SUPREME COURT OF QUEENSLAND

CITATION:	*R v GR* [2005] QCA 146
PARTIES:	**R** **v** **GR** (appellant)
FILE NO/S:	CA No 319 of 2004 CA No 397 of 2004 DC No 2103 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Ipswich
DELIVERED ON:	10 May 2005
DELIVERED AT:	Brisbane
HEARING DATE:	21 March 2005
JUDGES:	McMurdo P, Jerrard JA and Holmes J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal allowed** **2. Conviction set aside** **3. New trial ordered**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – OBJECTIONS AND POINTS NOT RAISED IN COURT BELOW – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – PARTICULAR CASES – where appellant convicted after four day trial of 15 sexual offences against his biological child – where shortly before the complainant's 18th birthday the complainant gave a 12 page typewritten statement of evidence to police which alleged the appellant committed all the offences in the indictment – where at a pre-trial hearing conducted when the complainant was almost 19 years old the complainant was determined to be a special witness under s 21A *Evidence Act* 1977 (Qld) – where at pre-trial hearing the complainant's typewritten statement to police was found to be admissible at trial under s 93A *Evidence Act* 1977 (Qld) – where complainant's evidence in chief and cross-examination at trial was pre-recorded – where trial began after the complainant had turned 19 – whether primary judge erred in determining

the complainant's typewritten statement was admissible at trial under s 93A *Evidence Act* 1977 (Qld)

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES INVOLVING MISCARRIAGE – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – where primary judge erred in admitting typewritten statement of complainant into evidence under s 93A *Evidence Act* 1977 (Qld) – where prosecution case turned largely on complainant's evidence – whether substantial miscarriage of justice would result if appeal not allowed

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – UNREASONABLE OR INSUPPORTABLE VERDICT – where minor inconsistencies in complainant's evidence raised by medical evidence called by appellant – whether convictions unsafe and unsatisfactory – whether retrial should be ordered

Evidence Act 1977 (Qld), s 21A, s 93A
Criminal Code 1899 (Qld), s 668E(1A)

COUNSEL: T A Ryan for the appellant
C W Heaton for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **McMURDO P:** The appellant was convicted after a four day trial of five counts of indecent treatment of a child under 16 years who is a lineal descendant, one count of maintaining a sexual relationship with a child under 16 years with a circumstance of aggravation, three counts of rape, two counts of sexual assault, one count of attempted incest and three counts of incest. The complainant is the biological child of the appellant. The offences were said to have occurred between 1 January 1999 and 11 April 2003 commencing when she was 13 years old and concluding when she was 17 years old. He was sentenced to seven years imprisonment for the three counts of incest and to lesser concurrent terms of imprisonment on the remaining counts. He appeals against his conviction and applies for leave to appeal against his sentence.

The appeal against conviction

[2] The appellant contends in his notice of appeal that the guilty verdicts are unsafe and unsatisfactory, although this was not pursued in oral argument. At the hearing of the appeal, the appellant was given leave to add further grounds of appeal that the learned primary judge erred in admitting into evidence the complainant's typewritten statement to police under s 93A *Evidence Act* 1977 (Qld) ("the Act"); in refusing to exercise a discretion to exclude that statement; in allowing the jury to be given a copy of that statement during the trial; in failing to caution the jury as to the use to be made of that statement; in admitting evidence of the uncharged acts of

physical violence by the appellant towards the complainant; if evidence of those acts were admissible, in failing to direct the jury as to the use to be made of them; and in permitting the prosecutor to cross-examine the appellant about prior acts which constituted criminal offences without first obtaining leave under s 15 of the Act.

The pre-trial hearing

[3] The prosecution case turned largely on the complainant's evidence. On 16 April 2003, shortly before her 18th birthday in May, she gave police a 12 page detailed statement of evidence in which she alleged the appellant committed each of the offences charged in the indictment. On 20 April 2004, when she was almost 19 years old, she gave evidence before a District Court judge in a pre-trial hearing to determine whether she should be declared a special witness under s 21A of the Act.

