

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

JAMES WILSON

Transcript of the Ruling on Applications for Testimonial Aids and Use of Video-recorded Interview by The Honourable Justice L. A. Charbonneau, at Inuvik in the Northwest Territories, on 28th May A.D., 2015.

APPEARANCES:

Ms. A. Piché: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

Charge under s. 271, 145(1)(a) Criminal Code of Canada

**Ban on publication of the Complainant/Witness
Pursuant to Section 486.4 of the Criminal Code**

1 THE COURT: I am going to now give my
2 ruling on a number of pretrial applications that
3 the Crown made a few weeks ago. I gave my
4 decisions on those applications which I will term
5 in a general way Applications for Testimonial
6 Aids and Special Accommodations for the Evidence
7 of the complainant. I gave counsel the bottom
8 line decision a few weeks ago so you could
9 prepare accordingly and said I would put my
10 Reasons on the record later, and now these are
11 those Reasons I am about to give.

12 When the pretrial motions were heard counsel
13 agreed to call the evidence relating to all the
14 pretrial applications as part of one large voir
15 dire. There was a lot of overlap in the evidence
16 that applied to the various motions. Most of the
17 evidence was relevant to more than one of the
18 motions. There were two broad categories of
19 applications. The first, which I am dealing with
20 now, were applications for testimonial aids and
21 special accommodations that the Crown was asking
22 be used for the testimony of the complainant.
23 The second group were applications seeking
24 evidentiary rulings. All of these applications
25 stem from personal characteristics of the
26 complainant and the impact that they might have
27 on her ability to testify.

1 First I will address my understanding of the
2 evidence that was presented at the voir dire
3 about the complainant's abilities.

4 The complainant is an adult woman in her
5 fifties. It is undisputed and apparent on the
6 evidence presented at the voir dire that she
7 suffers from a serious speech impediment. It can
8 be very difficult to understand her when she
9 speaks. The voir dire evidence also establishes
10 that there are issues with her comprehension of
11 certain words or sentences. A.K. is the
12 complainant's sister and grew up with her. She
13 testified that the complainant went to school for
14 a period of time when they were young but did not
15 finish school. She now lives with her brother
16 and some of her daughters. She cannot read or
17 write except for writing her own name. She is
18 unable to count and needs help dealing with
19 things that involve money, like going to the
20 store. A.K. also testified that the complainant
21 sometimes does not understand big words so that
22 when A.K. is speaking with her, sometimes A.K.
23 has to use smaller simpler words so that the
24 complainant will understand. A.K. testified that
25 when the complainant does not understand what
26 someone is telling her she makes that known. I
27 take it from A.K.'s evidence that generally

1 speaking she is able to communicate with her
2 sister except that sometimes she may have to
3 repeat something using simpler words so that she
4 will understand. A.K. also testified that the
5 complainant can look after herself in terms of
6 feeding herself, taking care of her personal
7 needs, getting dressed and things of that nature.

8 A transcript of the complainant's testimony
9 at the preliminary hearing was filed at the voir
10 dire. It illustrates some of the challenges in
11 adducing evidence from her, although it also
12 shows that she is capable of answering questions.
13 Another exhibit filed was a note from the Court
14 Reporter who produced the preliminary hearing
15 transcript which confirms that making out what
16 the complainant was saying could be difficult at
17 times. The Crown also filed a video-recording
18 interview of the complainant by a police officer.
19 This interview was done as part of the
20 investigation. The complainant's daughter R. was
21 present during the interview and at several
22 points during the interview assists the officer
23 in helping him understand what her mother is
24 saying in answer to questions. All this evidence
25 assists in understanding more about the
26 complainant, her ability to communicate and some
27 of the challenges in that regard, and that

1 evidence is key in assessing the various
2 applications before the court.

3 The Crown applied to have the complainant
4 testify with a support person seated next to her,
5 with the use of a screen to block her view of the
6 accused, and with the public excluded from the
7 courtroom. Defence did not oppose the
8 application for a support person but opposed the
9 other two. Crown also sought to have the
10 video-recorded interview of the complainant
11 entered into evidence pursuant to Section 715.2
12 of the Code. That application was opposed by
13 Defence.

14 Overall, the basis for the Defense's
15 objections to what the Crown seeks is that there
16 is an insufficient evidentiary basis to engage
17 the provisions that permit the use of these
18 testimonial aids and special accommodations. The
19 Defence's submissions in relation to the
20 interpretation of Section 715.2 overlap with its
21 submissions regarding the request for use of
22 other testimonial aids. The Defense's position
23 is grounded in the submission that the special
24 considerations recognized by the law in dealing
25 with evidence of children are not necessarily
26 engaged when dealing with witnesses who have a
27 physical or mental disability.

