2003 NWTTC A10

T-1-CR-2003000881

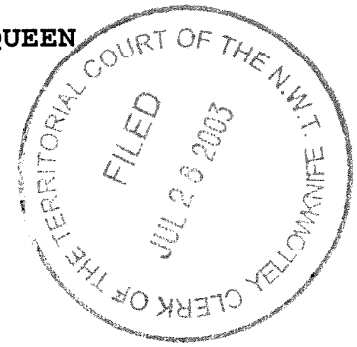
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

WANDA PENNER



Transcript of the Reasons for Judgment delivered by The Honourable Judge B.A. Bruser, sitting in Yellowknife, in the Northwest Territories, on the 11th day of July, A.D. 2003.

APPEARANCES:

Ms. L. Colton: Counsel for the Crown

Mr. J. Brydon: Counsel for the Defendant

(Charge under s. 266 of the *Criminal Code of Canada*)

THE COURT: I am ready to deal with this. It might be preferable for me to reserve and deliver a lengthy, well-reasoned judgment, but I think I can convey the sense of this matter, and I know that if I were to reserve, this would not change. All that would change would be the manner in which I word the judgment. It would be more scholastic if I could reserve; but I think the issues are important enough to deal with it now, and as I proceed, this ought to become abundantly clear. Also, this accused has been under considerable stress because of the proceedings. I do not think it fair to sacrifice her on the alter of scholastic achievement.

The charge is that Wanda Penner, on or about May 1st this year, at Yellowknife, assaulted her husband. In assessing and weighing the evidence, and in resolving the complex constitutional issues, I am indebted to counsel. They have been helpful, fair, reasonable, and thorough.

At the outset, I make it as clear as this court can pronounce on any statement: There is no offence in the *Criminal Code of Canada* of spousal assault. I have a sense that far too often people throw out words carelessly, and when they refer to spousal assault, they actually think they're talking about a crime. There is a crime of assault. It is an aggravating factor within the *Criminal Code of Canada*, and at

common law, to assault a spouse. There are a number of reasons for this, one being the obvious breach of trust, another one being an imbalance of physical power. There are other reasons as well. I need not go into them now. This is not a sentencing proceeding. I am dealing with an assault by, allegedly, one spouse upon the other.

To the extent that the enforcement agency (in this case, the RCMP) may think of these offences as a crime of spousal assault, I would have to disagree; but I do not know that the policies fall into that trap. I will say more about this shortly.

There are two issues. The first one raised by the defence is the second one raised by the Crown. It is the argument that the complainant consented to what occurred. If the Crown fails to prove beyond a reasonable doubt (the onus being on the Crown, not on the defence) that the complainant did not consent, the Crown's case must fail. I will deal with this issue first, although I intend to give reasons on both issues. It does not matter which order I do it in.

The complainant and the accused clearly were talking about the same event. There are more common features to what they had to say than features that are not common.

The accused wanted to talk things through with the complainant because she was having problems

trusting him. She had not slept well for two previous nights. She thought, and apparently correctly so, that she had seen her vehicle that she shares with the complainant being driven by an unknown woman, and she wanted to talk about that and, presumably, other issues.

I will not review the evidence of the complainant and the accused in depth, but, in summary, the complainant says that he was in a bathroom in the basement unit, and she blocked his way. She held him by the chest area, or by, if he had been wearing a suit, what we call the lapels. He dislodged himself. He is much larger than she. He started to go up the stairs. She wanted to talk. She made that clear to him verbally. She grabbed onto the waist area of his pants. She tugged and pulled him down onto his rear. He did not sustain any physical injury; but he did, he testified, sustain an emotional one. He went to a telephone. The complainant continued with the yelling and screaming at him that she had been doing up to this point.

The police promptly came. They heard yelling and screaming. They went into the unit, and the complainant was seated; the accused was verbally abusing him.

She doesn't dispute that this is more or less what happened, but she says that he grabbed her arm

hard enough in the bathroom area to cause bruising. She denies grabbing him by the lapel area, saying that definitely did not happen. She admits to holding onto the waist of the pants and tugging as hard as she could and simply holding on. She was being dragged up the stairs, and eventually he came tumbling down.

There have been suggestions in the cross-examination of the complainant that he was baiting the accused, or as people often say, pushing buttons.

