

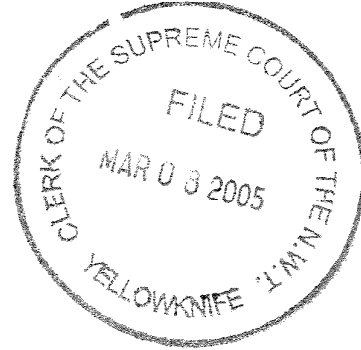
R. v. Walper and Hansen, 2005 NWTSC 29

S-1-CR2004000062/63/76

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -

NORMAN HUGH WALPER and JEREMY RYAN HANSEN

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Transcript of the Rulings on the Pre-Trial Motions before  
The Honourable Justice J.E. Richard, at Inuvik in the  
Northwest Territories, on March 3rd A.D., 2005.

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APPEARANCES:

Ms. S. Tkatch:	Counsel for the Crown
Mr. T. Boyd:	Counsel for the Accused Norman Hugh Walper
Mr. J. McFarlane:	Counsel for the Accused Jeremy Ryan Hansen

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THERE IS A TEMPORARY BAN ON PUBLICATION OF THE CONTENTS OF  
THESE RULINGS BY VIRTUE OF s. 645(5) C.C. AND s. 648 C.C.

1 THE COURT: The Court will now make its  
2 rulings on the four discrete issues which counsel  
3 have raised in these pre-trial proceedings.

4 The two accused are charged in an Indictment  
5 filed July 30th, 2004 with offences contrary to  
6 the *Controlled Drugs and Substances Act*.

7 In Count number 1, both accused, Norman  
8 Walper and Jeremy Hansen, are charged with  
9 trafficking in cannabis marijuana on September  
10 29th, 2003. In Count 2, Norman Walper alone is  
11 charged with possession of cannabis marijuana on  
12 October 1st, 2003 for the purpose of trafficking.  
13 The accuseds' election is by Judge and jury.  
14 These four applications are heard by me as trial  
15 Judge before the selection of a jury pursuant to  
16 Section 645(5) of the Criminal Code.

17 I will just mention that there is a  
18 statutory temporary ban on publication of these  
19 particular pre-trial proceedings pursuant to  
20 Section 648 of the Criminal Code.

21 The first application is made by the accused  
22 Hansen for the exclusion of certain evidence  
23 seized by the police at the warehouse of  
24 Northwest Transport here in Inuvik on September  
25 29th, 2003. Hansen submits that the police  
26 infringed his Section 8 Charter right to be  
27 secure against unreasonable search or seizure and

1           that as a result, evidence of the seized material  
2           ought to be excluded pursuant to Section 24(2) of  
3           the Charter.

4           In September 2003, the accused Hansen was an  
5           employee of Northwest Transport in Inuvik. His  
6           boss was the Inuvik manager of Northwest  
7           Transport, one Robin McConville. One of the  
8           aspects of the company's business operation was  
9           to move freight by truck from southern centres,  
10          for example Edmonton, to Inuvik. One of the  
11          employee benefits at Northwest Transport was that  
12          employees were able, with prior permission from  
13          Mr. McConville, to have personal goods shipped  
14          free by company truck from Edmonton to Inuvik.  
15          Two or three weeks prior to September 29th of  
16          '03, the accused Hansen approached Mr. McConville  
17          and advised that he had bought some tools from a  
18          cousin in Edmonton and asked if he could bring  
19          them up to Inuvik on a company truck, and  
20          Mr. McConville agreed.

21          On September 29th, 2003, Mr. McConville  
22          became aware that on one of the company trucks  
23          arriving in Inuvik from Edmonton that day was a  
24          piece of freight for himself, Robin McConville.  
25          He knew this because he read it on the manifest  
26          that the Edmonton office had provided to the  
27          Inuvik office via their computer system. The

1 manifest indicated that Mr. McConville was the  
2 consignee of a piece of freight.

3 In the late morning of September 29th,  
4 Mr. McConville received a telephone call from the  
5 RCMP in Inuvik. Constable Carter asked if Jeremy  
6 Hansen worked for the company and Mr. McConville  
7 confirmed that he did. Constable Carter asked if  
8 there was a shipment inbound for Mr. McConville  
9 in Mr. McConville's name; Mr. McConville  
10 indicated that there was, in his name, and he  
11 wasn't sure what it was. Constable Carter  
12 indicated that Mr. McConville should open it when  
13 it came in and to call the police if he found  
14 anything irregular.

