bander.[14] According to Tommy: four female creche workers watched as sharp sticks and burning paper were inserted into his anus; Peter Ellis' mother hung cages, in which there were children, from cables attached to the ceiling of the creche; he was forced to eat excrement while taking a bath with Ellis; he and other children were put into steaming ovens; he was forced to kill a boy. Tommy spoke of secret passageways and trapdoors and revealed the first names of eleven women who he said had physically or sexually assaulted him. He made similar accusations against several men and five teenagers. Tommy's memory of the alleged events was weak. During his fourth evidential interview, he said that three female creche workers had put needles into his penis. When the interviewer, Sue Sidey, asked: "so what stopped you from telling me [about that] yesterday?", he replied: "Oh, I just remembered today."

Tommy, whom seven appellate judges and Sir Thomas Eichelbaum considered a reliable witness, had several therapy sessions following his first formal interview. Gayle Taukiri, his

therapist, confirmed that she showed him satanic signs and asked him to identify them. The prosecution's expert witness, Dr Karen Zelas, informed the prosecutor pre-trial that it was necessary to look at "what took place" during Tommy's therapy before determining its potential impact. It is unclear if police investigated what took place during Tommy's therapy. Eichelbaum did not speak with any of the complainants' therapists nor did he speak with any of the complainants. What took place during therapy was beyond the scope of his inquiry.

Dr Zelas, who reviewed the children's evidence for police, knew that some parents were questioning their children improperly. In a letter to Detective John Ell, she explained that two children, including Tommy, had been exposed to "highly leading questioning" by their parents. Tommy's parents had, according to Zelas, "subjected him to intensive interrogation pertaining to 'ritual' abuse".[15] Zelas did not disclose the contents of her letter to jurors, an issue that was beyond the scope of Eichelbaum's inquiry.

In 1994, Tommy's mother, Joy Bander[16], set up End Ritual Abuse Society (ERA). The group held meetings and produced newsletters about ritual abuse (the word 'satanic' was never mentioned). According to Bander, ERA's first newsletter was sent to 430 counsellors. She said that "after an anxious wait I had the satisfaction of getting many encouraging responses".[17] Among the 15 members who signed their names to incoporation of the society were two counsellors, a teacher, a writer, a researcher, a tutor/lecturer, and a journalist. Each of the signatures was witnessed by Genevieve Crossan. A social worker, Crossan was heavily involved in the Ellis case, liaising with police, specialist interviewers, therapists, other social workers and non-complainant parents. Her role included supporting the creche workers, but, according to creche superivsor Gaye Davidson, Crossan "made it clear on her first visit that she believed the allegations against Peter".[18] In December 1992, Crossan reported to the Christchurch City Council that families had experienced a "tragic crisis in their lives". She recommended that several support groups be established, enabling parents to share information and to alleviate "unresolved anger" towards creche staff. Several support groups were subsequently established. Crossan's role, which included distributing a book on ritual abuse to creche parents, was not mentioned by Eichelbaum.

Profesor Graham Davies, one of two international experts chosen by Eichelbaum to assess the chldren's evidence, expressed doubt about some of Tommy's allegations.

> [Tommy's] later videos show a gradual spiral into more elaborate allegations embracing a wider and wider circle of helpers and teachers at the creche…[s]ecret passageways are the stuff of children's fiction (interestingly, they also figured in the testimony of children in the McMartin case, referred to earlier) and cages containing children might reasonably be traced to a similar origin.[19]

Val Sim, the then chief legal counsel in the Justice Ministry, seemed to believe that the issue of a moral panic was not significant. She advised Phil Goff:

> it is very difficult to attribute particular events to the existence of a 'moral panic' even if there is evidence to suggest it exists…[t]he general climate surrounding allegations of child sexual abuse and the effect of publicity about it have been considered by the courts and by the Eichelbaum inquiry.[20]

Sim's comment was incorrect. The Court of Appeal did not consider the climate surrounding allegations of sexual abuse. Furthermore, the term "moral panic" does not appear in its judgment. In regards to the Ministerial inquiry, Eichelbaum did not address the issue of moral panics. New evidence presented by Judith Ablett Kerr, that at the time of the police investigation Christchurch was a "smouldering volcano", was beyond the scope of his inquiry. His terms of reference prevented him from considering new evidence.

Jury Directions

In 1989, the Evidence Act 1908 was amended. Under section 23H, judges were no longer permitted to warn juries about the absence of corroboration. Retired judge Sir Thomas Thorp was moved to comment, when reviewing the Ellis case in 1999, that "where one child claimed to have seen serious abuse being committed on another, the second child denied any such happening".[21] During the police investigation, would-be complainants gave bizarre accounts of abuse by Ellis and his female colleagues. Ellis's mother was accused of being a participant. In the circumstances, a warning to jurors about the absence of any corroborating evidence could have proved helpful.

Sim said it was "very difficult to see how the current provision in itself can be said to have caused a miscarriage of justice". Whilst s23H may not have *caused* a miscarriage, it potentially contributed to one. Moreover, the potential effect of s23H should be assessed in conjunction with other factors that may have prejudiced Ellis' right to a fair trial. The Justice Ministry has not considered the cumulative effect of these factors, preferring instead to study each factor in isolation.

Sim made favourable comments about Justice Williamson's handling of Ellis's trial. She neglected to say that during his summing up the Judge told jurors:

> There may be good reasons, such as those I think outlined by Dr Zelas, as to why the complainants, *the victims of these offences*, may have refrained from making a complaint at the time... (emphasis added)[22]

It is unclear why Justice Williamson, who believed the complainants had been sexually abused, felt it necessary to make this comment. Jurors – not judges – determine the facts of a case and decide whether the accused is guilty or not.

The Judge advised jurors that they could give weight to allegations from complainants who had exhibited specific behaviours which "a lot of children of the same age group who have been sexually abused have also shown". This advice was highly prejudicial. Many of the complainants had specific behaviours in common. For example, of the 11 complainants whom the Judge considered competent to testify, all had toileting problems. In addition, nine had difficulty sleeping and eight threw tantrums. To rely on such behaviours – which are not uncommon among children who have not been sexually abused – as evidence of sexual abuse is scientifically invalid.

While summarising the defence case, Justice Williamson criticised its expert witness, Dr Keith Le Page. Le Page testified that the complainants' behavioural problems were not diagnostic of sexual abuse. This testimony was accurate and potentially helpful. However, the Judge did not allow it. In addition, he chided Ellis's counsel who (when summing up) claimed that there were no spontaneous disclosures by any child. The Judge said: "no doubt that was with the exception of Eli Laurel's comment or complaint".[23] Although Laurel claimed that he had told his mother about the alleged abuse without his mother being aware of any allegations, he contradicted this claim when cross-examined.

> Ellis' counsel: Isn't it true that your Mum asked you if Peter had done wees in your face?
> Eli Laurel: Yep.

Laurel's mother testified that on one occasion, prior to the police investigation into the creche, she asked Eli "how his day was at creche". She claimed that he said "Peter did wees and poohs on the children". She testified that when she asked him if this claim was true, he said, "No, I was just joking". In March 1992, she travelled overseas, leaving her son and partner at home. Upon her return, she was advised that children from the creche had made allegations of abuse:

> apparently things happened when I was away [overseas]…some other children had talked and because one of those children didn't seem to have anything in particular that was different to how my son was, I thought I had to be open to the fact that maybe they don't rush around with it across them on a label…I had to accept he couldn't possibly have been just lucky enough to see [other children being abused] so I felt it was better if he told me. I asked him…'did it happen to you or just to other children?'[24]

In his summing up, Justice Neil Williamson, who did not criticise any aspect of the prosecution case, said: "the case is not a trial of the other creche workers' conduct, nor of the conduct of the police, parents or specialist interviewers." Since the defence relied heavily on the argument that the police, the parents and the specialist interviewers had contributed to a moral panic and had implanted "memories" of abuse in the minds of the complainants, jurors may have felt that Williamson was telling them to ignore the crux of the defence case.[25] After the verdicts were announced, he claimed they were "obviously correct".

Expert Evidence in Child Sexual Abuse Cases

Under the now defunct section 23G of the Evidence Act 1908, expert witnesses were permitted to testify whether a child complainant's behaviour was "consistent or inconsistent with the behaviour of sexually abused children of the same age group as the complainant." Such testimony was unhelpful and potentially prejudicial. This is because there are no childhood behaviours specific to sexual abuse. Diagnosing child sexual abuse on the basis of specific behaviours can be unreliable and may result in many false positives (ie, non-abused children may be falsely diagnosed as abused).

In *R v Ellis*, psychiatrist Dr Karen Zelas testified for the prosecution. She argued that the complainants' behaviour was "consistent with" sexual abuse. She did not explain the degree of consistency, nor did she say how likely it was that abuse had occurred. When asked what behaviour was inconsistent with sexual abuse, she replied: "I haven't thought about that".

More recently, in *R v Aymes* [2005] 2 NZLR 376, the Court of Appeal was asked to assess the evidence of a psychologist in a case of alleged child sexual abuse. The psychologist claimed that the child complainant's behaviours had a "strong correlation with sexual abuse". The Court of Appeal criticised the psychologists's testimony, saying that where statistics are used the expert must "explain how the statistics are arrived at and what they actually show". According to one legal expert, the Aymes decision "constitutes a repudiation of loose thinking by experts about behaviours consistent with sexual abuse even where a degree of statutory licence is provided for such evidence".[26]

In *R v Ellis*, the prosecution supplied jurors with a list of complainant names and a description of behavioural and emotional problems from which each child allegedly suffered. Despite an admission by Val Sim that such evidence may be of little value and may be misleading, she concluded that there was no suggestion that it caused an injustice. How she reached that conclusion, given that she did not ask jurors what influenced their verdicts, is unclear. Whether such evidence caused an injustice is impossible to say, but it potentially contributed to one.

Social science research has confirmed that suggestive questioning increases the probability that a child will allege sexual abuse (whether or not abuse occurred). The jury in *R v Ellis* might have found this evidence helpful, especially in light of the fact that the child complainants' formal interviews featured suggestive questions. Professor Harlene Hayne's empirical review of those interviews found that they were not substantially better than those in an infamous US case of of alleged mass daycare abuse. This evidence might have proved helpful in the Ellis case and may have persuaded jurors to return not-guilty verdicts. Expert evidence can assist juries as long as it is relevant and has widespread support among the scientific community.

Sim agreed that "evidence that the [children's] behaviour in question is consistent with sexual abuse may be of little evidential value…such evidence may also be misleading". However, she opined, "there is nothing to suggest that the provisions caused any injustice in the particular circumstances of the Ellis case". In the retrial of David Bain earlier this year, the Supreme Court ruled that some evidence should be excluded because its prejudicial effect was greater than its probative value. Under the Evidence Act 2006, evidence that behaviour displayed by a complainant is consistent with sexual abuse would almost certainly be inadmissible.

Sim also noted that "the jury convicted Mr Ellis on some charges and acquitted on others. This suggests that the jury was well able to make its own assessment of the reliability of the evidence of each of the children individually and in respect of each of the charges". How Sim reached this conclusion is not clear. Experts on children's testimony have observed that:

> children who make false reports after being suggestively interviewed appear highly credible to trained professionals in the fields of child development, mental health and forensics; these professionals cannot reliably discriminate between children whose reports are accurate and those whose reports are inaccurate.[27]

Given that trained professionals cannot determine the accuracy of children's claims when contamination has occurred, Sim's suggestion that jurors were "well able" to make their own assessment of the reliability of the children's evidence is clearly false.