[4] The learned primary judge was satisfied that the complainant presented as a fairly immature 18 year old who became visibly upset and tearful during the application; the complainant had mixed and confused feelings towards her father; the family, including her mother and probably the appellant, pressured her not to continue with her complaint; she seemed scared of the appellant and likely to suffer severe emotional trauma if she gave evidence in court in the usual way; she would be likely to be intimidated and disadvantaged as a witness. Her Honour determined that she was a special witness[1] and that her evidence should be recorded under s 21A(2)(e) of the Act as soon as possible because of the pressure being placed on her by her family. Whilst her Honour accepted the defence submission that videotaped recording of the evidence of a special witness[2] should only be done in unusual circumstances, the facts here were within the legislative intent of s 21A of the Act.

[5] The prosecution then contended that the pre-trial ruling declaring the complainant to be a special witness meant that under s 93A of the Act the typewritten statement she gave to police was admissible as evidence in the trial. The defence objected to the admission of the statement under s 93A of the Act arguing that such tendered statements are usually in the form of a video or audio recording whereas here it was a recorded typewritten statement and the method of questioning and the spontaneity of answers could not be observed by the jury. Her Honour determined that s 93A was not limited to audio and video statements because of the definition of "statement" in Sch 3 of the Act.[3]

[6] Defence counsel urged her Honour to exclude the statement in the exercise of judicial discretion,[4] especially because the complainant was unable to give a full account of her allegations at the committal proceeding independent of the statement; the tendering of the statement under s 93A would provide an unfair boost at trial to her otherwise uncertain evidence.

[7] Her Honour determined that she should only exercise her discretion to exclude the statement if it was in some way inherently unreliable; that there was nothing at that stage to suggest it was unreliable; although it was a written statement rather than a recording of her oral testimony, this affected the weight to be given to it; it should

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1 As defined in s 21A(1) of the Act; see also s 21A(1B) of the Act.

2 See s 21A(2) of the Act.

3 Where "statement" is said to include "any representation of fact, whether made in words or otherwise and whether made by a person, computer or otherwise."

4 See s 98 and s 130 of the Act.

not be excluded but the jury would need careful directions about its use. Her Honour found that the complainant's statement was admissible at trial under s 93A of the Act. I note the arguments now raised as to the interpretation of s 93A were not raised before her Honour.

[8] The complainant's brief evidence in chief additional to her statement to police tendered under s 93A and her evidence in cross-examination at trial were pre-recorded before her Honour later on 20 April 2004, consistent with her Honour's ruling under s 21A(1B) and s 21A(2)(e) of the Act. The trial began before another judge on 30 August 2004 after the complainant had turned 19.

The relevant legislation

[9] It is necessary to refer to parts of the Act to determine whether the statement was admissible under s 93A. Part 2 of the Act deals with witnesses. Division 4 of Pt 2, consisting solely of s 21A, deals with the evidence of special witnesses. It is not disputed that the primary judge was entitled to find under s 21A(1B) that the complainant was a special witness, as defined in s 21A(1) in that she was "a person who, in the court's opinion … would be likely to suffer severe emotional trauma; or … would be likely to be so intimidated as to be disadvantaged as a witness; if required to give evidence in accordance with the usual rules and practice of the court." It followed that under s 21A(2)(e) the judge was entitled to order that the complainant's evidence for the trial be videotape-recorded instead of given as direct testimony. The videotaped testimony was admissible at trial under s 21A(6) of the Act.

[10] Division 4A of Pt 2 of the Act deals with evidence of affected children.[5] The phrase "affected child" is a "child who is a witness in a relevant proceeding and who is not a defendant in the proceeding".[6] The purpose of the division is, to the greatest extent practicable, to preserve the integrity of an affected child's evidence and to require that the evidence be taken in an environment that limits the distress and trauma that might otherwise be experienced by the child when giving evidence.[7] The division allows for a child's evidence to either be pre-recorded in the presence of a judicial officer before the hearing or, where this cannot be given effect, to be given remotely by audio visual link or with the benefit of a screen.[8] It also sets out the procedure by which affected children give evidence at the committal proceeding;[9] for pre-recording an affected child's evidence;[10] for taking an affected child's evidence using audio visual link or screen[11] and other procedures,[12] including judicial directions to be given to the jury when evidence has been taken under this division.[13] Section 21AD relevantly provides:

> "(1) For the purposes of a proceeding for this division, a '**child**' is –
> (a) if the proceeding is a criminal proceeding –
> (i) an individual who is under 16 years when the first of the following happens –

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5 Division 4A inserted by *Evidence (Protection of Children) Amendment Act* 2003, s 60, commenced 5 January 2004.
6 See s 21AC.
7 Section 21AA.
8 Section 21AB.
9 Sub-division 2.
10 Sub-division 3.
11 Sub-division 4.
12 Sub-division 5.
13 Section 21AW of the Act.