15 Shortly afterwards Mr. McConville spoke to  
16 the accused Hansen at the work site and asked if  
17 he, Hansen, had "any objections with me opening  
18 up the package that was coming to me to which he  
19 said he didn't".

20 Mr. McConville then got the wooden crate in  
21 question off the truck, that is a piece of  
22 freight which was consigned to himself, Robin  
23 McConville, in the shipping documents, and took  
24 it to a place near his office and proceeded to  
25 unpack it. The top of the wooden crate was  
26 addressed to "Robin McConville, c/o Jeremy  
27 Hansen". He took off the lid, inside was a red

1 tool box, inside the red tool box were some old  
2 used tools and 14 plastic bags of what turned out  
3 to be cannabis marijuana. Mr. McConville  
4 immediately called the police and told them he  
5 had found something and that they should come and  
6 take a look. They arrived within five to ten  
7 minutes and he showed it to them. The police  
8 then seized the marijuana, the wooden crate, the  
9 tool box and the company shipping documents. The  
10 police did not obtain any warrant authorizing a  
11 seizure.

12 Mr. McConville was asked if he would have  
13 opened that box if Mr. Hansen had not been around  
14 the warehouse to speak to at that time and his  
15 ultimate answer was "I would have opened it  
16 because it was consigned to me". On  
17 cross-examination he was asked "you would not  
18 have looked through the box but for the call from  
19 the RCMP?", and he answered "probably not".

20 Mr. McConville stated that the accused  
21 Hansen had not discussed anything with him about  
22 putting the shipment of tools in his,  
23 Mr. McConville's, name. He stated that normally  
24 employees, when bringing goods in free of charge,  
25 do so in their own name. Mr. McConville stated  
26 that he was very upset and hurt that Mr. Hansen  
27 had abused the trust Mr. McConville placed in him

1 as an employee.

2 This is the factual foundation on which the  
3 accused Hansen seeks to have the evidence seized  
4 by the police at the warehouse excluded under  
5 Section 24(2) of the Charter.

6 Firstly, of course, the applicant Hansen  
7 must establish on a balance of probabilities that  
8 his Section 8 Charter right has been infringed.

9 Section 8 of the Charter is fundamentally  
10 concerned with the protection of citizens'  
11 privacy. It has been said that the Charter  
12 protects people, not places. The purpose of  
13 Section 8 is to protect individuals from  
14 unjustified state intrusions upon their privacy.  
15 So the initial question here is did the applicant  
16 Hansen have a reasonable expectation of privacy  
17 with respect to the shipment, that is the wooden  
18 crate, that arrived on the truck? Whether he had  
19 a reasonable expectation of privacy must be  
20 determined on the basis of the totality of the  
21 circumstances.

22 Among the circumstances I note that there is  
23 no evidence on this application that the  
24 applicant Hansen ever had physical possession or  
25 control of the wooden crate. There is no  
26 evidence that he personally shipped the goods to  
27 Inuvik. There is no evidence that he knew how

1 the goods were packaged or labelled. There is  
2 evidence that the shipment was consigned not to  
3 him but rather to Mr. McConville. There is  
4 evidence that the name on the box was Robin  
5 McConville c/o Jeremy Hansen not the other way  
6 around. There is no indication that he told the  
7 consignee or addressee not to look in the box.  
8 Indeed, there is evidence to the contrary.

9 If an individual citizen has the use of,  
10 possession of, control of, ownership or other  
11 interest in something that is sent through the  
12 mails or through a trucking company and is  
13 clearly marked or labelled as the property of  
14 that citizen or as being addressed or consigned  
15 to that citizen, then it can fairly be said that  
16 that citizen has a reasonable expectation of  
17 privacy, an expectation that there will be no  
18 intrusions on that citizen's privacy.

19 But here, how can it be said that Mr. Hansen  
20 had any expectation of privacy when this package  
21 was addressed not to himself but to the manager  
22 of the trucking company?

