

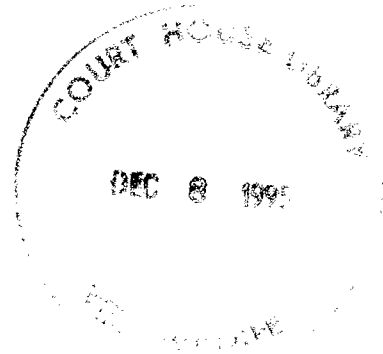
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ESAU TATATOAPIK



Application for change of venue, or, alternatively, an order directing the Sheriff to expand the jury panel to include residents of Arctic Bay as well as residents of Nanisivik. Application denied.

Heard at Yellowknife on October 6, 1995

Judgment filed: October 12, 1995

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Defence Counsel: D. Brice-Bennett

Crown Counsel: S. MacDonald

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

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REASONS FOR JUDGMENT

1 In this criminal proceeding the accused is charged with sexually assaulting the complainant in December 1994 at Nanisivik, Northwest Territories, contrary to s.271 C.C. He has elected to be tried by judge and jury. In June 1995 the Court set the date of his jury trial as October 23, 1995, at the sittings of the Court at Nanisivik. In establishing the place of trial as Nanisivik, the Court followed the long-standing tradition of the Court:

"I need only mention here that the practice and long tradition in this Court has been, and still is, that criminal trials are held in the community where the offence is alleged to have occurred, unless there is a strong reason for the trial to be held elsewhere."

de Weerd J in *R. v. Anablak*, [1984]
N.W.T.R. 118 at p. 119

2 The accused has made application for a change of venue pursuant to s.599(1) C.C. submitting in his filed application that it would be expedient to the ends of justice that the trial be held in the nearby hamlet of Arctic Bay. In the filed application

the accused seeks an order moving the place of trial, "or for such other order as this Honourable Court deems just". On the hearing of the application, counsel sought not an order for a change of venue, but rather an order directing the Sheriff to include in the jury panel residents of both Nanisivik and Arctic Bay.

3 Counsel have filed an Agreed Statement of Facts as evidence to be used on the accused's application. This document shows Nanisivik's population as 294, that of Arctic Bay as 543, and the population mix of each community as between Inuit and non-Inuit. The two communities are 36 km. apart, with an all-weather road between the two. Arctic Bay is a hamlet established pursuant to the *Hamlets Act*, R.S.N.W.T. 1988, ch. H-1, with an elected Mayor and Council. It is a traditional Inuit settlement. Nanisivik is an unincorporated community, a mining townsite developed twenty years ago with the opening of the Nanisivik Mine.

4 The provisions of the *Jury Act*, R.S.N.W.T. 1988, ch. J-2, and regulations enacted thereunder, compel the Sheriff to select a jury panel to attend at the place of trial, by having access to "voters' lists, assessment rolls and other public lists". Although no particular residence requirement is explicitly prescribed in the Act or regulations, the inference is that prospective jurors must reside within 30 km. of the place of trial (see s.7 of Act). In the present case the Sheriff has selected the October 23 jury panel by utilizing a "voters' list" from Nanisivik comprised of 141 names.

5 As I understand the thrust of the accused's submission on this application, it is that, for purposes of jury selection, Nanisivik and Arctic Bay should be considered as

"one district". It is further submitted that the Sheriff should select the jury panel by utilizing the voters' lists of both communities.

6 Upon a consideration of the evidence presented, and counsels' submissions, I find that it has not been established that Nanisivik and Arctic Bay are one district/community for purposes of the *Jury Act*.

7 The *Jury Act* speaks of the "place of trial". Nanisivik is the place of trial. Though unincorporated, it is no less a community. It is recognized as such in GNWT publications and in the Canadian Encyclopedia. It has a post office, school, library, health centre, airport, police detachment, fire department, government offices, recreation centre and varied residential units - company housing, GNWT staff housing and public housing.

8 The evidence submitted on this application indicates that Nanisivik and Arctic Bay are separate (and distinct) communities. The law (i.e. s.626 C.C. and the provisions of the *Jury Act*, R.S.N.W.T., ch. J-2) does not authorize the Court to direct the Sheriff to select the jury panel from two communities - unless in rare circumstances where the jury panel is exhausted and additional talesman are summoned (s. 642 C.C.).

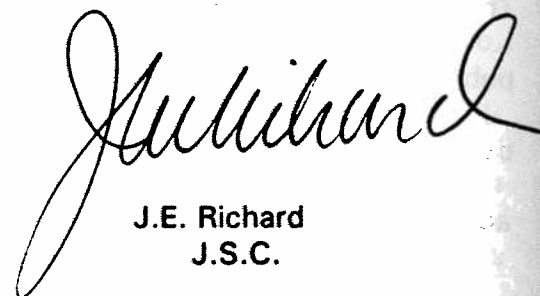
9 It should be noted that, on the within application, the accused does not seek a particular composition of his jury as between Inuit and non-Inuit. His counsel specifically states that that is not the basis of the application.

10 Counsel did not pursue an order for a change of venue. No foundation for such an order is before the Court at this time, e.g. bias in the community, *R. v. Fatt*,

[1986] N.W.T.R. 388, *R. v. Haslam*, [1991] N.W.T.R. 296; evidence of divisiveness and hostility in the community, *R. v. Lafferty* (1977), 35 C.C.C. (2d) 183; inability to select an impartial jury, *R. v. Anablak, supra*; risk of harm to a key witness, *R. v. I.K.*, [1990] N.W.T.R. 388, *R. v. Nasken*, CR 02870, September 20, 1995.

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For the foregoing reasons, the application is denied.



J.E. Richard
J.S.C.

Yellowknife, Northwest Territories
October 12, 1995