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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

HER MAJESTY THE QUEEN

Plaintiff

- and -

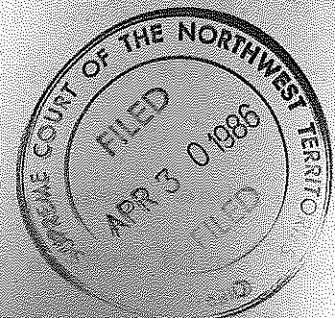
MARCEL LAFFERTY

Defendant

Transcript of the Facts and Submissions on Sentencing,
presented before His Honour Judge T. B. Davis, at
Yellowknife, in the Northwest Territories, on February
7th, A.D. 1986.

APPEARANCES:

MS. L. WALL: Counsel for the Plaintiff
R. SPAULDING, ESQ.: Counsel for the Defendant



1 MR. SPAULDING: We are ready to proceed with the sentencing.

2 THE COURT: I will hear the facts in the matter.

3 MS. WALL: Your Honour, I believe the last time Mr. Lafferty was
4 in court, the Crown attorney did give you the facts, and then
5 there was some dispute from defence as to the facts. So you have
6 heard some, but perhaps not all, so I will try to summarize them
7 again, if that's satisfactory.

8 MR. SPAULDING: Your Honour, I was in Rae at the last circuit,
9 and my recollection is that the facts were not read at the time.
10 It was put over until yesterday's date, and I appeared yesterday
11 and we adjourned it until today.

12 THE COURT: Yes. That would be January the 24th, then, in Rae,
13 would it?

14 MR. SPAULDING: That's right.

15 THE COURT: You feel sure, then, that we haven't had the facts
16 on it?

17 MR. SPAULDING: Yes, I am.

18 THE COURT: All right, I will hear all the facts, then.

19 PRESENTATION OF THE FACTS BY MS. WALL:

20 Q MS. WALL: Yes, Your Honour. There are three informations
21 before you; the first deals with an assault on the 28th of
22 September, 1985, at Rae, in the Northwest Territories. The
23 assault was on Bernadette Steedsman, Your Honour, as, in fact,
24 were all three that are before the Court today, all three
25 section 245 and section 245.1 matters.

26 She was the common-law wife of the accused, and the accused
27 and the victim attended a dance together at Rae Edzo. Both had

1 been drinking considerably. They got into an argument after
2 the dance. Miss Steedsman was going home to her mother's place
3 to stay, and the accused came with her, in her vehicle, as a
4 passenger. They parked in front of the mother's residence in
5 Rae. The argument became high, and the accused grabbed the
6 victim by the arm and dragged her from the driver's side, across
7 the seat, across the passenger's side and out the door onto the
8 ground. As a result, she had a sore arm.

9 At the time of that offence, he was on probation as a
10 result of another assault, also on Miss Steedsman. He was
11 placed on probation on the 17th of April, 1985, by a justice of
12 the peace.

13 Those are the circumstances on count 2, Your Honour.

14 MR. SPAULDING: Those circumstances are admitted.

15 THE COURT: Now, that would therefore be the facts relating to
16 information 149, a two-count information sworn on the 31st of
17 October; would that be right?

18 MS. WALL: Yes, Your Honour, one count of section 245 and one
19 count of section 666(1).

20 THE COURT: The facts being acknowledged, there will be
21 convictions entered on two charges, one under section 245 and one
22 under section 666(1) of the Code.

23 MS. WALL: The next assault, Your Honour, occurred on November
24 the 3rd, 1985. It was also at Rae, in the Northwest Territories,
25 and the assault was also on Bernadette Steedsman. The accused
26 had not yet had this, the first charge, the one in September,
27 disposed of, Your Honour; he was awaiting trial on that.

1 Miss Steedsman was staying in the residence of Archie
2 Beaulieu on the 3rd of November. The accused entered the
3 residence, went into the room where she was asleep. He woke her and then
4 slapped her twice under the left eye. He apparently had a
5 grievance against her, Your Honour. She screamed, and he left
6 the residence. He had been consuming alcohol when this assault
7 occurred.

8 MR. SPAULDING: Those facts are admitted, Your Honour.

9 THE COURT: Thank you.

10 Is that count number 1?

11 MS. WALL: Yes. I'm sorry, Your Honour.

12 With regard to count number 2, he was on probation at the
13 time. I am sorry; I don't have a copy of that probation order
14 to give to the court. I can only allege that he was placed on
15 probation by Judge Bourassa on May 23rd and was still on probation
16 at the time for that offence.

