HMTQ v. *Beaverho*, 2009 NWTSC 21

Date: 2009 04 08
Docket: S-0001-CR-2008000035

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ARCHIE BEAVERHO

Application to set the venue for trial.

Heard at Yellowknife, NT, on April 1, 2009.

Reasons filed: April 8, 2009.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.Z. VERTES

Counsel for the Crown: John Noseworthy

Counsel for the Accused: Hugh Latimer

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BETWEEN:

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- and -

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REASONS FOR JUDGMENT

[1] The question on this application is where the trial of the accused should take place.

[2] The accused is charged with the offence of sexual assault, allegedly committed in Whatì, Northwest Territories, on February 23, 2007. His trial was set to start on February 16, 2009, with jury selection in Whatì. However, a full jury could not be picked and the case was placed back on the scheduling list.

[3] The Crown has filed a motion seeking to have the trial set for a date in Yellowknife. It says that a trial can be heard much sooner in Yellowknife, being a larger centre, something that is of concern considering the age of the charge and the accused's constitutional right to trial within a reasonable time (although it appears from the court record that the charge was not sworn against the accused until November, 2007). The defence has filed a cross-motion seeking to have the trial in a community that is culturally and linguistically similar to Whatì, namely Behchokǫ̀, with the ability to select unilingual aboriginal speakers as jurors.

[4] The arguments raised in this matter implicate the language provisions of the *Jury Act*, R.S.N.W.T. 1988, c. J-2, and the practices of this court with respect to the setting of the venue for criminal jury trials and the selection of jurors.

Relevant Statutory Provisions:

[5] To understand the issues raised on this application, it is necessary to set out certain statutory provisions regarding jury service in the Northwest Territories. I will comment on these further in my reasons.

[6] First, the *Official Languages Act*, R.S.N.W.T. 1988, c. O-1, stipulates, in section 4, eleven official languages for the Northwest Territories (English, French and nine aboriginal languages: Chipewyan, Cree, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨chǫ). Section 9 provides that any person may use any of these official languages in court.

[7] The *Jury Act*, in section 4, sets out the qualifications for jury service:

> 4. Subject to this Act, every person who
> (a) has attained the age of 18 years,
> (b) is a Canadian citizen or permanent resident of Canada, and
> (c) is able to speak and understand an Official Language,
>
> is qualified to serve as a juror in any action or proceeding that may be tried by a jury in the Territories

[8] The eligibility to serve on a jury for people who do not speak either English or French, but do speak one of the other official languages of the Northwest Territories, is unique in Canada (with the exception of Nunavut which adopted all Northwest Territories laws upon its creation in 1999).

Background Facts:

[9] As previously noted, the accused's trial was scheduled to proceed in Whatì on February 16, 2009. The place of trial was set in accordance with this court's practice to hold the trial, when possible, in the community where the offence was allegedly committed. Whatì is a community within the Tłı̨chǫ First Nations land claim area. Its total population is 523 of which 494 (or 94.5 %) is aboriginal.

[10] The fact that the court would set a jury trial in a community of only 523 people is not common but it is also not unheard of. I presided on a jury trial in Whatì some

twelve or so years ago. But of the four previous jury trials set for Whatì since 2000 none proceeded to the selection of a jury.

[11] For this trial, the Sheriff summonsed 250 people for jury selection (out of a total potential jury pool of 328). Of the 250 summonses issued, 169 were successfully served. Prior to the court party travelling to Whatì, 40 people were excused by the Sheriff, leaving 129 people on the nominal list. On February 16th, 94 people showed up for selection.

[12] At the opening of court, and after already speaking with counsel, I informed the people assembled in the Whatì Community Hall that all people who do not speak English would have to be excluded. Although the court clerk had arranged for two Tłįchǫ speaking interpreters to be present to assist the court, only one was there. It is the policy of the court to not proceed with the selection of unilingual jurors unless there are two qualified interpreters present.

