IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JOHNNY SIMON

Transcript of the Ruling of The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 5th day of September, 2018.

APPEARANCES:

Ms. A. Piché:	Counsel for the Crown
Ms. K. Oja:	Counsel for the Accused

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

There is to be no publication or broadcast of any information that could identify the complainant (s. 486.4)

There is to be no publication or broadcast of this decision until such time as the jury retires to consider its verdict (s . 648)

There is to be no publication or broadcast of the contents of the Application , the evidence adduced , and the submissions made at the hearing (s . 278 . 9) Subject to the s . 486 . 4 and s . 648 bans , there is no publication ban on the decision itself

THE COURT: This is my Ruling on Mr. Simon's Application for production of records pursuant to section 278.3 of the *Criminal Code.* A number of publication bans apply to this decision.

First, there is an order banning the publication of any information that could identify the complainant pursuant to section 486.4 of the *Criminal Code*. There is also a publication ban in effect with respect to the entire application and this decision until such time as the jury has retired to consider its verdict, pursuant to section 648 of the *Criminal Code*. Finally, there is a publication ban on the contents of the application, the evidence presented, the information provided, the submissions made at the hearing, including the identity of anyone referred to in the records that were referred to, pursuant to section 278.9(1)(a) and (b) of the *Code*. There is a further potential ban that applies to this Ruling that I have the power to lift. I will hear from counsel at the end as to whether you are of the view that this is a case where it should be lifted.

I am going to be referring to the complainant and other persons referred to on the

record that were the subject of this Application, by using initials only.

Johnny Simon is charged with having sexually assaulted H.K. on February 5th, 2017. His jury trial is scheduled to proceed in Inuvik in October 2018. Mr. Simon has filed an Application pursuant to section 278.3 of the *Criminal Code.* He seeks the production of RCMP's investigative file in relation to a separate sexual assault complaint made by H.K. against another individual, W.M.

The circumstances leading to this application are unusual. Ordinarily, when an accused applies for the production of records in the possession of third parties, neither the Crown nor the accused has seen the records that are the subject of the application. Things are different in this case because Mr. Simon's counsel happened to be counsel on a circuit where W.M.'s matter was to be spoken to. And in that capacity, she was given the disclosure package for that file. Accordingly, she has seen the material. The Crown, obviously, has also seen the materials.

Mr. Simon's counsel recognized that because disclosure materials are provided to counsel under certain undertakings, she could not use the

materials in the W.M. file in the defence of another client, unless the Crown consented. Because the Crown did not agree that the materials should be used in this case, Mr. Simon's counsel filed this Application for production of the documents to her in her capacity as Mr. Simon's counsel. No one has suggested otherwise, but I want to make it clear that, in my view, Mr. Simon's counsel has handled this somewhat unusual and awkward situation in an exemplary manner.

It goes without saying that under the circumstances, counsel have been able to provide me with a lot more information about the contents of the records than would normally be the case in an Application like this one, but that has no bearing on the legal framework that applies. It is the same in this case as it would be in any other Application of this sort.

As far as the allegations against Mr. Simon, I have been referred to the pretrial conference report, which includes a synopsis of the allegations. I have also been provided transcripts of things H.K. said about the matter at different times. I have transcripts of the calls received by the RCMP's communication centre, when she called police and first

disclosed this matter on February 5th. It is an admitted fact between the parties that she was intoxicated at the time she made those calls. I also have transcripts of the four statements she gave to police about this matter.

The allegations, based on the pretrial conference report and other information provided at the hearing, can be summarized as follows: On February 6th, H.K. had spent time at a residence in Inuvik. Later that day, she met Mr. Simon. They drank alcohol together. They went to different locations, and eventually returned to the residence where H.K. had been previously that day, to get more alcohol.

She says Mr. Simon used a metal object to break into the apartment. She says, at some point, he dragged her to the emergency stairwell on the top floor. He held her by her arm, took her clothes off, and had forced sexual intercourse with her. After the assault, she went to the warming shelter and reported the matter to RCMP. She was brought to the hospital where a sexual assault examination was done. The examining doctor noticed scratches on her back.

