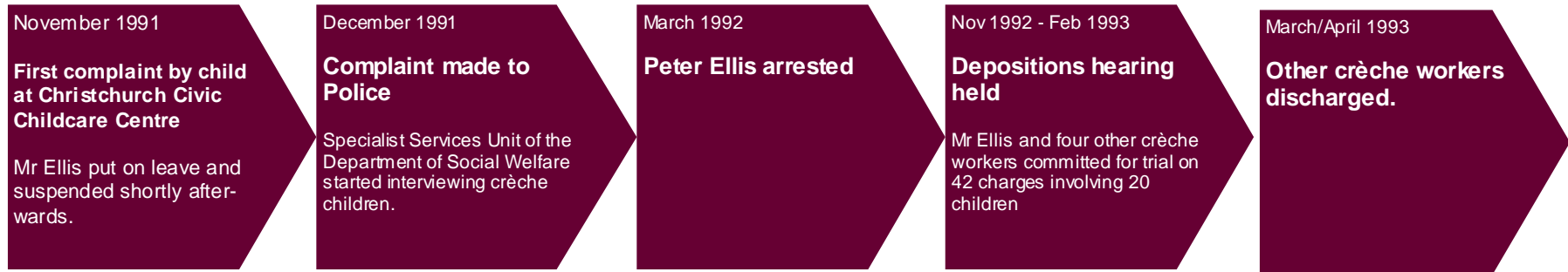


PETER ELLIS CASE - A COMMISSION OF INQUIRY?

BACKGROUND



CONSIDERATION OF CASE

	EVENT	ISSUES	OUTCOME
TRIAL	<p>April 1993 – June 1993</p> <p>Six week trial of Peter Ellis on 28 counts of child sexual abuse.</p>	<ul style="list-style-type: none"> Reliability of children's evidence <p>The jury heard evidence from child complainants, parents, interviewers, crèche workers, Police and experts on children's memory and suggestibility.</p>	<p>Ellis convicted</p> <p>Mr Ellis convicted of 16 counts of indecency in relation to 7 children and sentenced to ten years of imprisonment. The trial judge said:</p> <p>"The jury were in a unique position in this case. Unlike almost all of those who have publicly feasted off this case by expressing their opinion, the jury actually saw and heard each of the children. They also heard your evidence and that of the other former Christchurch Civic Crèche workers. They disbelieved you. They believed the children and I agree with that assessment."</p>
COURT OF APPEAL - 1st APPEAL	<p>September 1994</p> <p>Mr Ellis appealed to the Court of Appeal against his convictions and sentence.</p>	<ul style="list-style-type: none"> Reliability of children's evidence Retraction by one child Adequacy of interview process Expert evidence unsatisfactory Summing up unsatisfactory Verdicts inconsistent Judge's rulings on admissibility 	<p>Appeal dismissed</p> <p>Court of Appeal rejected all criticisms made in respect of each complainant's evidence and the interview process used to obtain the evidence. Court found that nothing put before them rendered the accounts given by the complainants improbable or unworthy of belief.</p> <p>Other grounds of appeal dismissed.</p> <p>Convictions quashed in relation to child who retracted evidence.</p>
ROYAL PREROGATIVE APPLICATIONS 1 AND 2	<p>December 1997</p> <p>Mr Ellis applied for Royal prerogative of mercy</p> <p>Further RP application was made to widen the reference to the Court of Appeal or for a Royal Commission of Inquiry</p> <p>Legal opinion from Sir Thomas Thorp recommended that the terms of reference to CA be enlarged.</p>	<ul style="list-style-type: none"> Adequacy of appeal process Reliability of children's evidence New expert evidence about interviewing techniques Police misconduct Police investigation unsatisfactory Trial process unsatisfactory Jury bias and irregularities Non-disclosure of evidence 	<p>Government re-opens Ellis case</p> <p>Case referred back to Court of Appeal.</p> <p>Government widens terms of reference.</p>
COURT OF APPEAL - 2ND APPEAL	<p>October 1999</p> <p>Mr Ellis has a second appeal against conviction heard by the Court of Appeal.</p>	<ul style="list-style-type: none"> Reliability of children's evidence Pre-trial rulings Jury matters Non-disclosure of evidence 	<p>2nd appeal dismissed</p> <p>All grounds of appeal were dismissed. The Court of Appeal said:</p> <p>"There is in our view an absence of significant "newness" in the additional evidence to show there were serious flaws or problems which were unknown or unappreciated".</p>
ROYAL PREROGATIVE APPLICATION 3	<p>October 1999</p> <p>Mr Ellis presented a third RP application - for a free pardon or a Royal Commission of Inquiry into his case.</p>	<ul style="list-style-type: none"> Adequacy of appeal process Reliability of children's evidence - expert opinion All other aspects of case 	<p>Government re-opens Ellis case a second time</p> <p>Government decided that there should be a further inquiry focusing on the adequacy of the interviews having regard to the development of expert opinion since 1993.</p>
MINISTERIAL INQUIRY	<p>March 2000</p> <p>Government appointed Sir Thomas Eichelbaum to conduct Ministerial inquiry.</p> <p>Inquiry to consider the reliability of the children's evidence (having regard to expert opinion on best practice for interviewing children).</p>	<ul style="list-style-type: none"> Reliability of children's evidence -expert opinion 	<p>Ministerial Inquiry finds no miscarriage of justice</p> <p>Sir Thomas concluded that the case advanced on behalf of Mr Ellis failed to convince him that the convictions were unsafe. "...it fail[ed] by a distinct margin; I have not found this anything like a borderline judgement".</p>

