

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

BLAKE NESSEL

Transcript of the Decision held before The Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 16th day of February, 2018.

APPEARANCES:

Ms. M. Zimmer: Counsel for the Crown
Ms. K. Oja, agent for R. Clements: Counsel for the Accused

(Charges under s. 271 the *Criminal Code*)

No information shall be published in any document or broadcast or transmitted in any way which could identify the victim or a witness in these proceedings pursuant to s . 486 . 4 of the *Criminal Code*
This decision has been edited to comply with s . 486 . 4 of the *Criminal Code*

1 THE COURT: So dealing with the decision
2 on Mr. Nessel's application. The accused Blake
3 Nessel is charged with having sexually assaulted
4 TN on August 26, 2016 in Hay River, Northwest
5 Territories. This matter is set for trial by
6 judge and jury on April 9th, 2018.

7 The accused has brought an application
8 pursuant to section 276 of the *Criminal Code*
9 seeking permission to adduce evidence of prior
10 sexual activity between himself and TN.

11 Pursuant to section 276, evidence that the
12 complainant has engaged in sexual activity,
13 whether with the accused or with any other
14 person, is not admissible to support an inference
15 that the complainant because of the sexual nature
16 of that activity either is more likely to have
17 consented to the sexual activity that forms the
18 basis of the charge or is less worthy of belief.
19 These are referred to as the twin myths, and the
20 section is intended to ensure that any evidence
21 of sexual activity that is adduced is relevant to
22 the allegations before the Court and does not
23 contribute to stereotypical representations of
24 sexual assault victims.

25 The procedure for determining the
26 admissibility of this evidence is set out in
27 section 276, 276.1 and 276.2 of the *Criminal*

1 Code.

2 The application process requires a two-stage
3 process. The accused first applies for a hearing
4 to determine the admissibility of the evidence
5 pursuant to section 276.1. If the preconditions
6 are satisfied, then the judge may order a
7 hearing.

8 The preconditions in section 276.1(4)
9 require a judge to be satisfied that first, the
10 application is made in accordance with subsection
11 (2) so it is in writing and sets out the detailed
12 particulars of the evidence that the accused
13 wishes to adduce and the relevance of that
14 evidence to an issue at trial; second, a copy of
15 the application was filed with the clerk and
16 provided to the Crown at least seven days in
17 advance or such shorter interval as the judge may
18 allow where the interest of justice require; and
19 third, the evidence sought to be adduced is
20 capable of being admissible under section 276(2).

21 Crown counsel conceded that the evidence was
22 capable of being admitted and that the defence
23 had met the preconditions set out in section
24 276.1.

25 The application was made by the accused in
26 writing seeking to adduce two prior occasions of
27 sexual intercourse with TN that the accused

1 alleged occurred in the summer of 2016.

2 The application, as filed, did not make
3 reference to the defence of honest but mistaken
4 belief in consent.

5 At the outset of the hearing, defence
6 counsel advised that this was also an issue and
7 that he wished to address it during the
8 application. Despite the lack of notice, the
9 Crown indicated that they were prepared to
10 address this issue as well. We adjourned so that
11 the accused could provide a supplemental
12 affidavit addressing that issue.

13 I was satisfied that the preconditions had
14 been met and ordered a hearing into the
15 admissibility of the evidence.

16 The evidence that was adduced at the hearing
17 consisted of the affidavit of Blake Nessel, the
18 supplementary affidavit of Blake Nessel, the
19 transcript of the preliminary inquiry, the
20 statement of TN, statement of JL, the statement
21 of JD, the statement of JLL, and a screen shot of
22 a note on TN's ipod. In addition, the accused
23 testified at the hearing and was cross-examined.

24 With respect to the evidence at the hearing,
25 the statement of TN was provided to the RCMP on
26 August 27, 2016. In her statement, TN told the
27 police that she had been babysitting at the

1 apartment of the accused and his girlfriend
2 Rebecca Brown. She was in the apartment with her
3 cousin and little sister and the baby that
4 evening. At around 10 or 11 the accused came to
5 the apartment, and she let him in. She thought
6 he was intoxicated and possibly high.