A break-in was reported at the residence in question at 9:15 that night. Mr. Simon was arrested a few hours later. He had a metal

object on him. DNA testing confirmed the presence of H.K.'s DNA on a penile swab seized from Mr. Simon, and the presence of Mr. Simon's DNA on a vaginal swab taken from H.K. during the sexual assault examination. The issue at trial is expected to be consent.

The information I was provided about the substance of the W.M. complaint is that it was for a sexual assault of H.K. alleged to have happened on January 29th, 2017. She reported this to police a short time after the alleged events. She gave a statement to police about those events a week later, on the same day as the day she says the events involving Mr. Simon happened.

I was told that the statement H.K. gave about the W.M. incident was very vague. I also heard about inconsistencies between what she is reported to have told the nurse when she underwent a sexual assault examination following that complaint and what she told police in her statement.

First, there is a note in the nurse's report to the effect that H.K. said, during the examination, that the assault took place outside the Mac's News Stand in Inuvik, that she was dragged up the stairs. In her statement to

police, she said the assault happened in an area between the RCMP detachment and the Mad Trapper. Both of these locations are on Mackenzie Road in Inuvik, but in different areas of the road.

Second, there is a note in the nurse's report stating that H.K. said the assault happened after she had gone to the warming shelter, whereas in her statement to police, she said it happened before she went to the warming shelter.

I was also advised that on the W.M. matter, the results of the DNA testing came back negative. The Crown directed a stay of proceedings on that charge.

Also, by way of additional context, defence counsel drew my attention to portions of H.K.'s cross-examination at the preliminary hearing on Mr. Simon's matter. During this portion of her evidence, H.K. acknowledged that during the time frame in question, she was drinking every day to the point of blacking out, and that this had been going on for some months. I mention this now because it ties into aspects of the Defence's argument as to why the W.M. file should be produced.

Defence argues that the W.M. file should be produced for my review and also produced to

Defence because it is necessary for Mr. Simon to have those records in order to make full answer and defence. The Defence's intention, if this Application is granted, is to file a further Application pursuant to section 276 of the *Criminal Code* and seek leave to cross-examine H.K. about the details of her complaint against W.M. Defence would argue, in the context of the section 276 Application, that cross-examination on that complaint is relevant to H.K.'s credibility and the reliability of her account of what happened with Mr. Simon.

The Crown opposes production, arguing that the W.M. complaint is not relevant and that it has, if any at all, minimal probative value.

It is undisputed that the W.M. file is a record within the meaning of section 278.1 and is not covered by the exemption set out in the definition. This section does exempt from the statutory scheme, "Records made by persons responsible for the investigation or prosecution of offences".

However, that exemption applies only to records made for the investigation of the offence charged, and not to records made in the context of just any investigation. That was confirmed in *R. v. Quesnelle,* 2014 SCC 46.

The regime contemplates a two-step process. The first step is for the judge to decide whether the records should be produced for inspection by the judge. Section 278.5. If the judge decides that it should be, the judge then examines the record and considers, as a second step, whether the record should be produced to the accused. Sections 278.6 and 278.7. At both stages of the analysis, the judge is required to consider the salutary and deleterious effects of the decision on the accused's right to make full answer and defence, and on the rights of privacy, personal security, and equality of the complainant, and of any other person to whom the record relates.

Specific factors listed at section 278.5(2) are to be considered, they include:

> (a) the extent to which the record is necessary to make full answer and defence; (b) the probative value of the record; (c) the nature and extent of the reasonable expectation of privacy with respect to the record; (d) whether production of the record is based on a discriminatory belief or bias; (e) the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates; (f) society's interest in encouraging the reporting of sexual offences; (g) society's interest in encouraging and obtaining of treatment by complainants of sexual offences; (h) the effect of the decision on the integrity of the trial process.

At the first step of the process, section 278.5 states that the judge may order production if three criteria are met. The first criterion is that the Court must be satisfied that the application was made in accordance with the statutory requirements that govern these matters. In this case, that criterion is met. The application meets the requirements of the *Criminal Code*. Although service on H.K. and W.M. was a short service, I am satisfied that service is valid. Based on the Crown's representations, I am satisfied that H.K. has been made aware of her right to be represented at this hearing and to participate, and that she does not wish to.

I am also satisfied, based on Mr. Simon's counsel's representations, that W.M. was aware of this matter, that steps were taken to ensure that he had the opportunity to obtain legal advice about this matter and participate, but that he declined to avail himself of that opportunity. I infer from that that he did not wish to participate or be represented at this hearing either.

