

ORIGINAL

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- v -

JERRY JAMES QUITTE

Transcript of the Decision on Change of Venue Application
held before The Honourable Justice J.Z. Vertes,
sitting in Yellowknife, in the Northwest Territories,
on Friday, the 23rd day of January, A.D., 1998.

APPEARANCES:

Ms. M. Nightingale:	Counsel for the Crown
Mr. R. Gorin:	Counsel for the Defence

1 THE COURT:

2 The Crown moves to change the
3 venue of Mr. Quitte's two trials. The trials are
4 scheduled to be held in Fort Rae before a judge and
5 jury.

6 These motions are not brought out of a concern
7 over bias or a possible inability to empanel impartial
8 juries. These motions are brought out of a concern
9 that the complainants and witnesses are reluctant, and
10 indeed scared, to testify in Fort Rae due to harassment
11 and intimidation and thus, the court will not receive a
12 full and candid account of what may have transpired.
13 Evidence was presented to show that there was a
14 likelihood that one of the complainants at least would
15 refuse to come to court at all if the trial were held
16 in Fort Rae.

17 As context for these contentions, evidence was
18 also presented from experienced observers to the effect
19 that there have been quite a few cases in Fort Rae
20 where complainants in cases such as these have been
21 harassed or shunned by community and family members. I
22 wish to make it clear, however, that there is nothing
23 in the material to suggest that the community of Fort
24 Rae takes its responsibilities any less seriously than
25 any other community. The evidence merely shows that
26 sometimes there are these problems. The primary issue,
27 in my mind, is what specific problems are anticipated
in these specific cases. I make no judgments based on

1 gross generalizations as to community attitudes.

2 Counsel are well aware of the operative
3 principles. This Court has always attempted to follow
4 a principled approach by holding jury trials in the
5 place where the crimes were alleged to have been
6 committed. There are many good and valid reasons for
7 this approach, and nothing has been said to me to
8 suggest that counsel do not agree with it. However,
9 this practice must be realistically applied and, in
10 appropriate cases, the court should and does arrange to
11 hold a trial in another community from that where it
12 would ordinarily be held.

13 The Criminal Code provides that the place of trial
14 may be changed "if it appears expedient to the ends of
15 justice." The factors that may make it "expedient" to
16 change venue depend on the circumstances. Fairness to
17 the accused, the circumstances of the complainant,
18 sensitivity to the needs of those who participate as
19 witnesses, and a recognition of societal interests are
20 all factors that must be taken into consideration. In
21 the end, however, it is still the exercise of a
22 judicial discretion, a discretion that must be
23 exercised judicially and judiciously.

24 The concerns expressed on this application are
25 based to some extent on speculation and opinion. It
26 may be in the nature of these types of applications
27 that such evidence is before the court. After all,

1 this is an exercise in predicting what possibly could
2 happen if the trial were held in one place or another.
3 But the evidence presented to me satisfies me of the
4 following:

5 First, the accused has a large extended family,
6 some of whom have already approached the complainants
7 and witnesses in an effort to dissuade them from
8 testifying; two, the complainants and witnesses have a
9 fear of further pressure and intimidation from some
10 members of the accused's family; three, one of the
11 complainants is likely to refuse to testify at all if
12 the trial is held in Fort Rae; four, there are
13 realistic concerns about obtaining a full and candid
14 account from the complainants and the witnesses if the
15 trials are held in Fort Rae; and five, there are no
16 support systems in place in Fort Rae to assist these
17 complainants and witnesses to overcome their fears
18 whether they are merely in their own mind or whether
19 they are, indeed, real.

20 Defence counsel has argued that one can go no
21 further than saying that it would be "easier" to
22 testify somewhere else, not that it is "impossible" to
23 do so. That may be true up to a point, but I take
24 these expressions of concern to be sincere and
25 realistic; and if, as Crown counsel said, the purpose
26 of a criminal trial is the search for truth, something
27 which I recognize may be a debatable philosophical

1 proposition, then the fundamental requirement of
2 fairness means that there must be fairness to the
3 complainant and witnesses as well as fairness to the
4 accused.

5 For these reasons, I grant the motion.

6 As to where the trials should take place, I take
7 into account the fact that the accused is in custody,
8 so delay should be avoided. These jury trials could be
9 accommodated in Yellowknife starting on February 2nd,
10 the same date as originally scheduled in Fort Rae. I
11 recognize this court's other common practice of holding
12 a trial, if not in the community of the alleged crime,
13 in a community that is culturally similar. To do that
14 in this case would mean setting the case off to some
15 indeterminate future date. That is not in the
16 interests of anyone, in my opinion, including the
17 accused.

18 The accused comes from a Dogrib community. While
19 Yellowknife is populated overwhelmingly by
20 non-aboriginals, there is a large Dogrib population,
21 and many of the non-aboriginals living in Yellowknife
22 have connections to and familiarity with Dogrib people
23 and the Dogrib culture. There is no overwhelming
24 cultural hurdle to overcome. Furthermore, I have heard
25 nothing to suggest that there is any particular
26 cultural perspective to these charges. It is not
27 unusual as well for cases from Fort Rae to be heard in

1 Yellowknife considering the close connections between
2 the two communities.

3 Hence, I direct that these two trials proceed in
4 Yellowknife on February 2nd, 1998, at 10 a.m.

5 Counsel should ensure that the appropriate removal
6 order is taken out, and the Crown will be responsible
7 for any expenses incurred to transport defence
8 witnesses, if any, to Yellowknife for trial.

9 Any questions, Mr. Gorin? I know that you were
10 not here yesterday for the argument. I take it you are
11 ready to proceed to trial?

12 MR. GORIN: That is correct, Sir.

13 THE COURT: All right. Crown will be ready to
14 proceed to trial?

15 MS. NIGHTINGALE: Yes.

16 THE COURT: Thank you.

17 MR. GORIN: Sir, those are all the matters
18 that I have if I could be excused.

19 THE COURT: Thank you, Mr. Gorin.

20 MR. GORIN: Actually, Sir, I should note too
21 that Mr. Quitte is unilingual so that translation will
22 be required.

23 THE COURT: I have asked the clerk to make
24 arrangements to have a Dogrib interpreter available.
25 Now, you should then consult with the clerk and with
26 the interpreters about the mechanism as to how the
27 interpretation is to be done during the course of the

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trial, if it is to be through the headsets or whatever
mechanism is most appropriate, so do that before
February 2nd if you would.

MR. GORIN: Thank you, Sir.

THE COURT: Thank you.

ADJOURNED GENERALLY

Certified pursuant to Practice
Direction #20 dated December 28, 1987.

Tara Taylor

Tara Taylor, CSR(A), Court Reporter