The Role of Officials in the Ministerial Inquiry

In late 1999, Justice Ministry officials informed Cabinet that they opposed a broad inquiry into the case. In March 2000, they repeated their opposition to a broad inquiry, claiming that such an inquiry was "neither necessary nor appropriate".[28] Their position was supported by the then Attorney-General, Hon Margaret Wilson. She claimed it was "doubtful whether there is anything particularly different or special about the Ellis case distinguishing it from many other child abuse cases".[29] She argued that a wde-ranging inquiry would not address public concerns in any "meaningful way". The opinions of officals and Wilson contrasted with the comments of the Court of Appeal. After listening to arguments during Ellis' second appeal, the Court expressed support for a "wide-ranging" Commission of Inquiry.

In March 2000, Phil Goff announced that a Ministerial Inquiry would be established. He advised Cabinet that it was likely to be "faster and cheaper" than a broad inquiry.[30] Former Chief Justice Sir Thomas Eichelbaum was appointed to chair the Inquiry. This was despite the fact that, in 1999, officials asked retired judge Sir Thomas Thorp to assess the merits of Ellis's application for a pardon. The Ministry's decision to overlook Thorp surprised Judith Ablett Kerr:

> It had been anticipated that Sir Thomas Thorp, who had reviewed the Ellis Petition for the Ministry of Justice, would have conducted the Inquiry but inexplicably, despite his familiarity with the issues in the case, he was not appointed.[31]

The writer has asked Val Sim why the Justice Ministry did not recommend the appointment of Sir Thomas Thorp. Did his prior comments – he expressed concerns with the prosecution case – make him an unsuitable choice in the Ministry's view? Sim replied via her lawyer, John Tizard, that it is neither appropriate nor her role to comment.

Sir Thomas Eichelbaum had nothing but praise for Justice Neil Williamson – the Ellis trial judge – when, in 1997, he delivered a lecture in memory of his late friend and colleague. Eichelbaum said that Williamson had been a "model judge".

> [Neil had] exceptional gifts of judgment, integrity and humanity. He conducted many of the most difficult trials of his time, and he did so impeccably. Neil was much more than an outstanding Judge…[he was] an exceptional human being.[32]

The Justice Ministry's chief legal counsel, Jeff Orr, has confirmed that Eichelbaum was the only name put forward by officials.[33] According to John Tizard, counsel for Sim, Sim was unaware at the time of the Inquiry that Eichelbaum held Williamson in such high regard.[34] When asked if she would have opposed his appointment had she known of his relationship with Williamson, Tizard said it was neither appropriate nor her role to comment. However, Tizard claimed Sim had "no involvement with or knowledge of that recommendation or appointment before it was made".[35]

Sim and her assistant Michael Petherick devised the Inquiry's terms of reference in consultation with Eichelbaum.[36] The latter was given many official documents, including a report signed by Colin Keating. The report, dated 1 March 2000, advised Phil Goff that "about six expert opinions will be necessary".[37] The memo said the Inquiry head would probably travel to the United States, UK and Australia to test the expert opinions. Days after the memo was written, officials drafted the terms of reference. Eichelbaum was required to select not six but three experts. He later amended the draft terms, enabling him to appoint only two experts. The terms of reference did not require him to test the experts' opinions.

Eichelbaum, who conducted his inquiry in private, was unable to compel witnesses or evidence. He did not communicate with either Peter Ellis or the complainants, but did liaise with parents of two of the conviction children.[38] What he said to those parents and what they said to him is not known. He was not required to create or retain records. Archives New Zealand says it holds no records relating to Eichelbaum's inquiry.[39]

Eichelbaum relied on Sim and Petherick for advice. Both officials were familiar with the Ellis case. Sim, for example, had previously:

- asserted that the prosecution's case had been "rigorously tested";[40]
- recommended on two separate occasions that Ellis not be pardoned;[41]
- recommended that a Commission of Inquiry not be held into the case.[42]

The Ministerial Inquiry's terms of reference did not require Eichelbaum "to attribute or apportion blame to particular individuals who undertook the interviews". Nonetheless, Sim warned him that the "personal reputations" of the children's interviewers, the complainants and their families were at stake.[43] There is no evidence that she warned him that the personal reputations of eleven creche workers who lost their jobs – unfairly, according to the Employment Court – were also at stake. She expressed no concern for four female creche workers, colleagues of Ellis, who were arrested and charged with sexual offences. (The charges were dismissed pre-trial.) She expressed no concern for Ellis' mother, whose flat was raided by police on the suspicion that she, too, had molested children. When she appeared

before Parliament's Justice and Electoral Committee in 2003, Sim asked MPs to consider the effect any inquiry into the Ellis case might have on the professionals "caught up in the case". She also expressed concern with the effect an inquiry might have on the complainants and their families, whose views, Sim claimed, "have not been given much public attention to date".[44]

In the early stages of his inquiry Eichelbaum asked Sim whether Sir Thomas Thorp's report into the case was covered by his terms of reference. She considered that because the report was not publicly available, the "safest course" was to discount it. She did not explain why the report, which the Ministry had had in its possession for more than a year, was not publicly available.[45] She did not explain why the Ministry's failure to release the report should prevent Eichelbaum from considering its contents. That the report raised concerns about the prosecution case may have been of considerable interest to Eichelbaum, who read a number of reports that were not included in his terms of reference. He was supplied with a copy of Thorp's report and it appears that he read it in the course of his inquiry.

When Sim informed Goff that *A City Possessed* did not justify further inquiry into the Ellis case, Sim criticised the book's author Lynley Hood. "Inevitably", Sim wrote, "the narrative is coloured by her [Hood's] own view of events…[her] account of the case is somewhat one-sided". Sim neglected to mention her own involvement in the Ellis case, especially her role in the Eichelbaum Inquiry.

The Role of Detective Eade

In response to Hood's criticism of Detective Colin Eade, who led the investigation into the Civic Creche, Sim advised Goff that the "crux of the Ellis case is the reliability of the children's evidence and Detective Eade's conduct and mental state are relevant only to the extent that they bear upon that issue". She added that the issue of possible contamination of the children's evidence by Eade "has been examined extensively by the High Court, by the Court of Appeal on two occasions and by the Eichelbaum inquiry".

Eade admitted that he "felt almost burnt out, pretty close to it" before the case began. By the time it had finished he said he was "beyond repair".[46] He cited a post-traumatic stress disorder for leaving the police in early 1994. During the investigation, he propositioned the mother of the child who made the first formal allegation of sexual abuse. He later admitted he had been drinking at the time. "I came home late one Saturday night after having a night out on the town and I received a phone call from one of the parents", he said.[47] He subsequently had affairs with a complainant mother – a close relative of a Minister in the Fourth Labour Government – a mother of a child attending the creche, and an evidential interviewer assigned to the investigation.

Evidential interviewer Sue Sidey testified that Eade spent up to thirty minutes with children prior to their formal interviews. There is no record of what he said to them. According to Dr Michael Lamb, arguably the world's leading authority on the interviewing of child abuse victims:

> [Eade's] frequent contacts with the children and their parents immediately before and after interviews and in between interviews afforded ample and unchecked opportunities for conveying information between families and for shaping the children's allegations… .[48]

At the depositions hearing, Eade said that the decision to lay charges was generally made by him. When asked how he assessed the credibility of the children's allegations, he replied:

> the procedure that was used is the same procedure that we use for in general for assessing any complaint in any inquiry…a policeman, and in this case it was generally me, would look at what information was available that could be presented in Court. If as a result of that information we believe we had a good cause to suspect that an offence had been committed, then we would proceed with that.[49]

Police treated the Ellis case as if it were a typical case of child sexual abuse. This is despite the fact that it was a mass allegation creche case with the unique features that such cases entail. According to Dr Lamb,

> Cases involving multiple young complainants within the same child care setting involve higher risks of contamination and thus require precautionary and preventive steps by investigators…[s]uch steps were not taken in the case of Peter Ellis.[50]

In December 1991, following an initial investigation into the Civic Creche, Eade claimed that children were "displaying some behaviour that we often attribute to sexual abuse".[51] He said it was clear to him that Peter Ellis "should not be involved in any way with the supervision or care of children".[52] It was "very lucky" that concerns had been raised about Ellis, otherwise "things could have got worse".[53] In March 1992, Eade claimed that police had a "feeling" that Ellis had been sexually abusing children. The abuse had occurred "under the noses of so called professionals over a long period of time…this offending is of a type that is unheard of in New Zealand."[54] At that stage, Ellis had not been charged and had not been spoken to by police. According to Judith Ablett Kerr, Eade's comments were "hardly founded on any sort of objective investigation".[55] More importantly, they indicate that Eade had decided that Ellis was guilty. Tunnel vision on the part of investigators has been shown to be a major factor in many miscarriages of justice.

In 2008, the writer sent Eade a copy of 'New Evidence in the Peter Ellis case'. He replied that he was "not qualified" to comment on my findings.

> I have not read your research and I do not intend to. I am sure that there are many qualified people who have the required skill and interest in this area to comment on your work.[56]

Eade, who now works as a probation officer, was suspended in 2005 by the Department of Corrections. Eade claimed to have acted in self-defence when punching a client in the head. An internal inquiry found the client was being held by two other probation officers at the time.

Many allegations of improper conduct by the police in general and Eade in particular were outside the scope of the Ministerial Inquiry. This is because they did not form part of the evidence given at the depositions and trial. In any event, Eichelbaum was not authorised to enquire into the facts of the case. Moreover, he chose to interpret his terms of reference narrowly:

> The Terms of Reference did not define "Investigations". By itself the expression could be taken as referring to any and all aspects of the Police investigation, but in their submissions, none of the participants addressed the term in such a wide sense...Mr Ellis's counsel directed some submissions to Police conduct at later stages, for example alleged non-disclosure of information; but on any view such matters were outside the ambit of the Inquiry…[o]ne of the grounds of the 1999 Appeal was the alleged non-disclosure of photographs of the interior of the creche, and (apparently) of creche activities. Having regard to the wording of the Terms of Reference to which I have just drawn attention, neither the international experts, nor I, have been shown those photographs. I mention this because the subject was referred to in submissions on behalf of Mr Ellis.[57]

Various experts have expressed concern at the extent to which the children's evidence was contaminated. Dr Lamb advised the Court of Appeal that nine factors can potentially reduce the accuracy of a child's account. Among the factors are:

- details are suggested repeatedly
- an air of accusation is established
- the questioner responds positively to some statements and ignores others
- the child is told that others have reported the details in question
- som e details are rehearsed
- conversations with sources of contaminating information - including parents, peers, counsellors, and police - proceed unchecked
- any real memories are weak

Lamb claimed all nine were present in the Ellis case, making it highly likely that the children's reports were (unintentionally) tainted. The risk of contamination was so high:

> and the failure [by investigators] to explore alternative hypotheses so obvious that it is almost impossible for either an expert or a tribunal of fact to determine which if any of the complainants' accounts were valid.[58]

Professor Graham Davies suggested to Eichelbaum that contamination was a serious problem. He wrote:

> The allegations that R makes in this late interview have clear parallels with those made by X…in both X and R's account, there are some implausible elements…there is a very real risk that large elements of the incident [described by R] involving adults could be unreliable, driven by repeated requests to recall, the negative stereotyping of Mr Ellis, the conflation of separate and unrelated events and the sharing of information between families.[59]

In 1995, Professor Stephen Ceci, an authority on children's testimony, reviewed transcripts of the complainants' evidential interviews for a television programme. He concluded:

> There apparently was quite a lot of conversation among the parents of the children in the creche, the parents with their own children over long periods of time before the very first electronically preserved interview took place and as a researcher we understand just how that kind of conversation and communication with the children concede reliability problems that later show up in the official interviews…no matter how good an interviewer is, if you have that kind of previous activity it may present insurmountable problems…there's nothing that has ever been established in a scientifically adequate way that can discriminate between accurate and inaccurate statements when the child has been repeatedly interviewed over long periods of time.[60]

Dr Karen Zelas

A City Possessed discusses the credentials and multiple roles of the prosecution's expert witness, Dr Karen Zelas. At the time of Ellis's trial, Zelas, a psychiatrist, had published no research in the area of child sexual abuse. In the 1980s, Zelas was a member of an advisory committee, headed by paeditrician David Geddis, which recommended sweeping changes to laws governing the investigation and prosecution of child sex offences. Parliament adopted the committee's recommendations when it passed the Evidence Amendment Act in 1989. The law reforms, as discussed above, weakened the rights of the accused to a fair trial.

