*R v Nessel*, 2018 NWTSC 18 **S-1-CR-2017-000052**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES IN THE MATTER OF:

**HER MAJESTY THE QUEEN**

**- v - BLAKE NESSEL**

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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*
28. *Code*.
29. The application process requires a two-stage
30. process. The accused first applies for a hearing
31. to determine the admissibility of the evidence
32. pursuant to section 276.1. If the preconditions
33. are satisfied, then the judge may order a
34. hearing.
35. The preconditions in section 276.1(4)
36. require a judge to be satisfied that first, the
37. application is made in accordance with subsection
38. (2) so it is in writing and sets out the detailed
39. particulars of the evidence that the accused
40. wishes to adduce and the relevance of that
41. evidence to an issue at trial; second, a copy of
42. the application was filed with the clerk and
43. provided to the Crown at least seven days in
44. advance or such shorter interval as the judge may
45. allow where the interest of justice require; and
46. third, the evidence sought to be adduced is
47. capable of being admissible under section 276(2).
48. Crown counsel conceded that the evidence was
49. capable of being admitted and that the defence
50. had met the preconditions set out in section

24 276.1.

1. The application was made by the accused in
2. writing seeking to adduce two prior occasions of
3. sexual intercourse with TN that the accused
4. alleged occurred in the summer of 2016.
5. The application, as filed, did not make
6. reference to the defence of honest but mistaken
7. belief in consent.
8. At the outset of the hearing, defence
9. counsel advised that this was also an issue and
10. that he wished to address it during the
11. application. Despite the lack of notice, the
12. Crown indicated that they were prepared to
13. address this issue as well. We adjourned so that
14. the accused could provide a supplemental
15. affidavit addressing that issue.
16. I was satisfied that the preconditions had
17. been met and ordered a hearing into the
18. admissibility of the evidence.
19. The evidence that was adduced at the hearing
20. consisted of the affidavit of Blake Nessel, the
21. supplementary affidavit of Blake Nessel, the
22. transcript of the preliminary inquiry, the
23. statement of TN, statement of JL, the statement
24. of JD, the statement of JLL, and a screen shot of
25. a note on TN's ipod. In addition, the accused
26. testified at the hearing and was cross-examined.
27. With respect to the evidence at the hearing,
28. 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.

1. TN was asked if she went to Kalinda
2. Cardinal's house, the mother of the accused, to
3. see the accused, and she testified that she
4. didn't think so. She also testified that she had
5. drunk a lot that summer and that she might have
6. gone there when she was drunk. TN denied
7. spending time with the accused outside of when
8. she babysat for Ms. Brown, and she testified that
9. she only saw the accused around Rebecca Brown
10. that summer and never saw him alone.
11. When asked if she had exchanged Facebook
12. messages with the accused to meet at the Rooster,
13. TN said she did not remember. She was asked if
14. she met up with the accused at the Rooster, and
15. she answered that she did not know. She was
16. asked about walking with the accused on a trail,
17. and she testified that she did not know.
18. JL provided a statement to the police on

11 August 27th, 2016. She stated in her statement

1. that she and JD went to Rebecca Brown's
2. apartment. When they entered the apartment JD
3. knocked on a door and yelled to open the door.
4. TN came out of the room clothed and looking
5. upset. A male was on the bed face down.
6. JD provided a statement to the police on

18 September 8th, 2016, and she said that she had

1. gone to the accused's apartment and knocked on
2. the bedroom door and told TN to open the door.
3. She heard something zip up and the door opened.
4. The accused was on the bed half naked laying face
5. down. TN came out of the room and was shaking.
6. JLL provided a statement to the police on

25 August 27th, 2016. She said that she went with

1. TN to babysit. At around 10:30 a guy came to the
2. door and was let in by TN. He seemed to her to
3. be drunk and high. This man and TN went out on
4. the balcony to smoke and came in a few minutes
5. later. He went down the hall, and TN showed her
6. a note on her ipod that said something like "WTF,
7. he's trying to bang me", and TN shook her head
8. no.
9. A few minutes later he called TN, and she
10. did not answer. He called her name again
11. sounding angrier. TN went down the hall, and
12. after a few minutes when she did not come back,
13. Ms. JLL went down the hall and heard TN say no.
14. Then someone knocked on the door, and she opened
15. the door and it was her mother and JD, her mother
16. being JL.
17. A photocopy of the note that TN made on the
18. ipod was entered into evidence. It is dated