7 The complainant said that the accused
8 repeatedly asked her to have sex with him, and
9 she kept saying no. She went outside to have a
10 smoke, and the accused came outside on the
11 balcony with her. When they were outside, he
12 kept asking her if he could have sex with her,
13 and she said no. He tried to grab her and kiss
14 her, and she pushed him away. They went back
15 inside the apartment, and she sat down beside her
16 cousin and sister. The accused went down the
17 hall and then she heard him calling her name.
18 She ignored him, and a couple of minutes later he
19 called her name again. She went down the hall
20 and into the spare room, and he closed the door.

21 She said he started to come on to her again
22 and that he pulled down his pants and pulled down
23 her pants. He put her on the bed, and he was
24 behind her in a spooning position. He put his
25 penis inside her. She said she kept telling him
26 to stop and saying no.

27 About two minutes later she heard a knock on

1 the door, and the accused stopped. She said the
2 accused pretended to sleep, and she opened the
3 door and saw her aunts JL and JD.

4 When asked in the statement how long she had
5 known the accused for, TN said that she had just
6 met him recently since she moved back here.
7 There were no questions asked in the statement
8 about any prior sexual interactions between
9 herself and the accused.

10 The complainant also testified at a
11 preliminary inquiry into this matter on March
12 21st, 2017. The Crown tendered the complainant's
13 statement pursuant to section 540(7) of the
14 *Criminal Code*, and she testified briefly before
15 being cross-examined by counsel for the accused.

16 During the cross-examination, TN testified
17 that she had moved to Hay River in May 2016 and
18 had babysat for Rebecca Brown during the summer
19 of 2016.

20 TN was asked if she went to Kalinda
21 Cardinal's house, the mother of the accused, to
22 see the accused, and she testified that she
23 didn't think so. She also testified that she had
24 drunk a lot that summer and that she might have
25 gone there when she was drunk. TN denied
26 spending time with the accused outside of when
27 she babysat for Ms. Brown, and she testified that

1 she only saw the accused around Rebecca Brown
2 that summer and never saw him alone.

3 When asked if she had exchanged Facebook
4 messages with the accused to meet at the Rooster,
5 TN said she did not remember. She was asked if
6 she met up with the accused at the Rooster, and
7 she answered that she did not know. She was
8 asked about walking with the accused on a trail,
9 and she testified that she did not know.

10 JL provided a statement to the police on
11 August 27th, 2016. She stated in her statement
12 that she and JD went to Rebecca Brown's
13 apartment. When they entered the apartment JD
14 knocked on a door and yelled to open the door.
15 TN came out of the room clothed and looking
16 upset. A male was on the bed face down.

17 JD provided a statement to the police on
18 September 8th, 2016, and she said that she had
19 gone to the accused's apartment and knocked on
20 the bedroom door and told TN to open the door.
21 She heard something zip up and the door opened.
22 The accused was on the bed half naked laying face
23 down. TN came out of the room and was shaking.

24 JLL provided a statement to the police on
25 August 27th, 2016. She said that she went with
26 TN to babysit. At around 10:30 a guy came to the
27 door and was let in by TN. He seemed to her to

1 be drunk and high. This man and TN went out on
2 the balcony to smoke and came in a few minutes
3 later. He went down the hall, and TN showed her
4 a note on her ipod that said something like "WTF,
5 he's trying to bang me", and TN shook her head
6 no.

7 A few minutes later he called TN, and she
8 did not answer. He called her name again
9 sounding angrier. TN went down the hall, and
10 after a few minutes when she did not come back,
11 Ms. JLL went down the hall and heard TN say no.
12 Then someone knocked on the door, and she opened
13 the door and it was her mother and JD, her mother
14 being JL.

15 A photocopy of the note that TN made on the
16 ipod was entered into evidence. It is dated
17 August 26 and shows a time of 11 p.m., and the
18 note says "WTF, he's trying to bang me... No
19 thank you".

20 Mr. Nessel provided two affidavits and
21 testified on the hearing. His evidence was that
22 he met TN during the summer of 2016. TN had been
23 babysitting for his children and that he and TN
24 had consensual sexual contact on two occasions.
25 Because he was in a relationship with Rebecca
26 Brown, he attempted to conceal this sexual
27 activity from Ms. Brown and others. He believed

1 that TN also attempted to conceal the sexual
2 activity.