During the police investigation into the Civic Creche, Zelas provided advice to the evidential interviewers, whom she oversaw. She also advised police as to how they should conduct their investigation. According to Hood, Zelas:

> provided therapy to a Crown witness shortly before the Ellis trial [p.423 *A City Possessed*], and advised the judge on the questioning of a child complainant during the trial [p.484-486 *A City Possessed*]. These points…add weight to concerns that Dr Zelas was not an impartial witness.[61]

There is additional evidence that Zelas was not an impartial witness. In March 1993, just weeks prior to the start of Ellis' trial, she supplied the Crown prosecutor, Brent Stanaway, with a 19-page affidavit. She focused on the evidence of child complainant Tommy Bander (aka Bart Dogwood). She wrote that Tommy had behavioural and emotional problems, which worsened after his first formal interview:

> It is not surprising that such symptoms would increase in intensity and/or new ones develop when a child was being placed under emotional pressure by the parents…[i]t is not surprising, given his parents' persistent questioning, that his behavioural and emotional symptoms intensified…I agree that Tommy is likely to have wanted his mother to stop questioning him.[62]

Zelas also noted that: "From the point of view of the Creche Inquiry, the investigation of Tommy's circumstances were (sic) considered complete after his first interview…I accept that the account of incidents described by Tommy in his first interview could be consistent with 'a cleaning up procedure'".[63] He underwent four further interviews because it was "hard to believe", she said, that his parents would have "accepted an opinion that Tommy had not been abused". For whatever reason, Dr Zelas did not disclose any of this information to jurors.

In August 1992, Zelas wrote a letter to Detective Sergeant John Ell, who was involved with the investigation into the Christchurch Civic Creche. She wrote that she had reviewed the videotaped interviews of Tommy Bander and another child, Kari Lacebark, "with a view to determining the likely credibility of the information disclosed in them…". She expressed concern with the way that some allegations of abuse had been elicited:

> It is clear that Kari's parents elicited disclosures of abuse by Peter Ellis by highly leading questioning. Bart's brother and parents did the same. In Tommy's case, the parents subjected him to intensive interrogation pertaining to 'ritual' abuse between the three August interviews which were on consecutive days. Tommy would then disclose in the next interview with Sue Sidey the information elicited by his parents the previous night. These facts could make it easy to dismiss the children's statements as having little probative value whether or not they might be accurate.[64]

Zelas did not tell jurors of her concerns. When she was cross-examined as to whether she had formed the view that Tommy suffered from mental illness during his evidential interviews, she replied: "No, I did not". She had advised Brent Stanway pre-trial that "Tommy has various mental health problems which have worsened since the first evidential interview".[65] An expert witness has a duty to assist the Court impartially on relevant matters within the expert's area of expertise and knowledge. He or she also has a duty to tell the truth.

In 2003, the Court of Appeal criticised Zelas regarding another case of alleged child sexual abuse. She had, the Court said, "gratuitously exceeded the limits of expert opinion" and "may well have been perceived as an advocate for the complainants rather than as a truly independent expert".[66]

According to Sim, Zelas was not "directly involved in the interviews of crèche children…[s]he was cross-examined extensively on a variety of matters...[t]he jury was therefore able to make its own assessment of Dr Zelas, the reliability of her memory and her overall credibility". Sim

was presumably aware that Zelas withheld from jurors crucial information which was likely to be harmful to the prosecution case. Jurors were in no position to make an accurate assessment of Zelas or her credibility. It is unclear why Sim misled Goff in regards to this matter.

The Second Appeal

Sim claimed that at Ellis's second appeal, the Court received expert evidence from "Drs Parsensen (sic) and Lamb (for Mr Ellis) and Dr Dahlenberg (sic) for the Crown. The Court noted that there were differing views amongst the experts and that knowledge in the area was constantly developing, but did not consider the new evidence sufficient to warrant intervention".

Three experts (not two) supported Ellis' second appeal: Drs Parsonson and Lamb and Professor Maggie Bruck. Dr Lamb advised the Court that there was consensus among recognised experts as to how young children should be questioned. He said that "*every* relevant professional group" endorsed the recommendation that forensic interviews rely primarily on open-ended questions. (italics in original) This recommendation was not, however, endorsed by Dr Dalenberg. She indicated that children should be asked direct questions if open-ended questions produced no allegations of sexual abuse. She stated, without any hint of concern, that such a strategy could lead to false allegations of sexual abuse. She could not respond to specific criticisms of the children's evidential interviews because she had not been supplied with any case-specific information. The Judges learnt, from Dr Lamb, that she had published no peer-reviewed research on the interviewing of child sexual abuse victims.

Dr Dalenberg, who did not supply the Court with a conventional curriculum vitae, claimed that her research on the relationship between fantasy and abuse had been published as a chapter in the *Handbook of Interviewing* (1999). In fact, her chapter was about adult Holocaust survivors and did not cite her research on fantasy. She told the Court that fantasy was "to be expected" when a child had been traumatised. However, her own research, which she cited, contradicted her claim that fantasy should be expected. When hundreds of suspected abuse victims were formally interviewed, fantasy was rarely present. Professor Bruck advised the Court that Dr Dalenberg's research on fantasy and abuse would not be accepted by a scientific peer-reviewed journal. Bruck confirmed that it had appeared in a professional newsletter.

Bruck referred to research showing that bizarre claims were more prevalent in false than in true reports. This indicated that bizarre claims could be a function of questioning techniques. In a study of children who were exposed to highly suggestive questioning and were given positive reinforcement, half made fantastic allegations.[67] Bruck argued that when fantastic or implausible claims feature prominently, as they did in the Ellis case, "this should begin to raise some concern about the authenticity of the allegations in general".[68] She concluded that Dalenberg's review was not an accurate reflection of the scientific literature. Parsonson was also highly critical of Dalenberg:

> …all of her assumptions and conclusions in relation to detail of the Ellis case itself appear to be based on hearsay and to be founded upon presumption. If so, they have to be viewed with some caution…[she] chooses to ignore these significant cases [the Kelly Michaels and McMartin preschool cases] which cast doubt on the generality of her research findings.[69]

At about the time that Dalenberg was attempting to rebut Lamb's and Parsonson's arguments, she was also researching mass allegation day care cases. She subsequently wrote an article,

'Overcoming Obstacles to the Just Evaluation and Successful Prosecution of Multivictim Cases', listing eleven complications with such cases. These include: parental contamination of children's evidence, the increased likelihood of bizarre detail, the likelihood of problems created by therapists and advocacy groups, and the possibility of contamination by the media and other children involved with the case. Where children's evidence is tainted, the timeline of contamination of children's testimony is, according to Dalenberg, "typically hopelessly confused". The possibility that children's testimony is not based on personal experience becomes a "plausible" argument. Dalenberg did not share her concerns with the Court of Appeal.

Dr Parsonson, former chair of the New Zealand Psychologists' Board, argued that research into the interviewing of children had grown since the early 1990s. He argued that the findings from this body of research pointed to the need for interviewers to use open-ended questions, to avoid closed (ie, yes/no) questions, and to interview children as soon as possible after the alleged events. He said that this had not occurred in respect of the interviews in the Ellis case. Michael Lamb reviewed Parsonson's analysis and concluded that it was accurate. Maggie Bruck endorsed Lamb's analysis. Parsonson's work was also endorsed by respected British expert Ray Bull. According to Bull, Parsonson's work was:

> well informed, well expressed and demonstrate Dr. Parsonson's good understanding of the relevant literature. I have no criticisms of them. … In the last five years the number of papers appearing in research journals and of books on relevant topics is much larger than in the years prior to 1993. This substantial increase in published work has enabled a better understanding of relevant topics, especially how to conduct investigative interviews with children.[70]

Parsonson's reports were included in Ellis' first application for the Royal prerogative of mercy. Val Sim and two of her colleagues, when recommending that Ellis' request for a pardon be rejected, said that these reports cast "considerable doubt on the reliability of the evidence given by the complainants".[71] Sim et al said that the Court of Appeal would be well-placed to address the expert opinion evidence. The Court, however, placed no weight on that evidence. It said:

> it is not the function of the Court as distinct from the more wide-ranging inquiry possible with a Commission of Inquiry, to determine whether the admissible evidence proffered by the appellant's present experts is to be accepted, nor even to make a final evaluation of its weight and effect on the trial evidence.[72]

The Courts are often required to assess and adjudicate upon the merits of expert evidence. The appeals court's failure to do so in this case has never been explained. In December 1999, the Justice Ministry expressed surprise and disappointment with the Court of Appeal's position. Officials described the Court's approach as "very narrow and conservative".[73] The Ministry said it was "surprised" by the stance taken by the Court. Sim ought to have been aware of the Ministry's criticism. However, her review of *A City Possessed* failed to articulate the Ministry's position and instead implied that the Court had properly performed its function. Why she chose to defend the judiciary when her Ministry had criticised the Court's very narrow and conservative position, is unclear. It raises the question as to whether she was articulating her personal opinion. Public servants are required to put their personal opinions aside when supplying Ministers with advice. When Sim appeared before the Justice and Electoral Select Committee in 2003, she argued that the role of the Justice Ministry:

> is not to act as an advocate for either party – prosecution or defence – nor is our role to uphold decisions of the courts. … I think I can say quite caterogically and strongly that I don't think we do have a vested interest in any outcome.[74]

The Ministerial Inquiry (I)

On 10 March 2000, the then Justice Minister Phil Goff announced that Sir Thomas Eichelbaum would chair an inquiry into the Peter Ellis case. Goff asserted that while it was extremely rare for an inquiry to be conducted into matters that the Courts had decided, "in this case the Court itself indicated that there were matters that might be more appropriately addressed by an inquiry of this kind.[75] Goff's comment was false. The Court of Appeal had suggested that a wide-ranging Commission of Inquiry could and should resolve the outstanding issues. The inquiry chaired by Eichelbaum was not such an inquiry. Its term of reference were narrow. Eichelbaum could not consider new evidence, nor could he compel witnesses. His inquiry would nonetheless have its benefits. Goff claimed that it would be "speedier and much less of a burden on the taxpayer" than a Commission of Inquiry.[76] (The Inquiry lasted almost a year after its reporting deadline was extended by six months. This is the length of time in which a Commission of Inquiry had been projected to be completed.)