17 August 26 and shows a time of 11 p.m., and the

1. note says "WTF, he's trying to bang me... No
2. thank you".
3. Mr. Nessel provided two affidavits and
4. testified on the hearing. His evidence was that
5. he met TN during the summer of 2016. TN had been
6. babysitting for his children and that he and TN
7. had consensual sexual contact on two occasions.
8. Because he was in a relationship with Rebecca
9. Brown, he attempted to conceal this sexual
10. activity from Ms. Brown and others. He believed
11. that TN also attempted to conceal the sexual
12. activity.
13. On the first occasion, the accused said that
14. he had consensual sexual intercourse with TN in
15. his bedroom at his mother's home in Hay River.
16. This was the first time he had met TN, and she
17. was babysitting at the time for he and Ms. Brown.
18. He had come home, and TN was in the living room
19. with his daughter, who was asleep. He said they
20. talked for a bit and then he asked her to have
21. sex with him. She followed him down the hall to
22. his bedroom. They were in his bed and had sex in
23. a spooning position. He believed that no one was
24. home except for himself, TN and his daughter.
25. On the second occasion, the accused said
26. that TN and he arranged to meet at the Rooster in
27. Hay River. They walked together to a secluded
28. area off of a trail and had consensual sexual
29. intercourse.
30. The accused's evidence was that this
31. occurred around the beginning of August 2016 and
32. a couple of weeks after the first time they had
33. sexual intercourse. Afterwards, the accused
34. testified that he told TN that "if you want to
35. keep doing this, keep it secret, keep it to
36. ourselves".
37. 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
38. the accused to make full answer and defence;
39. society's interest in encouraging the reporting
40. of sexual assault offences; whether there is a
41. reasonable prospect that the evidence will assist
42. in arriving at a just determination in the case;
43. the need to remove from the fact-finding process
44. any discriminatory belief or bias; the risk that
45. the evidence may unduly arouse sentiments of
46. prejudice, sympathy or hostility in the jury; the
47. potential prejudice to the complainant's personal
48. dignity and right of privacy; the right of the
49. complainant and of every individual to personal
50. security and to the full protection and benefit
51. of the law; and any other factor that the judge
52. considers relevant.
53. There is no dispute that the evidence that
54. the accused proposes to adduce is of specific
55. instances of sexual activity as contemplated by
56. section 276(2)(a) of the *Criminal Code*. The
57. issue is whether it is relevant to an issue at
58. trial and whether it has significant probative
59. value that is not substantially outweighed by the
60. danger of prejudice.
61. In order to determine whether the evidence
62. is relevant to an issue in trial, it is necessary
63. to identify the issue to which the evidence is
64. relevant as stated in the *R. v. L.S.*, 2017 ONCA
65. 685 at paragraph 86: "Relevance is
66. fact-specific. It depends on the material facts
67. in issue, the evidence adduced, and the positions
68. of the parties."
69. In order to be relevant, the evidence does
70. not have to establish or refute the fact in
71. issue. It does not have to be determinative.
72. The evidence only has to have some tendency to
73. make the existence or non existence of the
74. material fact more or less likely. *L.S.,* Supra at
75. paragraph 89
76. In this case the defence is claiming that
77. the defence will be one of consent or of honest
78. but mistaken belief in consent. The defence
79. argues that it is necessary for the trier of fact
80. to know about the prior sexual activity between
81. the accused and TN as it is relevant to
82. contextual narrative and credibility, consent,
83. and honest but mistaken belief in consent.
84. The defence argues that it will be
85. impossible for the trier of fact to properly
86. assess the accused's claim that the sexual
87. activity that forms the subject matter of the
88. charge was consensual if the jury is left with
89. the impression that the accused requested sex
90. with his babysitter, a virtual stranger, without
91. knowing about the accused's claim that they had a
92. prior sexual relationship.
93. The defence argues that the accused's
94. evidence of the prior sexual activity between the
95. accused and TN is necessary and relevant to the
96. contextual narrative and credibility as well as
97. consent.
98. The anticipated evidence of the complainant,
99. based upon her statement and the preliminary
100. inquiry transcript, will be that the accused
101. returned to the apartment that evening
102. intoxicated. The accused repeatedly asked her to
103. have sex with him and she kept saying no, both
104. inside the apartment and out on the balcony when
105. she went for a smoke and the accused accompanied
106. her.
107. Back inside the apartment, the complainant
108. sat down beside her cousin and sister and typed a
109. message on her ipod, which she showed to her
110. cousin, that said "WTF, he's trying to bang me.
111. No thank you."
112. The accused went down the hall and then she
113. heard him calling her name. She went down the
114. hall and into the bedroom, and he closed the
115. door. He started to come on to her again. The
116. complainant said that he pulled his pants down
117. and pulled down her pants. He put her on the bed
118. and was behind her in a spooning position. The
119. complainant says that she kept telling him to
120. stop and saying no. About two minutes later she
121. heard a knock on the door, and the accused
122. stopped.
123. It is not clear what the complainant will
124. say about prior sexual activity with the accused.
125. She was asked some general questions about
126. meeting with the accused at his home at the