The next criterion is that the accused has established that the record is likely relevant to an issue at trial, or to the competence of the witness to testify. Here, the question is solely

whether the record is likely relevant to an issue at trial. And, finally, the last criterion is that the production of the record is necessary in the interests of justice.

As I mentioned already, the purpose of Defence in seeking production of these records is to use them as a basis to file a section 276 Application with a view of enabling Defence to cross-examine H.K. about the details of her complaint against W.M. As everyone acknowledged, the admissibility of this evidence, pursuant to the section 276 regime, is not what I have to decide at this stage. But because the second criterion to be met is linked to relevance, and because the factors to be considered include probative value, the section 276 regime is part of the context in which this Application must be examined. Indeed, most of the authorities filed by counsel are decisions on 276 Applications.

A number of cases have addressed the relevance of unrelated complaints of sexual assault in the context of sexual assault trials. One authority that is often relied on in this context is *R. v. Riley* (1992) 11 O.R. (3d) 151, a decision from the Ontario Court of Appeal.

The often quoted passage of this relatively short decision is to the effect that the only

legal basis that can justify cross-examination on an unrelated sexual assault complaint is to lay the foundation for a pattern of fabrication. The Court of Appeal said in *Riley* that this should not be encouraged unless defence could show that the complainant recanted the allegation or that the complaint was demonstrably false.

The decision is now somewhat dated, but it was referenced by the same court more recently in *R. v. M.T.*, 2012 ONCA 511, at paragraph 52.

Defence argues that the requirement of demonstrated falsehood is too strict, and that subsequent cases have illustrated that there are other circumstances where cross-examination of a complainant on unrelated complaints may be relevant and very probative.

I agree that the relevance of an unrelated complaint may come from something other than the demonstration of its falsehood. If there are a series of complaints that are strikingly similar, for example, they may be probative of a pattern of fabrication, even if there is no actual demonstration or proof that any of them are false.

The facts in *R. v. Anstey*, 2002 NFCA 7 are a good example. In that case, the complainant had made very similar allegations about, effectively,

a third of the male population of a small community. And in each of those complaints, she alleged that the perpetrator had said very similar, quite distinctive things to her during the course of the assault.

There was nothing extrinsic to demonstrate that any of the allegations were false, but it was at least arguable that the striking similarities between them, in and of itself, raised issues about the implausibility of all these different men having, on separate occasions, done the exact same thing and said the exact same things to the complainant.

I pause here to mention that while I refer to this case for its facts, and with the greatest of respect, I disagree with the legal analysis and approach that the Court of Appeal adopted in dealing with the issue of admissibility of this evidence. I disagree with that approach essentially for the reasons outlined by Professor Elaine Craig in her article "Section 276 Misconstrued: The Failure to Properly Interpret and Apply Canada's Rape Shield Provisions", (2016) 94-1, Canadian Bar Review 96.

I am not here dealing with a section 276 Application, so I do not think this is the proper case to embark on a detailed discussion about

this. But I will say only that I agree with Professor Craig that it appears from some of the cases she refers to in that article that the exclusionary rule set out at paragraph 276(1), is, at times, conflated and confused with the admissibility rule set out at paragraphs 276(2) and (3). The difference between these two things is aptly summarized by the Ontario Court of Appeal in *R. v. M.T.*, at paragraphs 39 to 43.

Returning to situations where a demonstration of falsehood may not be necessary to render extrinsic sexual assault allegations relevant or probative, another example is when the other allegations are probative of a motive to fabricate.

R. v. G.S. [2007] O.J. No. 1645, referred to by Defence, is an excellent example of that. The complainant, a child, had made separate complaints of sexual assault against the two men who had been her mother's boyfriends, after her mother and father had separated. There was also evidence that she wished her parents to be back together, and did not want her mother to have boyfriends.

The second boyfriend, who was the one on trial, applied to cross-examine her about her allegations against the first boyfriend. In that

example, again, there was no demonstrated falsehood of the allegation against the first boyfriend, but the Court concluded, and rightfully so in my view, that the similarity of the conduct alleged, and more importantly, the relevance of the other allegation to the motive to fabricate in the overall context of the case, rendered the other allegations relevant and probative.