Eichelbaum was required to appoint at least two internationally recognised experts to review the evidence that was adduced at depositions and trial. Each of the parties to the Inquiry supplied him with the names of experts. Judith Ablett Kerr, on behalf of Ellis, nominated Dr Lamb and Professors Ceci and Bruck. Official documents show that Eichelbaum rejected Ceci because of his "research direction" and "high profile".[77] However, in his report into the Ellis case, Eichelbaum claimed he rejected Ceci because of his prior involvement with the case. Sim had earlier suggested to Eichelbaum that it would be advisable if he excluded experts who had previously been involved with the case. Such experts included Lamb and Bruck, who had supplied affidavits to the Court of Appeal, and Ceci, who had provided comments on the case for a televison programme. Sim's advice was inconsistent with advice she had given then Secretary for Justice, Colin Keating. Following Sir Thomas Thorp's review in 1999, Sim advised Keating that she probably would have sought Ceci's opinion – Thorp wanted the Justice Ministry to ask Ceci to review the children's evidence – if the Court of Appeal had not been seized of the case.[78] Her subsequent warning to Eichelbaum about Ceci et al begs the question: what was the reason for Sim's apparent turnaround? In the course of this research the writer asked Sim this question. She declined to comment.

Sim did not want Eichelbaum to appoint anyone who had a "close publishing association" with Ceci, Bruck and Lamb. Sim did, however, nominate developmental psychologist Debra Poole, who has had a close publishing association with Lamb (whom Eichelbaum discarded). She also had (and has) a high profile. Furthermore, her research interests were (and are) similar to Ceci's. She has stated that once children are contaminated, their testimonies become almost, though not completely, useless. "That is why", she explains, "we train people that the child's testimony is usually not the most important part of the case...[we] look at the testimony in the context of a time line of the case."[79]

Sim thought that American law professor Thomas Lyon could assist Eichelbaum.[80] Sim was aware that Lyon had, in 1999, written a lengthy paper criticising the "new wave" of suggestibility researchers, who included Ceci and Bruck. Sim gave Eichelbaum a copy of the paper in which Lyon claimed that the new wave exaggerated children's suggestibility and interviewers' use of suggestive questions. In 2000, Ceci and his colleague Richard Friedman responded, accusing Lyon of distorting the research findings on children's suggestibility. The authors implied that he was biased. (Eichelbaum does not appear to have been supplied with a copy of the Ceci and Friedman paper.) In 2001, forensic psychologist David Martindale declared that Lyon's research paper featured "significant fallacies". The professional recognition heaped upon Bruck and Ceci indicated that their work was "widely appreciated".[81] Lyon later conceded that the "recent research on children's suggestibility has done a lot of good".[82] He agreed that the findings of suggestibility researchers have "largely silenced

extremist claims that children's abuse allegations are never false or that children are no more suggestible than adults".[83]

Lyon has expressed the belief that many abused children "accommodate" abuse. He has stated, for example, that rates of denial among abuse victims are "surprisingly high" and that abused children "have difficulty in discussing abuse". These views, for which there is little empirical evidence, are not endorsed by Debra Poole.

> I have issues with Lyon's reading of the literature, how he slants it, and what he is willing to cite to make his points. I doubt you'll find him talking to people on both sides of the debate.[84]

Eichelbaum apparently had a long conversation with Lyon, who recommended two well-regarded experts, James Wood and Amye Warren. Eichelbaum subsequently asked an official for advice as to where both experts "stand in the debate". He presumably learnt that Warren was one of 45 social scientists, including Poole, Ceci and Bruck, to sign an amicus brief in support of childcare worker Kelly Michaels who, in 1988, was convicted on multiple counts of child sexual abuse. Her convictions were subsequently overturned, primarily because the children's formal interviews compromised the reliability of the complainants' evidence.

Dr Louise Sas, a Canadian psychologist and child advocate, was not nominated by any of the parties to the Ministerial inquiry. How her name came to Eichelbaum's attention is unclear. After speaking with Sim, Eichelbaum concluded that Sas had "high standing". While Sim and Eichelbaum discussed Sas's credentials, a female nanny in Toronto, Canada stood accused of forcing two four-year-old twin boys to perform oral sex on her. On the eve of her trial, a 12-year-old boy who lived near the twins alleged that she had also abused him. The trial was cancelled to allow the new witness to be interviewed. The boy reportedly said in his third and final interview that he had been lying all along. The boy's father claimed that he had seen his son sexually abuse the twin boys. At the nanny's second trial, Dr Sas, testifying for the prosecution, claimed that the older boy's recantation was a "clear example of his difficulty sharing the information". She said the twin boys' delayed allegations were "consistent with" the abuser being known to the children. The trial ended abruptly after the Judge dismissed the charges, saying the two boys were "highly impressionable". The nanny's lawyer, Cindy Wasser, criticised Louise Sas' testimony. "Dr Sas can interpret every fact and every behaviour as evidence of abuse", said Wasser.

Between 1991-2000, Amye Warren authored nine peer-reviewed journal articles and five chapters on child suggestibility, investigative interviewing of child victims, and memory – each of which was relevant in the context of the Ellis case. Official documents show that Eichelbaum believed Warren was "possibly less well-known" than Sas. He requested Val Sim's opinion of both experts before confirming Sas as his choice. Warren was surprised to learn of Sas's selection. "Clearly", she remarked, "Maggie Bruck would have been a better choice". Stephen Ceci, she said, "would also fall into Bruck's category".[85] Debra Poole, who drafted the forensic interviewing protocol for Michigan and served on committees that revised the protocol, says she has not heard of Sas.[86] Michael Lamb, who with Poole authored *Investigative interviews of children: A guide for helping professionals*, says that he is aware of Sas's work on the effects of maltreatment of children. But, he says, "I don't know of [her] research on testimony or interviewing".[87] Sas has not carried out any research on children's testimony, forensic interviewing, suggestibility, or memory. At the time of her appointment to the Ministerial Inquiry, she had written four papers on how child victims' experience of the Courts could be improved. She had also appeared for the prosecution in many cases of alleged child sexual abuse.

The Justice Ministry's chief legal counsel, Jeff Orr, says that Ministry records "do not indicate where the name Dr Louise Sas originated from".[88] Asked to explain why the Ministerial

inquiry's reporting deadline was extended six months to accommodate Sas' work commitments, Orr declined to comment. He claimed that Sas' appointment was based on "a number of factors", including but not limited to her experience, expertise and lack of previous involvement with the case.[89] Despite repeated requests, Orr has refused to disclose details of the other factors which apparently influenced Eichelbam's decision to appoint Sas. (The Justice Ministry says it has supplied me with all the information it holds in regards to Sas' appointment. It has supplied me with: a bibliography of articles written by Sas prior to 2000 and copies of two articles written by her (both articles focus on children as victims and the need for greater child advocacy in the justice system). It appears that these are the only documents relating to Sas with which officials supplied Eichelbaum. What officials told him about her is unclear.)

In 2003, Sim appeared before Parliament's Justice and Electoral Committee. The committee received two petitions requesting a Commission of Inquiry into the Ellis case. Sim was asked whether Dr Sas "had the expertise necessary" to evaluate children's evidence. Her reply was cryptic:

> There appears to be a spectrum from, at one extreme, experts who consider children extremely suggestible, and at the other, experts who don't find them suggestible at all.[90]

How this answer related to Sas's expertise is unclear. The mainstream position appears to be that children can be suggestible under certain conditions but that they can also be highly accurate when recalling personally experienced events. According to Ceci and Bruck:

> Although suggestive influences can have a negative impact on the accuracy of a child's statement, these influences do not guarantee inaccuracy in all situations and for all children and, conversely, the absence of these influences does not guarantee accuracy.[91]

In 1997, Wendy Ball, a lawyer and spokesperson for the Creche complainants, attended a conference on family violence in London, Ontario. Ball supplied participants, who included Louise Sas, with a paper in which she praised the Evidence Amendment Act 1989. The legislation, she argued, provided protection to child victims. She cited the Ellis case as a good example of the Act's success. She said an investigation began after "a three and a half year old child disclosed that he had been sexually abused by a child care worker in the creche which he attended".[92] In fact, the child did not disclose he had been sexually abused; he was not a complainant and did not testify at Ellis' trial. However, Louise Sas and others reading Ball's paper would have been unaware of these details.

Ball said that following the depositions hearing, a case was established against "all five offenders". She noted that four of the "offenders" were later discharged. The media's sympathetic treatment of Ellis and his co-accused left Ball feeling angry.

> The effects of this on the children abused by Ellis is (sic) far reaching and devastating…[p]ublic perception of Ellis has changed from seeing him as a disgusting paedophile to a victim of a climate of hysteria and professional and parental obsession with sexual abuse.[93]

When Val Sim advised Eichebaum to reject Ceci, Lamb and Bruck, she reasoned that anyone previously involved with the case might not be seen to be independent. Eichelbaum agreed. In his report, he wrote:

> I decided I would if possible appoint experts who had not had a previous connection with the case.[94]

Sas, meanwhile, had been exposed to highly preducial information about Ellis and his co-accused. At the time of her appointment, was the Justice Ministry aware she had attended a

conference at which Wendy Ball cited the Ellis case as a good example of the success of sections 23G and 23H of the Evidence Act? If so, did officials advise Eichelbaum of this fact before he appointed Sas? Did officials ask Sas if she had any knowledge of the case? If so, what was her response? The Justice Ministry has been unable to answer these questions. The Office of the Ombudsmen has advised this writer that:

> the officials involved cannot recall anything…which would enable the Ministry to answer [these] qustions… .[95]

Eichelbaum concluded that he and the two experts "independently reached the view that the children's evidence in the conviction cases was reliable". But he had watched the videotaped evidential interviews and read testimony from the trial and depositions *before* he chose the experts. By that stage, he may have decided that the children's allegations were reliable. However, he may have felt he needed the support of at least one of the two international experts. What if both experts contradicted his conclusions? The credibility of his report would probably be called into question. One way to overcome this potential problem was to select someone who might be expected to say that the children's evidence was reliable. After Eichelbaum spoke with Thomas Lyon and Val Sim, he may have felt confident he had found such a person.

The Ministerial Inquiry (II)

Eichelbaum was required to assess "whether the investigation into the events at the Christchurch civic creche case and interviews of children were conducted in accordance with best practice as now understood".[96] He was restricted to reviewing the evidence given at depositions and at trial. His terms of reference prevented a review of many key issues. For instance, the police investigation was outside the scope of the Inquiry. This meant that police photographs showing the open-plan layout of the creche – photographs not shown to jurors – were not considered. Other matters outside the Inquiry's scope included:

- the rationale behind the decision to formally interview 118 young children;
- the motivation of parents who questioned their children about possible abuse before seeking lump sum payments from ACC;
- the sanitising of charges on which Ellis was tried and convicted;
- Dr Zelas's failure to disclose crucial evidence to jurors;
- the admission by the oldest conviction child that she lied during her evidential interviews and while under oath;
- Sue Sidey's premature and prejudicial assessment of Ellis;
- anomalies with some members of the jury;
- Justice Williamson's summing up, including his premature exclamation that the complainants were "victims of these offences";
- the effect of legislative changes which, according to former law lecturer Wendy Ball, put evidential interviewers "into the shoes of the judge";[97]
- the expert opinion evidence of Drs Lamb and Parsonson and Professor Bruck;
- Sir Thomas Thorp's report.

Lynley Hood says she spent seven years researching the Ellis case. In contrast, Sir Thomas Eichelbaum says his inquiry consumed 400 hours. However, based on the cost of his services, this figure appears to be exaggerated.[98] Second, Mrs Hood interviewed many of those

involved with the case, including Peter Ellis, other creche workers, parents, police, specialist interviewer Sue Sidey, Lesley Ellis (Peter's mother) and many others. Eichelbaum did not speak with any of these individuals. He did, however, work closely with Val Sim and her assistant Michael Petherick. He also liaised with the parents of two of the conviction children. In addition, he spoke with Professor Thomas Lyon.

