



**DIRECTOR OF PUBLIC PROSECUTIONS  
NORTHERN TERRITORY**

**TO: THE DIRECTOR**  
**FROM: GENERAL COUNSEL**  
**RE: R v HENDERSON (RETTA DIXON HOME CASE)**

I have now had the opportunity to read the brief and committal transcript in this matter.

In my view there is no prospect of having this matter go before the jury, let alone obtaining a conviction.

The difficulty with all counts is that the Crown cannot overcome the difficulties enunciated in *S v The Queen*. It is not possible on the evidence to differentiate between one alleged incident and another. Further it is not possible to nail any particular alleged offence down to any particular time-frame. For example, one witness says that an incident occurred when she was 15 years old, and in cross-examination says that she was 10 years old at the time. Another witness will recount that he was indecently dealt with on a number of occasions in a three year period, but is unable to give any detail at all which might differentiate one incident from another. There is no way that one could be satisfied that a jury could differentiate between similar counts.

In the circumstances it is not possible for the defence to know exactly what case they are being asked to meet. If that be accepted then it follows that the accused cannot have a fair trial.

The following excerpt from the committal transcript gives some indication of the difficulty:

*Now, did that type of incident happen in any other place away from that pool?*

*Yes. At Howard Springs and Berry Springs.*

*Can you tell us a bit about what happened at Berry Springs?*

*Mr. Henderson would cross-leg himself where his feet would be on his knees so he had his knees sticking out and you'd be able to sit on his lap and the same sort of*

ME  
I understand that there is some kind of mention, however, I want some input from Alex before we file a note. It is due soon today, I think

Please arrange a joint meeting.  
7/11/02

*things used to happen that I – that I described before in the Howard Springs or Berry Springs...*

*So how many times do you think that sort of incident happened out at Berry Springs?*

*In Berry Springs was probably more than Howard Springs. I remember one occasion at Howard Springs and Berry Springs would've been more occasions as it was very, very deep and didn't have any rails like Howard Springs for young people to hold.*

The questioner then moved to another topic.

Later the following exchange occurs:

*Now, are you able to say when the first event you allege occurred between you and Mr. Henderson occurred? Are you able to put ant time on it or date on it at all?*

*No.*

The same problem occurs with all three Crown victims in respect of whom charges have been presented.

The matters complained of occurred approximately between 30 and 40 years ago. The earliest date alleged is January 1963 and the latest, May 1974. None of the witnesses can say with any degree of accuracy when any particular offence occurred. They cannot really narrow it down to a particular year. In addition, while there is some degree of consistency between the nature of the accused's conduct, there is also a considerable amount of inconsistency between the witnesses, and within the testimony of each particular witness.

In my view the defence are at a disadvantage that we are unable to overcome, and in fact the same applies to us.

**I recommend that we enter a *Nolle Prosequi* sooner rather than later.** The matter is set for trial in December 2002. I only received the file yesterday.

I have discussed the matter at some length with the Deputy Director and he is in full agreement with the proposed course.

I am told that the police understand the predicament and do not have a problem with the matter's not proceeding. I am also advised that the victim's were simply pleased to have had the accused committed for trial and that that very fact makes them feel vindicated. They have apparently had the problems explained to them and would not be overly disappointed if the matter were not to proceed. We would, of course, contact them and give a full explanation of the legal difficulties and explain clearly that their evidence is accepted and the reason for the *Nolle* relates to legal technicalities.

Michael Carey  
7 November 2002

① + Complaints  
+ Crown Prosecution  
+ Director of Public Prosecutions  
+ Police