[13] The accused's counsel noted, for the record, that his client objected to the exclusion of unilingual Tłįchǫ speakers and to proceeding with an English-only jury. The Crown took no position on the point. Defence counsel confirmed, however, that the accused, a Tłįchǫ First Nation individual, did not require interpretation assistance since "he's conversant in English" (to quote counsel).

[14] The potential jurors were invited to come forward if they wished to be excused for any reason. Of the 94 people present, only six asked to be excused because they did not understand English. Of the rest, most were excused for one reason or another, most often because of family or personal connections with either the accused or the complainant. At the end of the process eight jurors were selected and sworn (with the Crown and defence each having four peremptory challenges remaining). The Crown did not request that the Sheriff summon talesmen (as per s. 642(1) of the *Criminal Code*) since the available information showed that it would be unlikely to result in filling out the jury.

[15] As a result, I invited Crown and defence to make submissions as to the appropriate venue for the trial.

Submissions:

[16] At first, defence counsel sought an order that the court return to Whatì to try again, only this time without excusing unilingual Tłı̨chǫ-speaking jurors. He submitted that the exclusion of unilingual jurors denied the accused "due process" according to law and contrary to his fair trial rights as guaranteed by the *Canadian Charter of Rights and Freedoms*. If a jury could not be selected from a panel consisting of both English-speaking and unilingual jurors, then a stay of proceedings should be entered. Subsequently, defence counsel backed off from this position and submitted that Behchokǫ̀ should be the venue (but, again, with the ability to select both English-speaking and unilingual jurors). In counsel's submission, the right of unilingual aboriginal persons to serve on a jury is as much a right of the accused as it is of the aboriginal citizens of the Northwest Territories.

[17] Behchokǫ̀, located 90 kilometres northwest of Yellowknife, is the largest community in the Tłı̨chǫ First Nation land claim area. It has a population of 2,016 people, of whom 1,843 (or over 91%) are aboriginal: see NWT Bureau of Statistics, *Statistics Quarterly*, Vol. 30, No. 3 (September, 2008). Information supplied to the parties by the Sheriff shows that the potential jury pool consists of 1077 people and that, since 2000, there have been 14 jury trials held there without any difficulty in selecting the juries. The defence also filed an affidavit from a former mayor of Behchokǫ̀ who expressed his belief that there is no reason why a jury could not be picked there and a fair trial held.

[18] The Crown's position is that the trial should be held in Yellowknife, the capital of the Northwest Territories and its largest community. Yellowknife has a population of 19,155 people, of whom 4,445 (or 23%) are aboriginal: NWT Bureau of Statistics, *Statistics Quarterly*. It is common for jury panels assembled in Yellowknife to contain both aboriginal and non-aboriginal persons.

[19] The Crown submits that an accused person has no common law or constitutional right to have his or her trial in a particular community on cultural and linguistic grounds. Furthermore, it argues that it would be expedient to the ends of justice to move the trial to Yellowknife because a trial could be scheduled there at an earlier date and thus avoid further delays in this case. Finally, the Crown submitted an affidavit indicating that the accused has a brother and a sister living in Behchokǫ̀. The concerns about family connections interfering with jury selection, while not as great as in Whatì, are at least present in Behchokǫ̀.

[20] The submissions raise the issues of venue and language. While these are interconnected, simply because of the demographics of the Northwest Territories, they also require distinct analysis.

