



Let's not mess it up: Taking forward SAPSAC's 4th Conference message

In this Newsletter we publish a letter by Adv Retha Meintjes SC, President of SAPSAC, in which she joins hands with the Conference Guest Speaker. It reflects the strong stand she is willing to take to alleviate the ordeal to which sexually abused children are subjected in our courts.

**VIDEOTAPES OF
CONFERENCE
PRESENTATIONS**

Videotapes of some presentations at the 2003 Conference are available.

See separate details on order form and please note closing date of 31 August

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The fourth conference was attended by a record number of participants who formed a lively audience and actively participated in the open sessions. All of those who attended the conference were again able to gain valuable information on a wide variety of relevant topics and the conference concluded with the following resolutions:

to properly plan the interviewing of children and to call for legislation providing for video-taped interviews.

SAPSAC's president has put the resolution as far as video-taped interviews is concerned into action and on 5 June 2003 the following letter was forwarded to both the Department of Justice and the SA Law Commission:

“Project 107 -Sexual Offences- Report by the SA Law Commission

Video-taped interviews of child victims of sexual abuse

At the recent 4th National Conference of SAPSAC, “Towards multidisciplinary expertise in handling child abuse”, held at the campus of the University of Pretoria from 13 to 15 May, the issue of video-taped interviews was highlighted due to the fact that the guest speaker at this conference was Professor Ray Bull from the United Kingdom. His topics were “Good Practice in Child Interviewing” and “Achieving Best Evidence from Particularly Vulnerable Child Victims”.

Ray Bull is a professor of Criminological and Legal Psychology attached to the Center for Forensic Psychology at the University of Portsmouth, England and has an impressive CV. I will forward a

‘Brief Biological Sketch’, from which it will be clear that he is indeed a renowned expert in the field.

Briefly put, Prof Bull informed as follows: It has become the practice in the UK to video-tape the interview with the child, which then forms the basis of the child's testimony in chief. The videotape is made available for viewing by the defense. The video is shown to the child to refresh his/her memory prior to calling him/her as witness, which is solely for purposes of being cross-examined. This has proved an excellent forensic method since

- only one interview takes place (in exceptional circumstances a further interview might be held)
- it preserves the evidence: children forget faster
- it exposes and therefore promotes good/acceptable interview techniques and practices.

In its Discussion Paper 102, the SA Law Commission recommends a clause which provides for a court to allow electronically pre-recorded evidence (clause 13(4)(f)). In the December report at pages 108 to 128 and especially at 118 the Commission, despite the general acceptance by respondents of the proposed protective measures which include electronically pre-recorded evidence, took a decision to omit such a clause. The reasoning being “that video-taped evidence is an extremely complex issue and deserving of a more detailed research.”

Already at SAPSAC's Second Annual conference, the participants agreed on a

resolution that video-taped evidence should be allowed as evidence. At the Fourth Annual Conference, this resolution was affirmed and it was unanimously decided that SAPSAC will further the issue. It needs to be emphasized that the conference was attended by some 250 participants, not only interested individuals but professionals, most of whom are actively involved with child abuse matters and representative of the legal, medical, criminological, psychological, police, educational and social work fields. A list of participants will be forwarded.

Writer did, in my professional capacity as Deputy Director of Public Prosecutions: Transvaal, make recommendations to the S A Law Commission on the need for retaining the provision. Following the conference, it is clear that the sentiments expressed are not just my own but are shared by many others. This is also evident from a reading of the Commission's report.

Unfortunately respondents to the issue papers were not given the opportunity to debate the issue of complexity. As previously opined, the mere allowing for such testimony as being admissible is not to be equated with an attempt to simultaneously address issues such as how, where, when, etc. However, even these do not appear to be insurmountable. Video-taped interviews are not to be compulsory and a few forensic interviewers are already making use of video-taped interviews. Furthermore, with reference to issues of equipment, method and venue, these can in all probability be addressed in a manner similar to the way evidence is presently being given/conveyed by way of an intermediary via closed circuit television with even the same equipment and venues to be used, with a few smaller adaptations. These should be readily available given the Commission's proposal that evidence by way of an intermediary is to be compulsory (vide clause 13(5)).

It was mentioned at the conference that the Commission also took into consideration the possibility of defense counsel being placed in far too an advantageous position, they then being able to view the recording repeatedly. Prof. Bull replied that it does not happen in the UK, a verbatim transcript of the recording is provided to the defense and the tape is in some instances not even viewed. Speaking from own experience, few counsel will

have the time to view such a recording repeatedly.

The advantages of providing for the admissibility of video-taped statements as the child's evidence in chief are manifold. What has to be kept in mind is the way these matters are presently being dealt with:

- Repeated interviews occur by the many role-players involved: first rapport, parent, teacher, medical doctor, social worker, police official, prosecutor, intermediary/court, etc. Few are trained in interviewing skills and no co-ordination exists. Most of these interviews can be avoided if a well-planned audible and visible interview takes place.
- Terrible delays still occur prior to the child testifying in court, resulting in the child forgetting relevant detail and requiring of the child to testify **in full** about a horrible incident that the child would rather have forgotten. (It has been considered to perhaps arrange for the child to testify within a few days of the incident having been reported. However, this is not a solution at all since the charge sheet should not be compiled and the accused should not be asked to plead and evidence should definitely not be led prior to the matter having been fully investigated: no further charges can then be put and amendments to the charges might not be allowed.)
- It is a well known fact that most interviews are presently conducted in a manner that falls far short of what is essentially required, namely an interview that is well planned and executed by the person best qualified and trained in interviewing skills. Clearly, those who do not wish their lack of appropriate skills to be exposed will not conduct the interview on video. (However, once trained and practiced, this might become an everyday occurrence.) If admissible, moral pressure might mount to enforce the application of such a provision, which would simultaneously promote proper training and thus better interviewing skills. This would, in turn, address the concerns of the child in fact being traumatized during the interview and of ineffective interviews, where relevant information is not obtained. With better evidence at hand, the successful prosecution of the accused does, of course, also become more of a reality.

Keeping in mind the best interests of the child and the objectives of the Bill, especially as set out in clause 1(i) thereof, there appears to be no justification for not providing for the video-taped, pre-recorded statement of a child to be admissible and to be allowed as the evidence in chief of such child. The child will still have to be available for purposes of cross-examination (unless, in exceptional circumstances, the provisions of section 3 of the Evidence Act 45 of 1988 find application. In this latter instance, the video-taped recording should in any event prove to be far better evidence than the mere say-so of another witness about what the child had said).

On behalf of SAPSAC, on behalf of the many conference participants at its 4th Conference and in my professional capacity as Deputy Director of Public Prosecutions: Transvaal, I urge the Department to please take this issue into serious consideration and to reinstate the clause providing for video-taped interviews and to revive the previous clause 13(4)(f). However, the previous wording, "*electronically pre-recorded statement*" is too wide since audio-tapes, where the witness is not visible, will then also be admissible. Too many valid objections can be raised against such a procedure. It is therefore proposed that the wording be as follows:

"allowing a pre-recorded video-taped statement made by that witness as evidence"

(of course, the present proposed wording of sub-clause(4)(f) should be retained and included in 13(4)(g)).

Your kind consideration of the above submission and proposal will be highly appreciated."

New Editor for CARSA

Prof Steven Collings has been appointed Editor of CARSA. Prof Collings is well known for his research on child abuse, and we were fortunate to obtain his services as editor.

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