At no time did the complainant say that he had anticipated taking over possession of the home, property, or controlling anything else in their joint lives. It was his intention, after this occurred, to move out. He thought that's what was expected of him. It is not a case, as we often see, where it is the accused who is required to leave the home and where complainants sometimes are challenged as to why they called the police, with suggestions to them that they did so simply to get a spouse out of the place so they could occupy it alone. This isn't that kind of case.

I find very little in the evidence that indicates in any sense dishonesty on the part of the complainant respecting the reasons why he called the police. I do not find a reasonable doubt on the consent issue that he set the accused up. These are suggestions made to him, and the accused herself testified that was her

view, that she had been set up. I do not share that view. There is nothing suspicious or otherwise sinister about the suggestion that the police had a file open in the matter, or that a member assigned to that file was called by the complainant after this event. I read nothing into that either way, nothing in favour of or against the complainant, nothing in favour of or against the accused. It is neither here nor there.

What is clear beyond a reasonable doubt is that the complainant, when he got free from the bathroom area, wanted to leave. It was his intention to defuse the situation. The accused herself has acknowledged in her testimony that she can become verbally active when she becomes angry. This is what was happening. The complainant did what any reasonable complainant might do - he tried to walk away. Another option may have been to try to talk to her. But he doesn't have to talk to her on demand. This is not what a marital relationship is about; you stay there, I want to talk to you, you're not to move until I'm through. Marriages don't function that way. Marriages are not about that kind of power and control.

The complainant did not consent to being tugged by the waistband, and I leave the other issue of the lapel-grabbing aside because I can't resolve that. I don't know what happened. I extend the benefit of a

doubt to the accused in that regard. But what is common is that he did try to go up the stairs. He was trying to leave. He was not baiting her. There was no consent, express or implied, and I rule in favour of the Crown on that issue.

The other elements of the offence have been made out beyond a reasonable doubt. They are not in issue. Identity, jurisdiction, whether a grabbing of the pants and a pulling in that manner is an assault, are not issues that have been placed in dispute.

If there were not a constitutional challenge, I would therefore have to find, given these conclusions, the accused guilty as charged.

The defence has filed a Notice of Motion on Constitutional Issue. It was filed on May 26th. Attached to it is the affidavit of the accused. She testified in the voir dire, and her testimony there conforms to the affidavit. I have been invited to take into account her testimony in the voir dire on that issue alone and I do so.

The grounds for the application are: One, the arrest of the accused by the RCMP was arbitrary and illegal; two, the detention following the arrest was arbitrary and illegal; and finally, the policies of the Attorney General for Canada and the RCMP in respect of arrest and detention of people charged with offences are arbitrary, illegal, and contrary to the

Charter.

The principles in the notice to be argued are: One, the policies of the RCMP and the Attorney General of Canada of arresting all people charged with assault in a domestic context is an abuse of discretion, arbitrary and contrary to statute law; two, the policy of the RCMP and the policy of the Attorney General of Canada of holding all people charged with assault in a domestic context is an abuse of discretion, is arbitrary, and is contrary to statute law; and, three, the automatic arrest and detention of all people charged with a "domestic assault" is an arbitrary detention and an abuse of the person's right to be presumed innocent within the meaning of the *Charter*. Finally, the holding of the accused for a show cause hearing before a Justice of the Peace was a denial of her right to be presumed innocent and of her right to reasonable bail in all the circumstances, thereby violating her rights under the *Charter*.

I will now refer to the policies in issue. They are an important part of the constitutional argument, but, of course, are not all of that argument. The conduct of the RCMP is also in issue, although their conduct depends, on the evidence, to some extent on the policies, but not totally so. I will try to make this more clear as I proceed.

The Canada-wide policy from the Attorney General

of Canada is Exhibit 1. It is headed "Domestic Violence". The first part of this (that is, the numbers beginning 1. et cetera) are all abundantly reasonable. They are intended to protect the Canadian public. The policies recognize the tremendous harm done to spouses everywhere in this country. The first one, 1.a., by way of illustration, identifies "domestic violence complaints..." and I note here, it doesn't say "spousal" assaults. The language "domestic violence complaints" is entirely appropriate. I continue: "...as serious and potentially dangerous incidents that involve risk to the safety of the victim, children and responding member." Nobody can argue that anything in that sentence is inaccurate or exaggerated. If anybody were to argue that to be so, I would say that such argument is manifestly unreasonable.