1 Defence acknowledges that when it comes to
2 children the law now recognizes and assumes a
3 certain number of things about their
4 vulnerabilities, their ability to recollect and
5 recount events, and various other things that the
6 testimonial aids and accommodations are designed
7 to alleviate.

8 But Defence argues that when dealing with
9 witnesses with physical or mental disabilities,
10 there needs to be an evidentiary basis that
11 establishes the need to use these special
12 procedures and that establishes a link between
13 the witness's ability to communicate evidence and
14 the testimonial aid or special measure that the
15 Crown is seeking to use for the evidence of that
16 witness. Defence argues that some of the
17 assumptions that the law makes about children
18 cannot be simply applied to witnesses with
19 disabilities because there is too broad a
20 spectrum of disabilities that can exist which in
21 turn will have a varying impact on the witness's
22 ability to communicate evidence and on the
23 assistance that testimonial aids can provide.

24 So specifically in this case, Defence's
25 position is that the evidence of A.K. and the
26 other evidence adduced on the voir dire about the
27 complainant's circumstances does not lay a

1 sufficient evidentiary foundation for the court
2 to be satisfied that those circumstances place
3 her in the category of persons that provisions
4 like Section 715.2 and Paragraph 486.2(2) apply
5 to.

6 1. Application to use a screen during the
7 complainant's evidence.

8 I will deal first with the screen. The
9 application for use of a screen is governed by
10 Section 486.2 of the Criminal Code. The
11 provision contemplates two types of situations
12 and prescribes a different test to be applied in
13 each. Paragraph 1 applies to a witness who is
14 under the age of 18 or a witness who is able to
15 communicate evidence but may have difficulty
16 doing so by reason of a mental or physical
17 disability. In those situations the provision
18 states that the judge shall order that the
19 witness testify behind a screen or other device
20 that would allow the witness not to see the
21 accused unless the judge is of the opinion that
22 the order would interfere with the proper
23 administration of justice.

24 Paragraph 2 applies in all other cases.
25 That provision states that the judge may order
26 that the witness testify behind a screen or other
27 device that would allow the witness not to see

1 the accused if the judge is of the opinion that
2 the order is necessary to obtain a full and
3 candid account from the witness of the acts
4 complained of. In other words, under that
5 paragraph the Crown has the onus of establishing
6 that the use of the testimonial aid is necessary.

7 As I already alluded to, Defence
8 acknowledges that even though witnesses under
9 18 years old and witnesses who have physical or
10 mental disabilities are both referred to in
11 Paragraph 486.2(1), that does not mean that the
12 protections that Parliament intended for those
13 two categories of witnesses necessarily operate
14 in the same way.

15 My conclusion is that Section 486.2 draws a
16 difference between two categories of witnesses:
17 Those captured by paragraph 1,
18 a witness who is under the age of
19 eighteen years or a witness who has a mental
20 or physical disability,
21 and the others who are captured by paragraph 2.
22 In deciding whether the application for the
23 screen is governed by paragraphs 1 or 2,
24 therefore the only question is whether the
25 evidence satisfies me that the complainant is
26 able to communicate evidence but may have
27 difficulty doing so by reason of a mental or
physical disability.

1 I agree with Defence counsel that the
2 evidence does not establish the exact nature and
3 extent of Ms. K.'s cognitive issues. The
4 evidence establishes that she is illiterate and
5 that she cannot work with numbers. Those things,
6 of course, are not the same as having a mental
7 disability. The evidence also shows that she
8 struggles at times in answering questions. But
9 it falls short of establishing to what extent her
10 cognitive abilities are impaired or for what
11 reason.

12 But apart from any ambiguity in the evidence
13 about the level of cognitive difficulties that
14 the complainant may experience, the evidence does
15 clearly establish that she has a severe speech
16 impediment. Based on what I saw and heard on the
17 video-recorded interview and in the transcript of
18 her preliminary hearing evidence I am of the view
19 that this impediment can be characterized as a
20 physical disability, and that it does cause her
21 difficulty in communicating her evidence.

22 Given this I conclude that the application
23 for use of a screen during her evidence is
24 governed by Paragraph 486.1(1) of the Code.

25 When that provision is engaged it states
26 that the court shall grant the application for
27 use of the screen unless it is of the opinion

1 that the order would interfere with the proper
2 administration of justice.

