

CR02742 and CR02833

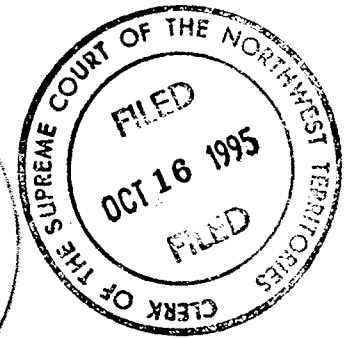
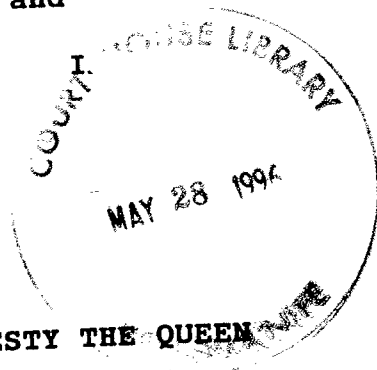
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

J



AND IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

L I

Transcript of Decision delivered by The Honourable
Mr. Justice J.Z. Vertes sitting at Iqaluit in the
Northwest Territories, on Thursday, September 21,
A.D. 1995.

APPEARANCES:

- Mr. M. Chandler: For the Crown
- Mr. D. Brice-Bennett: For the Accused, Joanasie Illauq
- Ms. S. Cooper: For the Accused, Limikie Illauq

1 THE COURT:

2 With respect to the application in the
3 I. matters, the issue on this application is the
4 appropriate location for the trial of each accused.

5 The two accused are awaiting jury trials on charges
6 of sexual assault. The complainants are the
7 step-daughter and sister of the accused persons. The
8 charges relate to incidents that allegedly occurred
9 over a span of many years. The alleged incidents took
10 place in Clyde River. Both accused reside there. One
11 of the complainants still resides there, while the
12 other complainant has recently moved to Iqaluit.

13 The question of venue was first raised by me during
14 a pre-trial conference. Information conveyed to me by
15 the sheriff indicated there were limited facilities for
16 holding jury trials at Clyde River. The hall where the
17 trial would be held does not have facilities for a jury
18 room. The school is not available. I am personally
19 aware that the Court has encountered difficulties in
20 the past few years in arranging jury trials in that
21 community.

22 Clyde River is an Inuit community of 565 people of
23 whom approximately half are under the age of 19
24 (therefore unavailable for jury duty). Evidence was
25 presented that a large number of people in the
26 community are related in some way to the accused and
27 complainants (one item of evidence suggests it may be
as many as 200 people). The defence has brought a

1 formal application to change the venue of these trials
2 on the ground of potential partiality. They seek to
3 have the trial held in another community, but a similar
4 one - that is to say one that is demographically and
5 culturally similar to Clyde River. .

6 The Crown wishes to keep the trials in Clyde River
7 notwithstanding the logistical difficulties. There is
8 strong evidence that the complainants are in need of
9 the psychological support of friends and family. If
10 the trials are to be moved, then the Crown says they
11 should be moved to Iqaluit, a relatively large centre
12 where adequate support services are available for the
13 complainants.

14 The parties do not disagree on the relevant
15 principles.

16 While the Northwest Territories is not divided into
17 judicial districts, so technically there are not the
18 same venue considerations as in southern jurisdictions,
19 the operative principle is that founded on the
20 common-law principle that the trial of a criminal
21 offense should be held in the place where the offense
22 occurred and tried by people from that place. There is
23 a long historical practise in this jurisdiction of
24 holding jury trials even in small communities
25 regardless of whether or not adequate courtroom
26 facilities are available. There are many good and
27 valid reasons for this practise, all of which have been

1 canvassed in the numerous cases cited by counsel on
2 this application. However, as has also been noted in
3 many cases, the practise of holding jury trials in
4 small communities must be realistically applied, and,
5 in appropriate cases, the Court should and does arrange
6 to hold a trial in another community from that where it
7 would ordinarily be held.

8 In this case, leaving aside the question as to
9 adequacy of the available facilities, I find there is
10 good and sufficient cause to move the trial from Clyde
11 River.

12 I was provided with an Affidavit from Corporal John
13 Ennis, formerly stationed at Clyde River. I was
14 impressed with this Affidavit since, even though it was
15 filed by the defense, it provides information that is
16 both in favour of and opposed to the defence position.
17 The Affidavit reveals that, according to Corporal
18 Ennis's informants, there is wide-spread knowledge of
19 these allegations; that many people may have prejudged
20 the allegations; that there may be a reluctance to
21 convict due to the many family connections even though
22 many people may already believe the truth of the
23 allegations and some do want to convict; and that there
24 may be difficulty in securing enough impartial people
25 for two juries.

26 Counsel agree that the question is: Has it been
27 made to appear that there is a fair and reasonable

1 probability of partiality or prejudice in Clyde River
2 (the place where the accused, in the ordinary course of
3 events, would stand trial)? I answer "Yes." In my
4 opinion, considering the wide-spread family connections
5 in the community and the apparent wide-spread knowledge
6 of the allegations, there is a reasonable apprehension
7 of a probability of partiality or prejudice. Indeed,
8 in my opinion, there is a real risk of partiality from
9 the perspective of the Crown as well as from that of
10 the defense. I think the broader community of the
11 Northwest Territories, knowing all of the information
12 placed before me, and realizing that this is a
13 contested trial (and not some sentencing or other
14 disposition process), would agree that the appearance
15 of justice, if not the reality, would be compromised by
16 holding these trials in Clyde River.