1.b. does not state that the police are to lay charges in cases of domestic violence; rather, it says that "where reasonable and probable grounds exist..." That language is consistent with the *Criminal Code of Canada* and there's nothing contrary to it or to the *Charter*. Where those grounds exist, charges are to be laid, with or without the support of the victim.

There is appellant authority and authority from the Supreme Court of Canada that victims are often at the receiving end of improper balance of power and

control. That is a reason why the support of the victim is not essential. Often victims are terrified or intimidated economically or through other reasons into not supporting charges. Paragraph 1.b. is therefore, in my view, consistent with case law at the highest levels in this country.

1.c. and 1.d., I need not refer to.

Under the heading "2. Division", the first requirement is that the RCMP "join with participating agencies in developing protocols and identifying responsibilities to respond to domestic violence incidences". I think anybody would be hard-pressed to challenge that logic.

The last part of this exhibit is where the complaint of the defence arises. But the policy 2.a. should not be read in isolation, and this is why I have referred to the preceding paragraphs. Paragraph 2 is simple:

> "2.a. General, 1. A person believed, on reasonable and probable grounds, to have assaulted his/her spouse, should be arrested and detained pending a show cause hearing."

That is the end of that policy.

The operational manual, Appendix III-2-4, Exhibit 2, deals with the "Spousal Assault Protocol - Bail" for this jurisdiction. I do not intend to be as thorough with it as with Exhibit 1 because much of it is not relevant enough for my purposes. That doesn't

mean that it is irrelevant; but for what I have to do here this afternoon, it is not necessary to read it all.

I begin with paragraph 2. It reads:

> "A person believed, on reasonable and probable grounds, to have assaulted his/her spouse, should be arrested and detained pending a show cause hearing."

These are the exact words used in the closing paragraph of Exhibit 1. But unlike Exhibit 1, Exhibit 2 continues to develop the policy at a local level, for local purposes.

Before I proceed, the word "should" as used in Exhibit 1 and Exhibit 2, must be understood.

I have the *Canadian Oxford Dictionary* and I have *Black's Law Dictionary*. Both give a similar meaning. I begin with the *Canadian Oxford Dictionary*, being "The foremost authority on current Canadian English". The relevant part of the definition is in paragraph 2(a): "To express a duty, obligation, or likelihood." In *Black's Law Dictionary*, sixth edition, the definition in its entirety is worthwhile quoting:

> "The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of proprietary or expediency, or a moral obligation, thereby distinguishing it from 'ought.' It is not normally synonymous with 'may,' and although often interchangeable with the word 'would,' it does not ordinarily express certainty as 'will' will sometimes do." (As read).

I conclude that what is being conveyed in the policies for the RCMP is close to the word "shall". It imposes a duty. It is greater than the word "may", and this is consistent with the evidence of RCMP members who testified and who understood this to be their duty.

Paragraph 3, however, gives the police, following a lawful arrest, the opportunity to release a person without a show cause hearing being held, notwithstanding paragraph 2 and the interpretation of the word "should". It reads:

> "The police must not release a person charged with spousal assault unconditionally without serious consideration of the protection provided in a conditional release."

This is as far as Exhibit 2 goes to address the release by an officer in charge on a promise to appear or on a recognizance with an undertaking in form 11.1. If the policy, Exhibit 2, did not contain paragraph 3, I would be concerned.

The way I will approach the next part of this judgment is to follow the division submitted by Crown counsel. There is the arrest and there is the detention thereafter. I begin with the grounds for the arrest.

The evidence of Constable Aimoe is critical. She was the arresting officer. Why did she arrest the accused?

As the police approached the home, they heard a female yelling inside, although the words could not be made out. She dealt with the accused, who eventually calmed down. She told the accused that she was under arrest for assault. She gave the accused her right to counsel, advice consistent with Section 10 of the *Charter*.

Constable Aimoe did not tell the accused that she was under arrest for "spousal" assault. In the wording of the arrest, she did not appear to be under a misapprehension that there was an offence of "spousal" assault, which is in some way different from the actual offence in the *Criminal Code* of assault. She did say, though, that she was following the policy. The policy as she understood it is that if there are reasonable and probable grounds to believe that there has been a "spousal assault", that they are to arrest and detain pending a show cause proceeding. To this extent, I find she was in error.