3 The Defence argues that because the screen
4 is usually positioned near the accused and in any
5 event must be positioned in a way to block the
6 witness's view of the accused, this can lead the
7 jury to draw adverse inferences against the
8 accused, suggesting, for example, that he must be
9 a bad person or he must be guilty if the
10 complainant has to have her view of him blocked.

11 If that alone was enough to prevent the use
12 of the screen it would mean that a screen could
13 never be used in a jury trial for any witness. I
14 cannot accept that this was Parliament's
15 intention. In my view the potential prejudice
16 that Defence counsel refers to and is concerned
17 about can be cured with an adequate instruction
18 to the jury both at the time the testimony is
19 heard and in the final instruction to the jury.
20 Although not determinative, and I do not have the
21 exact statistics about this, the court is aware
22 that there have been cases in this jurisdiction
23 where screens have been used in jury trials that
24 resulted in acquittals. This tends to suggest
25 that the use of the device, if the proper
26 instructions are given, does not have the effect
27 of overwhelming a jury or has an overly

1 prejudicial impact on the proceedings. For those
2 reasons I granted the application for use of the
3 screen.

4 2. Application to Adduce Video-Recorded
5 Interview of the Complainant.

6 Turning now to the application to adduce the
7 video-recorded interview, that application is
8 governed by Section 715.2 of the Code which reads
9 as follows:

10 In any proceeding against an accused in
11 which a victim or other witness is able to
12 communicate evidence but may have difficulty
13 doing so by reason of a mental or physical
14 disability, a video recording made within a
15 reasonable time after the alleged offence,
16 in which the victim or witness describes the
17 acts complained of, is admissible in
18 evidence if the victim or witness, while
19 testifying, adopts the contents of the video
20 recording, unless the presiding judge or
21 justice is of the opinion that admission of
22 the video recording in evidence would
23 interfere with the proper administration of
24 justice.

25 The complainant was not called at the voir dire.
26 Essentially the Crown sought what I would call a
27 ruling in principle to the effect that if she did
28 adopt the video-recording interview at trial,
29 then it would make this admissible. In a sense
30 the Crown sought a ruling that all the other
31 prerequisites of the provision were met and that
32 if the adoption did take place then the recording
33 would be admissible.

34 Section 715.1 is worded in a very similar

1 way as Section 715.2 but applies to witnesses
2 under the age of 18. There is much more
3 jurisprudence dealing with Section 715.1 than
4 there is dealing with Section 715.2. The Crown
5 argues that these are companion provisions and
6 that the jurisprudence dealing with 715.1 should
7 inform the interpretation of 715.2. That was the
8 conclusion reached by the Ontario Court of
9 Justice in R. v. Osborne, 2011 ONSC 4289 in
10 particular at paragraph 39.

11 As I said already, the Defence's position as
12 to the interpretation of Section 715.2 overlaps
13 in some respects with its position about the use
14 of other testimonial aids. Defence argues that
15 despite the similarity in wording, the manner in
16 which Section 715.1 has been interpreted does not
17 necessarily inform what the interpretation of
18 Section 715.2 should be because not all the
19 considerations that apply to young witnesses
20 necessarily apply to a witness who suffers from
21 one form of disability or another. Defence notes
22 that no expert evidence was adduced at the voir
23 dire. There is no evidence about what level of
24 cognitive difficulties the complainant may have,
25 how those difficulties impact on her ability to
26 recount events or about how having to testify in
27 the usual way about those events could be

1 traumatic or detrimental to her.

2 As I said, the wording of Section 715.1 and
3 Section 715.2 is very similar. The only
4 difference is in the description of the type of
5 witness each provision applies to. 715.1 applies
6 to,

7 a victim or other witness who is under the
8 age of eighteen at the time the offence is
alleged to have been committed,

9 whereas 715.2 applies to,

10 a victim or other witness who is able to
11 communicate evidence but may have difficulty
12 doing so by reason of a mental or physical
disability.

13 I agree with the reasoning in Osborne that
14 the similarity of language is indicative of that
15 Parliament intended these two categories of
16 witnesses to be treated similarly for the
17 purposes of using the video-recorded statement to
18 assist in introducing that witness's testimony.
19 Parliament decided to adopt measures to
20 facilitate adducing evidence from certain
21 categories of witnesses by allowing the use of a
22 recorded interview, provided that certain
23 conditions are met. This is a statutory
24 exception to the usual prohibition for adducing
25 out-of-court statements at a trial. Its effect
26 is to avoid the witness having to tell their
27 story in court as long as they adopt what they

1 have said in the earlier interview. It serves as
2 a substitute in whole or in part for their
3 testimony in chief. The thinking behind this has
4 to be that this will assist the witness. In a
5 sense there is a legislated assumption that it
6 will assist the witness to proceed in this way.

