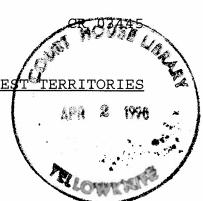
## **ORIGINAL**

IN THE SUPREME COURT OF THE NORTHWEST

IN THE MATTER OF:



HER MAJESTY THE QUEEN

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

THE COURT: The Crown moves to change the venue of Mr. Quitte's two trials. The trials are scheduled to be held in Fort Rae before a judge and jury.

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

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

gross generalizations as to community attitudes.

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

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

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

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

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

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

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

For these reasons, I grant the motion.

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

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

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Yellowknife considering the close connections between
 1
           the two communities.
 2
                Hence, I direct that these two trials proceed in
 3
           Yellowknife on February 2nd, 1998, at 10 a.m.
                Counsel should ensure that the appropriate removal
           order is taken out, and the Crown will be responsible
 7
           for any expenses incurred to transport defence
           witnesses, if any, to Yellowknife for trial.
 8
                Any questions, Mr. Gorin? I know that you were
 9
           not here yesterday for the argument. I take it you are
10
           ready to proceed to trial?
11
       MR. GORIN:
                                That is correct, Sir.
12
       THE COURT:
                                All right. Crown will be ready to
13
14
           proceed to trial?
       MS. NIGHTINGALE:
15
                                Yes.
16
       THE COURT:
                                Thank you.
       MR. GORIN:
17
                                Sir, those are all the matters
           that I have if I could be excused.
18
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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1	trial, if it is to be through the headsets or whatever
2	mechanism is most appropriate, so do that before
3	February 2nd if you would.
4	MR. GORIN: Thank you, Sir.
5	THE COURT: Thank you.
6	Hz
7	ADJOURNED GENERALLY
8	
9	Certified pursuant to Practice
10	Direction #20 dated December 28, 1987.
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14	Dara Daylon.
15	Tara Taylor, CSR(A), Court Reporter
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