Yet another example is where the evidence about the other allegations raise issues of possible transference or confusion between two separate events. That was the situation in the third case relied on by Defence, *R. v. G.W.*, 2011 ONSC 1361. In that case, the complainant, in the middle of testimony at a trial, where she was alleging that her step-father had sexually abused her, disclosed during a break that her biological father had also sexually abused her. This was found to be relevant both because it was inconsistent with her having spoken very positively about her biological father on earlier occasions, and because it raised the possibility of transference.

In that situation, the potential probative value of the other allegation did not come from any demonstration of its falsehood. On the

contrary, in that case, the theory of the Defence was that the other allegation was true, and that the complainant had transferred the abuse she sustained at the hands of one person, her biological father, to another person, the accused.

Of course, it does not mean that this theory would necessarily be accepted by the trier of fact, but it is another illustration that evidence may be relevant or probative, even if it does not fall within the strict parameters set out in *Riley*.

These examples show that the *Riley* approach does not capture all the situations where evidence of other complaints of sexual assault may be relevant and probative. There could be other situations where the same is true.

In my respectful view, relevance must be approached on a principled, case-by-case basis, not on the basis of rigid categories and pigeonholes. This is very much in line with the evolution of the law of evidence in various areas, the most obvious example being the admissibility of hearsay.

I have referred to cases where extrinsic sexual assault allegations were found to be relevant. There are, of course, many cases where

such allegations were found not to be relevant.

A very useful case, in my view, is the Ontario Court of Appeal decision in *M.T.*, which I have already referred to. The complainant in that case was a child. The accused was her uncle, and was alleged to have sexually abused her over a period of time. In the same statement where she disclosed that abuse, she also said she had been sexually abused by her father and that this had happened before the abuse at the hands of her uncle. The issues at that trial were whether the alleged conduct had happened at all, and, if so, the identity of the perpetrator.

The accused made application, pursuant to section 276, seeking to cross-examine the complainant about the allegations involving her father. That application was dismissed. The accused was convicted, and the section 276 ruling became one of the grounds of appeal.

The Court of Appeal found that the evidence of the complaint against the biological father was simply not relevant to the issue of identity. The Court noted, at paragraph 49, that evidence of non-consensual sexual activity with one person is not probative of the falsity of an allegation of non-consensual activity with another.

The Court also noted that although the two

complaints were made at the same time and there was a connection in that respect, they were quite distinct. The complainant said that the abuse at the hands of the father had stopped by the time the abuse at the hands of the accused had begun. The allegations also involved different locations and different behaviors.

At paragraph 52, the Court concluded that reduced to its essence, the claim that the evidence of the other complaint was relevant amounted to an argument that because the complainant was saying that two different persons had abused her sexually at different times, she was more likely to be lying about one of them than if she was accusing only one person. It found the evidence of the other complaint was not relevant, and it also found that it would be inadmissible, because of lack of relevance, even leaving aside the statutory framework and the special admissibility rules set out in section 276.

Returning to the present Application, the Defence says that the W.M. complaint is relevant to the credibility of H.K., as well as the reliability of her account of what occurred with Mr. Simon.

The first reason Defence argues is that the

W.M. complaint meets the "demonstrably false" threshold, or is very close to meeting that threshold. Defence bases this on the vagueness of the H.K. allegations against W.M. and on the inconsistencies between what she is reported to have said to the nurse and what she told police about the events. As I have already noted those inconsistencies related to where the assault occurred, as well as the timing of events in relation to when she went to the warming shelter.

Defence also relies on the "striking similarity" line of argument. More specifically, that in both cases H.K. describes the perpetrator as throwing her down, describes all her clothes being removed, and describes an act of vaginal intercourse. Defence suggests, in particular, that the allegation that every item of H.K.'s clothing was removed is a strikingly unusual feature for a sexual assault committed in a public, or semi-public area.

The second reason Defence says the W.M. complaint is relevant is because of the possibility of transference, confusion, or co-mingling on H.K.'s part of what happened with W.M. and what happened with Mr. Simon. That line of relevance does not suppose that the allegation against W.M. is fabricated or false. On the

contrary, it supposes that something did happen with W.M., that there has been some sort of transference or co-mingling between those two events in H.K.'s mind.