17 I can't provide any further details, Your Honour. I am
18 sorry. I do have a copy of the probation order, but it's very
19 poor. However, I will submit it if the Court would like to see
20 it.

21 THE COURT: It wouldn't be necessary if defence counsel
22 acknowledges that he was on probation.

23 MR. SPAULDING: I do acknowledge that.

24 THE COURT: Then there will be convictions on section 245 and
25 section 666 on information 150.

26 MS. WALL: The last offence occurred the 23rd of December 1985,
27 near Rae, in the Northwest Territories, and it was again on

1 Bernadette Steedsman. This is the assault causing bodily harm,
2 Your Honour. Miss Steedsman and Mr. Lafferty were driving from
3 Rae to Yellowknife in her vehicle. He decided he wanted to go
4 back to Rae, so she turned the vehicle and headed back towards
5 Rae, but then he changed his mind again and had her stop the
6 vehicle near the Stag River truck-stop.

7 He began screaming at her, threatening to kill her, and he
8 assaulted her by striking her with his right hand to the right
9 side of her face several times. He then became apologetic and
10 cried, saying he would not hit her again. A few moments later
11 he became abusive again. And, of course, in the incident he
12 struck the windshield with his hand and cracked it. He was
13 driven by her to their residence in Yellowknife. He became
14 abusive there, and she, instead of going into the residence, went
15 to the manager's office -- of the apartment -- and asked for the
16 police to attend. And they did come down.

17 The injuries she suffered consisted of a swelling to the
18 right side of her face and a cut about one inch long below her
19 right eye. Her clothes were covered in blood. She was taken to
20 the Yellowknife Stanton Hospital and treated by Dr. Cronin.
21 She also had swollen lips.

22 At the time of that offence, Marcel Lafferty was on
23 probation for assault causing bodily harm, with the usual
24 conditions to keep the peace and be of good behavior. His
25 probation also contained a condition to abstain from the
26 possession and consumption of alcohol, but he was intoxicated
27 at the time of this assault on Miss Steedsman causing bodily harm.

1 I have some pictures of Miss Steedsman after that assault,
2 Your Honour, which I'd like to submit.

3 THE COURT: Was that the same probation order, then, that he
4 violated, or would have been on at that time, that assault
5 causing?

6 MS. WALL: I will just check.

7 Your Honour, he was given a year's probation May 1985, so
8 he would still have been on that probation order at the time of
9 this assault causing bodily harm.

10 THE COURT: And that original probation order was for assault
11 causing bodily harm, then, too, was it? That is what you had
12 said?

13 MS. WALL: Yes, it was, Your Honour, yes.

14 THE COURT: And that is the same one? All of these offences
15 would have occurred on that same probation order, then?

16 MS. WALL: Well, actually, Your Honour, the first probation order
17 was the breach of an order entered into before a justice of the
18 peace.

19 THE COURT: The first charge is under section 666, and it says
20 that he failed to keep the peace -- of a justice of the peace.

21 I see what you mean.

22 MS. WALL: Yes, I have a copy of that order dated April 1985.

23 THE COURT: Thank you, yes.

24 MS. WALL: And that was in respect of an assault offence.

25 THE COURT: It was a different probation order, though.

26 Yes, thank you.

27 MS. WALL: As I say, Your Honour, I have some pictures of Miss

1 Steedsman, which I'd like to submit. These show how she looked
2 after the last assault, Your Honour.

3 THE COURT: Thank you.

4 MR. SPAULDING: I have no objection to the admission of the
5 pictures.

6 MS. WALL: I propose that they be made one exhibit, Your Honour.

7 THE COURT: Thank you. Then, the grouping of pictures will be
8 an exhibit. Is it one picture, or more?

9 MS. WALL: Four pictures in all, of the same person.

10 THE COURT: The pictures will be one exhibit.

11 MS. WALL: Those are the circumstances on the assault causing
12 bodily harm, Your Honour.

13 MR. SPAULDING: Your Honour, those facts are admitted, with the
14 exception of the statement which my friend recounted that the
15 accused threatened to kill Miss Steedsman before he struck her.
16 I believe my friend will not insist upon establishing that fact.