[21] It should be observed, however, that while some of the statutory provisions and jury practices in effect in the Northwest Territories are unique by comparison to Canadian provinces, they are part of a history that has often recognized extraordinary requirements for the exigencies of the administration of justice in the north. Section 8(1)(b) of the *Criminal Code* provides that the provisions of the *Code* "apply throughout Canada *except* in the Northwest Territories, insofar as they are inconsistent with the *Northwest Territories Act*" (similar provisions apply to Yukon and Nunavut). For example, s. 38 of the *Northwest Territories Act*, R.S.C. 1985, c. N-27, permits a judge of this court to exercise jurisdiction anywhere in Canada with respect to a criminal offence committed in the Northwest Territories. So presumably this accused could be tried, by a judge of this court, anywhere in Canada. This is a striking exception to the usual jurisdictional rules. As another example, for over 100 years up until 1985, the *Northwest Territories Act* and the *Criminal Code* provided for a jury of six people, not twelve as otherwise required elsewhere in Canada. The point is that variations from common practice in criminal procedure, specific to the Northwest Territories (and now Nunavut), are not unusual.

Venue:

[22] It is well known that in the Northwest Territories this court has, since its modern inception in 1955, travelled to the place of the alleged offence to hold jury trials. There are no judicial districts in the Territories and, because of that, cases from other jurisdictions regarding questions of venue are of limited application.

[23] The practice of the court was described by Tallis J. in *R.* v. *Lafferty* (1977), 35 C.C.C. (2d) 183 (N.W.T.S.C.), at p. 186:

> Traditionally the Supreme Court of the Northwest Territories has held jury trials throughout the Northwest Territories in many small settlements regardless of whether or not adequate courtroom facilities are available. This practice evolved from the position taken by the first Judge of the Territorial Court, Mr. Justice Sissons, who stated as a general rule that the proper place for a trial is the place where the offence was committed. In other words, every effort was made to ensure that justice was brought to all the communities in the Northwest Territories.

> This practice was carried forward and improved upon by my immediate predecessor Morrow, J. However, as changes took place in society in this jurisdiction, Morrow, J., recognized that the practice of holding a jury trial in a small community must be realistically applied and in appropriate cases, he did not hesitate to arrange to hold the trial in another settlement.

[24] The "general rule", referred to above, has its source in the common law rule that the trial be held in the place where the offence occurred and tried by people from the community of that place: *R.* v. *Sarazin* (1978), 39 C.C.C. (2d) 131 (P.E.I.S.C.); and *R.* v. *Cardinal* (1985), 21 C.C.C. (3d) 254 (Alta. C.A.). The original rationale of that rule, of course, bears no relationship to its current rationale. It originated in 13th century England when the jury was a body of witnesses drawn from the neighbourhood who decided cases on the basis of their prior knowledge of the facts. Today, of course, such prior knowledge would lead to disqualification of a juror.

[25] The practice of holding trials in the affected community has become entrenched in the *Criminal Procedure Rules of the Supreme Court*:

> 37. (1) Unless the convenience of the parties and witnesses otherwise requires, a trial shall be held in the community
>
> (a) at or nearest the place where the offence is alleged to have been committed; and
>
> (b) in which there are adequate facilities available to house the court and jury and to conduct the trial.

[26] The benefits of local trials are obvious. It makes it easier for the accused and witnesses to attend the proceedings. Jurors from the community have some sense of the atmosphere in which the participants acted and thus can put their behaviour into context. Members of the immediate community are usually the ones most affected and most concerned about local crimes. They have a stake in the outcome of trials. A trial in the community will also help avoid misconceptions of how the justice system works and misunderstandings about the results. There is greater understanding if people have the opportunity to attend and watch the proceedings.

[27] These observations take on added significance when considering the situation of Canadian aboriginal communities, often located many miles from regional judicial centres, and the concerns identified by numerous studies, over the years, regarding aboriginal alienation from the justice system. The Law Reform Commission of Canada, in its 1991 *Report on Aboriginal Peoples and Criminal Justice*, recommended that wherever possible the court sitting should occur in or near the

aboriginal community in which the offence was committed. The *Report of the Aboriginal Justice Inquiry of Manitoba*, issued in 1991, also recommended holding trials in the community where the offence occurred with juries being drawn from the immediate area.

[28] The test for deviating from the "general rule" is that set out in s. 599(1) of the *Criminal Code*. 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. It is a highly fact-specific exercise. But the ultimate aim is always a fair trial with an impartial jury.

