Date: 2025-06-27
Docket: S-1-CR-2022-000 004

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

HIS MAJESTY THE KING

-and-

N.B.

Application by the Defence pursuant to s. 278.92 C.C.
Section 278.92 of the *Criminal Code*

Heard at Yellowknife: April 10, 2025

Written Reasons filed: June 27, 2025

## REASONS FOR DECISION ON APPLICATION

**Restriction on Publication:** There is a ban on the publication, transmission or broadcast of any information that could identify the complainant, pursuant to section 486.4 of the *Criminal Code*

Counsel for Crown: A. Paquin and J. Kelly

Counsel for Defence: A. Lind

*R v B(N)*, 2025 NWTSC 47

Date: 2025 06 27
Docket: S-1-CR-2022-000 004

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

HIS MAJESTY THE KING

-and-

N.B.

**REASONS FOR DECISION ON APPLICATION**

**Restriction on Publication:** There is a ban on the publication, transmission or broadcast of any information that could identify the complainant, pursuant to section 486.4 of the *Criminal Code*

## BACKGROUND AND OVERVIEW

[1] The Accused, N.B., is charged with various sexual offences alleged to have taken place in Tulita and Yellowknife, Northwest Territories between August 2007 and March 2012. Four different complainants alleged that the Accused engaged in unlawful sexual contact with them. His trial will proceed before a jury commencing April 22, 2025, in Yellowknife.

[2] This is an application by the Defence pursuant to s. 278.92 of the *Criminal Code*, seeking the admission into evidence at trial of certain documents in the possession of the Accused. In support of this application, the Defence filed the affidavit of N.B., sworn March 26, 2025. The Defence refers to the Crown's filed

application to adduce evidence of extrinsic misconduct by the Accused, including manipulative relationships, psychologically abusive comments, exposure to pornography, displays of nudity, instructions on genital hygiene, masturbation and alcohol consumption with underage children.

[3] The Defence also points to the Crown's stated intention to advance a cross-count similar fact application at the close of the Crown's case to permit the jury to use the evidence of each complainant to bolster the credibility of the others. In advancing this s. 278.92 application, the Accused seeks to defend himself against general bad character evidence sought to be adduced by the Crown. The Defence maintains that various electronic messages between the Accused and the various complainants and other third parties will corroborate his evidence and thereby bolster his credibility. The Defence also contends that the introduction of this evidence will adversely impact on the credibility of the complainants and permit the Accused to rebut allegations of misconduct.

[4] The Crown's application to admit evidence of extrinsic misconduct was heard on April 9, 2025 at Yellowknife, NT. At the conclusion of the application, I reserved my decision. The following day, April 10, 2025, the within application was argued before me at Yellowknife, NT. At the conclusion of the application, I reserved my decision. On April 14, 2025, counsel were advised by letter from the Court that the s. 278.92 application by the Defence was, subject to certain agreed-upon redactions to the documents, granted with written reasons to follow. Similarly, on April 16, 2025, counsel were advised by letter from the Court that the Crown's application to admit evidence of extrinsic misconduct was allowed in part, also with written reasons to follow.

[5] These are my reasons for decision on this application.

**THE FACTS**

[6] As previously indicated, the Accused is charged with six sexual offences alleged to have taken place at Tulita and Yellowknife, Northwest Territories between August 1, 2007, and March 31, 2012. As set out in the Indictment currently before the Court, these charges read as follows:

Count One:
On or between August 1, 2007 and July 1, 2011, at our near Tulita, NT, did commit a sexual assault on B.Y., contrary to Section 271 of the *Criminal Code*.

Count Two:
On or between August 1, 208 and March 9, 2010 at or near Tulita NT and/or at or near Yellowknife NT, did commit a sexual assault on T.E., contrary to Section 271 of the *Criminal Code*.

Count Three:
On or between August 1, 2008 and November 9, 2009 at Tulita, NT, and/or at Yellowknife NT, being in a position of trust or authority toward T.E., a young person, did for a sexual purpose touch directly or indirectly the body of T.E., with a part of his body, contrary to Section 153(1) of the *Criminal Code*.

Count Four:
On or between October 29, 2011 and November 2, 2011 at Yellowknife, NT, being in a position of trust or authority towards G.Y., a young person, and/or being a person with whom G.Y., a young person, is in a relationship of dependency, did for a sexual purpose, invite, counsel or incite G.Y., to touch directly or indirectly with a part of his body or with an object, the body of G.Y., contrary to Section 153(1) of the *Criminal Code*.