In support of that argument, the Defence relies again on the similarities between the allegations and on the temporal link between them. As I mentioned earlier, the events leading to the complaint against W.M. were alleged to have happened on January 29th. It is an admitted fact that it was reported, at first, within a day or so, but that H.K. gave her statement to police about this only a week later, on the same day that she says the assault at the hands of Mr. Simon took place.

Defence also relies on H.K.'s acknowledgement about her heavy drinking and frequent blackouts during the relevant time frame. Defence argues that this increases the possibility that events may have become confused in her mind.

As I already said, to order production of these records for my review, I must be satisfied of their likely relevance and that their production is necessary in the interests of justice. In examining these criteria, I must also consider this salutary and deleterious

effects of the decision on the accused's right to make full answer and defence, and on the rights of privacy, personal security, and equality of H.K. In making those assessments, I must take into account the factors listed at section 278.5(2).

In examining the concept of likely relevance, I find it helpful to go back to how Justice Watt described the concept of relevance simpliciter in *R. v. M.T.* at paragraph 36. He said:

> Relevance is a matter of day-to-day experience and common sense, not an inherent characteristic of any item of evidence. Relevance exists as the relationship between an item of evidence proposed for reception and the proposition or fact the party tendering the evidence seeks to establish by its introduction.

He also said:

> An item of evidence is relevant if it makes the fact it seeks to establish slightly more or less probable than the fact would be without that evidence through the application of every day experience and common sense.

Reframed this way, the issue becomes: Does evidence about the W.M. complaint make the fact

that Defence seeks to establish (namely, a pattern by H.K. of fabricating sexual assault allegations, or that H.K.'s account of what Mr. Simon did is unreliable because she may have co-mingled or confused what happened between him and what happened with Mr. M) slightly more probable?

With respect to establishing a pattern of fabrication, I am not persuaded that cross-examination of H.K. on the W.M. complaint would assist in attacking her credibility. This is not, in my view, a situation where it can be shown that the W.M. complaint is demonstrably false. In my respectful view, it is nowhere near that threshold and has no relevance on that front. The stay of proceedings is not helpful in this regard. Proceedings can be stayed for many reasons. The Crown's decision to stay proceedings simply cannot be equated with the notion that the complaint was false, or that the Crown thought it to be false. Even an acquittal can mean anything between the trier of fact being positively convinced that a complaint was false, and a trier of fact believing that an accused is probably guilty but still having a reasonable doubt.

The vagueness of a complaint is not in and

of itself an indication of falsehood either. It can be an indication of a lot of things, including a high level of intoxication at the time of the events. The same is true with the types of inconsistencies that emerge from what is before me as far as what H.K. told police, and what she reportedly told the nurse during the sexual assault examination. Nor do I find this to be a case where there are such striking similarities between the allegations to suggest that it is implausible that these two events could have occurred. The similarities are different from those in *Anstey* and are of a much more generic nature.

I must also consider, quite aside from the question of demonstrable falsehood, whether this is one of those cases where the extrinsic complaint is relevant for other reasons. Here, there is no suggestion that the W.M. complaint is relevant because it suggests a motive to fabricate, so that is not not really in issue.

As far as possible transference or confusion between the two events, again, I do not find the similarities that exist between the two events to be capable of leading to that conclusion. A sexual assault complainant being thrown to the ground or having her clothes removed is fairly

generic. In my view, it is not a particularly distinctive feature, even acknowledging that there are many cases where not all of the complainant's clothes are removed. But, perhaps, more importantly, when considering this question of similarities in this type of analysis, one must also consider the dissimilarities. And here, there are several dissimilarities.

While the account of the W.M. complaint, I am told, is very vague, the account of the complaint involving Mr. Simon is quite specific. There is a narrative of events for that day, a location where things happened, a description of how they entered the apartment. There is independent evidence that there was, in fact, sexual contact between them, and the issue on this trial is going to be consent. This paints a very different picture from the one that has been brushed about the W.M. allegations.

In the Supreme Court of Canada decision of *Darrach*, the Court said, at paragraph 58:

> It is common for the defence in sexual offence cases to deny that the assault occurred, to challenge the identity of the assailant, to allege consent, or to claim an honest but mistaken belief in consent. Evidence of prior sexual activity will be rarely relevant to support a denial that sexual activity took place or to establish consent.