3 On the first occasion, the accused said that
4 he had consensual sexual intercourse with TN in
5 his bedroom at his mother's home in Hay River.
6 This was the first time he had met TN, and she
7 was babysitting at the time for he and Ms. Brown.
8 He had come home, and TN was in the living room
9 with his daughter, who was asleep. He said they
10 talked for a bit and then he asked her to have
11 sex with him. She followed him down the hall to
12 his bedroom. They were in his bed and had sex in
13 a spooning position. He believed that no one was
14 home except for himself, TN and his daughter.

15 On the second occasion, the accused said
16 that TN and he arranged to meet at the Rooster in
17 Hay River. They walked together to a secluded
18 area off of a trail and had consensual sexual
19 intercourse.

20 The accused's evidence was that this
21 occurred around the beginning of August 2016 and
22 a couple of weeks after the first time they had
23 sexual intercourse. Afterwards, the accused
24 testified that he told TN that "if you want to
25 keep doing this, keep it secret, keep it to
26 ourselves".

27 On the night of August 26, 2016 the accused

1 testified that he returned to his apartment that
2 he shared with Rebecca Brown and their daughter.
3 He had been drinking beer earlier with Rebecca
4 Brown and others. He says that he went on the
5 balcony with TN and they shared a cigarette. He
6 asked her about having sex that evening, but he
7 didn't recall her saying yes or no. TN went back
8 inside and he followed her inside. He went down
9 the hallway of the apartment and into a spare
10 bedroom. He called TN, and she came into the
11 bedroom and closed the door behind her. He was
12 on the bed and said let's have sex.

13 His evidence was that TN came over to the
14 bed, got on the bed and pulled her pants down.
15 He pulled his pants down, and they engaged in
16 sexual activity in a spooning position. This
17 lasted for about 30 seconds before there was a
18 knock on the door. TN got up off the bed and
19 stood by the door. He said that she hesitated
20 before opening the door.

21 According to the accused's supplementary
22 affidavit, TN never said any words such as "no"
23 or "don't" or "stop" or "I don't want to", and
24 did not make any gestures such as pulling away or
25 pushing or struggling or resisting that would
26 indicate to him that she was not consenting to
27 what occurred.

1 That is the evidence that was before me on
2 this application relative to the sexual history
3 that the accused alleges he had with the
4 complainant and that he wishes to have tendered
5 into evidence at the trial.

6 Section 276(1) of the *Criminal Code* states
7 that evidence that the complainant has engaged in
8 sexual activity, whether with the accused or with
9 any other person, is not admissible to support an
10 inference that by reason of the sexual nature of
11 the activity the complainant is more likely to
12 have consented to the sexual activity that is the
13 subject matter of the charge or is less worthy of
14 belief.

15 An accused person is not allowed to adduce
16 evidence of the sexual history of the complainant
17 unless the Court is satisfied that the evidence
18 pursuant to section 276(2) is of specific
19 instances of sexual activity, is relevant to an
20 issue at trial, and has significant probative
21 value that is not substantially outweighed by the
22 danger of prejudice to the proper administration
23 of justice.

24 Section 276(3) sets out a number of factors
25 that I must take into account in determining
26 whether the evidence is admissible. They are:
27 the interests of justice, including the right of

1 the accused to make full answer and defence;
2 society's interest in encouraging the reporting
3 of sexual assault offences; whether there is a
4 reasonable prospect that the evidence will assist
5 in arriving at a just determination in the case;
6 the need to remove from the fact-finding process
7 any discriminatory belief or bias; the risk that
8 the evidence may unduly arouse sentiments of
9 prejudice, sympathy or hostility in the jury; the
10 potential prejudice to the complainant's personal
11 dignity and right of privacy; the right of the
12 complainant and of every individual to personal
13 security and to the full protection and benefit
14 of the law; and any other factor that the judge
15 considers relevant.

16 There is no dispute that the evidence that
17 the accused proposes to adduce is of specific
18 instances of sexual activity as contemplated by
19 section 276(2)(a) of the *Criminal Code*. The
20 issue is whether it is relevant to an issue at
21 trial and whether it has significant probative
22 value that is not substantially outweighed by the
23 danger of prejudice.

24 In order to determine whether the evidence
25 is relevant to an issue in trial, it is necessary
26 to identify the issue to which the evidence is
27 relevant as stated in the *R. v. L.S.*, 2017 ONCA

1 685 at paragraph 86: "Relevance is
2 fact-specific. It depends on the material facts
3 in issue, the evidence adduced, and the positions
4 of the parties."

