

**IN THE CHILDREN'S COURT  
OF NEW SOUTH WALES  
AT PARRAMATTA**

**1 May 2007**

**MITCHELL SCM**

**IN THE MATTER OF LEON**

1. This is a matter which arises out of section 45 and the obligation of the Director General where he removes a child into care and then decides that no order is required to explain that decision to the court. I received, on 18 April 2007, a report under section 45(3) which indicated that Leon, who was born in 2006, had recently been assumed into care, had been presented first at .....Hospital and secondly at the Sydney Children's Hospital and had been shown to have suffered two subdural haemorrhages of differing ages together with external bruising to the body of varying ages. The report indicated that the injuries may have occurred outside the child care centre where Leon was attending and may therefore have occurred whilst he was in the primary care of his mother but conversely may have occurred within the child care centre.

2. The Director-General's report of 17 April 2007 indicated that the Director-General considered no orders of the Children's Court were necessary and he gave various reasons including the fact that police were investigating and that the mother's explanation was plausible.

3. I indicated by a letter which I cause the Registrar at Parramatta to write to the Director-General that I thought the explanation contained in the section 45(3) notice was not a full explanation and that I was entitled to see it as not answering the requirement contained in the section and I am pleased to say that the Director-General, through Mr Gavahan, the Director of Child and Family, Metro West, region, has provided much more information.

4. It is early days in terms of section 45 and so I am not critical of what one might call a shorthand report which was originally filed but, by the same token, I do not resile from the view that it was not a sufficient explanation. That said, I am enormously comforted by the explanations which I have received subsequently which I think fully supplement the original report....

5. The worrying aspect of this case of course is that it is shrouded in uncertainty and that none of us knows the reality. It is for that reason that the function of the Director-General in determining what further action should be taken is so difficult. It is clear that to take too much action, to remove Leon unnecessarily, would be significantly damaging to him. By the same token, to take too little action would be or could potentially be extremely damaging to him. The balancing of those risks and possibilities, mercifully, is not a function for this court at this time in these circumstances. It is, and remains until the Director-General determines that a care application should be brought, a matter for the Director-General and his officers but the Court is entitled to a detailed explanation of the decision not to proceed and I now believe that I have received such an explanation.