127. preliminary inquiry, and she denied being alone
128. with him at any time. She was also asked at the
129. preliminary inquiry about meeting him at the
130. Rooster, and she answered that she didn't know
131. when she was asked about meeting the accused at
132. the Rooster.
133. The accused's evidence is that he had
134. consensual sexual intercourse with the
135. complainant on two occasions in the weeks leading
136. up to the alleged incident. His evidence is that
137. the encounter on August 26, 2016 was also
138. consensual, and he argues that it bore some
139. similarity to what occurred the first time he and
140. the complainant had sexual intercourse.
141. Evidence of other sexual activity can be
142. important to an accused's ability to make full
143. answer and defence. The defence position is that
144. the complainant consented to the sexual activity
145. and only complained about the incident when they
146. were caught by her aunts, who accused her of
147. being irresponsible.
148. One of the issues the jury will be
149. considering will be the relationship between the
150. parties when determining whether the complainant
151. consented to having sexual intercourse with the
152. accused. Without evidence of prior consensual
153. sexual activity between the complainant and the
154. accused, the jury will likely have questions and
155. wonder why the complainant would agree to have
156. sex with a virtual stranger, would wonder what
157. the relationship was between the parties prior to
158. this night, would wonder why the accused expected
159. that the complainant would consent to his request
160. to have sex on that occasion.
161. Credibility will be a central issue at trial
162. in assessing the conduct of the complainant and
163. the accused during the incident and the
164. believability of their positions. The jury may
165. be influenced by their perception of the nature
166. and extent of the relationship between them.
167. Among other things, the jury will have to
168. consider why the complainant walked down the
169. hallway and went into the room with the accused,
170. why she wrote the note on the ipod that she
171. showed to her cousin, why the complainant was
172. hesitant to open the door when her aunts knocked
173. on it, whether the timing of her complaint to her
174. aunts about what occurred was part of her effort
175. to conceal the consensual nature of her sexual
176. activity with the accused.
177. If the accused is unable to testify about
178. the prior sexual activity between himself and the
179. complainant, the jury could assume that there was
180. no prior relationship between the parties, and
181. that the accused and complainant were practically
182. strangers. This has the potential to make the
183. evidence of the accused improbable or
184. preposterous.
185. As stated in *R. v. Strickland* 2007 CanLII
186. 3679 at paragraph 35: "The probative value of
187. this contextual evidence is not to support the
188. inference of an increased likelihood of consent.
189. Rather, it is to dispel the inference of the
190. unlikelihood of consent, which would result if
191. the jury were left with the misapprehension that
192. the sexual relations in question must have
193. occurred on the sudden, with no pre-existing
194. relationship between the parties."
195. The evidence of the complainant will likely
196. refer to the note she wrote on the ipod to her
197. cousin. One conclusion that could be drawn from
198. this note is that the complainant was not
199. interested in having sexual intercourse with the
200. accused. Her evidence will likely be that she
201. had little contact with the accused before this
202. incident, although, as I said, it is not clear
203. what she will say if asked about being in the
204. accused's bedroom alone at his mother's house and
205. about meeting him at the Rooster.
206. The evidence of the complainant will place
207. the nature of her relationship with the accused
208. in issue.
209. The accused's assertion of the prior sexual
210. activity between himself and the complainant is
211. relevant to the contextual narrative and to
212. credibility. In order to make full answer and
213. defence, the accused is entitled to lead evidence
214. of the alleged prior sexual activity between
215. himself and the complainant.
216. With respect to honest but mistaken belief
217. in consent, this issue frequently arises in
218. section 276 applications. It arises in
219. situations where the accused alleges that he
220. honestly believed that the complainant was
221. consenting to the sexual activity when the
222. evidence of the complainant is that she did not
223. consent.
224. It often occurs in situations where there
225. may be some ambiguity regarding the issue of
226. consent. It does not arise when there is clear
227. evidence of non consent, for example, where the
228. complainant is vigorously resisting or yelling
229. no.
230. There is an evidentiary burden on the
231. accused to establish that he believed there was
232. consent by the complainant to engage in the
233. sexual activity in question. This requires
234. evidence by the accused and specific evidence
235. regarding conduct or words that led him to
236. believe the complainant was consenting. The
237. Ontario Court of Appeal in the *R. v. Harris*,
238. (1997) 118 C.C.C.(3d)498, provides a number of
239. factors to consider in this situation.
240. The Court of Appeal stated at page 508:
241. "Where evidence of prior consensual sexual
242. activity between the parties is being proffered
243. to support the defence of honest but mistaken
244. belief in consent, it must be tested on a
245. case-by-case basis having regard to all of the
246. circumstances, including, but not limited to: The
247. viability of the defence itself; the nature and
248. extent of the prior sexual activity as compared
249. to the sexual activity forming the subject matter