7 What the provision requires on its face, and
8 here I am speaking of Section 715.2, is a link
9 between the disability, whether it is mental or
10 physical, and the ability of the witness to
11 communicate evidence. The provision applies,

12 when a witness is able to communicate
13 evidence but may have difficulty doing so by
 reason of a mental or physical disability.

14 To suggest that there is a requirement to
15 establish a further link between the nature of
16 the disability and the salutary effect that the
17 use of testimonial aids would have in alleviating
18 the difficulties in communicating evidence would,
19 in my view, add to the provision a requirement
20 that is not there. It could well empty this
21 provision of meaning for a large number of those
22 it was intended to assist. It may be extremely
23 difficult and in some cases impossible for the
24 Crown to adduce the type of evidence that Defence
25 counsel evoked in his submissions, by this I mean
26 evidence that could clarify the type of
27 disability a person has and how that disability

1 ties into that person's ability to testify in the
2 ordinary way.

3 So as far as how Section 715.2 operates and
4 how it should be interpreted I am in agreement
5 with the Crown's position that the jurisprudence
6 that relates to Section 715.1 is useful and that
7 there is, in this case, a sufficient evidentiary
8 basis to engage the provision. The evidence
9 shows that the complainant is able to communicate
10 evidence but may have difficulty doing so by
11 reason of a physical or mental disability.
12 Again, the impact of her speech impediment on her
13 ability to communicate evidence is clearly
14 established. There is also evidence that
15 suggests that while she is capable of
16 communicating, her difficulties in understanding
17 certain words or questions, whatever her specific
18 condition or diagnosis might be, may also give
19 her difficulties in communicating her version of
20 events.

21 The fact that the provision is available to
22 the Crown does not end matters though. The
23 question then becomes whether this particular
24 interview should be admitted pursuant to
25 Section 715.2. I do recognize that the basic
26 prerequisites for this provision to apply are
27 met. Despite the lack of cogent evidence about

1 the extent and nature of any mental disability
2 that the complainant may suffer from there is
3 clear evidence that she may have difficulty
4 communicating her evidence by reason of her
5 speech difficulties, which I consider to be a
6 physical disability. I am also satisfied that
7 the recording was made at a reasonable time after
8 the alleged events, and I am satisfied that in
9 some portions of the video she describes the acts
10 complained of.

11 The difficulty with admitting this video
12 into evidence is not that the prerequisites are
13 not met; the problem lies, in my view, with the
14 content of the statement itself because of how
15 the interview unfolded. The Crown fairly
16 acknowledged that there were several problems
17 with the video. The complainant's daughter R.
18 was present during it, the interviewing officer
19 essentially using her as a translator to help him
20 understand what the complainant was saying.
21 There are several segments of the interview where
22 the complainant speaks and it is not possible to
23 discern what she is saying. The officer then
24 asks R. to tell him what her mother is saying.
25 On the basis of what R. answers the officer
26 continues with his questions.

27 There are portions of this statement that

1 really are R.'s statement as to her
2 interpretation of what her mother is saying.
3 This is highly problematic in itself. The
4 problem is compounded because R.'s interpretation
5 of what her mother says then becomes the basis
6 for follow-up questions by the officer including
7 many leading questions.

8 There are parts of the interview where R.
9 volunteers some information on her own. This
10 clearly falls outside the ambit of what
11 Section 715.2 is meant to contemplate; and
12 finally, no doubt, because this was a difficult
13 interview to conduct, the officer uses a lot of
14 leading questions, even apart from those stemming
15 from R.'s "translations" of what her mother says.
16 Many of those incorporate reference to things
17 that the complainant has told the officer in an
18 earlier conversation that is not part of the
19 recorded interview.

