

NOT TO BE PUBLISHED
UNTIL TRIAL COMPLETED

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

T.9/93

R E G I N A

v.

PETER HUGH McGREGOR ELLIS

Hearing: 26th-30th April and 3rd-7th May 1993

Counsel: B.M. Stanaway and C. Lange for Crown
R.A. Harrison and Ms Siobhan McNulty for Accused

Oral Judgment: 7th May 1993

ORAL JUDGMENT (NO. 9) OF WILLIAMSON J.

A ruling is necessary in relation to questions which Counsel for the Accused wishes to ask this witness, the mother of child X. Counsel desires to ask the witness questions about an additional interview which was scheduled between her son and the Specialist Services Unit interviewer in August 1992. This scheduled interview was to be subsequent to other interviews early in August of which evidence has already been given. Counsel has stated that he desires to ask questions concerning the cancellation of that interview. He also desires to ask about a letter written by the witness to the Police in which she questioned the decision to cancel the interview and stated what she understood were the reasons for its cancellation. Further Counsel desires to ask questions concerning one

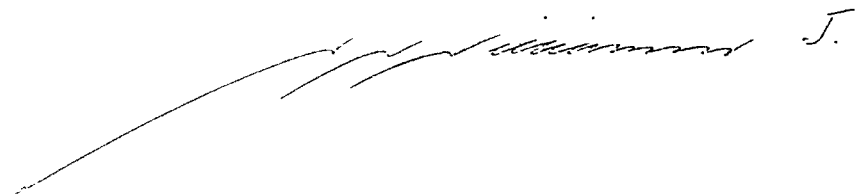
particular paragraph in the letter dealing with matters other than the allegations against the Accused.

There is already evidence before the jury that the child was scheduled to undergo a further interview and that it was cancelled. The only purpose in further questions about that matter must be to endeavour to establish the reason for the cancellation. Such a reason is in effect the opinion of another person about child X. It may or may not be clear who that person is but whatever the identity of the person who decided to cancel the interview such an opinion can form no basis for evidence in this Court. The letter upon which it is desired to cross-examine is a letter which effectively discusses the pros and cons of an opinion in relation to the child and the value of an interview with this child at that point of time. Again that is not a matter that is properly part of the evidence in this trial. Ultimately the jury will have the task of deciding, upon what they have seen and heard, their view about the reliability of the evidence given by the child in Court and by way of videotaped interview. The fact that other people have got opinions about these matters, the fact that those opinions are held by people of different degrees of learning, viewpoint or specialist qualifications, does not alter the position in law. Opinions of others are not relevant. It is the opinion of the jury that is vital. They must be given the facts, not other people's views. To endeavour to cloak that position by asking about other matters does not get away from the effect of what it is desired to ask.

For those reasons then, I rule against the questions that are proposed concerning the circumstances of the cancellation of the interview and the letter written in relation to those circumstances.

So far as the particular paragraph in the letter is concerned, Counsel may, of course, ask about information which this witness may have had at the time the letter was written concerning those matters, if he desires to do so in order to form a basis for the overall contention he makes of contamination. It is difficult, given the timing of the letter and the nature of the comment in the letter, to understand how it has real relevance to the defence in this trial.

The other question raised for a preliminary consideration is in relation to re-examination. Counsel for the Accused has asked the witness questions about information that she may have had prior to taking her son to the house at 404 Hereford Street. He has suggested to her that she must, because of the timing of the notes which she made, have been aware from a source other than her son of the location of the house prior to information being given to her by her son about that house. Clearly it is a point upon which the Crown must be entitled to re-examine, although the extent to which they can refer to the contents of the child's disclosures to his mother must be restricted. Decisions about this re-examination cannot properly be made until the cross-examination is completed. If necessary I will give a further ruling at that time.

A handwritten signature in black ink, appearing to be 'J. Harrison', written in a cursive style.

Solicitors:

Crown Solicitor, Christchurch, for Crown
R.A. Harrison, Christchurch, for Accused