

CR 02518

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

ROGER WALLACE WARREN

Transcript of the Oral Reasons for Sentence of The Honourable Mr. Justice M.M. de Weerd, in Yellowknife, in the Northwest Territories, on the 26th day of January, A.D., 1995.

APPEARANCES:

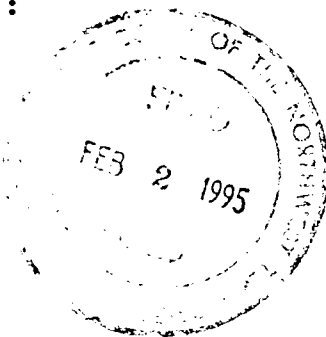
Mr. P. Martin, Q.C.:

For the Crown

Mr. G. Orris, Q.C./:

For the Accused

Ms. G. Boothroyd



1 THE COURT: There is just one point on which I
2 should ask counsel if they wish to make any submission
3 and that is Section 100 of the Criminal Code which I
4 understand obliges me to make an order.

5 MR. ORRIS: I have no submission, My Lord, on it.

6 THE COURT: Very good then.

7 Roger Wallace Warren is before the Court so that
8 the sentence provided by law may be pronounced in
9 reference to his conviction on Friday, January 20th
10 last, on nine counts of second degree murder.

11 The sentence to be pronounced on each count in the
12 indictment is one of life imprisonment. It follows
13 that these sentences shall all be served concurrently.
14 The sentence is one fixed by law, and it is a minimum
15 sentence pursuant to Section 235 of the Criminal Code.

16 Furthermore, Paragraph 742(b) of the Criminal
17 Code requires me to fix the period of that sentence
18 which is to be served without eligibility for parole
19 at a minimum of not less than ten years or up to a
20 maximum of not more than 25 years as provided by
21 Section 744 of the Criminal Code. And I am required
22 to state the length of that period when pronouncing
23 the sentence.

24 The period of ineligibility for parole in the case
25 of a person convicted of first degree murder is fixed
26 by the Criminal Code at a minimum of 25 years. That
27 difference in the length of the period of parole

1 ineligibility is, today, the only distinction made in
2 law in sentencing as between first and second degree
3 murder.

4 Since it is unfortunately not unusual to see or
5 hear misleadingly inaccurate reports of sentences in
6 murder cases, it deserves to be emphasized that the
7 sentence for murder is not one of just so many years,
8 that is to say the years of ineligibility for parole,
9 the sentence is one of life imprisonment; in other
10 words, for so long as the offender shall live. The
11 period of parole ineligibility does not alter that. It
12 merely limits the time when parole may, not must, be
13 granted.

14 My task, therefore, today is not one of fixing the
15 length of Roger Warren's sentence of imprisonment.
16 The Criminal Code, enacted by Parliament, has fixed it
17 at the length of his natural life, and no less.

18 My task is, instead, to pronounce that sentence
19 and, in doing so, to pronounce the period during which
20 his sentence shall be served without eligibility for
21 parole. In doing that, I'm required to apply the
22 criteria set out in Section 744 of the Code which
23 reads as follows and I quote,

24
25 "Subject to Section 744.1, at the
26 time of the sentencing under paragraph
27 742(b) of an offender who is convicted
of second degree murder, the judge who
presided at the trial of the offender,
or if that judge is unable to do so, any
judge of the same court may, having

1 regard to the character of the offender,
2 the nature of the offence and the
3 circumstances surrounding its
4 commission, and to the recommendation,
5 if any, made pursuant to Section 743, by
6 order substitute for ten years a number
7 of years of imprisonment being more than
8 ten, but not more than 25, without
9 eligibility for parole as the judge
10 deems fit in the circumstances."

11 No matter how long the period of parole
12 ineligibility may be, if it should be greater than 15
13 years, that greater period may be cut short pursuant
14 to Section 745 of the Code after 15 years have passed,
15 reckoning from the date of the prisoner's arrest on
16 the murder charges. In other words, after October 15,
17 2008 in the case of Roger Warren.

