

CR 02518

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ROGER WALLACE WARREN

Defendant

- and -

THE CANADIAN BROADCASTING CORPORATION

Intervenor

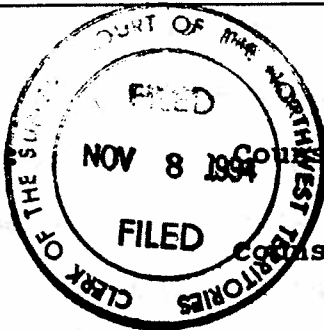
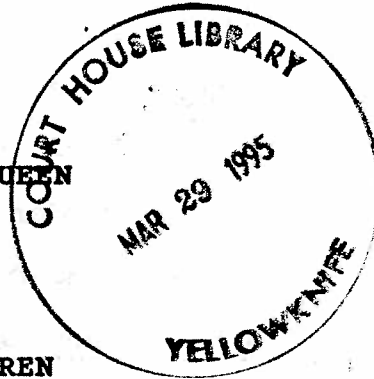
Transcript of the Proceedings heard before the Honourable
Mr. Justice M. M. de Weerd, sitting at Yellowknife in the
Northwest Territories, on Monday, November 7th, A.D., 1994.

APPEARANCES:

MR. P. MARTIN Q.C. Counsel for the Crown
MR. D. GUENTER:

MR. G. ORRIS Q.C.: Counsel for the Defence
MS. G. BOOTHROYD:

MR. J. BRYDON: Counsel for CBC



1 THE COURT: Before we call the jury in, Mr.
2 Martin, there is a notice of motion which has been
3 filed, and I think we should deal with that briefly.

4 MR. MARTIN: Yes, sir.

5 THE COURT: Mr. Brydon I take it is present, and I
6 will ask him to come to counsel table. Before you
7 commence, Mr. Brydon, you might like to take a chair.

8 Mr. Brydon appears on behalf of the Canadian
9 Broadcasting Corporation, and has, I understand,
10 served a notice of motion on counsel here of which I
11 have a copy. I am going to say that I directed the
12 clerk of the court to indicate to Mr. Brydon that he
13 could make the notice of motion returnable before me
14 this morning, and that we would confine the
15 proceedings in that connection to a brief discussion
16 of when the motion might best be heard, given that the
17 trial should not be delayed or interrupted any more
18 than appears necessary in the interests of justice.

19 Before counsel address me on that point, I should
20 like to say to Mr. Brydon that we are now entering on
21 the third week of the trial, having commenced a
22 pre-trial voir dire over two months ago. It is also a
23 matter of record that the preliminary inquiry leading
24 to the indictment of which the trial is proceeding was
25 concluded several more months before that.

26 The position now to be made on behalf of CBC is
27 therefore somewhat less than timely on the face of it

1 given that the Crown's reliance upon audio and video
2 recorded evidence has been apparent to anyone who
3 attended the preliminary inquiry.

4 I mention this since the bringing of this motion
5 halfway through the Crown's case during the trial does
6 nothing to ease the burdens borne by counsel for both
7 the Crown and the Defence, not to omit to mention the
8 burdens borne by the jury, the witnesses, the accused,
9 others concerned who are in attendance and, of course,
10 this bench. Indeed it adds to our already not
11 inconsiderable burdens.

12 Presumably the issues raised by the motion are of
13 public importance given the circumstances, even if for
14 reasons, yet undisclosed to me, the motion is brought
15 before the court at such a very late stage in the
16 proceedings. Be that as it may, our first priority it
17 seems to me must remain with the trial itself. We
18 should not at this stage in any way unduly delay or
19 interrupt the trial even for what appears to be a
20 matter of some quite considerable public interest, and
21 no doubt importance.

22 One possibility therefore is that I simply defer
23 the hearing of the motion until a time when that can
24 be accomplished without any break in the trial. For
25 example, if the trial runs the usual course, that
26 could be after I have concluded my final instructions
27 to the jury, and after they have retired to consider

1 their verdict. If counsel before the court wish to
2 offer their views on that suggestion, I should be
3 pleased to hear them.

4 Let me add that I have been very favourably
5 impressed by the general conduct of the various
6 media throughout the proceedings in this court, both
7 before and during the voir dire as well as in the
8 course of the trial. So far as I am aware the
9 coverage has been quite extensive, generally fair and
10 accurate, as such as to do credit to those responsible
11 for it. Media representatives attending the
12 proceedings have done so without causing any undue
13 distraction or disruption, even if we were still
14 somewhat unused to having our comings and goings
15 filmed at the courthouse door.