23 In these circumstances, I find that  
24 Mr. Hansen cannot assert any reasonable  
25 expectation of privacy. He cannot establish that  
26 his personal right to privacy has been violated  
27 because he did not have a personal right to

1 privacy, that is, to the exclusion of others. He  
2 cannot be heard to complain about a breach of his  
3 privacy when he, or an associate of his,  
4 intentionally consigned the parcel not to him but  
5 to someone else.

6 The evidence on this application indicates  
7 that Constable Carter in the initial phone call  
8 to Mr. McConville stated to Mr. McConville that  
9 if the parcel was shipped to him and had his name  
10 on it, he should probably open it. Constable  
11 Carter knew Mr. McConville to be a law-abiding  
12 citizen not likely to be involved in the drug  
13 trade. I see nothing improper with this police  
14 statement to Mr. McConville. I agree with  
15 Mr. McConville when he stated that he thought  
16 that the police gave him "good advice".

17 I also see nothing improper with  
18 Mr. McConville opening the parcel addressed to  
19 him and phoning the police when he discovered the  
20 marijuana. Mr. McConville had the legal right to  
21 open the parcel. In the circumstances here, I  
22 find that he was not acting as an agent of the  
23 state. His answer that he would likely not have  
24 opened the box but for the call from the police  
25 does not make him an agent of the police.

26 When Mr. McConville phoned the police  
27 immediately upon discovering the marijuana, I



1 find that he was not doing so as an agent of the  
2 police but rather in the context as a citizen who  
3 had discovered illicit substances in a box with  
4 his name on it in business premises supervised  
5 and managed by him. We expect no more, no less  
6 from law-abiding citizens like Mr. McConville.

7 For these reasons, I find that the applicant  
8 Hansen has not established that he was subjected  
9 to an unlawful or unreasonable search, nor to any  
10 unlawful or unreasonable seizure. He has not  
11 established any infringement of any  
12 constitutional right under Section 8 and  
13 accordingly Section 24(2) cannot be invoked and  
14 his application is dismissed.

15 I turn now to the second application; that  
16 is, the application of the accused Hansen for an  
17 exclusion of evidence of the warned statement he  
18 gave to the police on the evening of September  
19 29th, 2003 while in custody at the Inuvik  
20 detachment.

21 There are two aspects to this application.  
22 Firstly, Mr. Hansen alleges a breach of his  
23 Charter rights as a result of which the statement  
24 should be excluded under Section 24(2) of the  
25 Charter. Secondly, he argues that the Crown has  
26 not established beyond a reasonable doubt on this  
27 voir dire that the statement was made freely and

1 voluntarily by him to the police.

2 In short, I find that there is no merit to  
3 either of these submissions.

4 With respect to the Charter of Rights  
5 argument, it is submitted specifically that  
6 Mr. Hansen's Section 10(a) and Section 10(b)  
7 rights were infringed; that is, Section 10(a),  
8 everyone has the right on arrest or detention to  
9 be informed promptly of the reasons therefor; and  
10 10(b), everyone has the right on arrest or  
11 detention to retain and instruct counsel without  
12 delay and to be informed of that right.

13 Also in the Notice of Motion document  
14 leading to this application, it's asserted that  
15 there was the denial of his Section 7 Charter  
16 right to remain silent.

17 With respect, there is simply no evidence  
18 put forward on this application on which the  
19 Court can find that there was any breach of  
20 Mr. Hansen's right to remain silent or his  
21 Section 10(a) or Section 10(b) rights.

22 The viva voce testimony of Constable Carter  
23 and of Corporal Woodfine, the video recording,  
24 the audio recording all confirm that Mr. Hansen's  
25 constitutional rights were respected at the time  
26 of giving the statement to the police. There is  
27 no evidence to the contrary.

1           It is argued that the Court on this voir  
2           dire does not have evidence from the police  
3           officer who actually effected the arrest on the  
4           afternoon of September 29th as to that officer  
5           advising him of the charge, of his right to  
6           counsel, right to remain silent, etcetera. The  
7           short answer to that is that it is for Mr. Hansen  
8           as applicant to establish that there was a  
9           Charter breach.

10           There is no evidence on which the Court can  
11           find that there was a Charter breach to support a  
12           Section 24(2) application for exclusion of  
13           Mr. Hansen's statement and accordingly that  
14           aspect of this application is dismissed.