Count Five:
On or between September 1, 2006 and March 31, 2012, at Yellowknife NT did commit a sexual assault on N.K., contrary to Section 271 of the *Criminal Code*.

Count Six:
On or between April 21, 2009, and April 20, 2011 at Yellowknife, NT being in a position of trust or authority towards N.K., a young person, did for a sexual purpose, touch directly or indirectly, the body of N.K., a young person, with a part of his body, contrary to Section 153(1) of the *Criminal Code*.

[7] The Defence seeks the admission of various documents in N.B.'s possession, specifically:

i) Text and Facebook messages exchanged between N.B. and B.Y. in 2010, 2017, and 2020;
ii) Text messages exchanged between N.B. and T.E. in April and June 2010;
iii) Text messages exchanged between N.B. and G.Y. on September 17, 2021;
iv) Email messages between N.B. and his wife, K.B., dated August 25 and 26, 2008;
v) Email messages between the Accused and K.B. dated May 31, 2010;

vi) Email messages between the Accused and K.B. dated February 26, 2013;
vii) Email message from N.B. to J.B. (third party) dated May 31, 2010.

## The Law

[8] This application, brought pursuant to s. 278.92 of the *Code*, relates to certain documents in the possession of the Accused. The admissibility of these documents turns on the provisions of s. 278.92, as well as the definition of "record" set forth in s. 278.1. These provisions read as follows:

> **Admissibility – Applicant in possession of records relating to complainant**
>
> 278.92(1) Except in accordance with this section, no record relating to a complainant that is in the possession or control of the Applicant - and which the Applicant intends to adduce - shall be admitted in evidence in any proceedings in respect of any of the following offences or in any proceedings in respect of two or more offences at least one of which is any of the following offences:
>
> > a) an offence under section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1 or 286.3; or
>
> **Requirements for admissibility**
>
> (2) The evidence is inadmissible unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in section 278.93 and 278.94,
>
> > (a) if the admissibility of the evidence is subject to section 276, that the evidence meets the conditions set out in subsection 276(2) while taking into account the factors set out in subsection (3); or
> >
> > (b) in any other case, that the evidence is relevant to an issue at trial and has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.
>
> **Factors that judge must consider**
>
> (3) In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account
>
> > (a) the interests of justice, including the right of the Applicant to make full answer and defence;
> >
> > (b) society's interest in encouraging the reporting of sexual assault offences;

(c) society's interest in encouraging the obtaining of treatment by complainants of sexual offences;

(d) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;

(e) the need to remove from the fact-finding process any discriminatory belief or bias;

(f) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(g) the potential prejudice to the complainant's personal dignity and right of privacy;

(h) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(i) any other factor that the judge, provincial court judge or justice considers relevant.

**Application for hearing – section 276 and 278.92**

278.93(1) Application may be made to the judge, provincial court judge or justice by or on behalf of the Applicant for a hearing under section 278.94 to determine whether the evidence is admissible under s. 276(2) or 278.92(2).

(2) An application referred to in subsection (1) must be made in writing, setting out the detailed particulars of the evidence that the Applicant seeks to adduce and the relevance of that evidence to an issue at trial, and a copy of the application must be given to the prosecutor and to the clerk of the court.

(3) The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.

(4) If the judge, provincial court judge or justice is satisfied that the application was made in accordance with subsection (2), that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or any shorter interval that the judge, provincial court judge or justice may allow in the interests of justice, and that the evidence sought to be adduced is capable of being admissible under subsection 276(2), the judge, provincial court judge or justice shall grant the application and hold a hearing under section 278.94 to determine whether the evidence is admissible under subsection 276(2) or 278.93(2).

**Hearing – jury and public excluded**

278.94(1) The jury and the public shall be excluded from a hearing to determine whether evidence is admissible under subsection 276(2) or 278.92(2).

**Complainant not compellable**

(2) The complainant is not a compellable witness at the hearing but may appear and make submissions.

**Right to counsel**

(3) The judge shall, as soon as feasible, inform the complainant who participates in the hearing of their right to be represented by counsel.