17 MS. WALL: I don't require an opportunity to call evidence on that,
18 Your Honour.

19 THE COURT: Thank you. I will not, then, recognize as facts
20 anything with regard to a threat. Other than that, the facts
21 are acknowledged and conviction will be entered under section
22 245.1(1)(b) of the Code.

23 MS. WALL: The accused has a record of previous criminal
24 convictions, Your Honour, which I'd like to submit.

25 MR. SPAULDING: The record is admitted.

26 THE COURT: Thank you.

27 MS. WALL: I will just give Your Honour a minute to look at it.

1 THE COURT: Thank you.

2 What does the record actually say in the last couple of
3 lines -- 1984 and 1985? June of '84, the 20th of June, it says,
4 driving over .08. The next one is March 17th, 1985; it says,
5 assault, February 24th, 1985, breach of undertaking. What are the
6 sentences imposed for those individual charges? Can you tell,
7 or do we have to guess?

8 MR. SPAULDING: I have a better copy, Your Honour. I can just
9 read from it. The April 12th assault resulted in a sentence of
10 six months probation, and the breach of undertaking, a \$225.00
11 fine; in default, ten days.

12 THE COURT: I can read that. It says six months probation, and
13 I was just wondering if that did refer to the assault charge.

14 MS. WALL: It appears to, Your Honour, as it begins on the same
15 line as the assault.

16 THE COURT: Yes.

17 MS. WALL: But there is also the breach of undertaking. It
18 isn't clear which one is on which. I think the Court would have
19 to conclude that the probation was on the assault and the fine
20 was on the breach, the way it's laid out there.

21 THE COURT: Yes.

22 SUBMISSIONS ON SENTENCING BY CROWN COUNSEL:

23 MS. WALL: On this record, Your Honour, I don't know why the
24 accused received a suspended sentence for an assault causing, in
25 May of 1985, with the record he had at the time; however, that
26 is what he received. And you will see he had another assault
27 causing in November of 1985. He received a day in gaol

1 I would submit Your Honour can read the disposition of
2 last November as a clear warning from the Court, that the
3 accused has disregarded. I would submit the Court was, in
4 effect, telling the accused that by the large fine, it was
5 showing it was denouncing the type of behavior he had engaged
6 in, in committing the assault; and by giving him one day in
7 gaol, it was giving him a warning that the next time he
8 committed an assault, he would certainly be incarcerated, and
9 Your Honour, I submit that time has now come. I would be
10 submitting, even if there were just one assault, that the accused
11 should go to gaol.

12 You have before you three assaults today, two common
13 assaults and one assault causing bodily harm. The accused has
14 a previous assault on his record on the same victim, Bernadette
15 Steedsman. He now has three more on the same woman, a woman
16 that he's been living with for three years; they are spousal
17 assaults. I would submit they show a pattern that this accused has
18 developed of abusing and mistreating this woman, of resorting to
19 violence to settle their disputes, particularly when he's been
20 drinking. And on the latter two, I'd point out that he was
21 awaiting trial on the first when he committed the third. When
22 the third and most serious one was committed, he was awaiting
23 trial on two assaults on the same woman, and yet he didn't
24 govern his conduct accordingly.

25 Your Honour has heard the evidence and seen the photos of
26 the face of the victim after the last assault. Your Honour, I
27 would submit no one should have to put up with the kind of pain

1 that must be associated with blows to the face of that nature.
2 THE COURT: It surprises me when I hear of cases of what seem
3 to be repeat assaults on the same person, why a victim would
4 stay around and be available to be assaulted. It's a very
5 strange situation. Sometimes, I suppose, there is just no
6 opportunity to change their way of life.

7 MS. WALL: Well, Your Honour, I think every situation is
8 different, but there are many factors that go into it. And
9 there may be a relationship of some standing that the victim
10 is still hoping to preserve, because there are some good things
11 in it and there may be a child involved, things which have to be
12 considered.

13 I would submit it's not any factor in mitigation, any
14 factor that should be taken for the benefit of the accused, that
15 a victim was still associating with an accused after he assaulted her.
16 She is not to be regarded as having asked for it in any way by
17 having made herself available, simply because she was there,
18 continuing to see the same individual. He has to learn to
19 control himself, no matter who's around.