20 Acknowledging those problems the Crown
21 suggested that the problematic aspects of the
22 interview could be cured by showing the whole
23 recording to the jury but editing out the sound
24 for the inadmissible portions. I accept that in
25 certain cases editing can be an adequate solution
26 where inadmissible things find their way in an
27 otherwise admissible interview. This is

1 sometimes done with accused person's statements,
2 and it is not inconceivable that it could be done
3 with a witness' statement. But here in my view
4 there are simply too many portions of the
5 statement that would have to be edited out.
6 There comes a point where an edited statement can
7 no longer be considered to be the statement of a
8 witness especially if it is edited for the kind
9 of reasons for which it would have to be edited
10 in this case. If the various portions of the
11 interview were edited as outlined during the
12 submissions we would be left, in my view, with
13 something that could no longer truly be
14 considered to be the complainant's statement.
15 The portion that the Crown itself agrees should
16 be edited out really add up to a substantial
17 portion of the interview.

18 In summary, the requirement to edit large
19 portions of the interview, the use of leading
20 questions in other portions, and the numerous
21 other portions of the interview where what
22 the complainant says is unintelligible, all lead
23 me to the conclusion that admitting this video
24 recording in evidence would interfere with the
25 administration of justice. For that reason,
26 although I agree that the provision is engaged
27 and the statutory prerequisites for admission are

1 met, I conclude that the video-recorded interview
2 cannot be used during the complainant's
3 testimony.

4 3. Application to Exclude the Public.

5 I am now going to turn to the application to
6 exclude the public. That is governed by
7 Section 486 of the Criminal Code:

8 Any proceedings against an accused shall be
9 held in open court, but the presiding judge
10 or justice may order the exclusion of all or
11 any members of the public from the courtroom
12 for all or part of the proceedings if the
13 judge or justice is of the opinion that such
14 an order is in the interest of public
15 morals, the maintenance of order or the
16 proper administration of justice or is
17 necessary to prevent injury to international
18 relations or national defence or national
19 security.

20 The part of the provision that is engaged here is
21 the one referring to the proper administration of
22 justice.

23 The constitutional validity of this
24 provision was upheld in the case of C.B.C. v.
25 A.G. New Brunswick et alia 1996 CarswellNB 462.
26 The Supreme Court also reviewed the decision of
27 the sentencing judge in that case to exclude the
28 public in that specific case. I would summarize
29 the principles that emerge from that case as
30 following:

31 First, the guidelines outlined in
32 Dagenais v. Canadian Broadcasting Corporation

1 (1994) 3 S.C.R. 835, which dealt with the
2 exercise of the common law powers to order
3 publication bans, apply when dealing with
4 applications to exclude the public. Second, the
5 burden of displacing the general rule of openness
6 of court proceedings lies with the party making
7 the application, in this case the Crown. Third,
8 when these applications are made there must be a
9 sufficient evidentiary basis from which the judge
10 can assess the applicable factors. And fourth,
11 the factors that are to be considered, and this
12 is at paragraph 69 of C.B.C. v. A.G. New
13 Brunswick, include, first, the availability of
14 other options and whether there are other
15 reasonable and effective alternatives to the
16 exclusion of the public; second, whether the
17 order sought is as limited as possible; third,
18 the importance of the objectives of the order
19 sought and its probable effect must be weighed
20 against the importance of openness and the limits
21 the order would place on the rights in order to
22 ensure that the positive and negative effects of
23 the order are proportional. In essence, it is a
24 proportionality test which, put in simpler terms
25 perhaps, boils down to whether the order would do
26 more harm than good when considering the
27 importance of the competing interests at stake.

1 The Crown seeks the exclusion of the public
2 for the complainant's testimony on the basis that
3 she is a witness who has special needs. Her
4 ability to communicate is affected by her speech
5 impediment, and even though there is no expert
6 evidence or a diagnosis about her cognitive
7 abilities the evidence presented at the voir dire
8 demonstrates that she is not an ordinary witness.
9 She presents with certain challenges as far as
10 staying focused on the questions asked and at
11 times as far as understanding certain words or
12 certain questions. That in my view is
13 demonstrated by the video-recorded interview that
14 was filed as an exhibit and by the transcript of
15 her preliminary hearing evidence, and it is to an
16 extent confirmed by the evidence of A.K.

17 The Crown argues that given these
18 challenges, having the public excluded from the
19 courtroom for her evidence will enhance her
20 chances of being able to communicate her evidence
21 as effectively as she is capable of. The Crown
22 is asking the court to infer that the presence of
23 more people in the courtroom could make the
24 entire process more intimidating, and that for a
25 witness who has special needs the court should
26 exercise its discretion to allow her to testify
27 in the least intimidating or distracting of

1 conditions possible.