**Judge's determination and reasons**

(4) At the conclusion of the hearing, the judge, provincial court judge or justice shall determine whether the evidence, or any part of it, is admissible under subsection 276(3) or 278.92(2) and shall provide reasons for that determination, and

> (a) if not all of the evidence is admitted, the reasons must state the part of the evidence that is to be admitted;
>
> (b) the reasons must state the factors referred to in subsection 276(3) or 278.92(3) that affected the determination; and
>
> (c) if all or any part of the evidence is to be admitted, the reasons must state the manner in which that evidence is expected to be relevant to an issue at trial.

(5) The reasons provided under subsection (4) shall be entered in the record in proceedings or, if the proceedings are not recorded, shall be provided in writing.

**Definition of record**

278.1 For the purposes of sections 278.2 to 278.92, record means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

## ANALYSIS

[9] As set out above, an application under s. 276(2) or 278.92 proceeds in two stages. At Stage One, the court's role is to determine whether the form and content

of the application record meet the statutory requirements. The court must also determine whether the materials are "capable of admission". As the Court held in ***JJ.***, 2022 SCC 28 at para 89, a complainant has no right to participate in this stage of the process. If the requirements of Stage One have been met, the hearing proceeds to Stage Two, where a determination is made whether the evidence is admissible at trial. At Stage Two, a complainant has the right to make submissions to the court, but not to cross-examine the accused or adduce other evidence.

[10] The term "evidence capable of admission" was thoroughly discussed by the Saskatchewan Court of Appeal in ***R v Graham***, 2019 SKCA 63. At para 71, the Court held:

> For the evidence to be capable of admission at the first step under s. 276.1, an Applicant person must be able to specifically identify the potential relevance of the evidence. The proposed purpose of the evidence must be identified with sufficient precision to allow the trial judge to apply s. 276(2) and weigh the factors from s. 276(3): *Goldfinch* at paras 5, 40 and 51. There must be a connection between the evidence and the Applicant's defence: *Darrach* at paras 56-57. This is not an onerous obligation at the first stage as it entails only a facial consideration of relevance. Trial judges are required to exercise caution at stage one, and only screen out evidence if it is clearly incapable of admission; but a trial judge has an obligation to determine if the evidence is facially relevant at stage one: *Ecker* at para 61. The question must be asked and answered as to what disputed issue the evidence of prior sexual activity is potentially relevant. While it may be trite to say it, only relevant evidence is capable of admission. A trial judge does not make a determination of ultimate relevance or admissibility at trial at stage one, but there must be some facial relevance to the proposed evidence in order to proceed to stage two. Evidence is relevant if it makes a fact in issue more or less likely to be true. If no such fact in issue can be identified, except in terms of broad generalities, or in terms of the impermissible purposes set out in s. 276(1)(a) and s. 276(1)(b), the evidence cannot be capable of admission and the application should be dismissed at stage one.

[11] The definition of "record" in s. 278.1 applies to both s. 278.2 and 278.92 of the *Code* and, as such, relates to production of third-party records, as well as to the screening of records set out in ss. 278.92 to 278.94. The definition of record included both enumerated records – those specifically referenced in the section- and non-enumerated records. In ***J.J.*** the Court looked at Parliament's intent, the language of the section, and relevant jurisprudence, in considering whether particular evidence falls within the scope of the term "record" as it relates to the record-screening regime. The Court also provided direction and guidance on two specific types of records: (a) communications; and (b) records of an explicit sexual nature related to the charge.

[12] In this instance, it is not necessary to consider whether the evidence is "capable of admission" under s. 278.93)4). Only documents that constitute "records" within the statutory definition must be assessed on this basis. In ***J.J***., the majority held (at para. 29):

> For private record applications, if the judge determines that the proposed evidence is not a "record" under s. 278.1, the application will terminate. If the proposed evidence is a "record" under s. 278.1, but the judge concludes that it is not capable of being admissible under s. 278.92(2)(b), the application will be denied. If the evidence is a "record" and it is capable of being admissible, the application proceeds to a Stage Two hearing pursuant to s. 278.93(4).

Does the evidence sought to be introduced by the Defence constitute a "record"?

[13] In this instance, there is no dispute that the evidence sought to be adduced by the Defence does not fall within the definition of enumerated records. Describing the enumerated group of records, the Court in ***JJ*** held that "they are the type of records likely to contain personal information for which there is a reasonable expectation of privacy" (at para 39).