18 I mention that since I'm asked by the Crown to fix
19 a period of parole ineligibility in excess of 15
20 years. It will also be remembered that the jury's
21 recommendation is that the period be fixed at not less
22 than 20 years.

23 I pause to mention that the number of murder
24 convictions which have been entered against Roger
25 Warren does not alter the legal requirements which
26 apply when fixing the length of the period of parole
27 ineligibility.

That is because each of the nine convictions is in
respect of an offence committed when Roger Warren had
no previous conviction for murder on his record. If,
on the contrary, he had a previous murder conviction

1 on his record when the present offences were committed
2 by him, then the period of ineligibility for parole
3 would be fixed by law at no less than 25 years even
4 though, as is the case, he has been convicted only of
5 second degree murder.

6 The number of Roger Warren's convictions,
7 therefore, does not alter the law which governs how
8 his period of parole ineligibility is to be
9 calculated. But that number will, nevertheless, have
10 to be considered as part of the circumstances referred
11 to in Section 744 of the Criminal Code.

12 There are three criteria then which I must take
13 into consideration under Section 744 of the Criminal
14 Code:

- 15 1) The character of the offender;
- 16 2) The nature and surrounding circumstances of the
17 offence;
- 18 3) The jury's recommendation.

19 **1) Roger Warren's Character.**

20 I understand that he is now somewhat over 50 years
21 old. He seems to be in reasonably good health,
22 notwithstanding what he must have been through over
23 the past two to three years. His medical history
24 shows that he had an operation to correct a spinal
25 problem back in 1982 and that this appears to have
26 been successful to the point that he continued to
27 engage in the heavy labour of an underground hardrock

1 development miner for ten years.

2 He has been diagnosed as suffering to some extent
3 from a "white hand" condition, although this did not
4 prevent him from working as a miner and he has a
5 hearing deficit and wears eyeglasses, neither of which
6 is unusual in a person of his age.

7 I accept that he did suffer from post-traumatic
8 stress in 1987 and may have lingering effects of that
9 still, but that there is nothing of that sort which
10 still materially affects his health as described to
11 the Court in this case. I do not accept that he
12 suffered a severe clinical depression in October 1993
13 or during that year or since.

14 Roger Warren is married and has two grown-up
15 daughters. The marriage is of long duration and he
16 has not been previously married. According to the
17 evidence, the relationship between all four members of
18 the immediate family is a close one.

19 The Warrens have lived at Yellowknife more or less
20 continuously since 1978 or so. During that time Roger
21 Warren was active in local sports activities. He
22 earned a comfortable living on his earnings as a
23 highly competent and generally respected miner.

24 Roger Warren's formal schooling stopped short of
25 completion of Grade 12 in Ontario. He left school to
26 enter employment. Over the years he has read a great
27 deal. He enjoys working out crossword puzzles and, as

1 a result of these pursuits it seems that he has
2 developed an impressive vocabulary. He is generally
3 regarded as intelligent. I accept that his general
4 intelligence is above average.

5 Roger Warren's criminal record is not significant,
6 except perhaps in so far as it reveals a tendency, at
7 times, to abuse alcohol, resulting then in loss of his
8 usual self control and good judgment. When sober,
9 Roger Warren appears to be capable of very
10 considerable efforts of control over his natural
11 emotional expression.

12 Roger Warren gives the impression of a man who has
13 long bottled up his feelings, with the result that he
14 may, under pressure, act impulsively and in a manner
15 which he has cause to later regret. He showed signs
16 of a mostly well-concealed but potentially violent
17 aggressive streak in the course of his
18 cross-examination at trial. And there are other
19 indications in the overall evidence that he harbours
20 strong feelings of hostility to which he is unable to
21 give appropriate expression in words or action.