20 I am told at this particular instance, Your Honour, that
21 the two no longer do live together. In this case, the victim has
22 decided now she wants nothing to do with him. But I repeat,
23 Your Honour, the fact that she continued seeing him after
24 the first two assaults is not a factor I submit that he should
25 be given the benefit of.

26 In sentencing, Your Honour, I would ask you to take into
27 account both individual deterrence and general deterrence. I

1 submit there is a role for the Courts to play in sentencing spousal
2 abusers, to deter others who might be tempted to solve their
3 family disputes by violence. And I submit it is appropriate,
4 certainly, to deter this individual accused, so the next time he
5 hauls back and is going to strike a woman that he is in a
6 relationship with, he may think twice, and she will be saved, saved
7 some pain.

8 I would ask Your Honour to consider a sentence of five or
9 six months for this accused, for these offences. I submit less than
10 that would simply be a slap on the wrist. Those are my submissions.

11 THE COURT: Thank you. Mr. Spaulding?

12 SUBMISSIONS ON SENTENCING BY DEFENCE COUNSEL:

13 MR. SPAULDING: Your Honour, Mr. Lafferty is 26 years old. He
14 was born in Fort Rae and he has lived there all his life until
15 the past six months, when he and Miss Steedsman moved together
16 from Fort Rae to Yellowknife. He comes from a large family; he
17 has seven brothers and sisters. His mother raised the family
18 for the most part of his childhood, his father having died when
19 he was four years old. When he was six, he was cared for in Fort
20 Smith, at Breynat School, and then afterwards, until he was 11,
21 he went to school in Fort Smith, while he was there.

22 He stayed in school until he reached grade 8, and at that
23 time, when he was 16 years old, he left school in order to help
24 his mother support the family. She had only Welfare previously
25 and, at the time, was put off Welfare. And in the several years
26 thereafter, Mr. Lafferty worked seasonally to support the
27 family.

1 He was the eldest at home during this period.

2 When he was 17, he worked for the Department of Highways
3 for four months, doing brush-cutting work. Thereafter, he held
4 jobs for similar periods of time as a part-time guard with the
5 RCMP, as a part-time construction worker with Whissell
6 Construction Limited, with the Fort Rae Hamlet security guards
7 and, afterwards, at the local sawmill, cutting shingles.
8 He did that for four or five months.

9 When he was 22 years old, he moved out of the home and began
10 living with Miss Steedsman; they lived in Edzo, initially, she
11 and Mr. Lafferty and her children from a prior relationship.
12 They living in Edzo for the next three years, and for those
13 three years Mr. Lafferty had a full-time job with Rae-Edzo
14 Housing Association. He was responsible for doing the repair and
15 maintenance work on the water system in Rae, and he took home
16 \$245.00 per week, net, during that period of time. And during
17 that period of time he helped to support Miss Steedsman and
18 the one child that was still remaining, of hers, with the family.
19 She also was working at the time as a secretary at Fort Rae.

20 In the summer of 1985, Mr. Lafferty was laid off that job,
21 and he took a carpenter's job with Jaemar Construction in Fort
22 Rae, earning \$15.00 an hour, and that job lasted two months
23 further. At that point, there was very little work available
24 in Rae, and the couple decided to move to Yellowknife, Mrs.
25 Steedsman getting a job as a typist with the Department of
26 Personnel for the Government of the Northwest Territories.
27 In that period, Mr. Lafferty had been seeking work. He has

1 looked for jobs with PCL Construction, with Con Mine and Esso
2 Resources. At this point in time, he still doesn't have a job;
3 however, he has been told by the foreman at PCL working on the
4 hospital site that there is a good possibility that he could
5 get a job there within the next few weeks, working on
6 construction. He has been receiving Unemployment Insurance
7 until very recently.

8 Also in this period, he has taken up a hobby that he had
9 been interested in when he was younger. He has been doing some
10 painting, and one of the galleries in Yellowknife, the Rice
11 Gallery, has been showing some of his work.

12 Just a matter of a few days ago, Mr. Lafferty moved out of
13 the house where he had been, or the apartment, rather, in which
14 he had been staying with Miss Steedsman. He recognizes that
15 she doesn't want to be with him now, and he is recognizing now
16 that he simply hasn't been able to control himself, particularly
17 when he's drinking. He is hoping that in the long term, the
18 couple may reconcile, but he recognizes that things cannot stay
19 as they are, and he is willing to avoid contact with her as long
20 as it is necessary to do that.