[14] The Court described "non-enumerated records" in several ways. At para. 38, the majority referred to "records that do not fall within the enumerated categories but otherwise contain personal information for which there is a reasonable expectation of privacy." Subsequently, at para 42, the majority stated:

> Ultimately, we conclude that a non-enumerated record will only be captured by s. 278.1, in the context of the record screening regime, if the record contains information of an intimate or highly personal nature that is integral to the complainant's overall physical, psychological or emotional well-being. Such information will have implications for the complainant's dignity.

[15] According to the majority in ***J.J.***, Parliament's use of the term 'personal information' "invokes the concept of informational privacy. Informational privacy protects the ability to control the dissemination of intimate and private personal details about oneself that go to one's 'biographical core'" (at para 44). Citing ***R v Dyment***, [1988] 2 S.C.R. 417, the majority in ***J.J.*** held that informational privacy is "based on the notion of the dignity and integrity of the individual" (***Dyment***, at p. 429). The Court went on (at para 45) to find that "complainants have privacy interests in highly sensitive information about themselves, the disclosure of which can impact on their dignity." The majority also cited their previous decision in ***Sherman Estate v Donovan***, 2021 SCC 25, confirming that "[T]o reach the level of impact on dignity, an intrusion on informational privacy must 'trancen[d] personal

inconvenience by reason of the highly sensitive nature of the information that might be revealed' (***Sherman Estate***, at para 75; ***J.J***. at para 45).

[16] The majority in ***J.J.*** went on to find that the record screening regime does not focus on the medium used to share the information. Rather, the focus is on the sensitivity of the information. Further, the Court held that a proper understanding of the term "reasonable expectation of privacy" is context specific. While other s. 8 jurisprudence informs the definition of this terms in the context of the record screening regime, it is not determinative (at para 50).

[17] The majority also referred to the factors outlined in s. 278.92(3) as "shed[ding] light on the interests implicated by the record screening regime, reinforcing our conclusion that Parliament intended to safeguard highly personal information related to complainant dignity" (at para 51). Significantly, after reproducing the stage two factors set on in the statutory regime, the majority noted that (at para 52):

> A complainant's privacy interests in the information contained in a record are meant to be assessed against these competing factors. If the information in a record does not engage the facts designed to protect the complainant's personal dignity and privacy interests, or does so only marginally, this would be a clear indication that the document is not a record at all.

[18] Of note, the majority also discussed information that would not be caught by the definition of "record". At para. 53, it was observed that:

> The scheme is not intended to catch more mundane information, even if such information is communicated privately. Moreover, given the accused's right to make full answer and defence, mere discomfort associated with lesser intrusions of privacy will generally be tolerated. In this context, a complainant's privacy in open court 'will be at serious risk only when the sensitivity of the information strikes at the subject's more intimate self' (***Sherman Estate***, at para 74).

[19] The determination of whether evidence constitutes a non-enumerated record, requires the presiding judge to consider both the content and the context of the record. In terms of content, trial judges are directed to consider whether the information is similar to the content of an enumerated record. The majority in ***J.J.*** stated (at para 55) "[T]his type of content could include, but is not limited to, discussions regarding mental health diagnoses, suicidal ideation, prior physical or sexual abuse or involvement in the child welfare system." The majority went on to exclude certain types of information namely "mundane information such as general emotional states, everyday occurrences or general biographical information would typically not give rise to a reasonable expectation of privacy" (at para 56).

[20] In terms of context, the majority found that "expectations of privacy are contextual and must be assessed in light of the 'totality of the circumstances' (at para 57). The decision goes on to discuss three, non-exhaustive, contextual factors. First, the reason why the complainant shared the information; second, the relationship between the complainant and the person with whom the information is shared; and third, where the record was created and how it was obtained (***J.J.,*** at paras 58-60).

[21] Finally, the court considered the type of communication captured by this particular screening regime. Noting that the provision refers to "any form of record", the majority found that the regime applied to both electronic and non-electronic communication. At para 63, the majority found that:

> As a baseline, to be caught by the record screening regime, the communication must "relat[e] to [the] complainant" in some manner (s. 278.92(1)). The complainant must be the sender or recipient of the communication, or the content of the communication pertains to the complainant. (emphasis added).