22 On the whole Roger Warren, as a person, does not
23 fit the pattern of the usual violent criminal
24 offender. He does not seem to present any obvious or
25 immediate danger to others. Now that he has been
26 found guilty by a jury of his peers, who refused to
27 accept that his confession was false, he must surely

1 realize that his attempts to deceive them, as he
2 managed for so long to deceive the police, were in the
3 end of no avail. The jury's verdicts, with the
4 resulting convictions, must have a strongly deterrent
5 effect, if I judge correctly, upon him. It therefore
6 seems unlikely, to me, that he will readily re-offend.
7 All the more so since he is sufficiently intelligent
8 to appreciate that the risks of doing so are not worth
9 taking.

10 **2) The Circumstances of the Offence.**

11 The jury rejected the Crown's theory that the
12 murders themselves were planned and deliberate, and
13 they accepted at least the essence of the confession
14 in finding Roger Warren guilty of second degree
15 murder. Exactly which of the two available routes
16 they may have followed to reach that result is
17 unimportant in my respectful view. It's plain that
18 they were satisfied that Roger Warren set the bomb
19 even though he knew of the lethal danger which he had
20 thereby created.

21 Roger Warren could not have clearly foreseen that
22 his device would take as many lives as it did, but he
23 was evidently at least fully aware of the danger to
24 life as he walked away from the mine at 6 a.m. in the
25 morning, even if he, in the end, decided not to give
26 any warning.

27 That decision was no different, in its effects,

1 than a deliberate decision to create an explosion
2 which could have those effects. The victims of the
3 blast were condemned to death by that decision.

4 No doubt, as the evidence of Robert Carroll shows,
5 Roger Warren was very fatigued after he came out of
6 the mine. And we can deduce from Mr. Carroll's
7 evidence that Roger Warren knew all too well what a
8 deadly device he had created. Roger Warren not only
9 knew the characteristics of the explosives which he had
10 used, but he knew from close personal experience how
11 deadly they can be.

12 This offence was no mere bungling attempt by an
13 amateur. It may well have been, as Roger Warren
14 described it, a second choice or fall-back option
15 after he came to the conclusion that he could not be
16 sure of damaging the shaft and escape detection. Even
17 so, it was done with some calculation and
18 sophistication in an effort to derail an ore train and
19 thus create havoc and destroy the morale of those
20 working in the mine. And it was done with knowledge
21 that the ore train operator, the trammer, was bound to
22 suffer at least some injury and quite likely death
23 from the force of the blast. It was nothing less than
24 an act of terrorism.

25 That the blast occurred during a labour dispute in
26 which feelings ran high, and the fact that other
27 attempts at sabotage had occurred, the fact that

1 contempt had been shown for established law in what
2 has been described as a riot at the main gate to the
3 mine after a mass rally in defiance of a court order,
4 and the fact that intransigence had been shown by both
5 sides in the labour dispute, all these are part of the
6 surrounding circumstances, and perhaps they help to
7 explain why this tragic offence came to be committed,
8 but none of these things can justify or excuse it;
9 none of these things mitigate the horrendous nature of
10 the offence.

11 The tragedy of this terrible crime has had
12 devastating effects upon the lives of the surviving
13 relatives of the deceased miners, even as it has upon
14 the accused and his immediate family, not to do more
15 than mention the Community of the Yellowknife, the
16 mining community in Canada, the Canadian Labour
17 Movement, the people of the Northwest Territories and
18 the public across Canada.

19 Unless a higher court otherwise decides, Roger
20 Warren will carry the guilt of this stupid and
21 despicable crime with him for the rest of his days.
22 Yes, but the pain which he has inflicted will be borne
23 mostly by others; the families of the immediate
24 victims, his own family, and all who have been touched
25 by the events of September 18, 1992 at Giant Mine.

26 There is only one mitigating circumstance in the
27 case and that is Roger Warren's confession. However,

1 he having recanted his confession, it is not to be
2 taken as having the same mitigating effect as if he
3 had stood by it. Had he done that, I should not have
4 had the same difficulty that I now have in giving his
5 confession due credit as a mitigating feature for
6 purposes of sentencing.