2 On the basis of the evidence and going back
3 to the applicable factors, I do not think that
4 there are any alternatives available that would
5 avoid interfering with the open court principle
6 while also addressing the Crown's concerns.
7 There really is no middle ground here as far as
8 this witness's testimony is concerned. Either
9 the public will be excluded for it or it will
10 not. This is not a case where there is a
11 suggestion that the public be excluded but with
12 certain specific exceptions. The idea is to
13 allow the complainant to testify with as few
14 people as possible in the courtroom.

15 As for the second factor, which is whether
16 the order sought is as limited as possible, in my
17 view it is. The Crown is not seeking an
18 exclusion of the public for the whole trial.
19 Rather, it is asking for the exclusion of the
20 public only for the complainant's evidence.
21 Members of the public and representatives of the
22 media would be free to be there for every aspect
23 of the trial except her evidence. They could
24 hear the evidence of other witnesses, submissions
25 of counsel where her evidence will be referred
26 to, and my instructions where again her evidence
27 will be referred to. They would have access, if

1 they wish, to a transcript of her testimony and
2 could see for themselves what questions were
3 asked and what answers she gave. The order
4 sought will not render the complainant's evidence
5 a secret and shield it from public knowledge. It
6 will not shield these proceedings from any
7 scrutiny from the public.

8 The third factor is the proportionality
9 analysis that I have already talked about, the
10 analysis of good versus harm. Obviously the open
11 court principle is a fundamental one in our
12 system of law and it is very important, but it is
13 not the only principle that is at stake or
14 relevant here. There is considerable public
15 interest in ensuring that cases are decided on
16 their merits, and that witnesses who may have
17 certain vulnerabilities or special needs be able
18 to tell their stories to courts. The importance
19 of this objective is illustrated by the many
20 amendments that have been made to the Criminal
21 Code over the years to assist certain categories
22 of witnesses who may need special accommodations.
23 I have referred to this in dealing with some of
24 the other pretrial motions.

25 Parliament has identified certain categories
26 of witnesses who are thought to need special
27 accommodations, in provisions like Section 715.1

1 and 715.2 and 486.1 and 486.2, for example. Many
2 of these provisions have been challenged and have
3 been found to not breach the Charter. The
4 jurisprudence on those provisions and on those
5 issues is instructive in that it underscores that
6 one of the many important objectives of the
7 criminal justice system is its truth-seeking
8 function, and that the notion of preserving trial
9 fairness includes the rights of the accused but
10 also other interests such as the interests of
11 witnesses and complainants.

12 I recognize that the mere fact that
13 proceedings relate to alleged sexual assaults,
14 the sensitive subject matter of the evidence in
15 such cases, and the embarrassment that it may
16 cause a witness to have to testify in public
17 about such matter is not, without more, a
18 sufficient basis to grant an order excluding the
19 public. But in my view in this case there is
20 more. The evidence demonstrates that the
21 complainant faces challenges in giving her
22 evidence that are over and above the challenges
23 that any other sexual assault complainant or
24 witness in general would face. There is no
25 direct evidence that allowing her to testify with
26 fewer people present will necessarily assist her
27 in communicating her evidence, but in my view the

1 evidence in support of a motion like this one
2 does not need to be to that specific effect. I
3 am satisfied that she faces serious challenges,
4 and I am satisfied that there is at least a
5 possibility that having the public excluded for
6 her testimony may partially alleviate those
7 challenges or, put another way, I do not think it
8 is speculative or unreasonable to think that
9 those challenges and difficulties might be
10 enhanced should she have to give her evidence in
11 front of a packed courtroom.

12 The order sought will result in a breach of
13 the open court principle and an encroachment of
14 the rights protection by Section 2(b) of the
15 Charter but will do so in a limited way and only
16 to the extent necessary to maximize the chance of
17 having the evidence heard, assessed by the jury
18 and for the case to be decided on its merits.

19 Those are the reasons why I granted the
20 Crown's application to have the public excluded
21 for the testimony of the complainant. I have
22 directed that a transcript of her evidence be
23 filed. It means that it will be readily
24 accessible to anyone interested in these
25 proceedings and who may want to know what the
26 details of her testimony were.

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1

2 CERTIFICATE OF TRANSCRIPT

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6 I, the undersigned, hereby certify that the
7 foregoing pages are a complete and accurate transcript
8 of the proceedings taken down by me in shorthand and
9 transcribed from my shorthand notes to the best of my
10 skill and ability.

11 Dated at the City of Edmonton, Province of
12 Alberta, this 21st, July, 2015.

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Certified Pursuant to Rule 723
of the Rules of Court

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Darlene Sirman, CSR(A)

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Court Reporter

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