[22] The majority concludes its analysis by considering non-enumerated records of an explicit sexual nature. In this instance, there is no suggestion that any of the proposed documents contain information of an explicit sexual nature.

The Proposed Documents

[23] The documents that the Defence seeks to have admitted in evidence are attached to the affidavit of N.B. sworn March 26, 2005. The documents fall into 5 general categories:

i) Text and Facebook messages exchanged between N.B. and B.Y. in 2010, 2017, and 2020;
ii) Text messages exchanged between N.B. and T.E. in April and June 2010;
iii) Text messages exchanged between N.B. and G.Y. on September 17, 2021;
iv) Email messages between N.B. and his wife, K.B., dated August 25 and 26, 2008;
v) Email messages between the Accused and K.B. dated May 31, 2010;
vi) Email messages between the Accused and K.B. dated February 26, 2013;
vii) Email message from N.B. to J.B. (third party) dated May 31, 2010.

i) Text and Facebook messages exchanged between N.B. and B.Y. in 2010, 2017, and 2020

[24] Exhibit "A" is a Facebook message from B.Y. to the Accused on June 11, 2010. The last sentence in the message contains B.Y.'s statement: "like I said before you like a dad I never had". The Crown maintains that this statement includes highly personal information. The Defence, on the other hand, says that this statement can be redacted without adversely impacting the overall relevance of the message. On the basis of the Defence agreement to redact this challenged portion of the message, I am satisfied that the balance of Exhibit "A" is not a record within the meaning of s. 278.1. It does not contain intimate or highly personal information that is integral to B.Y.'s overall physical, psychological or emotional well-being.

[25] Exhibits "B", "D" and "E" are a series of text messages between B.Y. and the Accused on December 25, 2016, January 3, 2017, March 25, 2017, June 27, 2017, and July 4, 2020, respectively. The Crown contends these text messages show that B.Y. was struggling financially at the time, giving rise to him asking the Accused for money on three occasions – March, June 2017, as well as July 2020.

[26] The Crown, relying on the decision in ***R v C.M.G.***, 2023 ONSC 1478, says that the fact that B.Y. was struggling financially is information that is intimate and highly personal, and therefore a "record". In ***C.M.G.***, the court found that detailed financial statements filed in conjunction with a family law settlement conference contained personal information regarding the complainant's financial status and, as such, constituted a "record". The Court also found that the Ontario *Family Law Rules* protected the confidentiality of materials filed in a settlement conference and, as such, were excluded from the definition of "record" in s. 278.1: ***C.M.G.***, at para 34. The Crown also cites ***R v O.J.***, 2022 ONSC 7302, a case in which the court found that the complainant's request to the accused for money to purchase a property was not a record.

[27] The context in which the various requests were made in this instance is important. On December 25, 2016, B.Y. advised the Accused that he did not have any money until New Year's, though did not request financial assistance. On January 2, 2017, he sent a message stating, "Ugh N.B. I hate to ask but could I ask you for some money until I get paid on the 16?" On March 25, 2017, B.Y. sent the Accused a text message expressing regret for his lack of contact other than when he needed money, and expressing his love and appreciation for the role that the Accused and the Accused's wife have played in his life. He stated:

> Anyways, I'm listening to Tim chaisson [sic] "bail you out" this morning and it made me think of you. I'm sorry I've been disconnected and felt like an ass for only talking to you when I needed money. I just want to remind you that you and K.B. were the best thing that ever happened to me. You pushed me so much! At the time I hat d [sic] the chores and the lectures but now I listen to this song…I miss it all and am so thankful for everything you've done and how you went that extra mile to push me. Like I said I'm sorry I've been disconnected and have been only talking to you when I needed money:/ such a douche of me. I love you so much Neil and I miss those times with you.

[28] On June 27, 2017, B.Y. texted the Accused asking to borrow forty dollars until Friday. Finally, on July 4, 2020, B.Y. and the Accused exchanged a series of text messages in which B.Y. stated that he was behind on his phone bill but did not include any assistance request.

[29] I am not persuaded that any of these messages contain information of an intimate or highly personal nature that is integral to B.Y.'s overall physical, psychological or emotional well-being. Properly construed in context, I find that these various statements reflect a young person's general observations of his occasional tight financial circumstances and, in two instances, a request for temporary financial assistance from a parent or guardian. In my view, these circumstances are readily distinguishable from those in ***C.M.G.***, and more akin to the facts in ***O.J.*** I find that none of these text messages fall within the parameters of a "record" as that term is defined in the statutory regime.