7 The fact that death was instantaneous for seven of
8 the deceased victims, and nearly so for the two
9 others, is perhaps a small consolation to their
10 relatives. But this fact does not mitigate the
11 offence or operate to reduce the impact of the
12 sentence. The most that can be said is that it
13 removes what otherwise could have been an aggravating
14 factor.

15 **3) The Jury's Recommendation.**

16 As required by Section 743 of the Criminal Code, I
17 put the question set out in that section to the jury
18 following the reception of their verdict and before
19 releasing them from their duties.

20 The jury's recommendation was that Roger Warren
21 should be required to serve 20 years of his sentence
22 before becoming eligible for parole. Given his age at
23 the time of his arrest, that recommendation would
24 require Roger Warren to remain in a penitentiary until
25 he is close to 70 years of age.

26 On the whole of the evidence, and having regard to
27 the jury's verdict, it's my assessment that they

1 realized that if Roger Warren has to serve a minimum
2 of 10 years before becoming eligible for parole, and
3 if his convictions stand, then he is unlikely ever
4 again to be employed as a miner so as to be again in a
5 position to put the lives of other miners at risk.

6 Although the jury were not told of the
7 requirements of Section 100 of the Criminal Code, I
8 must, of course, take that into account. Noting, as I
9 do, that it requires me to make an order prohibiting
10 Roger Warren from possessing any firearm, or
11 ammunition, and any explosive substance for a minimum
12 of ten years following his release from imprisonment
13 on parole, should that take place.

14 In the circumstances of this case, I make that
15 order for the period of Roger Warren's life. Unless
16 set aside or varied by a higher court, that order
17 will, of course, operate to prohibit Roger Warren from
18 ever again handling explosives whether as a miner or
19 otherwise.

20 **4) Counsels' Submissions.**

21 Prior to adjourning last week to allow counsel to
22 make representations on sentencing today, Crown
23 counsel gave an indication that the Crown would, in
24 all likelihood, at least support the jury's
25 recommendation. Counsel for the accused, on the other
26 hand, made a submission to the effect that this was an
27 appropriate case for maintaining the period of parole

1 ineligibility at the minimum of ten years.

2 Given the late hour at the time and this clear
3 difference of position between counsel, I adjourned
4 the matter until this morning, and in the meantime
5 I've had the advantage of reading the victim impact
6 statements filed with the clerk, as I understand
7 counsel have agreed that I should do, and I have, as
8 well, been able to refresh my memory as to the law
9 which I must apply in a case coming under Section 742
10 of the Criminal Code such as this.

11 In addition, I have provided counsel with a record
12 of the most recent case, to my knowledge, in the
13 Northwest Territories, in which Section 742 was
14 applied. Although unreported, it refers to a number
15 of earlier cases of this kind in the Northwest
16 Territories, in addition to reported decisions of
17 courts elsewhere in Canada. The case to which I refer
18 is Regina v. Norman Joseph Desjardins decided on
19 November 1, 1991 at Yellowknife.

20 In that case, the period of ineligibility for
21 parole was fixed at 14 years, unchanged on appeal.
22 That was a case involving a single count of second
23 degree murder arising from circumstances very
24 different from those of the case now before me.

25 In my decision in the Desjardins case, I referred
26 to the case of Regina v. Magna in which a period of
27 parole ineligibility for 25 years was pronounced in

1 this court on conviction of two counts of second
2 degree murder. That period was upheld by the Court of
3 Appeal notwithstanding that the result was to put the
4 offender in the same position as if he had been
5 convicted of first degree murder.

6 The reasons delivered in the Desjardins case refer
7 also to a number of other murder sentencing cases
8 which have come before this court in the past decade.
9 Suffice it to say that all of these appear to have
10 been decided on the basis of the same principles as
11 had been applied in the reported cases from elsewhere
12 in Canada.