(A) the defendant in the proceeding is arrested;
(B) a complaint is made under the *Justices Act 1886*, section 42 in relation to the defendant in the proceeding;
(C) a notice to appear is served on the defendant in the proceeding under the *Police Powers and Responsibilities Act 2000*, section 214; or

(ii) an individual who is 16 or 17 years when the first of the matters mentioned in sub-paragraph (i) happens and who is a special witness; …

(2) An individual remains a '**child**' for the purposes of giving evidence for a proceeding if the child gives evidence for the proceeding at any time before the child turns 18 years."

[11] The complainant's evidence was not, however, recorded under Div 4A of Pt 2 but under Div 4 of Pt 2.

[12] Section 93A is in Pt 6 of the Act which concerns admissibility of statements and representations. It relevantly provides:

"(1) In any proceeding where direct oral evidence of a fact would be admissible, any statement tending to establish that fact, contained in a document, shall, subject to this part, be admissible as evidence of that fact if –

(a) the maker of the statement was a child or an intellectually impaired person at the time of making the statement and had personal knowledge of the matters dealt with by the statement; and
(b) the child or intellectually impaired person is available to give evidence in the proceeding.

(2) Where a statement made by a child or intellectually impaired person is admissible as evidence of a fact pursuant to subsection (1), a statement made to the child or intellectually impaired person by any other person –

(a) that is also contained in the document containing the statement of the child or intellectually impaired person; and
(b) in response to which the statement of the child or intellectually impaired person was made;

shall, subject to this part, be admissible as evidence if that other person is available to give evidence.

(3) Where the statement of a person is admitted as evidence in any proceeding pursuant to subsection (1) or (2), the party tendering the statement shall, if required to do so by any other party to the proceeding, call as a witness the person whose statement is so admitted and the person who recorded the statement.

…

(4) In the application of subsection (3) to a criminal proceeding –

'**party**' means the prosecution or the person charged in the proceeding.

(5) In this section –

…

'**child**' means –

(a) a child who is under 16 years; or
(b) a child who is 16 or 17 years old and who is a special witness.

…

[13] In the dictionary in Sch 3 of the Act, "intellectually impaired person" means:

"… a person who has a disability that –

(a) is attributable to an intellectual, psychiatric, cognitive or neurological impairment or a combination of these; and

(b) results in –

(i) a substantial reduction of the person's capacity for communication, social interaction or learning; and

(ii) the person needing support."

Was the complainant's statement admissible under s 93A of the Act?

[14] The threshold question is whether the complainant's statement to police on 16 April 2003, when she was 17 years old, was admissible under s 93A of the Act at the trial when she was 19 years old.

[15] The use of the term "child" in a statute can have surprisingly divergent meanings. Ordinarily, it means an individual who is under 18: s 36, *Acts Interpretation Act* 1954 (Qld).[14] Under the *Juvenile Justice Act* 1992 (Qld) "child" is defined ordinarily as "a person who has not turned 17 years".[15] The more restrictive definition of "child" in s 21AD of the Act[16] is limited to the purposes of a proceeding under Div 4A of Pt 2 of the Act[17] and so does not apply to s 93A in Pt 6 of the Act. In any case, s 93A provides its own definition of "child" in sub-s (5).[18]

[16] It is common ground that the complainant will only be a child as defined in s 93A(5) if she was "a child who is 17 years old and who is a special witness".[19] It is also common ground that the complainant's statement to police on 16 April 2003 was a statement where direct oral evidence of the facts contained in it would be admissible[20] so that her statement was admissible under s 93A if it also met the requirements of both s 93A(1)(a) and (b).

