

not satisfied that this would be so.

Mr. Jones relied primarily on the statement made under caution by Stewart on 22nd September, 1983 (at which time Webb was not present). In this, Stewart made admissions about himself but said in effect that he had been led into the activities by Webb. He went into some detail as to the part allegedly played by Webb. Mr. Jones also referred to -

- (a) the statement of Sergeant Wesley Gibson which describes a prior interview of Stewart by Detective Superintendent Mirfield in which the latter officer put to Stewart a number of lengthy questions, some of which involved the assertion at some length of the allegations against Webb; and
- (b) the statement of Jack Newby Junior describing a discussion, at which he was present, between Stewart and the Chief Medical Officer which contains a reference implicating Webb.

All three statements are inadmissible against Webb and Mr. Jones maintained that the first would be highly prejudicial to him, if put before the jury at his trial. To a lesser extent, he advanced the same argument in respect of the other two statements. He said that no matter how strongly and clearly directed, the jury would not be able to put them out of their minds.

I cannot agree. The prima facie case against Webb does not depend on any of these statements. In relation to the first, I think it is overstating the matter to contend that it will be highly prejudicial. There will be some degree of risk of prejudice but I consider that it can be kept to a minimum by appropriate directions, and that it is not such as to warrant separate trials. The risk of prejudice in relation to the other statements is very slight; Mr. Smellie in fact indicated that the evidence could be called in such a way as to virtually eliminate it.

Mr. Giglioli's application rested on the proposition that if Stewart, who only faces two counts, is tried jointly with Webb who faces six counts, the jury will tend to associate him with those counts for which he is not tried, but I can see no real reason why this should be so if they are given proper directions.

The directions will need to be clear and firm, but they will not have to be complicated. The nature of the allegations against the defendants is such that they ought in my view to be tried jointly.



D. Hull

David Hull
Puisne Judge

8th May, 1985.