Eichelbaum made a number of errors of fact. For example, he claimed that the experts "reached the view that the children's evidence in the conviction cases was reliable". Both experts did not say that the children's evidence was reliable. Graham Davies said he would "not pronounce on the reliability of individual children's accounts".

Eichelbaum argued that any allegations arising out of the complainants' later evidential interviews generally did not result in charges. That was incorrect. Nine of the sixteen counts on which Ellis was convicted came from allegations elicited in subsequent interviews. Eichelbaum also argued that the interviewing was of a "high standard for its time" and by present day standards was of a "good overall quality" (at 9.4.4). That is demonstrably false, as evidenced by Professor Harlene Hayne's findings.

Dr Michael Lamb, when reviewing the interviews for Ellis' second appeal, stressed the need to focus on the interviewers:

> interviewers' behaviour – particularly their vocabularies, the complexity of their utterances, their suggestiveness, and their success in motivating children to be informative and forthcoming – profoundly influences the course and outcome of their interviews…the ways in which interviewers seek information from children have a major impact on the quality of that information.[99]

Free recall and open-ended questions elicit the most accurate and detailed responses from children, who should explain in their own words what has happened to them (eg, "Tell me what you did today"). Lamb cited research by Gail Goodman showing that a significant minority of young children were error-prone when asked specific abuse-related questions. When questioned in a laboratory setting, between 20-35 per cent of 3- to 4-year-olds falsely assented to questions such as "Did he try to kiss you?", "Did he keep his clothes on?" and "He took your clothes off, didn't he?". Studies have found that false and potentially troublesome claims can also be elicited from school-age children, even when asked non-leading questions. Lamb advised the Court that interviewers in the Civic Creche case eschewed the most desirable types of questions in favour of riskier alternatives. He said the interviewers in the Ellis case "did not perform well relative to current recommendations and best practice guidelines".[100] Judith Ablett Kerr supplied details of his findings to Eichelbaum.

Ablett Kerr advised Eichelbaum that none of the complainants disclosed abuse when first questioned by their parents. Eichelbaum's response was that "there may be good reasons why children delay reporting abuse".[101] It is true that most abused children remain silent for long periods, if they disclose at all. But it is also true that "if a child denies abuse when asked directly, there is no scientifically compelling evidence that the child is in denial".[102] In possibly the largest study of its kind, 26,325 Israeli children were formally interviewed between 1998-2002.[103] They were suspected victims of physical or sexual abuse. The disclosure rate for sexual offences was 71 per cent. Other studies have found high rates of disclosure (and low rates of denial) when suspected victims are questioned by trained professionals. According to Kamala London, a leading suggestibility researcher:

> [children who] come before authorities [do so] because they are telling and most continue to tell during forensic evaluation. In that sense, denial and recantation do not typify children's disclosures during forensic evaluation.[104]

The likelihood that a child victim will disclose abuse depends on various cognitive and social factors. Dr Lamb, who co-authored the Israeli study referred to above, says that abused children "are most likely to keep secrets when still in contact with (and presumably fearful of) the alleged abuser and when their parents are skeptical or unsupportive".[105] When police began their investigation into the Civic Creche, none of the conviction children were in contact with Ellis. It is also apparent, from the support groups that were established, that many parents believed and supported their children when allegations of abuse emerged. Professor Ceci has expressed surprise that the complainants did not disclose earlier.

> It, in my experience, is exceedingly unlikely that you can coerce a group of children this age into silence for prolonged periods of time when the following were allegedly involved: anal insertion; forcing children to walk over precarious ladders perched high above buildings; defecating and urinating on children in bathtubs, in beds and the like. These are events which cause almost instant revulsion in children…despite claims to the contrary, scientifically it's now been established quite convincingly in my view that it is very, very unlikely that you could persuade children to be silent about that for long periods and also to exert external manifestations of affection for the perpetrator which many of these children did.[106]

Lynley Hood writes in *A City Possessed* that Sir Thomas Eichelbaum "failed to carry out reality checks on the children's evidence and failed to take seriously evidence showing the children's evidence had been obtained by pressure and manipulation".[107] Val Sim's response was that "these criticisms amount to little more than that she [Hood] does not agree with the conclusions which were reached by Sir Thomas". Why Sim ignored the comments of Ceci, Lamb and other experts is unclear. Eminent international experts have raised concerns about the accuracy of the conviction children's evidence. Eichelbaum did not give any weight to those expert opinions. In addition, he appeared to believe that Tommy Bander and another of the conviction children had been ritually abused. (See page 3 of this document for a description of Tommy's allegations.)

Val Sim defended Eichelbaum's findings and suggested to Phil Goff that Peter Ellis' conviction was safe. She did not say that Eichelbaum made errors of fact, nor did she highlight any shortcomings with his inquiry. She did, however, say that given the passage of time, a further factual inquiry "is quite unrealistic". She did not mention that a Royal Commission of Inquiry into the conviction of Arthur Allan Thomas was established in 1980, ten years after the police investigation into the murders of Harvey and Jeanette Crewe. Thomas was pardoned in 1979. The Royal Commission concluded that police planted evidence which incriminated Thomas.

The Opportunity for Abuse

As stated, various experts have raised doubts as to whether any child was sexually abused at or away from the creche. Professor Graham Davies said in relation to abuse committed outside the creche:

> All the children reviewed chose to tell about events at the creche in their first interviews and some, when asked, explicitly denied that Mr Ellis had done anything untoward on any walks or visits outside of the creche. Virtually all the allegations concerning events outside the creche emerged in later interviews, often after considerable delay…the most reliable accounts from young children tend to be those which occur early on, before the opportunities for elaboration and contamination…have had the opportunity to occur.[108]

Sim did not mention that Davies expressed doubts that abuse had taken place away from the creche. She also neglected to mention that many of the charges laid by the Crown prosecutor were sanitised. Sir Thomas Thorp said jurors should have been made aware that some of the complainants were capable of "outrageous and fanciful" claims.[109] However, the Crown

prosecutor's decision to sanitise the charges on which Ellis was tried, and the Judge's decision to prevent the defence from questioning on "collateral matters", meant that jurors did not get to hear what some complainants were capable of saying.

As stated, one conviction child, Tommy Bander, made several bizarre allegations of abuse. Sir Thomas Thorp expressed concern with the reliability of these allegations and was also concerned that jurors did not hear the full extent of them.

> In terms of other allegations made by [Tommy] which were not put before the jury, the videotapes of the third and fifth interviews, which were not played, expanded both the numbers of persons said to be involved in the abuse and the places where it was said to have occurred The last tape named for the first time two workers at the creche, neither of whom was at any stage the subject of a charge, as the principal offenders in a large group which thrust needles up his penis until it bled and then repeatedly pushed burning paper "up (his) bum".[110]

According to Sim, "the [appeals] Court… summed up the submissions under this head with the observation that although they called for careful consideration by the jury, there was nothing which in itself rendered the accounts by the various complainants inherently improbable or unworthy of belief."

The Factual Basis for the Ministerial Inquiry

Sim advised Goff that "one of the main factors which influenced the shape of the Eichelbaum inquiry was the *impossibility* of obtaining any better account of the facts than was given at the depositions and trial." (emphasis added) Sim did not provide any evidence to support this claim. Her opinion was not shared by the appeals court, which asserted that there "may be matters which are worthy of, and could properly be addressed by, a commission of enquiry".[111]

Essentially, Ellis was convicted on the basis of uncorroborated testimony of young children. Jurors watched and listened as excerpts of videotaped interviews with the complainants were played. Some interviews were not played at all. At two subsequent appeal hearings, Ellis' legal counsel argued that the defence was prevented from cross-examining or leading evidence on matters which went to the heart of the children's credibility and reliability. In his 1999 report into the case, Sir Thomas Thorp wrote:

> There is in my view some merit in the Petitioner's argument that "the jury had to see that the children were capable of outrageous and fanciful allegation".[112]

Not only did the jury not see and hear what the children were capable of saying, but it was poorly served by Dr Zelas' testimony. As stated above, Zelas misled jurors by omitting crucial information that was potentially harmful to the prosecution case. In addition, some of her evidence was, according to Judith Ablett Kerr QC, "outside the scope" of permissible opinion.[113]

Jurors probably were not aware of the striking similarities between the Ellis case and similar cases overseas. In his 1999 report, Sir Thomas Thorp stated:

> The trial record shows that at no stage was the Court advised that "multiple allegation creche cases" had special characteristics which called for special care and examination. As the case appears to have been the first of its kind in New Zealand that is understandable.[114]

Thorp also stated that if the view, expressed by Professor Ceci and Justice Wood, that "special hazards" arising from mass allegation creche cases proved to have substantial

support, "it would in my view be difficult to argue against the existence of a serious doubt about the safety of [Ellis'] convictions."[115] At Ellis' second appeal, Dr Lamb asserted:

> Cases involving multiple young complainants within the same child care setting involve higher risks of contamination and thus require precautionary and preventive steps by investigators…[s]uch steps were not taken in the case of Peter Ellis.[116]

Even the Crown's expert witness, Dr Dalenberg, said that mass allegation creche cases pose special problems.

Jurors were denied the opportunity to hear from some key witnesses. The child who made the allegation that sparked the investigation into the Civic Creche did not testify. He evidently did not make any allegations of abuse when formally questioned. His mother, who allegedly has a history of mental illness, also did not testify. Jurors did not learn that the boy was taken from the Civic and, at his new creche, made an allegation of sexual abuse against a male creche worker (Hood, 2001). No charges were laid regarding that allegation. Jurors were not given the opportunity to hear from children who had been interviewed and who did not allege abuse. The vast majority of children – at least 118 were formally questioned – failed to report abuse.

Evidential interviewer Sue Sidey conducted interviews with six of the seven conviction children and with other complainants. Jurors were not told that she had quickly formed a negative opinion of Ellis. In December 1991, she alleged that he was "not a suitable person for a child care centre".[117] How she came to this conclusion – she did not meet or speak with Ellis – is unclear. Police did not charge Ellis until 30 March 1992. No formal disclosures of sexual abuse had been made at the time of Sidey's comment.

Several complainants received therapy. Tommy Bander had at least four sessions prior to his second formal interview. His therapist, Gayle Taukiri, confirmed that she showed him satanic signs and asked him to identify them. She claimed, however, that she did not talk to him about Peter Ellis or the Civic Creche, unless he raised these matters of "his own volition". Tommy's allegations of ritual abuse appear to have occurred only after talking with Taukiri (who took no notes during their sessions). Taukiri subsequently told Tommy's mother – Joy Bander – that American ritual abuse "expert" Pamela Hudson should be brought to New Zealand to assist police. Weeks before the start of the trial, Karen Zelas advised prosecutor Brent Stanaway that it was necessary to look at "what took place during Tommy's therapy" to determine its possible effect. Though she was unaware of what took place, she inidicated to jurors that he had been sexually abused.

A television programme, screened in 1997, alleged that there were anomalies with the trial jury. The jury foreman, a marriage celebrant, had allegedly officiated at the Crown prosecutor's wedding. The Crown prosecutor later confirmed this fact, which he had not disclosed to the Judge. In addition, the programme alleged that a female juror had known the mother of one of the conviction children. The mother, a social worker, testified at Ellis' trial. She later swore that "it became obvious to me that I knew and was known by the Jury member".[118] The juror's partner, a psychiatric nurse, and the complainant mother worked in a small office at the Hereford Centre. The mother complained that during the six-week trial "there was considerable tension in the office which impacted on my relationship with [the juror's partner] and I believe impacted on the other staff members".[119] Although she disclosed the matter to a Court official, she was told "the relationship was not that strong and not to worry about it, which surprised me a little".[120] Justice Williamson wrote in his notebook that a juror "says a flatmate works with mother of child". The Judge was misinformed; the juror's *partner* worked with the mother.