15           On the voluntariness issue, again the  
16           evidence in this regard is quite straightforward.

17           Upon his arrest, Mr. Hansen was given the  
18           opportunity to contact a lawyer and the inference  
19           that I draw from the evidence is that he indeed  
20           spoke to a lawyer. He was placed in cells and  
21           later Constable Carter approached him in cells  
22           and asked if he wished to speak to the police and  
23           he agreed to do so. This evidence is not  
24           contradicted or challenged.

25           He was taken to the interview room and the  
26           one-hour interview with Corporal Woodfine and  
27           Constable Carter is videotaped and audiotaped and

1           these recordings were played as part of the voir  
2           dire evidence. My observations and conclusions  
3           are that Mr. Hansen understood the nature of the  
4           charge he was facing, understood he didn't have  
5           to give a statement, understood he could stop at  
6           any time. My impression is that Mr. Hansen  
7           genuinely wanted to give the statement; genuinely  
8           and sincerely wanted, at that time, to  
9           acknowledge or accept responsibility for his  
10          involvement in the shipment to Northwest  
11          Transport. He was very cooperative with the two  
12          police officers, very responsive to their  
13          questions with the one exception of his  
14          reluctance to "rat out" someone else. There were  
15          no promises, threats, inducements or trickery in  
16          connection with the giving of this voluntary  
17          statement to the police. There are no  
18          circumstances which raise any reasonable doubt as  
19          to voluntariness.

20                 On this voir dire, the Crown has established  
21                 beyond a reasonable doubt that Mr. Hansen gave  
22                 this statement to the police freely and  
23                 voluntarily and I rule it admissible at the  
24                 option of the Crown at Mr. Hansen's trial.

25                 The third application is the application of  
26                 the accused Walper for a ruling on the validity  
27                 of the search warrant which was issued on October

1           2nd, 2003 authorizing the search and seizure of a  
2           parcel which was in Mr. Walper's possession when  
3           he was arrested outside the post office on  
4           October 1st, 2003. It is argued that the  
5           issuance of this search warrant violated  
6           Mr. Walper's rights under Section 8 of the  
7           Charter to be secure against unreasonable search  
8           and seizure. Mr. Walper, then, seeks a review to  
9           ascertain whether the warrant could have issued  
10          on the basis of the sworn Information.

11                 The standard of review which guides me was  
12          stated by the Supreme Court of Canada in the  
13          Garafoli case as follows:

14                     "The reviewing Judge does not  
15                     substitute his or her view for that  
16                     of the authorizing Judge. If based  
17                     on the record which was before the  
18                     authorizing Judge, as amplified on  
19                     the review, the reviewing Judge  
20                     concludes that the authorizing Judge  
21                     could have granted the  
22                     authorization, then he or she should  
23                     not interfere. In this process, the  
24                     existence of fraud, nondisclosure,  
25                     misleading evidence and new evidence  
26                     are all relevant but rather than  
27                     being a prerequisite to review,

1           their sole impact is to determine  
2           whether there continues to be any  
3           basis for the decision of the  
4           authorizing Judge".

5           There was some evidence on the voir dire as  
6           to the factual circumstances leading to Constable  
7           Carter attending before the Justice of the Peace  
8           to obtain this search warrant.

9           Constable Carter was the lead investigator  
10          on the CDSA investigation arising out of the  
11          discovery and seizure of the 14 bags of marijuana  
12          at the Northwest Transport warehouse on September  
13          29th. He had arranged for Jeremy Hansen to be  
14          arrested on the evening of September 29th.  
15          Mr. Hansen gave a warned statement in Constable  
16          Carter's presence in which he acknowledged his  
17          own involvement in the September 29th shipment  
18          and in which he also inter alia implicated Norman  
19          Walper in the September 29th shipment of  
20          marijuana. Constable Carter had worked on the  
21          September 29th investigation for two days and he  
22          had formed the intention to arrest and charge  
23          Mr. Walper for the September 29th matter.

24          On October 1st, Constable Carter was off  
25          duty in civilian clothes and standing across the  
26          street from the post office and happened to  
27          notice Norman Walper pull up to the post office

1 in his pickup truck and enter the post office.  
2 Constable Carter decided to arrest Mr. Walper  
3 then and there for the September 29th matter.  
4 He called the detachment and asked for the  
5 assistance of a uniformed member to effect the  
6 arrest. Constable Charles arrived and after  
7 Mr. Walper had exited the post office, Constable  
8 Charles, in the presence of Constable Carter,  
9 effected the arrest of Norman Walper.