[29] Past cases in this jurisdiction reveal a variety of reasons for ordering a change of venue. These include factors such as community divisiveness or hostility (as in *Lafferty*, *supra*); psychological harm to or oppression of witnesses (as in *R.* v. *J.K.*, [1990] N.W.T.R. 388; and *R.* v. *J.I.*, [1995] N.W.T.J. No. 96); community prejudgment (as in *R.* v. *G.H.* [1991] N.W.T.J. No. 104; and *R.* v. *Anablak*, [1984] N.W.T.R. 118); or, most commonly, where attempts to obtain a jury in a community have failed (as in *R.* v. *McDonald*, [2008] N.W.T.J. No. 93). But there have also been many cases where a change was refused, even in small communities where there were close family ties and intense interest in the case (as in *R.* v. *Koyina*, [1989] N.W.T.R. 337; *R.* v. *Chinna*, [1990] N.W.T.R. 1; *R.* v. *Lafferty (C.T.)*, [1992] N.W.T.J. No. 151; *R.* v. *Muckpa*, [1994] N.W.T.J. No. 60; and *R.* v. *Taniton*, [1996] N.W.T.J. No. 26). All these cases recognize, however, that the power to order a change of venue is a discretionary one which should be exercised only upon strong grounds.

[30] The present case, of course, is not one about changing what would ordinarily be the place of trial but about picking another place for trial (since the trial could not be held in the original location). In such circumstances, the practice of the court has often been to move the trial to a community that is demographically and culturally similar to the community where the trial would ordinarily have been held. But, as many cases point out, this is not a hard and fast rule. Again, it depends on the circumstances.

[31] This last point raises the question of the representative nature of the jury.

[32] Many writers on the jury system, and numerous cases, have identified representativeness as a necessary attribute of the jury. But, by that, what is meant is a representative cross-section of the community. No group is to be systematically

excluded from the jury panel from which the jury is drawn. This is a way of legitimizing the jury system.

[33] In *R.* v. *Sherratt*, [1991] 1S.C.R. 509, L'Heureux-Dubé J., writing on behalf of the Court, identified the functions and qualities of the modern jury (at para. 30):

> . . . the development of the institution known as the jury and the process through which it came to be selected was neither fortuitous nor arbitrary but proceeded upon the strength of a certain vision of the role that that body should play. Most of the early rationales for the use of the jury are as compelling today as they were centuries ago while other, more modern, rationales have developed. The Law Reform Commission of Canada in its 1980 Working Paper, The Jury in Criminal Trials, sets out numerous rationales for the past and continued existence of the jury. The jury, through its collective decision making, is an excellent fact finder; due to its representative character, it acts as the conscience of the community; the jury can act as the final bulwark against oppressive laws or their enforcement; it provides a means whereby the public increases its knowledge of the criminal justice system and it increases, through the involvement of the public, societal trust in the system as a whole.

[34] In *Sherratt*, the Supreme Court identified the characteristics of representativeness and impartiality as being essential and necessary for the proper performance by the jury of its functions. It is the basic goal of the jury selection process to produce juries that are impartial and, in the broader sense, representative. The Court took the position that the procedure for jury selection set by provincial or territorial legislation, through the "the random selection process, coupled with the sources from which this selection is made . . . guarantees representativeness, at least in the initial array", while the "in-court" selection procedures, governed by the *Criminal Code*, are the main method for ensuring jury impartiality: *Sherratt*, at paras. 35-36.

[35] The jury selection process is not meant to be a tool in the hands of either the Crown or defence to obtain the most favourable jury possible: see *Sherratt*, at para. 31. Neither can the venue be manipulated on some expectation that a jury from one community would be more favourable than from another one. The aim, as stated earlier, is a fair trial with an impartial jury.