In Peter Ellis' second petition to the Governor-General, his legal counsel, Judith Ablett Kerr, QC, referred to the programme's allegations. Mrs Ablett Kerr also referred to a conversation

between barrister Simon Barr and Lynley Hood. Barr alleged that Hood had told him that the jury foreman, who was a chaplain at the time of the trial, had sought counselling at St Elmo Court. Dr Karen Zelas worked at St Elmo Court as a clinical psychiatrist. The foreman allegedly knew Dr Zelas and had invited her to speak at a meeting of parishioners.

In 2007, at the inaugural Innocence Project New Zealand conference, Professor Harlene Hayne spoke about her research into the Ellis case. Hayne, who is an authority on children's memory, compared the children's formal interviews with the interviews in the infamous Kelly Michaels case. Hayne argued that the interviews in the Ellis case were not substantially better. Indeed, in some respects the Ellis interviews were worse. For example, the evidential interviewers in the Ellis case asked more than twice as many suggestive questions as did their counterparts in the Michaels case. Hayne concluded that there was a "strong risk" the children's evidence was contaminated.

In the circumstances, a Commission of Inquiry might be expected to reach a better view of the facts than was reached at Ellis' trial. Whether such an inquiry would arrive at the truth is another matter. In March 2000, the Justice Ministry advised Phil Goff that a Commission of Inquiry was "unlikely to be able to arrive at the truth". If a wide-ranging inquiry could not determine the truth of the complainants' claims, it would inevitably raise doubts about the safety of Ellis' conviction.

That Matters of Public Concern were not Addressed

According to Sim, "The purpose of the Eichelbaum inquiry was to assess the safety of Peter Ellis' conviction rather than to address public concerns about the case…Sir Thomas and the international experts were provided with all of the relevant material…from which they could make their own assessment". It is true that the Ministerial inquiry was not set up to address public concerns about the case. Nevertheless, why do many people continue to believe that justice has not been done? A 2002 NBR-Compaq poll, conducted a year after Eichelbaum reported his findings, found that 51% of those polled believed Ellis was not guilty. This compared with 25% who believed he was guilty. In 2003, an opinion poll commissioned by the *Press* found that 68% of Cantabrians wanted a Commission of Inquiry into the case; 17% opposed this option. In March 2003, the Canterbury Criminal Bar Association called for a Royal Commission of Inquiry. The vote in favour was 23-0 with one abstention. If the Eichelbaum inquiry was expected to lay the case to rest, it failed to do so.

Contrary to Sim's assertion, Eichelbaum and the international experts were not provided with all of the relevant material. In 2006, the Justice Ministry advised the writer that its records "do not show how many video tapes of the children's interviews were sent to Professors Davies and Sas".[121] It is unclear if the experts were sent any tapes or transcripts of the conviction child who subsequently recanted. The opportunity to watch this child make detailed, convincing and apparently false claims could have proved helpful.[122] Davies and Sas were not supplied with copies of the first or second appeal judgments. They were not provided with a copy of Sir Thomas Thorp's report, nor were they given copies of affidavits from the prosecution and defence expert witnesses. They were not given a copy of Professor Mike Hill's account of New Zealand's importation of satanic panic. Joy Bander's *A Mother's Story*, which highlights the lengths to which one complainant mother – the book's author – went to obtain allegations of sexual abuse from her young son, could have assisted the two experts. However, the experts were denied the opportunity to read *A Mother's Story*. They were also denied the opportunity to read the expert opinions of Parsonson, Lamb, Bruck et al. In addition, they were not given access to Karen Zelas's informative letter to Detective Ell (for details, see page 12 of this review). The letter raised concerns about parental questioning of

two complainants, concerns which the jury never heard. When reaching their conclusions, Davies and Sas would have been unaware that:

- the Inquiry could not compel witnesses or evidence;
- the Inquiry could not consider new evidence;
- their opinions would not be peer-reviewed but instead would be used to argue that Ellis' conviction was safe;
- Dr Zelas withheld crucial information from jurors;
- the oldest conviction child admitted fabricating her allegations;
- Detective Eade concluded that Ellis was guilty long before the police investigation had been completed;
- doubts about the veracity of the children's evidence had been cast by eminent experts (eg, Ceci, Bruck, Lamb, Bull);
- a retired judge had expressed concerns with the prosecution case;
- one of the evidential interviewers (Sue Sidey) made a premature and prejudicial assessment of Ellis.

Although the Inquiry's parameters were narrow, although the international experts were not given all of the relevant material, and despite the Inquiry's many shortcomings, Val Sim encouraged Phil Goff to accept Eichelbaum's findings. In her review of *A City Possessed*, she cited Eichelbaum's assertion that the Ellis case "has had the most thorough examination possible", a claim which she should have known was demonstrably false. It should be noted that while officials believed the Ministerial inquiry might cost up to $800,000, it actually cost less than $150,000. In comparison, the Commission of Inquiry into Police Conduct, which concluded in 2007, cost $4.8 million.

The Failure to Pardon

Sim advised Goff that "the test for a pardon has never been clearly articulated…[however] it has not been demonstrated that the judiciary has made a mistake". Sim's comment begs the question: under what circumstances (if any) would officials be prepared to accept that a pardon is justified? Former Justice Minister Goff said he needed new evidence before he could contemplate granting Ellis a pardon. In January 2008, Judith Ablett Kerr wrote to then Justice Minister, Annette King, and cited Professor Harlene Hayne's new research. Hayne's findings cast considerable doubt on Eichelbaum's claim that the formal interviewing was of a "good overall quality" by present day standards. Ablett Kerr also referred to this writer's findings, which, she said, "completely eroded" public confidence in the Eichelbaum inquiry.[123] She said the Court of Appeal had "erred" by failing to consider the expert evidence at Ellis' second appeal. She requested a meeting with King to discuss the new evidence. Her request was transferred to then Associate Justice Minister, Rick Barker. After taking advice from his officials, Barker declined Ablett Kerr's invitation.

The criminal justice system is not infallible. The Privy Council's decision in *R v Bain* demonstrates that at all levels the Courts can make serious errors of judgment. In 2007, the Privy Council referred to David Bain's conviction, which the Court of Appeal had earlier upheld, as a "substantial miscarriage of justice". In 2009, Bain was retried and was acquitted on five counts of murder. In 1998, Bain petitioned the Governor-General for the exercise of the Royal prerogative of mercy. The petition, which included arguments advanced at Bain's retrial, was sent to the Justice Ministry where it was assessed by Val Sim and Michael Petherick. They believed Bain's conviction was safe.

> We do not consider that any of the matters advanced in the petition when looked at individually point to a miscarriage of justice…[n]or do we consider that they have a collective significance which may cast doubt on the safety of the petitioner's convictions…We acknowledge that there were a number of errors in the Crown's case. However we do not consider they indicate a likely miscarriage of justice, having regard to the overall weight of the Crown case…On that basis, we cannot recommend a pardon at this stage. Nor is a referral back to the Court of Appeal under section 406(a) of the Crimes Act 1961 warranted.[124]

When reviewing *A City Possessed*, Sim opined that the Ellis case had been the subject of a "good deal of public anxiety and concern" which, she claimed, had been created largely by the media and by Lynley Hood's book. She also claimed that "neither the media nor Ms Hood have had access to all of the evidence and in particular have not had the advantage of seeing the children give their evidence". Sim did not provide any evidence to support her argument that the media portrayal of the case had caused public anxiety and concern. While it is true that Hood did not see the children testify, she did have access to a transcript of the trial record, including a record of the children's testimony. Hood also had access to transcripts of the complainants' evidential interviews. Sim omitted to say that several experts have seen the conviction children being questioned. One such expert is Dr Barry Parsonson, former head of the Pscyhologists' Board. After watching the conviction children being formally interviewed, Parsonson was highly critical of interviewers' use of direct, leading and suggestive questions. He said the interviewers did not meet the standard necessary for obtaining accurate information from children. For instance, when reviewing one of the conviction children's formal interviews, he wrote:

> primarily because of the poor standard of interviewing with its extensive reliance at critical points on suggestion, prompts, props, and social influence, one should view the resulting allegations with considerable caution.[125]

Sim informed the Secretary for Justice that Parsonson's analysis was "capable of raising serious doubt about the reliability of the complainant's (sic) evidence".[126] For whatever reason, she did not share her concerns with Phil Goff.

Goff may have believed that Sim had access to all of the evidence. She had, after all, twice recommended to the Justice Minister that Ellis not be pardoned. She had also advised against establishing a Commission of Inquiry. Did she traverse all of the evidence before making these recommendations? When she appeared before Parliament's Justice and Electoral Committee in 2003, she was asked whether she harboured any doubts that justice had been done. She replied:

> I feel some limitations on my ability to answer that, because I haven't, unlike the authorities that have considered the case, seen, for example, the evidential interviews…I haven't had the same opportunity to make the assessment that the courts and authorities have had, in relation to this case.[127]

The Courts and the Eichelbaum inquiry

Sim informed Goff that questions relating to the reliability of the children's evidence had been "thoroughly examined by the Courts and by the Eichelbaum inquiry". The fact remains, however, that the Court of Appeal did not test the children's evidence. A total of seven Judges have rejected Ellis' appeals. In 2003, Bruce Squire QC advised the Justice and Electoral Select Committee that there was no clear evidence that any of the Judges had seen the chldren's videotaped interviews. When Goff read Sim's review of *A City Possessed*, he would have been unaware that the Court of Appeal did not avail itself of all the available evidence.

At trial the jury was unaware that suggestive questioning – which was a feature of the evidential interviews – increases the probability that a child, whether abused or not, will make allegations of sexual abuse. Jurors were also unaware that mass allegation creche cases pose special problems for investigators. According to Dr Lamb:

> Cases involving multiple young complainants within the same child care setting involve higher risks of contamination and thus require precautionary and preventive steps by investigators…[s]uch steps were not taken in the case of Peter Ellis.[128]

In 1994, the oldest complainant recanted her sexual abuse allegations. She said she had not been abused by Peter Ellis. Neither the Court of Appeal, which quashed Ellis' convictions relating to this child, nor Eichelbaum focused on the wider implications of her recantation. Indeed, the appeals court asserted, without citing any reference, that it was not "uncommon for child complainants in sexual abuse cases to withdraw their allegations or claim they were lying". It appears that child sexual abuse victims seldom recant.[129] Jurors in *R v Ellis* may have reasoned that as the oldest complainant, she was the most credible. However, a believable witness is not necessarily an accurate one. As stated above, trained professionals cannot determine the accuracy of a child's allegation when contamination has occurred. Moreover, studies have found that children who have made false reports spoke sincerely and provided detailed accounts filled with emotion.[130] Such children are likely to be credible witnesses in the eyes of jurors.

It is worth repeating that Professor Graham Davies was unwilling to say whether the conviction children's evidence was reliable. He argued that due to their age and the historic nature of their claims, the children were unable to provide "detailed and spontaneous accounts which are so useful from the point of view of making judgements on reliability".[131] There were questions pertaining to corroboration which he was unable to answer. These questions, he wrote, would need to be addressed by "the wider inquiry". If Davies had been given a copy of Sir Thomas Thorp's review, he would have realised that the children's claims of sexual abuse could not be corroborated. Although some peripheral details described by the children were corroborated, it would be a mistake to assume that all of their allegations were true.