That is not, however, the only reason she gave for arresting the accused. I accept her evidence as to why she placed the accused under arrest. Part (a) was the assault, but part (b) was her fear that if she did not arrest the accused, the offence would continue, or it would resume. She based this on the yelling and screaming she heard upon her arrival. She based it, as well, upon the observation she made of

the accused who did not calm down for some minutes following her arrival. Also, she based it upon the accused's statement that she had said she wanted to confront her husband earlier in the day and had been looking for him. She also based it upon instructions that she believed came her way from the corporal who testified that this was an "arrestable" offence.

The *Criminal Code of Canada*, Section 495, allows a peace officer to arrest without a warrant if a person has committed an indictable offence, or who, on reasonable grounds, she believes has committed or is about to commit an indictable offence. There are some prohibitions under Section 495(2).

Subsection 495(2) provides that a peace officer shall not arrest a person without a warrant for this type of an offence in any case where she believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to: one, establish the identity of the person; two, secure or preserve evidence; and, three, to prevent the continuation or repetition of the offence, may be satisfied without so arresting the person.

The officer, when viewed both subjectively and objectively, had the subsection 495(1) grounds to effect the arrest, and had, again viewed both subjectively and objectively, reasonable grounds to believe that the offence would have been committed, or

could have been committed, had the police simply departed with a warning not to do this again.

I find the arrest to have been lawful and entirely in accordance with the member's duty to serve and to protect the public. This was not a blind arrest based on a blanket policy in which the RCMP, as has been alleged, came across a situation like this and simply arrested someone based on policy. There is more than policy behind this arrest. The grounds have been established according to the *Criminal Code of Canada*, Section 495, and the common law that has applied it.

This takes me to the second consideration, and this is the one that Crown counsel has, I think, properly conceded to be the difficult part of the case from her perspective.

The accused was detained by the police for about seventeen and a half hours before being brought before a Justice of the Peace. There was nothing improper in law or on the facts with Constable Aimoe leaving the matter, after the accused had been placed in a cell, in the hands of another responsible member. To the extent that there is any suggestion that doing so is somehow improper or unlawful under the *Criminal Code of Canada* or under the *Charter*, I reject such argument outright.

The problem is this: Why did an officer in

charge or other peace officer not release this accused within that seventeen-and-a-half-hour period? The answer to this, I find, on the totality of the evidence, is that the police mistakenly misinterpreted their policy. They thought they had to keep her in custody. I have made it clear that they did not have to do so by virtue of their policy.

It is beyond contention that if policy and the law are in conflict, the law applies. Law trumps policy. In this case, though, the policy and the law are not in conflict. It is the investigating members' (I am using the plural here whereby I include all the members who were involved) misunderstanding and consequent misapplication of the policy that caused Wanda Penner to be detained for seventeen and a half hours. No consideration at any time was apparently given to having her released by a peace officer/officer in charge with or without conditions. Paragraph 3 of Exhibit 2 (the Operational Manual policies) specifically allows a release without conditions, although, in this type of case, it would be an exceptional situation where a peace officer would do so. Conditions would usually be more appropriate.

In making the finding that the police have misunderstood and misapplied the policy in Exhibit 2, I am not finding that they acted out of any improper

motive. This was innocent and inadvertent. I am satisfied beyond any doubt of this. There is nothing to suggest that they were detaining her in this way to try to squeeze a confession out of her or that they had any bias or ill will against her. Indeed, any suggestion of this sort can be dispelled from the very fair way that Constable Aimoe dealt with the accused in her home. The accused was in a housecoat. She was allowed, without being handcuffed, into her bedroom, and while the officer stood by for apparent safety reasons, she was allowed to change into outdoor clothing and get her outdoor wear as well, and then she was handcuffed and taken to the detachment and placed in a cell. There is no suggestion that she was placed in a cell with people who might have been expected to intimidate or harm her. She was given, by the officer, something to lie on, something that would make her stay not comfortable necessarily but more comfortable than it would have been had the officer not been caring. The police were fair, they were reasonable, they were acting out of good faith and nothing but good faith, but they made a mistake. They made a mistake which I infer may have developed over the course of time by the misapplication and/or misunderstanding of Exhibit 2. There comes a point where sometimes when something is done incorrectly, it develops into a pattern or a custom, and the pattern

or custom is thereafter deemed to be correct because, after all, that is the way everybody does it. This is what seems to have happened here.