5 In order to be relevant, the evidence does
6 not have to establish or refute the fact in
7 issue. It does not have to be determinative.
8 The evidence only has to have some tendency to
9 make the existence or non existence of the
10 material fact more or less likely. *L.S.*, *Supra* at
11 paragraph 89

12 In this case the defence is claiming that
13 the defence will be one of consent or of honest
14 but mistaken belief in consent. The defence
15 argues that it is necessary for the trier of fact
16 to know about the prior sexual activity between
17 the accused and TN as it is relevant to
18 contextual narrative and credibility, consent,
19 and honest but mistaken belief in consent.

20 The defence argues that it will be
21 impossible for the trier of fact to properly
22 assess the accused's claim that the sexual
23 activity that forms the subject matter of the
24 charge was consensual if the jury is left with
25 the impression that the accused requested sex
26 with his babysitter, a virtual stranger, without
27 knowing about the accused's claim that they had a

1 prior sexual relationship.

2 The defence argues that the accused's
3 evidence of the prior sexual activity between the
4 accused and TN is necessary and relevant to the
5 contextual narrative and credibility as well as
6 consent.

7 The anticipated evidence of the complainant,
8 based upon her statement and the preliminary
9 inquiry transcript, will be that the accused
10 returned to the apartment that evening
11 intoxicated. The accused repeatedly asked her to
12 have sex with him and she kept saying no, both
13 inside the apartment and out on the balcony when
14 she went for a smoke and the accused accompanied
15 her.

16 Back inside the apartment, the complainant
17 sat down beside her cousin and sister and typed a
18 message on her ipod, which she showed to her
19 cousin, that said "WTF, he's trying to bang me.
20 No thank you."

21 The accused went down the hall and then she
22 heard him calling her name. She went down the
23 hall and into the bedroom, and he closed the
24 door. He started to come on to her again. The
25 complainant said that he pulled his pants down
26 and pulled down her pants. He put her on the bed
27 and was behind her in a spooning position. The

1 complainant says that she kept telling him to
2 stop and saying no. About two minutes later she
3 heard a knock on the door, and the accused
4 stopped.

5 It is not clear what the complainant will
6 say about prior sexual activity with the accused.
7 She was asked some general questions about
8 meeting with the accused at his home at the
9 preliminary inquiry, and she denied being alone
10 with him at any time. She was also asked at the
11 preliminary inquiry about meeting him at the
12 Rooster, and she answered that she didn't know
13 when she was asked about meeting the accused at
14 the Rooster.

15 The accused's evidence is that he had
16 consensual sexual intercourse with the
17 complainant on two occasions in the weeks leading
18 up to the alleged incident. His evidence is that
19 the encounter on August 26, 2016 was also
20 consensual, and he argues that it bore some
21 similarity to what occurred the first time he and
22 the complainant had sexual intercourse.

23 Evidence of other sexual activity can be
24 important to an accused's ability to make full
25 answer and defence. The defence position is that
26 the complainant consented to the sexual activity
27 and only complained about the incident when they

1 were caught by her aunts, who accused her of
2 being irresponsible.

3 One of the issues the jury will be
4 considering will be the relationship between the
5 parties when determining whether the complainant
6 consented to having sexual intercourse with the
7 accused. Without evidence of prior consensual
8 sexual activity between the complainant and the
9 accused, the jury will likely have questions and
10 wonder why the complainant would agree to have
11 sex with a virtual stranger, would wonder what
12 the relationship was between the parties prior to
13 this night, would wonder why the accused expected
14 that the complainant would consent to his request
15 to have sex on that occasion.

16 Credibility will be a central issue at trial
17 in assessing the conduct of the complainant and
18 the accused during the incident and the
19 believability of their positions. The jury may
20 be influenced by their perception of the nature
21 and extent of the relationship between them.

22 Among other things, the jury will have to
23 consider why the complainant walked down the
24 hallway and went into the room with the accused,
25 why she wrote the note on the ipod that she
26 showed to her cousin, why the complainant was
27 hesitant to open the door when her aunts knocked

1 on it, whether the timing of her complaint to her
2 aunts about what occurred was part of her effort
3 to conceal the consensual nature of her sexual
4 activity with the accused.

