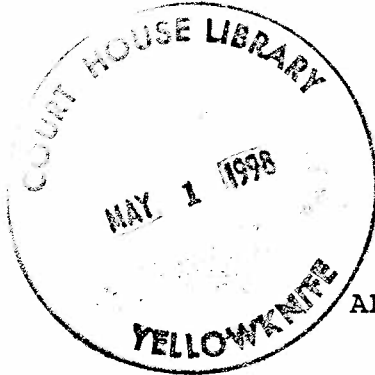


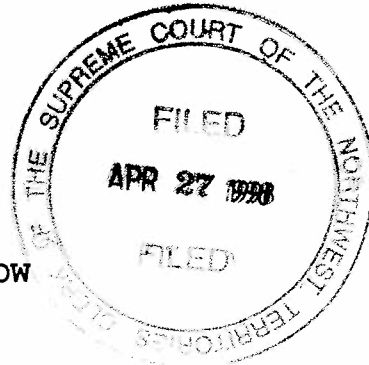
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -



ABKIKAKIM ABDULLE YALAHOW

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Transcript of the Proceedings held before Justice J. Z. Vertes, in Yellowknife, in the Northwest Territories, on the 23rd day of April, A.D. 1998.

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APPEARANCES:

MR. D. McWHINNIE: On behalf of the Crown  
MR. S. TARRABAIN: On behalf of the Defence

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Charges under ss. 326(1)(b) C.C. and 145(3) C.C.

1 THE COURT:

2 I do not think it is necessary for me  
3 to issue some broad statement that a judge who issues a  
4 search warrant can never or should never sit on a trial  
5 where those warrants are attacked. That is unnecessary  
6 in the circumstances of this case and that would be too  
7 sweeping a generalization. Everything depends on the  
8 circumstances of a particular case.

9 The test for a reasonable apprehension of bias is  
10 what would an objective, informed observer perceive as  
11 to the fairness of the proceedings. It does not call  
12 into question any actual bias on the part of the  
13 decision maker. It is a matter of perception. And it  
14 is, as quoted in the famous National Energy Board case  
15 from the Supreme Court of Canada, "...a matter of the  
16 probability or reasoned suspicion of bias, appraisal  
17 and judgment unintended though it be...", and I  
18 emphasize that latter phrase, "unintended though it  
19 be".

20 In this situation I am told that the accused  
21 intends to attack the sufficiency of the warrant; and  
22 by that I understand to be both the legal sufficiency  
23 for the initial issuance of the warrant based on what  
24 was before the issuing judge, as well as some other  
25 factors. In my view, such an attack on those grounds  
26 puts the trial judge in a very difficult position  
27 because even though he or she may be able to fully  
divorce themselves from their intellectual or

1 proprietary interest in their previous decision, it is  
2 the unintended and subconscious influences that are, of  
3 course, of concern and could lead to a reasonable  
4 apprehension on the part of a reasonable observer.

5 We have here as well indications or evidence that  
6 this concern was raised by counsel to the Chief Judge a  
7 week ago, that counsel certainly anticipated that Judge  
8 Bourassa would not be the judge assigned to the trial,  
9 and that, I think it's fair to say, both counsel were  
10 taken somewhat by surprise when indeed Judge Bourassa  
11 was the trial judge.

12 I can appreciate, from having read the excerpts of  
13 the proceedings before Judge Bourassa yesterday and  
14 earlier this morning, the judge's concerns about  
15 proceeding with the matter. He is obviously concerned  
16 about delays in bringing this matter to trial, as I am  
17 told he set this matter peremptorily on the Crown to  
18 proceed this week, and I think it is fair to say that  
19 his concerns are legitimate concerns in the public  
20 interest. He also expresses a concern about these  
21 types of applications derailing proceedings on a  
22 regular basis, having regard to the small number of  
23 judges in this jurisdiction - that, too, is a  
24 legitimate concern - although I may say that that is a  
25 concern that can be balanced and addressed on a  
26 case-by-case basis. So I want to emphasize, as I said  
27 at the beginning, that my ruling here should not be

1           seen as some general proposition applicable in all  
2           situations. But I share his concerns.

3           But in this instance, having regard to the basis  
4           and the nature of the applications that the accused  
5           intends to make, I think there is a reasonable concern  
6           as to the perception of justice should Judge Bourassa  
7           continue in this matter as the Trial Judge.

8           Therefore, an order will be issued prohibiting the  
9           continuation of these proceedings before Judge Bourassa  
10          as the Trial Judge. Needless to say, the usual  
11          protective orders will issue in favour of the Trial  
12          Judge.

13          I will leave it to counsel to address the question  
14          of the recommencement of these proceedings, before whom  
15          and at what time. Counsel should address that with the  
16          Chief Judge at the earliest opportunity, the Chief  
17          Judge of the Territorial Court.

18          Do you require any further direction, counsel?

19          MR. McWHINNIE:           I'm thinking, Sir, to avoid a loss of  
20          jurisdiction that you may want to direct that the  
21          matter be put on the next -- or on a date certain to  
22          fix a date for a new trial because we're currently set  
23          to appear before Judge Bourassa at 1:30 to speak to  
24          this matter.

25          THE COURT:               Well, my suggestion is that, and if  
26          you wish I can give a direction to this effect, that  
27          the accused is to appear before Judge Bourassa at 1:30

1           today so that counsel can speak to the issue of  
2           continuation of these proceedings.  
3   MR. McWHINNIE:           Thank you, Sir, that solves the  
4           problem.  
5   MR. TARRABAIN:           Thank you, Your Honour.  
6   THE COURT:                Madam Reporter, perhaps you can  
7           prepare a transcript of my comments and provide it to  
8           counsel and to Judge Bourassa for his information so  
9           that he is apprised of the reasons for this  
10          extraordinary step.  
11   MR. TARRABAIN:           Thank you, My Lord.  
12   THE COURT:                Thank you, gentlemen. We'll  
13          adjourn.

14                            .....

15  
16                            Certified pursuant to Practice  
17                            Direction #20 dated December 28,  
18                            1987.

19                            *Annette Wright*  
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21                            Annette Wright  
22                            Court Reporter  
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