10 When Mr. Walper had exited the post office,  
11 he was carrying a brown wrapped parcel which he  
12 placed in the open back of his pickup truck.  
13 When the two police officers took Mr. Walper to  
14 the detachment, Constable Carter also took  
15 possession of the parcel and he placed it in a  
16 secure place at the detachment.

17 That evening Constable Carter prepared an  
18 Information to Obtain Search Warrant pursuant to  
19 Section 11 of the CDSA. I will summarize the  
20 wording of Section 11 as follows:

21 "A Justice who, on ex parte  
22 application, is satisfied by  
23 information on oath that there are  
24 reasonable grounds to believe that a  
25 controlled substance is in a place  
26 may issue a warrant authorizing a  
27 peace officer to search the place

1                   for the controlled substance".

2                   Constable Carter carefully prepared a  
3 five-page Information and the draft search  
4 warrant which would authorize the police to  
5 search inside Mr. Walper's parcel for cannabis  
6 marijuana and to seize any cannabis marijuana  
7 which was found there.

8                   Constable Carter attended before a J.P. just  
9 after midnight on October 2nd and swore the  
10 Information and on the basis of the Information,  
11 the J.P. issued the search warrant. Constable  
12 Carter then opened Mr. Walper's parcel and inside  
13 found 15 bags of cannabis marijuana. The fact  
14 that marijuana was indeed found in the parcel, of  
15 course, is not really relevant on the issue  
16 whether there were proper grounds for the search  
17 warrant to issue in the first place.

18                  Having heard the evidence of Constable  
19 Carter on the voir dire, I find that Constable  
20 Carter drafted the Information carefully and  
21 attempted to be quite complete in his disclosures  
22 to the J.P. There are a lot of what might be  
23 termed "boilerplate" sections of the Information  
24 document and I do not say or mean that in any way  
25 pejoratively. Constable Carter gave the names of  
26 all of the officers involved in the investigation  
27 and the names and the particulars of the two



1 accused individuals - Hansen and Walper. He gave  
2 a detailed description of the discovery and  
3 seizure of the marijuana in the Northwest  
4 Transport warehouse on September 29th. He gave  
5 information about the arrest of Jeremy Hansen on  
6 September 29th and of the warned statement of  
7 Hansen given to Constable Woodfine and Constable  
8 Carter including the fact that Norman Walper was  
9 implicated in the September 29th shipment of  
10 marijuana to the Northwest Transport warehouse,  
11 and also that Norman Walper had supplied Jeremy  
12 Hansen with marijuana in the past and that Norman  
13 Walper gets marijuana through the mail.

14 Constable Carter then in the sworn  
15 Information gave the details of the arrest of  
16 Norman Walper by the police on October 1st,  
17 including the fact that he was seen coming out of  
18 the post office carrying a brown parcel.

19 Finally in the sworn Information, Constable  
20 Carter indicated that earlier in the calendar  
21 year 2003, the police had received information  
22 from two reliable sources to the effect that  
23 Norman Walper is a known trafficker of marijuana  
24 in Inuvik.

25 In the concluding paragraph of the  
26 Information, and also on the front page,  
27 Constable Carter says that he has reasonable

1 grounds to believe and does believe that there is  
2 cannabis marijuana in the brown parcel; yet, and  
3 this is the crux of the difficulty, he does not  
4 state what those reasonable grounds are.

5 Upon a careful consideration of the entire  
6 contents of the Information to Obtain, the most  
7 that could be said about the reliable information  
8 known to Constable Carter was,

9 (a) Norman Walper was known in Inuvik to be  
10 a trafficker in marijuana;

11 (b) Norman Walper had in the past brought  
12 marijuana into Inuvik through the postal system;

13 (c) Norman Walper had just picked up a  
14 parcel at the post office.

15 There was no information known to Constable  
16 Carter about this specific parcel that he wanted  
17 to search.

18 Again referring to Section 11 of the CDSA,  
19 the J.P., before issuing the draft search  
20 warrant, had to be satisfied that there were  
21 reasonable grounds to believe that there was  
22 cannabis marijuana in that brown parcel. There  
23 were no such reasonable grounds and I conclude  
24 that the J.P. could not have granted the judicial  
25 warrant of authorization.