[30] The Crown concedes that the content of Exhibit "C" is not a "record".

ii) <u>Text messages exchanged between N.B. and T.E. in April and June 2010</u>

[31] Exhibits "F" and "G" are text messages between the Accused and his nephew, T.E., dated April 20, 2010, June 13, 2010, June 14, 2010, and June 16, 2010, respectively. In these various messages, T.E. described his emotional reaction to leaving the Accused, saying that he was missing the Accused and hoped to return in the summer. T.E. also expressed his love for the Accused and the fact that the Accused has assisted him with his problems in the past. The Accused was T.E.'s guardian, teacher and coach while T.E. was living at the Accused's residence in Tulita.

[32] The Crown contends that the June 13, 2010, text message contains intimate and highly personal details related to T.E.'s reliance on the Accused to help him become more outgoing and open in dealing with his feelings. The Crown also refers to the fact that the message dated June 14, 2010, refers to the Accused's drinking.

Regarding the Crown's objection to the content of the June 13, 2010, text message, the Defence maintains that the expression of feelings and emotions towards a parent figure does not rise to the level of highly sensitive personal information for which there is a reasonable expectation of privacy. I agree. Under the circumstances, I am not persuaded that the expression of emotion and appreciation for the support of a parent-like figure involves highly sensitive personal information that strikes at T.E.'s "more intimate self": ***Sherman Estate***, at para 74. I am also not persuaded that the somewhat veiled reference to the Accused drinking on one occasion touches on the privacy interests of any of the complainants in this matter.

iii) Text messages between G.Y. and the Accused dated September 17, 2021

[33] The Crown fairly concedes that the content of the September 17, 2021, text message is not a "record".

iv) Email messages between N.B. and his wife, K.B., dated August 25 and 26, 2008

[34] Exhibit "H" contains three email exchanges between the Accused and K.B., dated August 25 and 26, 2008, in which they discuss the challenges of being the guardians of B.Y. and the parents of G.Y. The first email is from K.B. to the Accused at 10:35 p.m. on August 25, 2008. The Defence seeks the admission of only the first two paragraphs of this message, relating to a request from T.E. to come to Tulita to go to school and to play basketball for the Accused. The Defence concedes that the balance of this first email should be redacted on the basis that it contains prejudicial information that is not relevant to the trier of fact in this matter. If redacted as proposed, the Crown concedes that the remaining portion of the email is not a "record" as it does not contain information of a highly personal nature impacting on the dignity of T.E.

[35] The second email is the Accused's response to the previous email from K.B., sent at 4:40 p.m. the following day. The message continues a discussion about whether to take T.E. into their home in light of their existing four-year commitment to B.Y. The Accused also expresses concern about financial issues relating to the possible additional financial responsibility to the family. While expressing his love for T.E., the Accused also noted that T.E. can be "a very particular boy when it comes to having what he wants." I am not persuaded that this second email is a "record" as it does not contain sensitive personal information related to T.E.

[36] The third email, dated August 26, 2008, 9:34 p.m., is K.B.'s response to the email sent earlier that day by the Accused. The Defence says that this email was

included to provide a complete picture of this communication between the Accused and K.B., but concedes that it contains personal information that would attract privacy interests and should not go to the jury. I agree.

v) E-mail messages between the Accused and his wife, K.B. dated May 31, 2010,

[37] The Accused and K.B. exchanged three email messages on May 31, 20210, that the Defence now wishes to be admitted into evidence. The first message was authored by K.B. at 3:36 p.m. The second message was the Accused's response sent at 4:25 p.m. K.B. sent a further message to the Accused at 6:58 p.m. I am satisfied that the first email message is not a "record" in that there is only a passing reference to T.E. The Crown does not take issue with the admission of this message.

[38] The second message from the Accused at 6:48 p.m. expresses his great frustration with what has been going on in the home related to T.E. and another young man living with them at the time. The Accused reports that he has been fighting with T.E. almost every day and that T.E. was not cooperative. The Accused expresses his love for T.E. but also states that he is looking forward to his completing high school and leaving the home. At one point, the Accused refers to T.E. as a "jerk". Further, the Accused refers to T.E. and the other young man fighting and being rude to each other. Finally, the Accused states that he is not "ruining my summer with the kids putting up with them. I don't need a bunch of lazy slobs who want to eat our food, make a mess, drink, smoke, and screw and then give me attitude to boot."