> one cannot make judgments of reliability based on features of the child's narrative that are known to be true…when children are suggestively interviewed, they often interweave the false suggestions with accurate details about their lives.[132]

It is also worth repeating that the Eichelbaum inquiry suffered from several shortcomings. It could not compel witnesses or evidence. A number of important issues were outside its scope, including the police investigation, Dr Zelas's decision to withhold crucial evidence from jurors, and the prejudicial comments of the trial judge. Eichelbaum's decision to attach no weight to the expert opinions of Dr Lamb et al was significant. He placed considerable weight on the opinion of a child advocate who lacked any relevant research experience (Dr Sas) but he failed to give any weight to the opinions of highly qualified and respected experts. Readers will draw their own conclusions as to what may have motivated him to dismiss those opinions.

Conclusion

Peter Ellis has been the subject of much debate since his conviction sixteen years ago. The role of the Ministry of Justice has received little attention in the context of this debate. When she reviewed *A City Possessed,* Val Sim had a duty to act honestly and impartially and to put any personal views about Ellis aside. Her review, which for whatever reason was unbalanced, included false and misleading information. Though she was presumably aware of the

Ministerial inquiry's flaws, Sim defended Eichelbaum's findings and suggested to Goff that there had been no miscarriage of justice. This is despite the fact that evidence to which Goff was not privy indicated that a miscarriage may have occurred. It is difficult to resist the conclusion that Ministry officials, and the criminal justice system, have failed Peter Ellis.

Ross Francis
July 2009

Postscript

Belinda Clark (the Secretary for Justice), Jeff Orr, Michael Petherick and Val Sim were each sent a copy of this Critique last year. They were invited to comment and were asked to correct any errors. They did not respond. Val Sim was subsequently supplied with a revised version and was again invited to comment and to correct any errors. I subsequently received a response from her legal counsel, John Tizard. He advised me that my Critique contained "numerous factual inaccuracies" and "defamatory comments". In a follow-up letter, Tizard contended that it was "not the first time you have made defamatory remarks about Ms Sim". What remarks he was referring to is unclear. Val Sim has never advised me that I have made defamatory remarks concerning her, nor has she requested an apology.

Tizard argued that Sim's review of *A City Possessed* "was not and did not purport to be a comprehensive review of the Ellis case". This seems to be an admission that Sim told only part of the story. Indeed, she advised Goff that it was "not possible within the confines of this report" to address all of the matters raised by Lynley Hood. Given that Hood's analysis raises important questions about whether justice has been done, Goff might have been expected to be entrusted with a detailed account of the facts. Importantly, Sim had access to documents to which Goff was not privy. These documents, cited in this Critique, raise doubts about the veracity of the complainants' evidence. It is unclear why Sim did not refer to these documents when, in May 2002, she indicated to Goff that Ellis' conviction was safe.

Sim's involvement in the Ministerial Inquiry, claimed Tizard, was "largely administrative". Unfortunately, the full extent of her involvement is unlikely ever to be known. She appears to have avoided electronic communication throughout the year-long inquiry. Only two emails from Sim can be found among the many documents released to the writer under the Official Information Act. She does not appear to have taken notes of her conversations with Eichelbaum or the parties to the Inquiry. For example, after he liaised with Sim, Eichelbaum believed that Sas had "high standing". Sim presumably conveyed to him information about Sas's reputation and/or credentials. The Justice Ministry cannot find any records pertaining to this issue. The Ministry also has no record of who nominated Sas and how her name came to Eichelbaum's attention. It is worth noting that government agencies are required to create and maintain full and accurate records and to ensure that such records are easily accessible.

Notwithstanding that many relevant records were not created, Sim's role went well beyond mere administration. She helped shape the terms of reference, which allowed Eichelbaum to appoint only two experts. Although she opposed the appointment of some of the world's leading experts, she appears to have promoted a child advocate (Louise Sas) as an ideal choice. In addition, Sim warned Eichelbaum that the personal reputations of the children's interviewers were at stake, curious advice given that the terms of reference did not require Eichelbaum to apportion blame. She might have been expected to advise him to take seriously the concerns expressed by Sir Thomas Thorp. Instead, she suggested he could and should ignore those concerns. Hers was an influential and powerful position.

Tizard argued that Goff was "well aware" of Sim's prior involvement in the Ellis case. That might be true in a general sense. But Goff could not have known the specifics of her advice which she proffered during the course of the Eichelbaum Inquiry. This is especially true given that many records relating to that Inquiry are not held by the Justice Ministry. Goff was an Opposition MP when, in 1998, Sim claimed that the prosecution case had been "rigorously tested". When he requested her to review *A City Possessed*, he would not have known that she had long held the view that there had been no miscarriage of justice.

Tizard claimed that the scope of Eichelbaum's inquiry was "determined by Cabinet". This ignores the fact that the Justice Ministry advised the Government to set up a narrow inquiry, arguing that a Commission of Inquiry was "neither necessary nor appropriate". The Court of Appeal did not believe that a narrow inquiry could or would resolve the outstanding issues; it anticipated and encouraged a Commission of Inquiry. Given that the Ministry had privately criticised the Court of Appeal for taking a "very narrow and conservative" approach, it is unclear why officials did not prefer a broad inquiry.

Official documents show that Val Sim and Michael Petherick, in consultation with Eichelbaum, devised the Inquiry's terms of reference. Tizard disputed this fact, however, and argued that "[r]esponsibility for the actual terms of reference lay with the Minister of Justice, not the Ministry. Such matters are not a case of 'rubber-stamping'". According to the Ministry's chief legal counsel, Jeff Orr, officials drafted six versions of the draft terms of reference. The first version required the Inquiry chair to obtain the opinions of three internationally recognised experts. Eichelbaum amended this version to enable him to obtain the opinions of "at least two" international experts. The sixth and final draft was identical to the terms that were announced by Phil Goff. There is no evidence that any of the drafts were sent to Goff for his consideration. It seems the first time Goff saw the terms of reference was when he announced them to the media! To suggest that Goff did not "rubber-stamp" the Ministry's advice is plainly incorrect.

Tizard argued that whilst it was correct to say that the Justice Ministry recommended Eichelbaum's appointment, Sim "had no involvement with or knowledge of that recommendation or appointment before it was made". Eichelbaum's appointment was announced by Goff on 10 March 2000. On 8 March 2000, Sim supplied Eichelbaum with a copy of the proposed terms of reference and advised him that "[w]e would be grateful for your comments as soon as possible". She added that the Minister "intends to proceed with an inquiry and hopes to announce it on Friday [March 10] before he goes overseas". The following day Sim faxed Eichelbaum a letter and enclosed an amended copy of the proposed terms of reference. The new terms included provision for a pardon. Sim wrote:

> Please let me know if you are comfortable with the way it is formulated. As drafted, it would probably require you to give some consideration to the appropriate threshold for a pardon. We have already done some work on that issue which can be made available to you.[133]

Sim added that the Minister "would like to announce both the terms of reference and *your appointment* tomorrow morning" (emphasis added). Goff announced the terms of reference and Eichelbaum's appointment the following morning.

Tizard claimed that Eichelbaum's appointment "resulted from discussions" between Colin Keating, the then Secretarry for Justice, and Phil Goff. Tizard did not supply any evidence to support his claim and Ministry records do not refer to any such discussions. Keating has told the writer that he was "only peripherally involved" with the Eichelbaum inquiry. "I think most of the details were worked out with the Minister by officials directly responsible for the matter", he

says.[134] Those officials were Val Sim and Michael Petherick. Keating also said that he signed "hundreds" of letters a week, hinting that his advisors actually wrote the letters.

I informed Tizard that when I began researching Sim's review of *A City Possessed*, I did so in good faith. I had hoped that Sim would be willing to assist me. That did not transpire and, as a result, many questions remain unanswered. Why did Sim supply Phil Goff with false and misleading information? Why did she withhold crucial information from him? Why was Sir Thomas Thorp not chosen to chair the Ministerial Inquiry? Why did officials exclude his report from the Inquiry's terms of reference? Would Sim have opposed the appointment of Sir Thomas Eichelbaum had she known of his relationship with Justice Williamson? Why did Eichelbaum not subject the expert opinions to peer-review? Why did he appoint only two experts when Colin Keating informed Goff that six were necessary? Why did he traverse much, if not all, of the evidence before choosing the experts? How did Louise Sas's name come to his attention and what was he told about her? Why did officials approach Sas but ignore experts with far better credentials? Was the Justice Ministry aware that she had published no research on the interviewing of child sexual abuse victims? If so, did the Ministry advise Eichelbaum of this fact before he appointed her? Did officials ask Sas if she had any prior knowledge of the case? Did officials know that she had previously been exposed to highly preducial information about Ellis, and did they forward this information to Eichelbaum? Why did Sim believe that Stephen Ceci was unworthy of selection when she had previously indicated that his expert opinion could be helpful? Why did she warn Eichelbaum that the personal reputations of the children's interviewers, the complainants and their families were at stake? Why did she suggest to Goff that the Court of Appeal had properly performed its function, when her own Ministry had criticised the Court?

In the course of my research, Phil Goff declined to respond to questions and instead directed me to his public comments on the case. Sir Thomas Eichelbaum has not responded to requests for information.

NOTES

1 Val Sim, 'A City Possessed' – Lynley Hood's Book on the Christchurch Civic Creche Case, 21 May 2002.

2 'The Making of a Modern Witch Trial', in Nathan, D. (1991). *Women and Other Aliens.* El Paso, Texas: Cinco Puntos Press

3 Although the convictions of Dove and Noble were overturned on appeal, both were retried. Dove was again convicted; again her conviction was overturned. Noble was acquitted.

4 'The Ritual Sex Abuse Hoax', in Nathan, D. (1991). *Women and Other Aliens.* El Paso, Texas: Cinco Puntos Press

5 Victor, J. S. (1993). *Satanic Panic: The Creation of a Contemporary Legend.* Illinois:Open Court

6 DeYoung, M. (2007). Two decades after McMartin: a follow-up of 22 convicted day care employees, *Journal of Sociology and Social Welfare*, 34, 9-33

7 Hill, M. (1998). Satan's Excellent Adventure in the Antipodes, *Issues in Child Abuse Accusations,* 10, 112-121

8 Presentation by Ritual Action Group, Family violence: Prevention in the 1990s. Family Violence Prevention Coordinating Committee, Conference Proceedings. Christchurch, New Zealand, Sept 1991

9 Eichelbaum, T. *The Peter Ellis case:Report of the Ministerial Inquiry.* Wellington: Government Printer, February 2001.