5 If the accused is unable to testify about
6 the prior sexual activity between himself and the
7 complainant, the jury could assume that there was
8 no prior relationship between the parties, and
9 that the accused and complainant were practically
10 strangers. This has the potential to make the
11 evidence of the accused improbable or
12 preposterous.

13 As stated in *R. v. Strickland* 2007 CanLII
14 3679 at paragraph 35: "The probative value of
15 this contextual evidence is not to support the
16 inference of an increased likelihood of consent.
17 Rather, it is to dispel the inference of the
18 unlikelihood of consent, which would result if
19 the jury were left with the misapprehension that
20 the sexual relations in question must have
21 occurred on the sudden, with no pre-existing
22 relationship between the parties."

23 The evidence of the complainant will likely
24 refer to the note she wrote on the ipod to her
25 cousin. One conclusion that could be drawn from
26 this note is that the complainant was not
27 interested in having sexual intercourse with the

1 accused. Her evidence will likely be that she
2 had little contact with the accused before this
3 incident, although, as I said, it is not clear
4 what she will say if asked about being in the
5 accused's bedroom alone at his mother's house and
6 about meeting him at the Rooster.

7 The evidence of the complainant will place
8 the nature of her relationship with the accused
9 in issue.

10 The accused's assertion of the prior sexual
11 activity between himself and the complainant is
12 relevant to the contextual narrative and to
13 credibility. In order to make full answer and
14 defence, the accused is entitled to lead evidence
15 of the alleged prior sexual activity between
16 himself and the complainant.

17 With respect to honest but mistaken belief
18 in consent, this issue frequently arises in
19 section 276 applications. It arises in
20 situations where the accused alleges that he
21 honestly believed that the complainant was
22 consenting to the sexual activity when the
23 evidence of the complainant is that she did not
24 consent.

25 It often occurs in situations where there
26 may be some ambiguity regarding the issue of
27 consent. It does not arise when there is clear

1 evidence of non consent, for example, where the
2 complainant is vigorously resisting or yelling
3 no.

4 There is an evidentiary burden on the
5 accused to establish that he believed there was
6 consent by the complainant to engage in the
7 sexual activity in question. This requires
8 evidence by the accused and specific evidence
9 regarding conduct or words that led him to
10 believe the complainant was consenting. The
11 Ontario Court of Appeal in the *R. v. Harris*,
12 (1997) 118 C.C.C.(3d)498, provides a number of
13 factors to consider in this situation.

14 The Court of Appeal stated at page 508:
15 "Where evidence of prior consensual sexual
16 activity between the parties is being proffered
17 to support the defence of honest but mistaken
18 belief in consent, it must be tested on a
19 case-by-case basis having regard to all of the
20 circumstances, including, but not limited to: The
21 viability of the defence itself; the nature and
22 extent of the prior sexual activity as compared
23 to the sexual activity forming the subject matter
24 of the charge; the time frame separating the
25 incident; and the nature of the relationship
26 between the parties."

27 The evidence of the accused is that the

1 complainant voluntarily entered the bedroom and
2 closed and locked the door. She got on the bed
3 herself and removed her pants, that they began to
4 have sex in a spooning position before they were
5 quickly interrupted by the knock on the door.

6 The accused's evidence was that she did not
7 say "no" or "stop" or do anything to suggest that
8 she was not consenting to what was occurring.

9 The evidence of the complainant, based upon
10 the statement to the police, was that she said
11 "no" and "stop" in the bedroom.

12 The statement of JLL indicates that she
13 heard the complainant say no from inside the
14 bedroom shortly before her mother knocked on the
15 apartment door. The evidence of the Crown seems
16 to establish that the complainant indicated her
17 non consent to the actions of the accused. She
18 said "no", and said it loud enough that her
19 cousin heard it from outside the door of the
20 room.

21 At this point I am not satisfied that there
22 is evidence which gives an air of reality to the
23 defence of honest but mistaken belief in consent.
24 Certainly, evidence during the trial may unfold
25 differently, and the issue can be revisited, but
26 I am not satisfied that there is a basis to the
27 section 276 application pursuant to the honest

1 but mistaken belief in consent defence.

2 The third condition is that the evidence
3 must have significant probative value that is not
4 substantially outweighed by the danger of
5 prejudice to the proper administration of
6 justice.

7 Significant probative value means that the
8 evidence must have more than a trifling relevance
9 and is capable in the context of all of the
10 evidence of leaving the jury with a reasonable
11 doubt. *L.S.*, *Supra* at paragraph 90.