16 My remarks with reference to the motion are not
17 intended to reflect any adverse response to it or to
18 the mover, and they should not be taken as intended in
19 that spirit. It is simply that at this point in the
20 trial we must be very careful not to allow the motion
21 to deflect us from our primary task, namely the fair
22 and orderly conduct of the trial itself.

23 Do counsel for the Crown or for the accused wish
24 to speak to what I have just outlined before we hear
25 from Mr. Brydon?

26 MR. MARTIN: No, My Lord.

27 MR. ORRIS: My Lord, let me just say this. Before

1 we hear from Mr. Brydon, subject of course to what Mr.
2 Brydon has to say, this I think would be a matter that
3 will take some time to argue. Mr. Brydon has been good
4 enough to hand me a book of authorities this morning
5 that I anticipate he intends to rely on in the course
6 of this application. Frankly, in casting no
7 dispersions on him, I don't intend to read those in
8 the next little while because I have quite a bit to
9 read already and continue to.

10 My position, My Lord, is this. I don't think the
11 Defence--in my submission the Defence should not be
12 required to take time out from the dealings with the
13 Crown's case, especially this important part of the
14 Crown's case and the preparation for the Defence, in
15 running the Defence, to deal with this issue, and so I
16 would recommend to Your Lordship, Your Lordship's
17 thoughts or at least if not Your Lordship's thoughts,
18 my comments that this matter can be dealt with more
19 fairly for all concerned after the jury has this case
20 and is deliberating. But I will leave that. Those
21 are my preliminary views, My Lord.

22 THE COURT: Very good. Mr. Brydon.

23 MR. BRYDON: My Lord, clearly in a matter such as
24 this, the timeliness of the news itself, what we are
25 seeking is of some importance to my client. Our first
26 position would be that to have access to the tapes as
27 they come due on a daily basis would be the most

1 preferable situation. We do recognize, however, that
2 the first priority of this court can and is and should
3 be the fairness of the trial to Mr. Warren so that
4 that can be concluded in a timely, expeditious,
5 efficient and, of course, just way.

6 It is our submission that if the time is
7 available, we would ask to have the matter dealt with
8 as soon as possible. In the alternative, My Lord, we
9 would ask to have it as Your Lordship suggests after
10 the jury has been instructed and has had a chance to
11 leave and start deliberations.

12 So if I can put it that way, choice number one and
13 our preferable choice obviously is to deal with the
14 matters as soon as possible so as to deliver the news
15 to the people of Canada as quickly and as efficiently
16 as possible. In the alternative, obviously we would
17 accept the second choice.

18 THE COURT: Do either or any of counsel wish to
19 address the court on that?

20 MR. MARTIN: No, thank you.

21 MR. ORRIS: No, thank you, My Lord.

22 THE COURT: First of all, the tapes that we have
23 heard so far and presumably those which we will hear
24 are, and I expect will be, audible in the courtroom.
25 There is always a risk when tapes are dealt with other
26 than merely by handling them that they may be affected
27 in some way that their integrity may be affected. And

1 consequently, I am going to say right away that the
2 custody of those tapes must remain in the hands of the
3 clerk whatever else happens.

4 Secondly, as to access in terms of hearing them
5 again after court, I would have to take that into
6 further consideration after hearing from counsel. I
7 am reluctant to impose additional burdens on the
8 clerk, but I will leave that question open for the
9 time being.

10 With regard to making copies of the tape material,
11 that goes to the merits of the application, and I will
12 say nothing about that until I have heard argument.
13 And likewise, with reference to any broadcasting or
14 repetition of the material copied, As to when this can
15 best be heard, I am pleased to see that you, Mr.
16 Brydon, and your client presumably, recognize that at
17 this late stage that will not be possible without a
18 major interruption of the trial. I must therefore and
19 with some regret rule against dealing with the matter
20 until we will have time to do that. The first
21 opportunity that I can see would be when the jury
22 retires to consider its verdict.

23 What I propose then to do is to adjourn the
24 hearing of this motion until that time. It may
25 well be that, as Mr. Orris has indicated, some
26 preparatory efforts will have to be undertaken by
27 counsel and they may well not be in a position to do

1 that even by the time I have indicated. However, so
2 that the matter will be dealt with openly and in
3 public at that time, I am adjourning this hearing
4 until then.

5 I take it that will conclude the matter so far as
6 you are concerned for the time being, Mr. Brydon.

7 MR. BRYDON: Yes, thank you, My Lord.

8

9 -----


10

11

Certified correct to the best of my
12 skill and ability,

13

14


15 Laurie Ann Young
Court Reporter

16

17

18

19

20

21

22

23

24

25

26

27