10 Judith Ablett Kerr, Submission to Rt Hon Sir Thomas Eichelbaum, 24 July 2000.

[11] Michael Whitman, cited by Judith Ablett Kerr, Submission to Rt Hon Sir Thomas Eichelbaum, 24 July 2000.
[12] *The Press*, 5 November 1991.
[13] Research, however, suggests that jurors may be willing to convict an accused despite the presence of satanic or bizarre elements. See, for example, Bottoms, B.L., Diviak, K.R., & Davis, S.L. (1997). Jurors' reactions to satanic ritual abuse allegations, *Child Abuse and Neglect*, 21(9), 845-859.
[14] In *A City Possessed*, Tommy Bander's pseudonym is Bart Dogwood.
[15] Letter from Karen Zelas to Detective John Ell, 28 August 1992.
[16] In *A City Possessed,* Joy Bander's pseudonym is Ms Dogwood.
[17] Bander, Joy. (1997). *A Mother's Story:The Civic Creche Child Sex trial*. Auckland:Howling at the Moon
[18] Hood, L. (2001). *A City Possessed:The Christchurch Civic Creche Case*. Dunedin:Longacre, p.369.
[19] Davies, G. *Comments on the investigation and interviewing of children in the Ellis case*, January 2001.
[20] Val Sim, 'A City Possessed' – Lynley Hood's Book on the Christchurch Civic Creche Case, 21 May 2002.
[21] Thomas Thorp. Opinion for the Secretary for Justice re petitions for the exercise of the Royal prerogative of mercy by Peter Hugh McGregor Ellis, March 1999.
[22] Justice Neil Williamson, *R v Ellis* [1993].
[23] Eli Laurel is a pseudoynm adopted by Hood (2001).
[24] Testimony of Eli Laurel's mother, *R v Ellis* [1993].
[25] A review of the trial transcript shows that the Judge's summing up of the prosecution case consisted of 50% more words than his summing up of the defence case.
[26] Freckleton, I. (2008, Jan). Heterodoxy, iconoclasm, and charlatanism, *New Zealand Lawyer (online).*
[27] Ceci, S., Klemfuss, J.Z., Kulkofksy, S., Sweeney, C.D., & Bruck, M. (2006). "Unwarranted Assumptions about Children's Testimonial Accuracy", *Annual Review of Clinical Psychology*, 3, 307–24
[28] Colin Keating, Options for further inquiry into the Ellis case, 1 March 2000.
[29] Margaret Wilson, Memorandum for Cabinet, March 2000.
[30] Phil Goff, Memorandum for Cabinet, undated.
[31] Letter from Judith Ablett Kerr to Hon Annette King, 25 January 2008.
[32] 'Inaugural Neil Williamson Memorial Lecture: Judicial Independence Revisited', [1997] 6 *Canterbury Law Review* 421.
[33] Personal correspondence, 5 October 2006.
[34] Private communication, 2 September 2008.
[35] Private communication, 21 October 2008.
[36] Letter from Jeff Orr to author, 29 February 2008.
[37] Colin Keating, Options for further inquiry into the Ellis case, 1 March 2000.
[38] Both sets of parents refused legal representation provided to parents of the other conviction children.
[39] Personal correspondence, 20 April 2009.
[40] Application for the exercise of the Royal prerogative of mercy: Peter Ellis, 20 March 1998.
[41] See Peter Ellis' first and second applications for the exercise of the Royal prerogative of mercy.
[42] Second application for the exercise of the Royal prerogative of mercy: Peter Hugh McGregor Ellis, 27 April 1999.
[43] Letter from Val Sim to Sir Thomas Eichelbaum, 9 May 2000.
[44] Val Sim, Oral presentation to Justice and Electoral Select Committee, 10 December 2003.
[45] The Justice Ministry has since argued that Thorp's report was not publicly available because it was sub judice when, in May 1999, the Court of Appeal heard Ellis' second appeal. The suggestion that the Court could be influenced by the release of Thorp's report is insulting to the five Judges who sat on the appeal. The Court delivered its judgment in October 1999. Thorp's

report was released in March 2001. Requests for a copy of the report, made under the Official Information Act, had previously been rejected by officials.

[46] TV3, The Case in Question, 16 November 1997.

[47] *The Evening Post*, 20 November 1997.

[48] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98), 21 April 1999.

[49] Cited by Judith Ablett Kerr, Submission to the Ministerial Inquiry, volume 3.

[50] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98).

[51] Letter to Rob Dalley, 20 December 1991.

[52] Ibid.

[53] Ibid.

[54] Police Report Form, 19 March 1992.

[55] Judith Ablett Kerr, Submission to the Ministerial Inquiry, volume 3.

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[57] Sir Thomas Eichelbaum, *The Peter Ellis case:Report of the Ministerial Inquiry*, February 2001.

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[59] Davies, G. *Comments on the investigation and interviewing of children in the Ellis case*, January 2001.

[60] Stephen Ceci, Interview with Russ Francis, July 1995.

[61] Lyney Hood, Response to Ministry of Justice submission on Petition of Lynley Jane Hood and Don Brash and 807 others for a Royal commission of inquiry into the Christchurch Civic Creche case, 11 October 2003.

[62] Affidavit of Karen Zelas, 22 March 1993.

[63] Ibid.

[64] Letter from Karen Zelas to John Ell, 28 August 1992.

[65] Affidavit of Karen Deborah Zelas, 22 March 1993.

[66] Anthony Hubbard, Are courts over Zelas?, *Sunday Star Times*, August 31, 2003.

[67] Garven, S., Wood, J.M., & Malpass, R.S. (2000) "Allegations of wrongdoing: The effects of reinforcement on children's mundane and fantastic claims". *Journal of Applied Psychology,* 85, 38-49.

[68] Affidavit of Maggie Bruck, *R v Ellis.* (CA120/98).

[69] Affidavit of Barry Parsonson, *R v Ellis.* (CA120/98).

[70] Letter from Ray Bull to Judith Ablett Kerr, 13 July 1998

[71] Application for the exercise of the Royal prerogative of mercy: Peter Ellis, 20 March 1998.

[72] Court of Appeal, *R v Ellis*, CA 120/98, 14 October 1999.

[73] Letter from Colin Keating to Minister of Justice, 16 December 1999.

[74] Val Sim, Oral presentation to Justice and Electoral Select Committee, 10 December 2003.

[75] Phil Goff, Press release, 10 March 2000.

[76] Ibid.

[77] File Note, Michael Petherick, 13 June 2000.

[78] Ministry of Justice, Second application for the exercise of the Royal prerogative of mercy: Peter Hugh McGregor Ellis, 27 April 1999.

[79] Personal correspondence, 28 July 2005.

[80] Lyon was nominated by the Children's Commissioner and Crown Law Office, but was not available. However, when Lyon expressed an interest in making himself available, Eichelbaum emailed Michael Petherick and asked: "if he [Lyon] offered, what would your and Val's reaction be?" (Email from Sir Thomas Eichelbaum to Michael Petherick, 24 June 2000).

[81] Martindale, D.A. (2001). On the importance of suggestibility research in assessing the credibility of children's testimony. *Court Review*, 38, 8-10.

[82] Lyon, T.D. (2001). Let's not exaggerate the suggestibility of children. *Court Review*, *38 (3),* 12-14.

[83] Ibid.

[84] Personal correspondence, 4 May 2005.

[85] Personal correspondence, 21 May 2005.

[86] Personal correspondence, 28 April 2005.

[87] Personal correspondence, 25 November 2006.

[88] Personal correspondence, 19 July 2006.
[89] Personal correspondence, 16 January 2006.
[90] Transcript of Justice and Electoral Select Committee, 10 December 2003
[91] Ceci, S.J., Kulkofsky, S., Klemuss, J.Z., Sweeney, C.D., & Bruck, M. (2007). Unwarranted assumptions about children's testimonial accuracy, *Annual Review of Clinical Psychology*, 3, 307–24.
[92] Ball, W. (1997, June). Paper presented to The 2nd International Conference on Children Exposed to Family Violence. London, Ontario.
[93] Ibid.
[94] Sir Thomas Eichelbaum, *The Peter Ellis case:Report of the Ministerial Inquiry*, February 2001.
[95] Personal correspondence, 6 July 2009.
[96] Ibid.
[97] Wendy Ball, Paper presented to The 2nd International Conference on Children Exposed to Family Violence. London, Ontario. June 1997.
[98] The Justice Ministry has advised that it cannot locate any invoice issued by Eichelbaum. However, on the basis of his hourly rate ($112.50) and the amount paid to him ($40,612.90), he is likely to have worked no more than 360 hours. This of course assumes that there were no incidental costs for which he was reimbursed. The cost of incidentals was $4,939.37 (though it appears few such expenses were incurred by Eichelbaum). At the time of the Ministerial inquiry, Eichelbaum chaired the Commission of Inquiry into Genetic Modification.
[99] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98).
[100] Ibid.
[101] Sir Thomas Eichelbaum, *The Peter Ellis case:Report of the Ministerial Inquiry*, February 2001.
[102] Ceci, S., Klemfuss, J.Z., Kulkofksy, S., Sweeney, C.D., & Bruck, M. (2006). "Unwarranted Assumptions about Children's Testimonial Accuracy", *Annual Review of Clinical Psychology*, 3, 307–24
[103] For details of the study, see Hershkowitz, I., Horowitz, D., & Lamb, M.E.(2007). "Individual and family variables associated with disclosure and nondisclosure of child abuse in Israel". In Pipe, M.E., Lamb, M.E. et al (eds) Child Sexual Abuse: Disclosure, Delay, and Denial. Mahwah, NJ:Lawrence Erlbaum
[104] Personal correspondence, 9 June 2009.
[105] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98).
[106] Stephen Ceci, Interview with Russ Francis, July 1995.
[107] Hood, L. (2001). *A City Possessed:The Christchurch Civic Creche Case*. Dunedin:Longacre, p.
[108] Davies, G. Comments on the investigation and interviewing of children in the Ellis case. January 2001.
[109] Thomas Thorp, Opinion for the Secretary for Justice re petitions for the exercise of the Royal prerogative of mercy by Peter Hugh McGregor Ellis. March 1999.
[110] Ibid.
[111] *R v Ellis* [1999] NZCA 226
[112] Thomas Thorp, Opinion for the Secretary for Justice re petitions for the exercise of the Royal prerogative of mercy by Peter Hugh McGregor Ellis. March 1999.
[113] Letter from Judith Ablett Kerr to Hon. Annette King, 25 January 2008.
[114] Ibid.
[115] Ibid.
[116] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98).
[117] Rob Dally, quoted by Lynley Hood in *A City Possessed:The Christchurch Civic Creche Case*. Dunedin:Longacre (2001:258).
[118] Affidavit of Mother of complainant A, 29 November 1997.
[119] Ibid.
[120] Ibid.
[121] Letter from Ivan Kwok (Ministry of Justice) to Ross Francis, 3 July 2006.
[122] Dr Parsonson viewed her taped interviews and said she was "somewhat suggestible". He made many negative comments about the way her interviews were conducted.
[123] Letter from Judith Ablett Kerr to Annette King, 25 January 2008.

[124] Ministry of Justice, Application for the Royal prerogative of mercy: David Cullen Bain, 31 October 2000
[125] Barry S. Parsonson, Analysis of Christchurch Creche Evidential Videotapes, March 1999
[126] Ministry of Justice, Application for the exercise of the Royal prerogative of mercy: Peter Ellis, 20 March 1998.
[127] Val Sim, Oral Presentation to Justice and Electoral Select Committee, 10 December 2003.
[128] Affidavit of Michael E. Lamb, *R v Ellis.* (CA120/98).
[129] For a review of these studies, see London, K., Bruck, M., Ceci, S.J., & Shuman, D.W. (2007). "Disclosure of child sexual abuse: A review of the comtemporary empirical literature". In Pipe, M.E., Lamb, M.E. et al (eds) Child Sexual Abuse: Disclosure, Delay, and Denial. Mahwah, NJ:Lawrence Erlbaum
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[131] Davies, G. (2001, Jan). *Comments on the investigation and interviewing of children in the Ellis case*.
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[133] Letter from Val Sim to Sir Thomas Eichelbaum, 9 March 2000.
[134] Private communication, 15 February 2007, 22 February 2007.