[17] The first of those is met if the complainant was 17 years and a special witness at the time she made the statement and had personal knowledge of the matters in the statement.[21] Whilst her Honour found that the complainant was a special witness on 20 April 2004, not when she made the statement on 16 April 2003, it seems extremely likely that in the light of the prosecution evidence in this case and in the absence of any contrary evidence from the appellant, her Honour would also have been satisfied the complainant was a special witness on 16 April 2003 when she made the statement. The appellant does not seriously contend otherwise. I am prepared to accept that the complainant came within the first of the requirements (s 93A(1)(a)).

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14 This is also its meaning in the *Child Protection Act* 1999 (Qld): see s 8.
15 See that Act's Schedule 4, dictionary.
16 Set out in [10] of these reasons.
17 Section 21AD(1).
18 Set out in [12] of these reasons.
19 See s 93A(5)(b).
20 Section 93A(1).
21 Section 93A(1)(a).

[18] The second requirement to be met before the statement becomes admissible is that the child or intellectually impaired person must be available to give evidence in the proceeding (s 93A(1)(b)). The section makes clear that the maker of the statement must be a child or intellectually impaired person at the time of making the statement (s 93A(1)(a)) but the section is less clear as to whether the maker of the statement must also be a child or an intellectually impaired person at the time the child or intellectually impaired person is able to give evidence in the proceeding (s 93A(1)(b)).

[19] In enacting s 93A(1) in its present form the legislature intended to provide some special protection and assistance for children and intellectually impaired persons in the unfamiliar and potentially stressful and traumatic circumstances of giving evidence in court, to minimise the risk that they may not give their best evidence because of fear, shyness or lack of understanding.

[20] Words in statutes should be given their ordinary meaning unless to do so would create an absurd result or one contrary to the clear legislative intent of the statute. The clear and most likely inference from the ordinary meaning of the words in s 93A(1)(b) is that a statement cannot be tendered under s 93A unless the maker of the statement is a child or an intellectually impaired person available to give evidence in the proceeding *at the time of the proceeding*. It seems unlikely the legislature intended the provisions of s 93A to apply to witnesses giving evidence in court who were no longer children or intellectually impaired persons at the time of the court proceeding. Such witnesses would no longer be in need of the special protection provided by s 93A. This interpretation is consistent with the scheme of the Act and in particular Div 4A of Pt 2, s 21AD(2) of which recognises that when witnesses are no longer children or intellectually impaired persons as defined, then in giving their evidence they are, like other witnesses, subject to the ordinary laws of practice and procedure. Although no particular assistance is gained from the Second Reading Speeches and the Explanatory Notes to the *Evidence (Protection of Children) Amendment Act* 2003 (Qld), which amended s 93A(1) in its present form,[22] the interpretation I suggest is certainly not inconsistent with the observations made there.

[21] The use of the present tense "is" in s 93A(1)(b) rather than the past tense "was" used in s 93A(1)(a) also supports this conclusion. Had the legislature not intended in s 93A(1)(b) that the maker of the statement to be a child or intellectually impaired person at the time of giving evidence in the proceeding, it could very easily have repeated the phrase used at the beginning of s 93A(1)(a), "the maker of the statement", rather than using only the defined terms "child or intellectually impaired person".

[22] In my view a statement cannot be tendered under s 93A unless the maker of the statement is a child or an intellectually impaired person available to give evidence in the proceeding at the time of the proceeding. Her Honour erred in admitting in evidence the complainant's statement to police of 16 April 2003 because at the time the complainant gave evidence in the criminal trial, she was 19 years old and not a child as defined in s 93A(5) of the Act; the mandatory requirement for admissibility set out in s 93A(1)(b) of the Act was not met.

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22 See s 63 of the amending Act.

Section 668E(1A) *Criminal Code* (the proviso)

[23] The appeal must be allowed unless the case is within s 668E(1A) *Criminal Code* (the proviso). Although the prosecution case was stronger than many such cases reviewed by this Court, it largely turned on the complainant's evidence. The complainant's s 93A statement played a pivotal role in the trial which, as earlier noted, commenced before another judge in late August 2004. The prosecutor, with the concurrence of defence counsel, told the judge that he had prepared copies for the jury of the complainant's statement and intended in his opening to draw their attention to the particulars of each of the 15 counts by reference to her statement. The trial proceeded in this way. The jury were supplied with copies of the complainant's statement, marked at relevant points with numbers corresponding to the count on the indictment to which that part of the statement referred. The jury members were also supplied with copies of the indictment. It is impossible to conclude here that had the complainant's detailed 12 page statement not been tendered in evidence that a reasonable jury, properly instructed, would inevitably have convicted the appellant. It follows that the appeal must be allowed.