12 Evidence that the accused and TN may have
13 engaged in consensual sexual activity before the
14 alleged sexual assault has a probative value that
15 is more than trifling. Evidence about the nature
16 of the relationship in the weeks before the
17 alleged incident could be of assistance to the
18 jury in assessing the evidence of the complainant
19 and the accused in making determinations
20 regarding their credibility. It also provides
21 contextual narrative to the accused's evidence.

22 Considering the accused's evidence without
23 hearing about the prior sexual activities that he
24 alleged occurred between he and the complainant
25 could cause the jury to dismiss the accused's
26 account and prevent the trier of fact from
27 considering the prior relationship, if it

1 existed, in assessing the conduct of the parties
2 on the night in question.

3 In considering potential prejudice, the
4 Crown argued that this stigmatizes the
5 complainant, perpetuates a trope of her as the
6 "drunken, crazy, home wrecker". No one has
7 referred to the complainant in that way or made
8 any suggestion of the sort.

9 The evidence of the complainant from the
10 preliminary inquiry referred to her use of
11 alcohol and her mental health struggles. She
12 testified that she was consuming a lot of alcohol
13 in the summer of 2016, and she also testified
14 that she had taken medication on occasion for
15 depression.

16 It is a fact that the complainant has had
17 some issues, whether they are big or small is not
18 for me to say, which have had an impact on her.
19 She acknowledged in her testimony that her
20 consumption of alcohol may have had an affect on
21 her memory. That is a relevant issue to be
22 explored at trial, so is any prior relationship
23 she may have had with the accused.

24 I am cognizant that there may be some
25 prejudice which will result from the trier of
26 fact hearing about prior sexual activity between
27 the complainant and the accused. Any potential

1 prejudice can be limited and addressed in two
2 ways; first, the potential misuse of the evidence
3 by the jurors can be limited by a clear warning
4 to the jury about the use they can make of this
5 evidence in the charge to the jury in accordance
6 with section 276.4 of the *Criminal Code*.

7 The second way that this prejudice can be
8 limited is through a limitation on what evidence
9 can be adduced at the trial and limiting the
10 extent of the cross-examination of the
11 complainant on this issue. This will assist in
12 limiting the prejudice as well as maintaining, as
13 much as possible, the complainant's personal
14 dignity and right of privacy.

15 This is not a situation where the intimate
16 details of the sexual activity are relevant. The
17 relevance arises from the assertion that the
18 sexual relationship existed at all, that there
19 may have been a sexual relationship which
20 consisted of two sexual encounters that occurred
21 in the weeks before the allegations and that the
22 accused wished to conceal this relationship from
23 others.

24 I have also considered society's interest in
25 encouraging the reporting of sexual assault
26 offences. While delving into the prior sexual
27 activity between the accused and the complainant

1 could operate to discourage reporting of sexual
2 assault offences, requiring the complainant to
3 answer some questions about any prior
4 relationship with the accused would not have that
5 result.

6 The complainant will have to testify at the
7 trial about intimate details of the alleged
8 sexual assault and requiring her to answer
9 additional questions of a more general nature
10 about prior encounters with the accused will not
11 add significantly to that burden.

12 In conclusion, the application is granted,
13 and the accused has permission to adduce evidence
14 at trial concerning his prior sexual activities
15 with the complainant.

16 The evidence that may be adduced will be
17 general in nature and only refer to the sexual
18 nature of the activity, the number of times that
19 it is alleged to have occurred, the time and
20 place in which the activities are alleged to have
21 occurred, that the parties were alone at the
22 relevant time, and that the accused wished to
23 conceal the activities from others.

24 Counsel will not be permitted to elicit the
25 specific details of the alleged sexual
26 encounters, and this ruling is subject to being
27 revisited depending on the evidence adduced at

1 trial in the event that it is materially
2 different than the evidence which was adduced at
3 the hearing.

4
5

6 **PROCEEDINGS ADJOURNED TO MARCH 5, 2018 A.M.**

7
8 **CERTIFICATE OF TRANSCRIPT**

9

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

15 Dated at the City of edmonton, Province of
16 Alberta, this 26th day of February, 2018.

17 Certified Pursuant to Rule 723.
18 of the Rules of Court

19



20

21

Colleen Rea

22

Court Reporter

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