13 In particular, there is the recent case of Regina
14 v. Shropshire (1994) 90 C.C.C. (3d) 234, a decision of
15 the British Columbia Court of Appeal to which counsel
16 referred me last Friday. As I read the reasons for
17 judgment on appeal against the trial judge's decision
18 to set the period of parole ineligibility at 12 years
19 in that case, the Courts today recognize two salient
20 principles in such cases.

21 First of all, there is the principle of protection
22 of the public by incapacitation of the offender.
23 Second, there is the principle of denunciation and
24 deterrence by which the public may be given assurance
25 of its protection by the Courts.

26 Bearing in mind what I have said as to Roger
27 Warren's character, not least his age and the absence

1 of any but a minor previous criminal record, and
2 considering all the thankfully unique and unusual
3 circumstances of the offences for which he is now to
4 be sentenced, I see no need for the incapacitation of
5 Roger Warren for more than ten years only in order to
6 prevent him from a repetition of any such offence. In
7 other words, the first of these two principles, taken
8 alone, would, in my judgment, be satisfied if the
9 period under consideration were to be left at the
10 statutory ten-year minimum.

11 It is altogether a different situation, however,
12 when the second principle is also applied. This is a
13 case in which the circumstances call out for a stern
14 denunciation which will leave no mistaken impressions
15 in the public mind. And while I see no need for
16 specific deterrence of Roger Warren beyond what he
17 must expect as a minimum under the law, I do see the
18 clear need for general deterrence of others who might,
19 in future, be tempted to follow his example.

20 It is in that light that I understand the jury to
21 have made its recommendation.

22 Would you please stand, Mr. Warren? Have you
23 anything to say before the Court pronounces sentence
24 upon you?

25 THE ACCUSED: No, I have nothing to say.

26 THE COURT: As required by law, you are sentenced
27 to imprisonment for life on each count in the

1 indictment.

2 Furthermore, you are prohibited for life from
3 possessing any firearm, ammunition, or explosive
4 substance. I direct Crown Counsel to prepare and
5 enter the formal order in those terms requiring you,
6 Roger Warren, to have any such items which may be in
7 your constructive possession disposed of forthwith.
8 Copies of the order, once entered, shall be delivered
9 to you and to your counsel and I'll ask you, Mr.
10 Martin, to please see that is done.

11 MR. MARTIN: Yes, Sir.

12 THE COURT: No other order under the Criminal Code
13 has been requested except under Section 742. Pursuant
14 to Section 744, I therefore order that you, Roger
15 Warren, shall not be eligible for parole for 20 years
16 from the date of your arrest on October 15, 1993.
17 Please be seated.

18 With regard to the exhibits, counsel may seek an
19 order in due course and I take it nothing need be said
20 now.

21 As for the various restrictive orders on
22 publication and broadcasting, media people will be
23 aware that the restriction contained in Section 648 of
24 the Criminal Code expired upon the sequestration of
25 the jury. The orders which I made before the trial
26 with respect to the pre-trial conferences and the
27 pre-trial voir dire, remain in effect subject to any

1 further order I may now make. Do counsel wish to
2 speak to that?

3 MR. ORRIS: My Lord, can I speak to one other
4 matter before we deal with that, and it is simply this --
5 and it deals with where Mr. Warren will serve his
6 time. His family, as you know, is in Yellowknife.
7 The corrections people usually like to have the person
8 serve time close to his family. The difficulty here
9 is that there is not a Federal Institution in
10 Yellowknife. Having talked to the corrections people,
11 they have made it plain that they will classify Mr.
12 Warren wherever they think they should and nothing
13 this Court can say obviously will affect that.

14 THE COURT: That's my understanding.

15 MR. ORRIS: But they have said that if Your
16 Lordship was inclined to make a recommendation that he
17 serve his time in Yellowknife, they would take that
18 into account. And so in that sense I simply ask Your
19 Honour to consider making such a recommendation and
20 they will do with that as they see fit. It's not
21 binding upon them, nobody would suggest it is, but it
22 simply is something that they would take into account
23 and I don't think my friend has any position with
24 respect to that.