Unsafe and unsatisfactory?

[24] In those circumstances, it is unnecessary to decide the many other grounds of appeal raised by the appellant, save his contention, not addressed in oral argument, that the conviction was unsafe and unsatisfactory. This is because, if a reasonable jury properly instructed could not have convicted on the evidence at trial, no retrial should be ordered. In considering this issue, it is necessary to briefly review the evidence.

[25] The complainant's evidence was that she was first sexually abused by the appellant over a period of about four years commencing when she was in Grade 8 and aged 13 or 14, increasing in seriousness as she grew older. He began to have sexual intercourse with her when she was 17. He was a strict father and disciplined her with a large piece of wood throughout her childhood. As she reached puberty, their relationship changed. He asked her to massage him. During these massages he began to touch her on her vagina, at first on the outside of her clothing and then inside. He began lying in bed with her and touching her on the breasts and vagina. When she was 16, he first digitally penetrated her. This progressed to him requesting, "Can I put him in?" and attempts to do so. On other occasions, he managed at least partial penetration. The complainant said she was frightened of him. In time she complained to others who finally notified police. She said she had no sexual experience with anyone other than the appellant.

[26] The complainant's evidence received some support from the evidence of her sister, whose videotaped statement was tendered at trial under s 93A of the Act. She said that after the complainant told her of the father's sexual advances, she saw him fondling the complainant in the complainant's bed under her doona.

[27] Because of the manner of the police investigation, the complainant and her sister had no opportunity to collude before providing statements to police.

[28] A doctor gave evidence that the complainant's hymen was damaged, consistent with penetration by something larger than a finger, probably a penis, on a number of occasions but not a large number.

[29] The appellant gave evidence denying that he behaved in any improper sexual way towards the complainant. He claimed that, because of health problems, he was impotent and could not achieve an erection. He called two medical witnesses on this issue. One doctor opined that it was likely that the appellant would suffer from erectile dysfunction in the light of his medical condition and his drug regime. The other doctor's opinion was that there was a one in three chance of erectile dysfunction.

[30] On a view of the evidence plainly open to the jury this medical evidence was capable of supporting the complainant that the appellant had difficulty achieving penetration and used his hand on the first occasion of sexual intercourse to achieve it and with some other details of her account.

[31] The relatively minor inconsistencies in the complainant's evidence referred to by the appellant's counsel did not require the jury to reject the complainant's evidence on any count on which they convicted. The evidence at trial looked at as a whole was certainly capable of supporting a guilty verdict. The difficulty is the jury's verdict was reached through considering an inadmissible statement of the complainant's evidence.

[32] It follows that a retrial must be ordered.

ORDERS:

1. Appeal allowed.

2. Conviction set aside.

3. New trial ordered.

[33] **JERRARD JA:** In this appeal I have read the reasons for judgment of each of the President and of Holmes J, and respectfully agree with their Honours that a new trial should be ordered in this matter. I agree with the President's view that it seems extremely likely that the complainant satisfied the requirements of s 93A(1)(a) of the *Evidence Act* 1977 (Qld) when she made a statement to police on 16 April 2003. That is because it is extremely likely that the court which was satisfied that the complainant was a special witness as at 20 April 2004, being a person who in the court's opinion would be likely to suffer severe emotional trauma and be so intimidated as to be disadvantaged as a witness if required to give evidence in accordance with the usual rules and practice of the court, would also have been satisfied in April 2004 that the complainant was likewise disadvantaged a year earlier in April 2003.

[34] I also agree with the President's construction of s 93A(1)(b) that a statement cannot be tendered under s 93A unless the maker of the statement is a child (as defined for the purpose of that section) at the time of the proceeding. The proper construction is not free from doubt; s 93A(3) describes an obligation on the party tendering the statement to, if required, call as a witness the *person* whose statement is admitted under s 93A. That would suggest that a statement could be tendered from an adult, which was given when that adult was a child; but that construction is made difficult by the requirement in s 93A(1)(b) that the *child* is available to give evidence in the proceeding. I accept the President's construction.