250. of the charge; the time frame separating the
251. incident; and the nature of the relationship
252. between the parties."
253. 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
254. but mistaken belief in consent defence.
255. The third condition is that the evidence
256. must have significant probative value that is not
257. substantially outweighed by the danger of
258. prejudice to the proper administration of
259. justice.
260. Significant probative value means that the
261. evidence must have more than a trifling relevance
262. and is capable in the context of all of the
263. evidence of leaving the jury with a reasonable
264. doubt. *L.S.,* Supra at paragraph 90.
265. Evidence that the accused and TN may have
266. engaged in consensual sexual activity before the
267. alleged sexual assault has a probative value that
268. is more than trifling. Evidence about the nature
269. of the relationship in the weeks before the
270. alleged incident could be of assistance to the
271. jury in assessing the evidence of the complainant
272. and the accused in making determinations
273. regarding their credibility. It also provides
274. contextual narrative to the accused's evidence.
275. Considering the accused's evidence without
276. hearing about the prior sexual activities that he
277. alleged occurred between he and the complainant
278. could cause the jury to dismiss the accused's
279. account and prevent the trier of fact from
280. considering the prior relationship, if it
281. existed, in assessing the conduct of the parties
282. on the night in question.
283. In considering potential prejudice, the
284. Crown argued that this stigmatizes the
285. complainant, perpetuates a trope of her as the
286. "drunken, crazy, home wrecker". No one has
287. referred to the complainant in that way or made
288. any suggestion of the sort.
289. The evidence of the complainant from the
290. preliminary inquiry referred to her use of
291. alcohol and her mental health struggles. She
292. testified that she was consuming a lot of alcohol
293. in the summer of 2016, and she also testified
294. that she had taken medication on occasion for
295. depression.
296. It is a fact that the complainant has had
297. some issues, whether they are big or small is not
298. for me to say, which have had an impact on her.
299. She acknowledged in her testimony that her
300. consumption of alcohol may have had an affect on
301. her memory. That is a relevant issue to be
302. explored at trial, so is any prior relationship
303. she may have had with the accused.
304. I am cognizant that there may be some
305. prejudice which will result from the trier of
306. fact hearing about prior sexual activity between
307. the complainant and the accused. Any potential
308. prejudice can be limited and addressed in two
309. ways; first, the potential misuse of the evidence
310. by the jurors can be limited by a clear warning
311. to the jury about the use they can make of this
312. evidence in the charge to the jury in accordance
313. with section 276.4 of the *Criminal Code*.
314. The second way that this prejudice can be
315. limited is through a limitation on what evidence
316. can be adduced at the trial and limiting the
317. extent of the cross-examination of the
318. complainant on this issue. This will assist in
319. limiting the prejudice as well as maintaining, as
320. much as possible, the complainant's personal
321. dignity and right of privacy.
322. This is not a situation where the intimate
323. details of the sexual activity are relevant. The
324. relevance arises from the assertion that the
325. sexual relationship existed at all, that there
326. may have been a sexual relationship which
327. consisted of two sexual encounters that occurred
328. in the weeks before the allegations and that the
329. accused wished to conceal this relationship from
330. others.
331. I have also considered society's interest in
332. encouraging the reporting of sexual assault
333. offences. While delving into the prior sexual
334. activity between the accused and the complainant
335. could operate to discourage reporting of sexual
336. assault offences, requiring the complainant to
337. answer some questions about any prior
338. relationship with the accused would not have that
339. result.
340. The complainant will have to testify at the
341. trial about intimate details of the alleged
342. sexual assault and requiring her to answer
343. additional questions of a more general nature
344. about prior encounters with the accused will not
345. add significantly to that burden.
346. In conclusion, the application is granted,
347. and the accused has permission to adduce evidence
348. at trial concerning his prior sexual activities
349. with the complainant.
350. The evidence that may be adduced will be
351. general in nature and only refer to the sexual
352. nature of the activity, the number of times that
353. it is alleged to have occurred, the time and
354. place in which the activities are alleged to have
355. occurred, that the parties were alone at the
356. relevant time, and that the accused wished to
357. conceal the activities from others.
358. Counsel will not be permitted to elicit the
359. specific details of the alleged sexual
360. encounters, and this ruling is subject to being
361. revisited depending on the evidence adduced at
362. trial in the event that it is materially
363. different than the evidence which was adduced at
364. the hearing.

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

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8 **CERTIFICATE OF TRANSCRIPT**

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of edmonton, Province of
7. Alberta, this 26th day of February, 2018.
8. Certified Pursuant to Rule 723.
9. of the Rules of Court

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1. Colleen Rea
2. Court Reporter

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