26 To repeat, Constable Carter in the sworn  
27 Information said that he had reasonable grounds

1 to believe there was marijuana in the brown  
2 parcel but didn't say what those grounds were. I  
3 conclude he did not have reasonable grounds for  
4 such a belief. Indeed, in his viva voce  
5 testimony on the voir dire he did not assert such  
6 a belief but, rather, stated, and these are his  
7 words, "I suspected there may be drugs in the  
8 box". Suspicion does not constitute reasonable  
9 grounds.

10 The warrant could not have issued under  
11 Section 11 of the CDSA. This was an unreasonable  
12 search and seizure that constituted an  
13 infringement of Mr. Walper's Section 8 Charter  
14 rights. He had an expectation of privacy in his  
15 parcels and mail received at the post office safe  
16 from state intrusion unless authorized by law.

17 The law does not allow the state to look  
18 into each and every parcel in the possession of a  
19 citizen, even alleged drug dealers.

20 This, in my view, was a serious Charter  
21 violation and to allow the resulting evidence  
22 into evidence at Mr. Walper's trial would, in my  
23 view, bring the administration of justice into  
24 disrepute. Accordingly I grant Mr. Walper's  
25 application. The evidence of the October 2nd  
26 seizure is excluded.

27 Finally, I turn to the fourth application

1 before the Court and that is the application of  
2 the accused Hansen for a stay of proceedings  
3 based on what he says is a Crown process that  
4 infringes or denies his Section 7, Section 11(c),  
5 and Count 11(d) Charter rights. The remedy that  
6 he seeks is a judicial stay of proceedings and  
7 alternatively a severance of the Indictment to  
8 allow him to have a separate trial on Count  
9 number 1 in the Indictment.

10 The Crown process that Mr. Hansen complains  
11 of on this application is essentially that the  
12 Crown initially proceeded against Mr. Hansen and  
13 Mr. Walper separately on the September 29th  
14 matter yet subsequently filed an Indictment  
15 charging them jointly with the September 29th  
16 matter.

17 The evidence before me is that Mr. Hansen  
18 was arrested on September 29th and on that date,  
19 an Information was sworn charging him with  
20 possession for the purpose of trafficking.

21 On October 1st, 2003, Mr. Walper was  
22 arrested and on October 2nd, 2003, an Information  
23 was sworn charging him with two counts of  
24 possession for the purpose of trafficking; one on  
25 September 29th, the other on October 1st.

26 These two Informations proceeded separately  
27 in Territorial Court. Mr. Walper had his

1 preliminary on May 6th, 2004 and was committed  
2 for trial on both counts. Mr. Hansen was a Crown  
3 witness at Mr. Walper's preliminary.

4 Mr. Hansen had his own preliminary on May  
5 28th, 2004 and was committed for trial.

6 On July 30th, 2004, the Crown filed an  
7 Indictment in this Court with two counts. In  
8 Count number 1, the Crown jointly charged Hansen  
9 and Walper with trafficking in marijuana on  
10 September 29th, 2003. And on Count 2, the Crown  
11 charges Walper solely with possession of  
12 marijuana on October 1st for the purposes of  
13 trafficking.

14 Mr. Hansen says the manner in which the  
15 Crown has proceeded infringes his Section 7,  
16 Section 11(c) and Section 11(d) Charter rights  
17 but does not articulate how.

18 Section 7 states that Mr. Hansen, and  
19 everyone else, has the right to life, liberty,  
20 and security of the person and the right not to  
21 be deprived thereof except in accordance with the  
22 principles of fundamental justice.

23 Section 11(c) states that Mr. Hansen, being  
24 a person charged with an offence, has the right  
25 not to be compelled to be a witness in  
26 proceedings against himself in respect of that  
27 offence.

1           Section 11(d) states that Mr. Hansen, being  
2 a person charged with an offence, has the right  
3 to be presumed innocent until proven guilty  
4 according to law in a fair and public hearing by  
5 an independent and impartial tribunal.

6           With respect to 11(c), Mr. Hansen expresses  
7 concern that he was compelled to be a witness at  
8 Mr. Walper's preliminary inquiry on the very  
9 subject matter of Count number 1 in the  
10 Indictment and that that testimony may be used  
11 against him if he should testify here at his  
12 trial and be subject to cross-examination by  
13 Crown counsel and/or Mr. Walper's defence  
14 counsel.