21 He is staying now with cousins of his in Yellowknife; his
22 cousin's name is Terry Tsetta, and he says that he can stay there
23 with him for as long as he's able to assist them with paying the
24 rent. In the long term, if he can't pick up steady employment
25 in Yellowknife, he's considering going back to school and
26 upgrading his school qualifications to grade 10. He would have
27 to take full-time schooling in math and English to do that, and

1 the course would be a seven-month course. After that time,
2 he has been told that he would then qualify to take a mechanics
3 course, and that he could get public assistance to take that
4 course in Edmonton. And he says that he has mechanical
5 aptitude and would be interested in doing that.

6 With respect to the circumstances of these three assault
7 offences, I would submit that the one assault, in particular,
8 the assault involving bodily harm, is in a somewhat separate
9 category from the others. The three together do fall into a
10 pattern. I accept my friend's submission that there is clearly
11 a pattern here of violence when drinking. There is also a
12 pattern of argument between the couple, and drinking on the part
13 of both parties, which is not to suggest that drinking on the
14 part of the victim excuses the accused's conduct, but it does
15 suggest that their relationship was one that could not withstand
16 drinking on the part of both of them.

17 With respect to Mr. Lafferty's record, it is clear from
18 the record that going back over the past eight years or so,
19 these offences had been virtually all alcohol-related. He has
20 no record of offences against the person, prior to April of
21 1985; the offences prior to that involved drinking and possession
22 of liquor, drinking and driving.

23 I would submit that the particular related offences
24 regarding sentencing on the three assault charges are the assault
25 of April 17th, 1985 and the assault causing convictions of
26 May the 23rd and November 1st. His prior sentences on these
27 three matters were a term of six months probation, a suspended

1 sentence and a sentence of one day in gaol.

2 I would agree with my friend's submission that the most
3 recent sentences were an attempt on the part of the Court to
4 give Mr. Lafferty a warning for his conduct, and I would,
5 however, remind the Court that the sentence imposed today is
6 not an attempt to resentence him again for conduct for which
7 the Court has already dealt with him. The Court ought to
8 look at prior sentences to determine whether or not they have
9 been successful in meeting their end, and I would have to accept
10 that they weren't.

11 The sentence of a suspended sentence and one year probation
12 in May 1985 also included an order that Mr. Lafferty attend a
13 detox program, an alcohol treatment program in Yellowknife,
14 which he did attend.

15 I have asked Mr. Lafferty about his drinking problem. He
16 tells me that he began drinking when he was 18 years old and
17 that he considers himself to have been a weekend drinker, he
18 could avoid it if he wanted to. He informs me that he has been
19 drinking more heavily since a tragedy in the family in late
20 1984. Mr. Lafferty's brother was one of the young people in
21 Fort Rae involved in an accident in which a truck rolled over
22 when there was drinking involved. Several other young people
23 from Rae were seriously injured in that accident, and Mr.
24 Lafferty tells me that it had a very traumatic impact on him --
25 he was close to his brother -- and, as well, on his mother, to
26 whom he was very close. The assaults on the record took place
27 after this point in time. In fact, Mr. Lafferty informs me that

1 he and Mrs. Steedsman got on fairly well in the first two years
2 of their relationship and there was no violence during that time.
3 All of the assaults on the record, he informs me, took place
4 during periods of heavy drinking on his part, and usually
5 drinking, as well, on hers.

6 The order that he attend the alcohol treatment program in
7 May of 1985 resulted in him completing a 28 day program and
8 staying away from alcohol for several months thereafter. He
9 continued to attend for regular counselling, which was arranged
10 by the alcohol treatment centre, and he did quite well up until
11 late in the year, when these offences on the record show up
12 again, starting in September.

13 Mr. Lafferty informs me that he considers alcohol to be
14 the root problem of his violence, and I would submit that the
15 record is fairly clear on that point. He does have a serious
16 interest in attending for further treatment. He is willing to
17 attend further treatment of the Yellowknife Alcohol and Treatment
18 Centre, either voluntarily or should that be ordered by the
19 court.