25 As far as the publication orders are concerned, My
26 Lord, my friend and I have discussed those, and I
27 believe our position can be stated that as far as the

1 voir dire bans are concerned or matters that took
2 place in court, in effect in the presence of the
3 accused prior to trial, those bans would be terminated
4 upon the -- upon Your Lordship's ruling today and
5 would not survive past today.

6 Your Lordship made a comment with respect to
7 pre-trial discussions between counsel and Your
8 Lordship. And my understanding of those, My Lord, was
9 that they were discussions that were, in effect,
10 informal discussions between the Court and counsel. I
11 don't believe --

12 THE COURT: Purely of a management nature.

13 MR. ORRIS: Exactly. And on that basis Mr. Warren
14 wasn't present because they were dealing with simply
15 management procedures. My experience, and I stand to
16 be corrected by my friend, is that those would not be,
17 in effect, normally disclosed to the public, not
18 because there is anything necessarily to hide in
19 those, obviously there is nothing. But, as I
20 understand, there is no transcript kept. It's rough
21 notes as to what was discussed and, in effect, they're
22 not really part of the proceedings.

23 THE COURT: My concern is that no restriction
24 should continue without some limit upon it unless
25 there is very good reason for that.

26 MR. ORRIS: My position, My Lord, simply is that
27 discussions of a management nature between counsel and

1 the Court are matters that are really of no interest
2 to the general public in any event. I don't want to
3 get into a position of being asked questions about
4 what was discussed, I can't remember quite frankly all
5 of it now nor do I want to have to rely upon notes.

6 THE COURT: There is not all that much in the
7 materials, it's just that it struck me I shouldn't
8 leave any loose ends unattended to.

9 MR. ORRIS: Sorry, My Lord, I didn't mean to
10 interrupt. My position would be simply that any
11 matters in court that were, were banned previously,
12 obviously those bans would be lifted and wouldn't
13 survive today.

14 The voir dire bans, similarly, would not survive
15 today.

16 As far as informal pre-trial discussions are
17 concerned, I don't consider those to be part of the
18 proceedings and simply are not subject to disclosure
19 in any event.

20 I leave with Your Lordship the arguments as far as --
21 that we addressed during the jury's deliberations with
22 respect to press access to the exhibits, Your Lordship
23 has those to deal with, but as far as those other
24 matters are concerned, I think my friend and I are in
25 agreement on those points.

26 THE COURT: While you're on your feet, with
27 respect to the order made by Justice Richard, is there

1 anything you wish to say at this point?

2 MR. ORRIS: I haven't examined that order in
3 detail lately, My Lord, but I don't --

4 THE COURT: I'll confess I have not examined it
5 either lately, but I understood that there was a
6 restriction on publication and broadcast in that
7 connection.

8 MR. ORRIS: That's correct, My Lord. I
9 understood, however, that -- and again, I don't know
10 the specific order but I believe all parties were of
11 the view that that would be for the duration of the
12 trial. I don't think there was anything suggested nor
13 was there argument made that it would be a permanent
14 ban.

15 THE COURT: It's simply that it is not expressed
16 as having any termination and I thought I should
17 attend to that.

18 MR. ORRIS: I appreciate that, My Lord. It was
19 not before Your Lordship but I think in fairness to
20 all concerned it was not discussed as a permanent ban
21 and I thought -- and I believe that all parties were
22 of the view that at the end of the trial that matter
23 would become open to publication.

24 THE COURT: That would be the usual course. Do
25 you wish to speak to that, Mr. Martin?

26 MR. MARTIN: Excuse me, the latter point?

27 THE COURT: Yes.

1 MR. MARTIN: I have no submission to make to that.
2 As my friend indicated, it was in open court, the
3 accused was present. It would seem to me that, that
4 the publication ban should now -- have run its course
5 and cease and the matter be open for review and
6 publication.