That point was noted in *M.T.* at paragraph 41. The Supreme Court of Canada reiterated this in *Quesnelle*, at paragraph 17, when it gave the fact that a complainant has reported sexual violence in the recent past as one of the examples of something that is not, without more, relevant.

Here, the defence says this is one of those rare cases and that there is more. I respectfully disagree. I have kept in mind that the threshold for relevance is quite low to start with, and also that section 278.5 requires only that likely relevance be established, not actual relevance. But, under the circumstances of this Application, I still do not think that threshold is met.

If I am mistaken about that, and even assuming that the criterion of likely relevance is established on the record before me, I am not satisfied that the third criterion is met. I am of the view that the production of these records is not necessary in the interests of justice. I have concluded, on the contrary, that in all circumstances, production would be contrary to the interests of justice having regard to the factors set out at section 278.3(2).

The first factor is whether the record is

necessary for Mr. Simon to make full answer and defence. I am not satisfied it is. Whatever H.K. would say about the separate allegation, that evidence, in my view, is not necessary for Mr. Simon to defend this charge. It has little to do with what H.K. claims he did, and her claim that the sexual activity between them was not consensual. The second factor, the probative value of this evidence, is somewhat related to the first one. I find the probative value of this evidence extremely tenuous. The reasons I gave for concluding it does not meet the threshold of likely relevance, are also the reasons why I find it has little to no probative value.

The potential prejudice to H.K.'s personal dignity and right to privacy is another factor that must be considered. It would be even more engaged at the stage of deciding whether to order production of the record to Mr. Simon, because then Mr. Simon himself, in addition to his counsel, myself, and the Crown would have access to the details of the W.M. investigative file.

But even at the first stage, which is concerned only with production to me as the trial judge, H.K.'s privacy interests and personal dignity cannot be overlooked. In my view, we

cannot and should not lose sight of the highly sensitive and personal nature of the contents of these types of records. We should not be too quick to assume that having additional persons gain access to the details of such complaints, even just one person, even just the judge, does not have an impact on a person's dignity and right to privacy. Lawyers, judges, and others who work in the criminal justice system read and hear about such matters on a regular basis, but that does not change the fact that for each complainant who makes a statement about this type of event, this is a highly personal and sensitive subject matter

Finally, I am required to consider society's interest in encouraging the reporting of sexual offences. In my view, cross-disclosure of unrelated sexual assault complaints would have a very real impact on whether persons who are sexually assaulted multiple times will choose to report these events. To be sure, there are cases where the probative value of the other evidence and its importance to the accused making full answer and defence will tip the scale in favour of production, despite these concerns. But I have concluded that this is not one of those cases.

Having carefully weighed all the factors, and the salutary and deleterious effects of ordering production, and of declining to order production, I have concluded that the W.M. file should not be produced to me for review. The Application is dismissed.

[Discussion about whether publication ban as to the decision should be lifted pursuant to section 278.9(c)]

Section 278.9(c) states that determination of the Court on these types of Applications are subject to a publication ban unless the judge, after taking into account the interests of justice and the right to privacy of the person to whom the record relates, orders that the decision may be published.

I have considered this, as well as counsel's positions. The Crown, properly, noted that the Court must consider H.K.'s privacy interests. On the other hand, there is not a lot of jurisprudence in this jurisdiction with respect to these types of applications. The issues raised on this Application, in my view, engaged important principles that may well arise again in the context of applications like this one or on

applications brought pursuant to section 276 of the *Criminal Code*. H.K.'s privacy interests can be protected through the use of initials in this transcript and through the general ban on the publication of any information that could identify her. On the whole, in my view, it is appropriate for me to exercise my discretion to lift the publication ban that would otherwise apply to this decision. Given that this is going to be jury trial, by operation of section 648 of the Criminal Code, this decision cannot be published until the jury has retired to consider its verdict. But once that publication ban is no longer in effect, this decision will not be subject to a ban pursuant to section 278.9

PROCEEDINGS CONCLUDED

CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the transcribed foregoing pages are a complete and accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 23rd day of September, 2018.

Certified Pursuant to Rule 723
Of the Rules of Court

Leanne Harcourt, CSR(A)
Court Transcriber