[39] The third message is a follow-up message from the Accused to K.B. at 6:58 p.m. that same day. The message is mainly a response to K.B.'s earlier expressions of distress relative to her extended family back in Alberta, namely, her mother, aunts and uncles. However, the message also makes reference to T.E. and another young man then living with them as being "selfish", just like K.B.'s other relatives. The Accused's distress with the impact of family members on their lives is readily apparent.

[40] The Crown takes the position that the contents of the emails authored by the Accused contain highly personal information that could cause a loss of personal dignity to T.E. The Defence, on the other hand, urges the court to find that the challenged content of these emails contains the Accused's opinions and conclusions regarding T.E. but offers no factual information to support those opinions and conclusions. The Defence maintains that the expectation of privacy concerning the sharing of opinions is much lower than that related to the sharing of specific facts or

details touching on a person's biographical information. The Defence goes on to concede that the reference to "screw" in one of the emails should be redacted. I agree.

[41] I am not persuaded that the content of the second and third emails contains personal information about T.E. that is highly sensitive or "strikes at the core of the subject's more intimate self": ***Sherman Estate***, at para. 74. Context is critical to this review process. Here, we are dealing with private communication between parents/guardians regarding the parental challenges they face with a group of adolescent males very close to the age of majority. I agree with the Defence contention that there is a lesser expectation of privacy concerning the opinions or conclusions of others than is the case with the revelation or disclosure of specific factual details that go to the biographical core of the concerned individuals. While these opinions and conclusions are not flattering, they are, in my view, typical of the common complaints of parents about their children, particularly young people in their upper teenage years. This parental venting does not, in my view, rise to the level of the disclosure of core biographical or intimate and personal information touching on the subject's reasonable expectation of privacy. Subject to the redaction referred to above, I find that these emails are not "records" within the meaning of the statutory regime.

vi) <u>E-mail message from the Accused to K.B. dated February 26, 2013, regarding G.Y.</u>

[42] Exhibit "J" is an email message sent by the Accused to K.B. on February 26, 2013, primarily concerning the educational difficulties of their son, G.Y. The second paragraph of this message contains detailed information regarding G.Y.'s academic achievements to that date. The Defence concedes that this is core biographical information relating to G.Y. that should be redacted, as requested by the Crown. Similarly, the Defence agrees that the last two sentences in the third-to-last paragraph of this email also contain core biographical information relating to G.Y. that it should be redacted, again as requested by the Crown. I agree. Once these redactions have been made, the Crown concedes that the balance of Exhibit "J" is not a "record".

vii) <u>Email message from N.B. to J.B. (third party) dated May 31, 2010</u>

[43] Exhibit "K' is an email message from the Accused to J.B., the parent of one of the Accused's basketball players, dated May 31, 2010, in which the Accused describes an incident involving N.K., T.E. and another Tulita resident. The Crown concedes that the email is not a "record" as regards T.E. I agree. The Defence agrees

that the fourth sentence of the first paragraph should be redacted, namely "He also said he's been seeing N.K. around and hearing things about him drinking and doing other negative things." Further, the Defence agrees that the second sentence of the second paragraph should also be redacted, namely:

> I plan on talking to him today myself, but his attitude has been very uncooperative and rude since AWG, most of the time, so I don't know if he cares about sports or what I say as much now that he is hanging around with Kyle, Terence and the rest of those older boys.

[44] Once this redaction has been made, the Crown says that the balance of the email message does not amount to a "record" within the meaning of s. 278.1.

**CONCLUSION**

[45] For the reasons set out above, the application is allowed in part.

M. David Gates
J.S.C.

Dated in Yellowknife, NT this
27th day of June, 2025,

Counsel for the Crown: A. Paquin and J. Kelly

Counsel for the Defence: A. Lind

S-1-CR-2022-000 004

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

BETWEEN:

HIS MAJESTY THE KING

-and-

N.B.

**Restriction on Publication:** There is a ban on the publication, transmission or broadcast of any information that could identify the complainant, pursuant to section 486.4 of the *Criminal Code*

REASONS FOR DECISION ON APPLICATION OF THE HONOURABLE JUSTICE M. DAVID GATES