7 I have some very brief comments to make with
8 regard to the other issues that you spoke to with
9 regard to the housing of the accused from now on,
10 pending or following an appeal, I am content to leave
11 that in the hands of the corrections people who will
12 be his keepers. If Your Lordship feels sufficiently
13 informed of the situation to make a recommendation, I
14 leave that to you. I have nothing to say on that
15 point.

16 THE COURT: What occurred to me as Mr. Orris was
17 addressing the Court, was I could perhaps make a
18 recommendation, but that's all I can make, that Mr.
19 Warren be kept in Yellowknife until the expiry of any
20 appeal which presumably would be heard here.

21 MR. MARTIN: I leave that matter entirely to you,
22 Sir. If you feel, as I say, sufficiently informed to
23 be able to make such a recommendation I have nothing
24 to say about it.

25 With regard to the publication bans on matters
26 which took place -- excuse me, in court in the absence
27 of the jury, it would seem, as my friend has indicated

1 now that -- I'm addressing particularly the voir dire
2 dealing with the confession, that that matter may now
3 be addressed, and that is to say the ban now has
4 lapsed, that's my understanding of the law. I frankly
5 cannot recall offhand all of the other matters we
6 dealt with in the absence of the jury and if there are
7 some particular matters that cause Your Lordship
8 concern, I'd be happy to address them.

9 THE COURT: There are none.

10 MR. MARTIN: Then I think that that would take care
11 of the matter. The only other concern I have,
12 frankly, as I scan my memory to try to recall what
13 matters we discussed in the absence of the jury were
14 the matters relating to other people facing other
15 charges. And we addressed that briefly in the course
16 of this trial, that is to say their right to a fair
17 trial, and it may be appropriate that there be an
18 order directing that information which would have
19 bearing on their trial not be publicized until the
20 conclusion of the trial. That would seem to me to be
21 consistent with the concerns raised at trial and Your
22 Lordship's ruling.

23 THE COURT: Then to assist those who would be
24 bound by my order, that would be any reference to Mr.
25 Timothy Bettger or Mr. Alan Shearing by name should
26 not be made with reference to the present proceedings
27 until such time as all pending proceedings against

1 them have been disposed of.

2 MR. MARTIN: I think that's correct. The only
3 other chap whose name came up, as I recall now, was
4 St. Amand and perhaps the same order should apply to
5 him, although I do not believe he is facing charges.

6 THE COURT: I have no knowledge of that.

7 MR. MARTIN: I don't either, but I could quickly
8 find out but I don't know now.

9 THE COURT: Do you wish to do that?

10 MR. MARTIN: Or do you wish to err on the side of
11 caution and say reference to him should also --

12 THE COURT: Well, if I say any charges pending
13 against him and there are none, then presumably the
14 media will be at liberty to use his name.

15 MR. MARTIN: I'm thinking actually that if there
16 are no charges and the presumption of innocence
17 applies to this man as it does, then we should
18 consider even, in the absense of charges, whether he --
19 there should be publication of any alleged involvement
20 on his part. That is to say, if you were to direct
21 there would be no reference to Mr. Bettger, Mr.
22 Shearing, or Mr. St. Amand, that would seem to me to
23 cover it.

24 THE COURT: All right, I have your submission on
25 that. What I will say then is that the orders made
26 with reference to and during the hearing of this case
27 restricting publication or broadcasting are now

Darcy Mosherko



DEPARTMENT OF JUSTICE

Memo *from the desk of*
Kim Schofield

Date: March 04, 2009

TO: Department of Justice Cell Phone Users

RE: Cell phone usage

It has come to our attention that a program called "Short Code" has been appearing on some Justice cell phones without the knowledge of the user. This is a subscription service however the user may not know they have subscribed to the service.

There are a variety of ways that a user ends up signed up – for example, texting into a contest on the radio or TV or being assigned on-line through internet programs or simply by providing your cell number on an on-line quiz (such as Facebook). Once subscribed you might receive for example a daily joke or your horoscope. Each time the user looks at the text message, there is a charge of \$1.00 per transaction.