[36] In the Northwest Territories the randomness of the initial jury panel is assured by the random selection of names drawn by the Sheriff from lists of persons provided by the Director of Medical Insurance for the Territories: *Jury Act*, s. 8(2). The

Sheriff must certify that the selection was random: *Jury Regulations*, R-034-99, s. 7(a).

[37] This, of course, begs the question of how one defines community. I think it is fair to say that, in *Sherratt*, the Court was talking about representativeness as being representative of the diverse groups that make up Canadian society, the larger community, a "representative cross-section of society, honestly and fairly chosen": *Sherratt*, at para. 31. This accords with the commonly expressed aim of a representative jury, that being that a diverse group of persons will bring different perspectives to the case. The representativeness requirement seeks to avoid the risk that persons with different perspectives, and who are otherwise available, will be systematically excluded from the jury list.

[38] If, however, a trial is held in a particular community with a predominant racial composition, it is inevitable that the jury panel will reflect that race. But that is a feature of demographics. There is nothing in Canadian law that says that an accused has the right to a jury composed so as to deliberately reflect the particular characteristics of race, age, class, sex and so on, of the accused: *R.* v. *Kent* (1986), 27 C.C.C. (3d) 405 (Man. C.A.); *R.* v. *Nepoose* (1991), 85 Alta. L.R. (2d) 18 (Q.B.); *R.* v. *Yooya*, [1995] 2 W.W.R. 135 (Sask. Q.B.); and *R.* v. *Church of Scientology* (1997), 116 C.C.C. (3d) 1 (Ont. C.A.).

[39] So it comes down to a question of what is expedient to the ends of justice. The accused is not entitled as of right to a jury made up of people of his own race. Even if the jury trial is held in Behchokǫ̀ there is no guarantee that all the jurors will be of the same race. There is no indication in this case that there is any cultural component other than the race of the trial participants. There is no suggestion that anything in the subject-matter of the trial makes similarity of cultural background as between the trial participants and the jurors significant. And, there is no suggestion of racial bias or prejudice on the part of potential jurors should the trial be held in Yellowknife. Having said all that, however, I recognize that there are broader benefits to holding the trial in Behchokǫ̀, most of which were discussed earlier.

<u>Language</u>:

[40] The defence submits that the accused has a right to have unilingual Tłı̨chǫ speakers available for selection as jurors. This requires me to consider whether the qualification criteria set out in s. 4 of the *Jury Act* (quoted earlier) is a right of the

accused, or a right of the citizens of the Northwest Territories, or both. To do this it is necessary to examine the history and purpose of this provision.

[41] The recognition of the nine aboriginal languages (listed in s. 4 of the *Official Languages Act*) as "official languages" came about in 1984. Subsequently, in 1986, the Legislative Assembly passed an amendment to the *Jury Act* as follows:

> 5.2 An aboriginal person who does not speak and understand either the French language or the English language, but who speaks and understands an aboriginal language as defined in the *Official Languages Act* and is otherwise qualified under this Act, may serve as a juror in any action or proceeding that may be tried by a jury in the Territories,

[42] Prior to this, the *Jury Act* required all jurors to speak either English or French. The purpose behind this amendment was explained by the then territorial Minister of Justice:

> In the Northwest Territories aboriginal people are in the majority and in the majority of cases aboriginal persons are the accused. If we are to recognize the principle that a person is entitled to be tried by his or her peers, then surely we must do all that we can to make it possible in the Northwest Territories for aboriginal persons to sit on the jury. (*Hansard*, Northwest Territories, 7th Session, 10th Assembly, p. 1119)

[43] At that time, the Northwest Territories comprised an area of over 1.3 million square miles (combining both what is now Northwest Territories and Nunavut) with a population that was 65% aboriginal (the current population of the present Northwest Territories is approximately 50% aboriginal).

[44] The amendment was not proclaimed in force until it was studied by the Northwest Territories Committee on Law Reform. The amendment was viewed as an attempt to increase community involvement by allowing unilingual aboriginals to take part in the jury process. It was an attempt to increase the representativeness of juries. The amendment was supported by a wide array of aboriginal organizations.