Although I perhaps don't have to go further, I will. I will now deal with the options that were, in law, available to the police. I am now not addressing the policy.

Under Section 496 of the *Criminal Code*, a number of offences are mentioned. There are three categories. The offence of assault fits within Section 496. In other words, it is one that an appearance notice could be issued for. I do not say that in this case it would have been appropriate to issue an appearance notice. It would have been, on the contrary, inappropriate to do so. But to understand the rest of this judgment, I have to refer to Section 496.

Under Section 497, the release from custody by a peace officer is as stated. It has to do with the arrest without a warrant, but it refers to the Section 496 offences, which is why I had to begin with Section 496.

The beginning of Section 497(1) is that the person has to be released from custody "as soon as practicable" with the intention of compelling the appearance by summons. The police cannot issue their own summons. That has to be done by a Justice of the

Peace. That's why the words are "with the intention of compelling the appearance by way of a summons". The police can't say what the Justice of the Peace will do. All they can do is to ask a Justice of the Peace for a summons. That's why that language is used. Where there has been an arrest without a warrant, an appearance notice can be issued where the person has been arrested and then released right away. This covers the situation where there is an arrest and then the police officer decides, no, I don't have to detain this person anymore, I'll let him go. Often that can happen within a few minutes.

Under Subsection 497(1.1), the peace officer is prohibited from releasing a person under subsection (1) "if the officer, on reasonable grounds, believes that it is necessary in the public interest that the person be detained or," and this is significant, "that the matter of their release from custody be dealt with under another provision of this Part..." and then the criteria are referred to. One of the criteria is to prevent the continuation or repetition of the offence, which is what Constable Aimoe had in mind. So the arrest was lawful to prevent a repetition of the offence, and the detention thereafter was lawful for the same purpose. It would be illogical to arrest to prevent the repetition of an offence and then walk out of the home 90 seconds later and do nothing more.

This leads me to conclude that the arrest was lawful and the subsequent detention was lawful.

Under subsection (3), it is provided that a peace officer who has arrested a person without a warrant for one of the offences that I have already referred to, including assault, "and who does not release the person from custody 'as soon as practicable' in the manner described in that subsection, shall be deemed to be acting lawfully and in the execution of the peace officer's duty for the purposes of any proceedings under this or any other act of Parliament..."

What do we now have? We have a lawful arrest and a lawful detention. Logically, the police had to take Mrs. Penner to the detachment as a detained person.

Section 498 is the next section. Not surprisingly, it says that if a person who has been arrested without warrant is taken into custody and is detained in custody under 503(1) for an offence in Section 496(a), (b), or (c), or any other offence that is punishable by imprisonment for five years or less - and assault fits that category - and "has not been taken before a justice or released from custody under any other provision of this Part, the officer in charge or another peace officer shall, as soon as practicable, (a) release the person with the intention of compelling their appearance by way of summons; (b)

release the person on their giving a promise to appear...", and (c) has to do with the recognizance before an officer in charge or another peace officer, and (d) does not apply.

The members who were in the detachment -- and it doesn't matter who they are - the police are the police -- had the accused in their care, in custody, and had to release her under paragraphs (a), (b), or (c) of Section 498(1). But Parliament has added paragraph (1.1) to Section 498, which prohibits the officer in charge or a peace officer from releasing under subsection (1) if the officer in charge or the peace officer believes on reasonable grounds that - and here we go with the same language I have referred to already - it is necessary to keep the person detained to establish identity, to secure or preserve evidence, or to prevent the continuation or repetition of an offence - and here I am summarizing - or to ensure the safety and security of any victim of/or witness to the offence.

It would have been lawful to keep this accused in custody if any of those criteria had been established. But things had cooled down by the time the accused arrives at the detachment. Mr. Penner had left the home. He'd packed up. He had another place to go. The accused was no longer yelling and swearing and saying that she would go looking for him. I don't

know why she could not have been released on a summons or on a promise to appear or on a recognizance. Apparently no consideration was given to doing so.

Under Subsection (3) of Section 498, an officer who does not release from custody as soon as practicable in the manner I referred to earlier "shall be deemed to be acting lawfully and in the execution of the officer's duty".