17 I also think that holding the trials in Clyde River
18 may be, in these particular circumstances, a source of
19 divisiveness or acrimony in the community, or at least
20 within the large extended family of the accused and
21 complainants. This is not to discount the very
22 genuine, positive benefits of holding jury trials at
23 the locality of the crime. It merely recognizes the
24 realities of this case.

25 Crown counsel argued that Clyde River should not be
26 left out of the opportunity of having local jury trials
27 simply because of its small size and logistical

1 problems. I want to make it clear that it is not.
2 Logistical problems can be overcome. There is ample
3 evidence, however, to convince me that the interests of
4 justice warrant moving these particular trials to
5 another place.

6 The question, therefore, is: To which place?

7 The Crown submits that Iqaluit would be the
8 appropriate place. There is ample evidence that the
9 complainants require support for their psychological
10 and physical health. Such support is available in
11 Iqaluit. Such services are not available elsewhere
12 (including Clyde River - although at least in Clyde
13 River the complainants have extensive family support).

14 Defence counsel, Mr. Brice-Bennett, submitted that
15 while the complainants' views should be considered,
16 they should not be decisive. I agree. But the
17 personal circumstances of the complainants, both
18 physical and psychological, are significant
19 considerations. This is not a case where the
20 complainants prefer one place over another simply out
21 of convenience. It is a question of their mental
22 health and ability to face the trial process. The
23 public interest in bringing serious cases to trial
24 warrants and mandates that any potential trauma to
25 alleged victims in facing and going through the trial
26 process should, where possible, be minimized.

27 Defence counsel urged that the trial should be

1 relocated to another Inuit community such as Pond Inlet
2 or Broughton Island. The practise of this Court, noted
3 in several cases and emphasized by defence counsel, has
4 been to move a trial, if necessary to move it, to a
5 community that is demographically and culturally
6 similar to the community where the trial would
7 ordinarily have been held. This is not a hard and fast
8 rule as evidenced by numerous other cases. It depends
9 on the circumstances. But generally speaking, I agree
10 that, if possible, a trial should be held in a similar
11 community.

12 Iqaluit is a community of approximately 3500 people
13 of which two-thirds are Inuit. Experience shows that
14 most juries in Iqaluit are racially mixed ones between
15 Inuit and non-aboriginals. Mr. Brice-Bennett submitted
16 that it is not just a larger community, but one of a
17 far different character. That, I think, is an accurate
18 observation.

19 The issue raised by defence counsel is really one
20 of the "representative" nature of the jury. A jury
21 must of course be impartial. But does it have to be
22 representative as well? And if so, is it to be
23 representative of the small community in which the
24 crime occurred or the larger community of the region or
25 perhaps the broad community of the Northwest
26 Territories? Historically, in England, Canada and the
27 United States, the community from which juries were

1 selected was the county or district which corresponded
2 to the judicial district, not the specific village or
3 town where the crime took place.

4 I know of no principle of law that requires a jury
5 to be representative of the individual accused.
6 Defense counsel acknowledged that there is no
7 "cultural" component to this case other than the race
8 of the individuals involved in it. There is no
9 suggestion of racial bias or prejudice of potential
10 juries in Iqaluit whether of one or mixed race.

11 In the recent case of R. v. Biddle (1995), 36 C.R.
12 (4th) 321, several judges of the Supreme Court of
13 Canada, albeit in obiter, commented on the
14 representative nature of juries. And even though these
15 comments were in obiter, obviously it would be cavalier
16 for mere trial judges like myself to ignore them. As
17 said in that case, representativeness is a
18 characteristic which furthers the perception of
19 impartiality even if not fully ensuring it. While
20 representativeness is not an essential quality of a
21 jury, it may be one to be sought after. However,
22 McLachlin J. made the following comments (with which I
23 respectfully agree):

24 "Gonthier J. suggested that a jury must be
25 impartial, representative and competent. I
26 agree that a jury must be impartial and
27 competent. But, with respect, the law has
never suggested that a jury must be
representative. For hundreds of years
juries in this country were composed

1 entirely of men. Are we to say that all
2 these juries were for that reason partial
and incompetent?

3 To say that a jury must be
4 representative is to confuse the means with
5 the end. I agree that representativeness
6 may provide extra assurance of impartiality
7 and competence. I would even go so far as
8 to say it is generally a good thing. But I
9 cannot accept that it is essential in every
10 case, nor that its absence automatically
11 entitles an accused person to a new trial.

12 To say that a jury must be
13 representative is to set a standard
14 impossible of achievement. The community
15 can be divided into a hundred different
16 groups on the basis of variance such as
17 gender, race, class and education. Must
18 every group be represented on every jury?
19 If not, which groups are to be chosen and on
20 what grounds? If so, how much
21 representation is enough? Do we demand
22 parity based on regional population
23 figures? Or will something else suffice? I
24 see no need to start down this problematic
25 path of the representative jury provided the
26 impartiality and competence of the jury are
27 assured. Representativeness may be the
means to achieving this end. But it should
not be elevated to the status of an absolute
requirement."

18 There is nothing to suggest that a jury in Iqaluit
19 would not be fair and impartial in these cases.
20 Furthermore, the likelihood of minimizing or preventing
21 any possible harm to the complainants is greater in
22 Iqaluit than in other communities in this region.

23 Mr. Brice-Bennett raised a warning that moving
24 these trials to Iqaluit may be the thin edge of a wedge
25 so as to undermine the traditional practises of this
26 Court. I do not agree. Just as my decision to move
27 these trials out of Clyde River must be viewed in the
context of the particular circumstances evident here,

1 so should my decision to hold these trials in Iqaluit
2 be viewed.

3 The trials will therefore be held during the
4 Supreme Court jury sittings in Iqaluit commencing on
5 October 17th, 1995.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Certified correct to the best of my
skill and ability.



Jane Romanowich
Court Reporter