[45] The Final Report of the Committee recommended, however, that the amendment be changed so as to replace the racial classification ("An aboriginal person who does not speak and understand either . . . ") with a purely linguistic test. The Committee thought it repugnant to our conception of equality to have legislation reference race as the distinguishing characteristic. As a result of this recommendation, the amendment was changed to the current formulation ("every

person who . . . is able to speak and understand an Official Language"). The amendment then came into force in 1988.

[46] As I noted previously, this provision is unique. Early on it was viewed as a measure aimed to benefit and preserve cultural pluralism in the north: see *R.* v. *Fatt*, [1986] N.W.T.R. 388 (S.C.). This follows the commitment to the preservation and enhancement of Canada's multicultural heritage articulated by s. 27 of the *Charter of Rights and Freedoms*. One appellate judge described the purpose of this provision as follows (in *R.* v. *Kaunak*, [1997] N.W.T.J. No. 71 (C.A.), per Berger J.A. at paras. 29-30):

> One can understand the geographic and cultural reasons for these legal provisions. The Northwest Territories covers a vast land area and includes a diverse group of Canadians of aboriginal descent . . .
>
> To assemble a jury in some of the sparsely-settled, remote communities in the Northwest Territories, it may be necessary to include unilingual aboriginal-language speaking persons. *This is to say nothing of the important Charter aboriginal and multicultural rights those persons have to participate in the legal process*, which are not issues before this Court. (Emphasis added).

[47] When I consider these sources I conclude that s. 4 of the *Jury Act* provides a right to the citizens of the Northwest Territories – the pool of potential jurors – as opposed to providing a right to any particular accused person. Any person speaking an "official language" is eligible to serve on a jury. That language may be any one of the eleven official languages. There is nothing to suggest that an accused is entitled to have any particular language speaker on the jury.

[48] The purpose of the enactment was to increase and facilitate the opportunity for aboriginal citizens to serve on a jury. It is a participation right. It does not translate into a right of the accused to have a certain linguistic group on the jury, no more than the right to have a jury composed of a certain race or class.

[49] There is also a practical consideration, one that is illustrated in this case.

[50] In Whatì, out of the 86 people who were excused from jury selection, only six were excused because of language. If those six had not been on the original list, the jury panel would not have had any unilingual Tłįchǫ speakers. It can hardly be said that the accused would then have had the right to have further potential jurors summonsed, further jurors who spoke only Tłįchǫ. His only recourse would have

been to challenge, if he could, the selection process used by the Sheriff. But that attack would have had to have been based on some irregularity in the selection process. There is nothing in the legislation to compel the Sheriff to select unilinguals. The only requirement is that the selection be random.

[51] The only language rights enjoyed by an accused person, in terms of the composition of the court that tries the accused, are those found in the *Criminal Code*. Section 530 provides a right to the accused to have his or her trial conducted in his or her "official language". But that refers to one of the official languages of Canada, i.e., French or English.

[52] There is one more practical consideration, also illustrated by this case.

[53] In this case, those potential jurors who could not speak English were excused because the court did not have available two qualified interpreters. Court staff had lined up two interpreters but only one showed up at jury selection. As a result, it was my opinion that we could not select non-English speakers. The burden of interpreting a complete trial is too heavy for only one interpreter, no matter how qualified, to bear.

[54] In its review of the *Jury Act* amendment in 1986, the Committee on Law Reform also recognized the need to develop a trained corps of legal interpreters. It was necessary to develop acceptable terminology, in all the official aboriginal languages, so as to translate English (and French) legal terms. There were no common translations before this. And, since it is the Government of the Northwest Territories that has the responsibility for the administration of justice, it fell to the government to meet this need.