Section 503 of the *Criminal Code* is also applicable. It provides that a peace officer who arrests a person without a warrant - and I'm skipping some words that aren't applicable, Counsel - shall cause a person to be detained in custody and to be taken before a justice to be dealt with according to law where a justice is available within a period of 24 hours after the person has been arrested, and without unreasonable delay, and in any event, within that period. Seventeen and a half hours, in these circumstances, is, whichever way one looks at it, an unreasonable delay. The police knew that the accused could not be brought before a Justice of the Peace for seventeen and a half hours, and were obligated to consider something else. Section 503 provides for that something else. It allows the police, in that kind of a situation, to release the person unconditionally or conditionally. The police, however, gave no thought to this. They may have

decided to release her unconditionally. They might have decided to release her conditionally and could have done so. These are exercises of their discretion, and as long as the discretion is lawfully thought through and carried out, the courts would not interfere. But here there was a failure to exercise any discretion.

They could have protected, if they had thought about it, the complainant by including a number of authorized conditions by means of a promise to appear or a recognizance, along with a Form 11.1 undertaking.

I shall now refer to the *Charter of Rights* as I near the conclusion of these reasons.

Section 7 provides that "everybody has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The police here failed to afford this accused the "fundamental justice" that the *Criminal Code of Canada* required them to consider.

The sections of the *Criminal Code* that I have referred to are not unconstitutional; they are part of the principles of fundamental justice. Section 7 of the *Charter* has been breached in this case.

Section 9 provides that "everyone has the right not to be arbitrarily detained or imprisoned." It is not, as the case law says and as counsel have

correctly argued, every unlawful detention or every unlawful imprisonment that will necessarily be an arbitrary detention or an arbitrary imprisonment and therefore in contravention of the *Charter*. But in these circumstances, given the reasoning process that I have been following, I find that Section 9 was violated. There was an arbitrary detention past a certain point, not at the house and not initially at the detachment, but at some point within those seventeen and a half hours. It's not necessary for me to decide exactly at what point it was. There was an arbitrary detention and an arbitrary imprisonment, because when one is locked up in a cell, one is in these circumstances both arbitrarily detained and arbitrarily imprisoned.

Section 11 of the *Charter*, paragraph (e), provides that any person charged with an offence has the right "not to be denied reasonable bail without just cause". There was no just cause for detaining this accused for seventeen and a half hours. That section, as well, was violated.

Now what do I do? The relief sought is for a stay or, alternatively, punitive damages. It is not for damages, but rather "punitive" damages.

There will not be a judicial stay. A judicial stay is an exceptional remedy. Given the very positive features of what the police did do,

notwithstanding the devastating effects to the accused, I do not find that the circumstances warrant a judicial stay of proceedings.

The same reasoning leads me to conclude that punitive damages are not appropriate. If this situation had happened in another case in this jurisdiction where the police were flaunting the decisions of this or any other court, a stay or punitive damages might be appropriate. As far as I am aware, this is a leading case in this jurisdiction on this issue, and I think it would be inappropriate to be too harsh on the authorities. In a future case, however, it could be successfully argued that a more severe Section 24(1) *Charter* sanction is not only warranted but necessary.

I do not see this as a case, either, for damages simpliciter. The same reasoning process applies. I think that it is probable, following the limited company judgment from the Supreme Court of Canada referred to by counsel, that this court does have authority to award damages, but I need not resolve that issue.

I am called upon in at least one of the cases filed by counsel to be "imaginative". In my view, the appropriate remedy is to decline to enter a conviction.

One of the arguments raised by Crown counsel is

that the remedy could be fashioned in the sentencing stage, perhaps by way of a discharge, absolute or conditional. If there were a discharge and if it were a conditional one and the accused successfully completed the probationary term, there would not be any conviction; but she would still have a record, a record for having been found guilty of this assault. But I'm not going to enter a finding of guilt. Therefore, there will be no record. It is not a stay. It is not an acquittal. It is simply a remedy in which the Court is doing nothing further.

Does the Crown have anything more?

MS. COLTON: No, sir. Thank you.

MR. BRYDON: No, sir.

THE COURT: Mr. Brydon?

MR. BRYDON: No.

(CONCLUSION OF PROCEEDINGS)

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Certified to be a true and accurate transcript, pursuant to Rules 723 and 724 of the Supreme Court Rules of Court

Jane Romanowich,
Court Reporter