[35] The provisions of Div 4A, dealing with the evidence of affected children as explained by the President, could have applied to this trial. That is because the complainant is an individual, within the meaning of s 21AD(1)(a)(ii), who was 17 when the defendant was arrested (the sentencing remarks show that he had been held in custody since 14 April 2003, presumably in relation to the counts on the indictment) and who was a special witness. Because the provisions in Div 4A only came into force on 5 January 2004, and the committal hearing in this matter was on 13 August 2003, Div 4A did not apply to that committal hearing. It could have applied to the trial conducted in August 2004, but for orders to have been made under s 21AK directing that the complainant's evidence be videotaped pursuant to Div 4A sub-div 3, the prosecution needed to present the indictment before evidence could be taken under that sub-division (s 21AJ). Proceeding that way would have made no relevant difference because the complainant's evidence was videotaped in advance in any event by reason of orders made under s 21A, Div 4, as explained by the President.

[36] It is unfortunate that a retrial needs to be ordered in this matter. The complainant had provided a detailed statement to police in April 2003, was cross-examined at the committal hearing on 13 August 2003, and was then cross-examined in a video recorded proceeding on 20 April 2004. The contents of that cross-examination suggested that she gave evidence at the committal hearing consistent with the detailed statement provided in April 2003. She certainly adhered to the account in that statement when being cross-examined in the video recorded proceeding. The jurors accordingly heard her actually make a fair number of the differing accusations constituting the separate counts, when being cross-examined in the recorded proceeding. The error which occurred in receiving her evidence in chief in the form of the written statement may have had little significance if the document itself had not become pivotal in the way the President described, and had not included so much information about other matters.

[37] **HOLMES J:** I agree with the conclusion of the President that the complainant's statement was not admissible under s 93A of the *Evidence Act* 1977 (Qld), but for different reasons.

[38] The complainant was 17 at the time she made the statement in question. Section 93A(1)(a) rendered it admissible if at the time of making it she was a child; that is to say, by virtue of the definition of "child" in s 93A(5), if, when the statement was made, she was 17 years and a special witness. "Special witness" is defined in s 21A of the Act as meaning:

> (a) a child under 16 years; or
> (b) a person who, in the court's opinion—
> (i) would, as a result of a mental, intellectual or physical impairment or a relevant matter, be likely to be disadvantaged as a witness; or
> (ii) would be likely to suffer severe emotional trauma; or
> (iii) would be likely to be so intimidated as to be disadvantaged as a witness;
>
> if required to give evidence in accordance with the usual rules and practice of the court.

[39] I doubt that the court's opinion can be retrospectively formed. It seems to me that for the complainant to have had, at the time of making her statement, the status of a

special witness, it was necessary that the opinion of the court as to the matters set out in the definition then exist. In any event, in this case no opinion had been formed by the court in respect of what the complainant's position was when she made her statement, whether before or after that occurred. In the absence of any finding that she was a special witness at the time of making her statement, there was no basis for the admission of the statement.

[40] On the other hand, I do not think that s 93A(1)(b) requires that the witness meet the definition of "child" at the time he or she gives evidence. The reference to "the child" in sub-paragraph (b), in my view, is a reference back to the "child" as identified in sub-paragraph (a); that is, to the maker of the statement who was a child at the time it was made. If the requirement in (b) is that the witness be a child at the time of giving evidence, there seems little point in imposing in (a) the requirement that he or she be a child at the time of making the statement.

[41] I should add, in any event, that I do not think that the statement was properly admitted in the form it took. It contained a good deal of prejudicial material as to the appellant's alleged violence to the complainant as a child, and to her mother. No attempt was made to demonstrate its admissibility by showing that it had any link to the offences. Nor, for that matter, was leave sought before the appellant was cross-examined about the alleged incidents of violence, notwithstanding the requirement in s 15(2) of the *Evidence Act* 1977 (Qld); and no direction was given in respect of those matters. All of those matters make it abundantly clear that this conviction should not stand. I agree that a re-trial should be ordered.