[55] The territorial Department of Justice instituted a legal interpreter training program in 1988. By 1991, a corps of interpreters had been "certified" as court interpreters. There were full-time staff persons responsible for co-ordinating the engagement of interpreters for the courts. In 1995, funding for the program was diminished and responsibility for the program was transferred to Arctic College. The program was eventually terminated in 1998.

[56] Since 1998, there has been no training of legal interpreters. Even for those aboriginal language speakers who are willing to provide interpretation services, there are no resources to develop skills specific to the courtroom. Court staff are required to track down interpreters. There is much competition for the services of skilled interpreters from private industry. So even when the court wants to utilize the

provisions of the *Jury Act* to increase a potential jury pool it is often impossible to do so because of a lack of interpreters.

[57] This situation was foreshadowed in a comment found in a 1995 report from the Commissioner of Official Languages for Canada, "The Equitable Use of English and French Before the Courts in Canada", quoted in *Kaunak* (at para. 33):

> The issues relevant to the use of Aboriginal languages in the courts of the Northwest Territories are of a quite different order [as compared with the issues surrounding the use of the French language]. No reasonable prospect exists at the moment for providing judges or prosecutors who speak any of the Aboriginal languages fluently. The most pressing concern is the training and availability of interpreters who can assist a court to understand the testimony of witnesses or accused persons who speak an Aboriginal language. Until recently, the territorial Department of Justice maintained a Legal Interpreting Program (fully funded under the Canada-Northwest Territories Co-operation Agreement) whose aim was to train Aboriginal-language speakers as court interpreters. Without reliable interpretation, Aboriginal people appearing before the Territorial Courts face serious disadvantage. Moreover, a language barrier deepens the impression that the court system is foreign and not really an integral part of one's community. The need for the assistance of interpreters is apparent in the number of hours of interpretation logged during the fiscal year 1993-94, which ranges from 1,324 hours of Inuktitut, 366 of Dogrib, 265 of North Slavey, to 176 of Chipewyan. Cuts in funding under the Co-operation Agreement for French and Aboriginal Languages have affected this valuable program. In addition to decreased funding, responsibility for this program has been transferred to the Arctic College in Fort Smith and Iqaluit and is no longer assumed by the territorial Department of Justice,

[58] So, even if a trial is held in an aboriginal community, there is no guarantee that unilingual aboriginal speakers can be chosen as jurors if qualified interpreters are not available. This is something beyond the ability of the court to remedy. It is the government that must address this problem because, without interpreters, the purpose of s. 4 of the *Jury Act* is rendered meaningless.

[59] For these reasons, I conclude that the accused does not have a right to have unilingual Tłįchǫ speakers on the jury. The ability to select unilinguals is certainly desirable. It is something that the citizens of the Northwest Territories should expect. But it is not something the accused can demand. It is not necessary to have unilinguals on a jury in order for the accused to have a fair trial.

[60] All this however is not to forget that, regardless of whether unilingual aboriginals are on a jury, there is often a need for competent interpretation for

accused persons and witnesses. In such a situation the issue does become a *Charter* right by virtue of s. 14 of the *Charter,* which provides that a party or witness who does not understand or speak the language in which the proceedings are conducted has the *right* to the assistance of an interpreter. The failure to provide adequate interpretation in such circumstances could lead to a stay of proceedings.

Conclusions:

[61] As I stated previously, it is a question of what is expedient to the ends of justice. In this case there are good reasons to have the trial in Yellowknife. Primary among them is the fact that a trial could be scheduled much sooner than in Behchokǫ̀. However, there are also good reasons to have the trial in Behchokǫ̀. Primary among those is that the trial would take place closer to the place of the alleged offence in a community that is culturally similar. If holding the trial in Behchokǫ̀ results in further delay, then that is the accused's choice.

[62] I therefore order that the trial of this charge be held in Behchokǫ̀ on a date to be set.

J.Z. Vertes
J.S.C.

Dated this 8th day of April, 2009.

Counsel for the Crown: John Noseworthy

Counsel for the Accused: Hugh Latimer

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