

NOT TO BE PUBLISHED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, 3rd-7th, 10th-14th, 17th, 24th and 25th
May 1993

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

Oral Judgment: 25th May 1993

ORAL JUDGMENT (NO. 12) OF WILLIAMSON J.

Objection has been made to evidence contained in the brief of the present witness, ' . This evidence is to the effect that while the Accused was living at the witness's address during the period of approximately 2 years from May or June 1987, he cared for children from the Creche on a private basis. These children, during the course of this babysitting by the Accused, stayed overnight and shared his bed.

The objection which is made to this evidence is two fold. First, that it is not relevant to the charges now made against the Accused, and that such relevance as it may have is outweighed by the prejudicial effect it

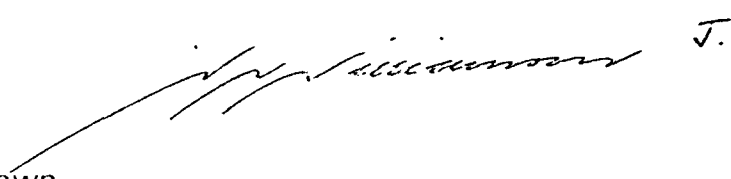
would have. Secondly, it is objected to on the basis that it is hearsay rather than direct evidence.

Counsel for the Crown has submitted that the evidence is relevant because at least two of the complainant children speak of being in the Accused's bedroom at or about the time when the alleged offences occurred. None of the children who were babysat and who stayed overnight in the Accused's bed at the witness's address are complainants in this trial. The evidence then is not directly relevant to any of the charges which are presently before the Court. There is a relevance in the evidence in so far as it tends to confirm that the Accused, on occasions, did have Creche children sleeping in his bed with him. It could be said that this shows a pattern or system of conduct which the jury should be aware of in reaching their decision on these charges. Such patterns or systems were confirmed as relevant and generally admissible evidence by the Court of Appeal in the case of *R v Huijser* [1988] 1 NZLR 577 (CA). As is so often the case, however, while evidence may be relevant in a broad sense, the degree of relevancy has to be weighed alongside the detailed facts to be given and having regard to the effect which those facts may have.

In this case, while I am of the view that the evidence is relevant, I am also of the view that the prejudice which would be caused by the admission of this evidence outweighs the degree of probative value. For that reason I rule this evidence inadmissible.

Solicitors:

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



J.