15           I do not accept that that is a legitimate or  
16 valid concern because of the existence of  
17 Section 13 of the Charter and the jurisprudence  
18 that has developed on Section 13.

19           Section 13 reads,  
20           "A witness who testifies in any  
21 proceedings has the right not to  
22 have any incriminating evidence so  
23 given used to incriminate that  
24 witness in any other proceedings  
25 except in a prosecution for perjury  
26 or for the giving of contradictory  
27 evidence".

1           That section prohibits either Crown counsel  
2           or Mr. Walper's defence counsel from using  
3           Mr. Hansen's testimony at the Walper preliminary  
4           in any way to incriminate Mr. Hansen at this  
5           trial through cross-examination or otherwise.

6           Mr. Hansen argues further that even if Crown  
7           counsel or Mr. Walper's defence counsel are not  
8           allowed to directly use Mr. Hansen's previous  
9           testimony in cross-examining him, each of those  
10          counsel still has the benefit of the fact and  
11          contents of his previous testimony in their  
12          respective preparation of their cross-examination  
13          of Mr. Hansen at this trial.

14          I fail to see without any explicit  
15          articulation how that can benefit either the  
16          Crown or the co-accused or be unfair to  
17          Mr. Hansen.

18          Mr. Hansen cites the Zurlo case from the  
19          Quebec Court of Appeal in support of his position  
20          on this application. In that case, Zurlo and his  
21          co-accused had had separate preliminaries and  
22          each had been compelled to testify at the other's  
23          preliminary. Crown filed a joint Indictment and  
24          a joint trial was held. Zurlo's co-accused  
25          testified at the trial. Because of Section 13 of  
26          the Charter, the trial Judge would not allow  
27          Zurlo's counsel to cross-examine the co-accused

1 on her earlier testimony. Mr. Zurlo was  
2 convicted and he appealed. The Appeal Court held  
3 that Zurlo's Section 11(d) right to a fair trial  
4 had been infringed.

5 Even assuming that the Zurlo decision is  
6 correctly decided, I cannot see that the Zurlo  
7 decision is of assistance to Mr. Hansen in this  
8 case because he is not in the same position as  
9 Mr. Zurlo. If Mr. Hansen's co-accused testifies  
10 at this trial, Mr. Hansen's counsel will have the  
11 usual full opportunity to cross-examine  
12 Mr. Walper.

13 In citing Section 7 of the Charter,  
14 Mr. Hansen does not specify which particular  
15 principle of fundamental justice he is being  
16 deprived of. Although the procedural background  
17 leading to this trial might be considered  
18 unusual, I see no abuse of the Court's process by  
19 the Crown. I am not convinced that there has  
20 been any oppressive or vexatious proceedings or  
21 that there will be any oppressive or vexatious  
22 circumstances should the trial continue as framed  
23 in the Indictment. I have not been satisfied  
24 that there has been or will be any violation of  
25 the principles of fundamental justice which  
26 underlie the judicial system's sense of fair  
27 play.



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There are no infringements of Charter rights as alleged on this application and thus no justification for a stay of proceedings as sought by Mr. Hansen.

The request for an alternate remedy of separate trials is based on the same grounds and so similarly must fail.

When it is alleged that two accused acted in concert in the commission of an offence, the presumption is that they ought to be tried together in the same trial, one of the reasons being to avoid the risk of inconsistent rulings and/or inconsistent verdicts. For these reasons, Mr. Hansen's application for a stay of proceedings, or alternatively for a separate trial, fails.

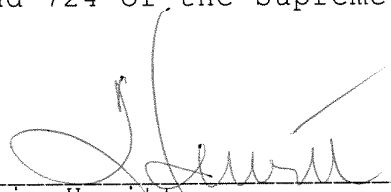
Now, counsel, those are the Court's rulings on the four discrete issues raised by counsel. And we will now adjourn this matter until later this morning or later today when I would like to address with counsel the scheduling of the next steps in this trial process. So we will take a one-hour adjournment for now.

**(ADJOURNMENT)**

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Certified to be a true and accurate  
transcript pursuant to Rules 723  
and 724 of the Supreme Court Rules,



Lois Hewitt,  
Court Reporter