20 I have contacted both treatment centres in Yellowknife to
21 determine whether there would be places available for him.
22 The Salvation Army program, I am informed by Mr. MacDonald, who
23 is there, has a bed available starting Monday, and that he
24 would start a new program there. I wasn't able to get a clear
25 answer from the Alcohol Treatment Centre. Two weeks ago when
26 I spoke to the supervisor, whom I couldn't get in touch with
27 today, there was a place available starting on March the 3rd.

1 Mr. Lafferty is in a position, given time, to pay a heavy
2 fine. He has submitted his income tax return for 1985 and
3 expects to receive \$1,600.00 when the return is processed.

4 THE COURT: The \$1,000.00 and the \$250.00 fines had been paid,
5 had they?

6 MR. SPAULDING: I believe so, Your Honour.

7 The fines of November 1985 have not been paid, which does,
8 of course, take a considerable portion of the amount that I
9 just named as being available. Other than that, as I have said,
10 Mr. Lafferty is optimistic that he would be working soon and
11 would be willing to, and able to, given enough time, pay a
12 substantial fine.

13 I accept my friend's submission that deterrence to Mr.
14 Lafferty and to others who might find themselves in a similar
15 position is the most important consideration for the Court.
16 Given his age and given the relatively recent occurrence of this
17 kind of behavior on his part, I would submit that the purpose
18 of rehabilitation is not to be disregarded by the Court and I
19 would urge the Court to consider in whatever order it makes, that
20 alcohol treatment in the long run may be a very important
21 component of Mr. Lafferty's rehabilitation.

22 I do not agree with my friend's submission that a term of
23 imprisonment of five or six months is clearly warranted in this
24 situation. I do not agree that anything less than that ought
25 to be considered merely a "slap on the wrist." If the Court is
26 considering a term of imprisonment in this case, given the prior
27 record of punishment for the assault convictions, I would submit

1 that a term in the range of two months would probably be
2 sufficient to bring home to Mr. Lafferty the seriousness of his
3 conduct and to cause him to seriously try to change his behavior.
4 I have said that he is willing to abide by a term of no contact
5 with Mrs. Steedsman, and I would also point out, then, that
6 the assault that we're dealing with are not assaults against
7 the public at large; they're assaults against a particular
8 person. And he has not been subject in the past to an order to
9 stay away from that person, and I would suggest that the Court
10 ought to consider that an order such as that, successfully
11 respected by Mr. Lafferty, ought to accomplish the purpose of
12 preventing this kind of behavior again.

13 Those are my submissions.

14 THE COURT: Thank you.

15 MS. WALL: Your Honour, just if I could say one or two words.

16 As Mr. Lafferty's counsel has pointed out, he hasn't paid
17 the fine that was imposed in November, and the default time is
18 going to come due very shortly, and I'd ask if the Court gives
19 him incarceration today that it be made consecutive to default
20 time on the fine. I realize there would have to be a
21 sentencing today, but possibly -- I am not sure if it can be
22 done, Your Honour, frankly -- I would ask the Court to consider --

23 THE COURT: That is what I was going to ask. Are we in a
24 position to, if he is not serving time now, even though he
25 might be subject to three months, 21 days consecutive on two
26 previous matters, are we in a position to make this term
27 consecutive or make those previous terms consecutive, if they

1 commence after today's sentencing?

2 MS. WALL: If they weren't originally specified to be consecutive,
3 I don't think the Court can do that, Your Honour.

4 THE COURT: One of them is consecutive, but the other one isn't.

5 MS. WALL: It would be consecutive to the first one.

6 I am really not able to advise the Court. I don't know
7 whether my friend can. I am not sure it is provided for in the
8 Criminal Code.

9 THE COURT: Mr. Spaulding, do you understand the point the
10 Crown is bringing forth at this time?

11 MR. SPAULDING: I understand the point, Your Honour.

12 Unfortunately, I am unable to assist.

13 MS. WALL: I would ask Your Honour to consider at least making
14 the time on two of the offences consecutive, rather than
15 considering concurrent time, and then there might by a way that
16 it could be worked.

17 I would also bring to Your Honour's attention section 98
18 of the Criminal Code. I am sorry; I neglected to mention it
19 earlier.

20 THE COURT: That is just a restriction on weapons and firearms.

21 MS. WALL: Yes, Your Honour.

22 THE COURT: Thank you.

23 (CONCLUSION OF SUBMISSIONS)

24 -----
25
26 Certified a correct statement,

27 *Debora Chippefield*
Debora Chippefield,
Court Reporter