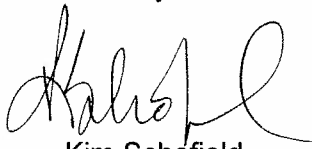
Bell Mobility has advised that if you begin to receive text messages similar to those listed above the only way to get rid of them is to do the following:

Reply to the text message once by simply typing in STOP (in capital letters)

While we are monitoring the monthly invoices before distributing them to individual users, Justice employees should be looking at their own monthly bills and contacting Sharon Chynoweth (873-7641) if there are any discrepancies.

As well, I would like to remind everyone that any personal long distance calls on either GNWT issued cell phones or the regular land line must be reimbursed to the government. Payment can be submitted by cash or cheque to Gwen Gould in Finance.

Thank you.



Kim Schofield
Director, Finance

1 them have been disposed of.

2 MR. MARTIN: I think that's correct. The only
3 other chap whose name came up, as I recall now, was
4 St. Amand and perhaps the same order should apply to
5 him, although I do not believe he is facing charges.

6 THE COURT: I have no knowledge of that.

7 MR. MARTIN: I don't either, but I could quickly
8 find out but I don't know now.

9 THE COURT: Do you wish to do that?

10 MR. MARTIN: Or do you wish to err on the side of
11 caution and say reference to him should also --

12 THE COURT: Well, if I say any charges pending
13 against him and there are none, then presumably the
14 media will be at liberty to use his name.

15 MR. MARTIN: I'm thinking actually that if there
16 are no charges and the presumption of innocence
17 applies to this man as it does, then we should
18 consider even, in the absense of charges, whether he --
19 there should be publication of any alleged involvement
20 on his part. That is to say, if you were to direct
21 there would be no reference to Mr. Bettger, Mr.
22 Shearing, or Mr. St. Amand, that would seem to me to
23 cover it.

24 THE COURT: All right, I have your submission on
25 that. What I will say then is that the orders made
26 with reference to and during the hearing of this case
27 restricting publication or broadcasting are now

1 terminated. I make one qualification to that
2 termination, and that is that there will be no
3 publication or broadcasting of any information which
4 might identify Timothy Bettger, Alan Shearing, or I
5 believe it's Arnold St. Amand?

6 MR. MARTIN: I think it's Art St. Amand, Sir.

7 THE COURT: Arthur?

8 MR. MARTIN: Yes.

9 THE COURT: During the pendency of any criminal
10 proceedings against any of them. That will, of
11 course, come to an end with any such proceeding.

12 With regard to where Mr. Warren should be held, as
13 counsel know and have said, this Court does not
14 control that but I shall make a recommendation and
15 I'll ask the clerk to transmit it to the Warden of the
16 Yellowknife Correctional Center and the recommendation
17 is simply that Mr. Warren be held at Yellowknife
18 pending the outcome of any appeal proceedings which
19 may be launched in this case. Is there anything
20 further then?

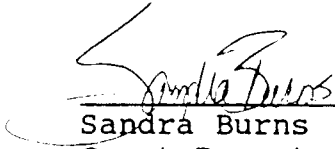
21 MR. MARTIN: The only other matters are the ones
22 just raised by you and Mr. Orris with regard to the
23 publication of the pre-trial conference notes or
24 references, and I join my friend in that. I would
25 submit that's not something which should be available
26 to the media to broadcast or publish.

27 THE COURT: What I will say then is that the clerk

1 will have those sealed, they'll remain on the file
2 sealed until further order.

3 I should not part with this case without
4 expressing the appreciation of this bench to counsel
5 in a most difficult and challenging case, and to the
6 administrative authorities who have done everything
7 they could to make the trial of this case possible
8 with a minimum of difficulty. So on that note, we
9 shall adjourn.

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11
12 Certified Pursuant to Practice Direction #20
13 dated December 28, 1987.

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15 _____
16 Sandra Burns
17 Court Reporter
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