WHY DO SUPPORTERS WANT A COMMISSION OF INQUIRY?

The justice system failed in convicting Peter Ellis

- Interviewing of the children was flawed
- Parental involvement led to contamination
- Police misconduct during investigation
- Prosecutors sanitised charges
- Evidence was wrongly admitted and excluded
- Evidence laws inhibited cross-examination of children
- Experts were not impartial
- Children's evidence was unreliable

The system failed to self-correct

- Court of Appeal wrong body to determine miscarriage of justice claims - appeal process too narrow
- Ministry of Justice not impartial adviser on Royal prerogative of mercy applications - has vested interest in upholding convictions
- Ministerial Inquiry too narrow in scope
- Selection of experts for Eichelbaum Inquiry was flawed

Confidence in justice system needs to be restored

- High level of public and professional concern about case
- Failure to correct injustice has undermined confidence in criminal justice system

Desired outcomes of a Commission of Inquiry

- Exoneration of Peter Ellis
- Compensation for Peter Ellis and crèche workers
- Social and historical reappraisal of events
- Improvements to evidence laws and procedures
- Government organisations and officials held accountable
- Achieve finality in Peter Ellis case

ESTABLISHING A COMMISSION: WHAT ARE THE ISSUES?

<p>1 CONSTITUTIONAL Commission of Inquiry may be unconstitutional.</p>	<p>Crown Law advises that Commission of Inquiry into safety of Peter Ellis's convictions would be unconstitutional. Would encroach directly on authority and function of the courts. Could also be ultra vires the Commissions of Inquiry Act 1908. Mr Ellis has not exhausted his appeal rights – has signalled appeal to Privy Council but not yet pursued. Accepted process for intervention by Executive is Royal prerogative of mercy – normally requires fresh evidence not previously examined.</p>
<p>2 PRECEDENT Could establish undesirable precedent.</p>	<p>No precedent for Commission of Inquiry into the safety of a conviction in NZ legal history. Australian precedents based on discovery of fresh evidence after appeal rights exhausted – unlike Ellis case. If Commission for Peter Ellis, will be difficult to reject other requests on principled basis.</p>
<p>3 CONSTRAINTS OF COMMISSIONS OF INQUIRY ACT 1908 Act inflexible and has limitations.</p>	<p>1908 Act provides for oral hearings and affected persons have rights to appear and be heard - not possible to conduct inquiry 'on the papers' with limited role for affected persons. Overseas judge as chair would not have same powers as High Court Judge to deal with contempt. Potential gaps in suppression powers relating to crèche children's identities. Limitations could be addressed by legislation: amend 1908 Act OR pass Inquiries Bill first OR enact special statute for Ellis Commission of Inquiry.</p>
<p>4 LEGAL CHALLENGE Inquiry could be hampered and delayed by legal argument and/or judicial review.</p>	<p>Risks of legal argument and challenges relate to:</p> <ul style="list-style-type: none"> • the lawfulness of establishing the Commission • the Commission's terms of reference • the proceedings of the Commission.
<p>5 AVAILABILITY AND QUALITY OF EVIDENCE Hard for inquiry to reach better view of facts.</p>	<p>Lapse of time will affect availability of witnesses and recall. Some key witnesses (eg, Peter Ellis, complainants) may be unwilling to give evidence and be cross-examined.</p>
<p>6 TIMING AND COST Inquiry time-consuming and expensive.</p>	<p>Estimated timeframe 18-24 months from establishment. Longer if delays occur (eg. because of judicial review). Cost substantial given interested persons, contentious subject matter, difficult legal issues – especially costs of overseas judge, counsel assisting and legal representation of parties.</p>
<p>7 FINALITY Unlikely to achieve finality.</p>	<p>Opinions on both sides already polarised and entrenched. Only exoneration for Peter Ellis will achieve finality for Ellis supporters.</p>