Citation: *R. v. Buyck,* 2026 YKTC 17

Date: 20260320
Docket: 24-00715
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Phelps

REX
v.

ROY KENNETH BUYCK

Publication of any document, or broadcast or transmission in any way of an application made, evidence taken, information given, representations made or the decision of a judge, unless ordered otherwise, under ss. 278.93 or 278.94 of the *Criminal Code* is prohibited pursuant to s. 278.95 of the *Criminal Code.*

Appearances:
Andreas Kuntz — Counsel for the Crown
Felix Larose (by video) — Counsel for the Defence
Susan Bogle (by video) — Counsel for the Complainant

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

RULING ON APPLICATION

[1] PHELPS C.J.T.C. (Oral): Roy Buyck is before the Court on a two-count Information alleging offences from October 3, 2024, contrary to ss. 271 and 279(2) of the *Criminal Code*.

[2] A pre-trial application was made on behalf of Mr. Buyck to adduce the records in his possession at trial, being the following complainant medical records from the date of the alleged offences:

1. Treatment and Community Health Notes.
2. Emergency Medical Services Patient Care Record.
3. Emergency Department General Report prepared by Dr. Warchawski.
4. Sexual Assault Note prepared by Dr. Boon.

[3] All of the listed documents meet the definition of a record as set out in s. 278.1 of the *Criminal Code*:

> 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 or disclosure 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.

[4] A s. 278.93 *Criminal Code* application was made on October 3, 2025, in relation to these documents. The Crown made the concession on that date that the documents were capable of being admissible under s. 278.92(2) of the *Criminal Code* and that the matter should proceed to a s. 278.94 hearing. On review of the written material filed on behalf of Mr. Buyck, which included the Notice of Application, the Book of Documents, and the Book of Authorities, I was satisfied that the threshold test had been met.

[5] The s. 278.94 *Criminal Code* hearing proceeded on January 27, 2025, with counsel for the complainant added as a participant pursuant to s. 278.94(2). Counsel for the complainant filed a written argument and caselaw opposing the application. The complainant did consent to the production of the documents for disclosure purposes, but the decision on admissibility at trial, as counsel pointed out, is for the trial judge.

[6] The Crown did not file materials in opposition to the application but did make submissions regarding the insufficiency of Mr. Buyck's submission on the records other than the Treatment and Community Health Notes. The Crown's opposition was to the defence application and proposed use of the records, noting that the Crown intends to rely on certain aspects of the records in the prosecution as they relate to treatment and observations of injury. The brief history noted by the physicians in the records sought by defence would not be reliable, the Crown argued, without the author testifying to the circumstances of receiving such information.

[7] Section 278.94(4) of the *Criminal Code* sets out the responsibilities of a Judge on the application:

> (4) At the conclusion of the hearing, the judge... shall determine whether the evidence, or any part of it, is admissible under subsection 276(2) or 278.92(2) and shall provide reasons for that determination, and
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> (a) if not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;
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> (b) the reasons must state the factors referred to in subsection 276(3) or 278.92(3) that affected the determination; and
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> (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.

[8] The applicable test for this application is set out in s. 278.92(2)(b) of the *Criminal Code*:

> (2) The evidence is inadmissible unless the judge… determines, in accordance with the procedures set out in sections 278.93 and 278.94,
>
> (b) …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.

[9] This application requires the consideration, as stated in s. 278.94(4), of the factors set out in s. 278.92(3):

> (3) In determining whether evidence is admissible under subsection (2), the judge… shall take into account
>
> (a) the interests of justice, including the right of the accused to make a 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;
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> (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.

[10] The Supreme Court of Canada reviewed these factors in *R. v. J.J.*, 2022 SCC 28, noting at para. 51:

> The factors outlined in s. 278.92(3) shed 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...

[11] The Court continued at para. 53:

> In our view, s. 278.1 presupposes that a certain level of privacy must be engaged; namely, this provision concerns only records that could cause "potential prejudice to the complainant's personal dignity". These factors suggest 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 where the sensitivity of the information strikes at the subject's more intimate self".

[12] Finally, the following passage from *J.J.* at para. 126 is relevant to the application before this Court:

> As a preliminary point, we emphasize that the record screening regime clearly does not render essential evidence inadmissible, such as prior inconsistent statements for the purpose of credibility or reliability assessments. Where the balance tips in favour of admitting the evidence because of its significance to the defence, it will be admitted for that purpose. By the same token, the record screening regime prohibits the accused from using the evidence for impermissible, myth-based purposes -- just like the s. 276 regime. This is not a novel proposition. Indeed, no evidence can be admitted unless it meets the relevance and materiality thresholds for admissibility (*Seaboyer*, at p. 609; *Goldfinch*, at para. 30).

Treatment and Community Health Notes

[13] This document contains three pages of handwritten notes by a nurse at the health centre in Mayo, Yukon, on October 3, 2024. The initial visit to the nursing station was with the investigating police officer within two hours of the alleged sexual assault. The entries have time notations, with the initial entry commencing at 5:50 a.m.

[14] The first page of notes purports to be a recording of the circumstances of the assault expressed by the complainant to the nurse. The exchange was not audio or video recorded, and it is not clear if the nurse was questioning the complainant continuously or if any of the information was offered by the investigating officer who accompanied her.

[15] The record is one of the first disclosures of the sexual assault and does contain information, defence argues, that is either absent from, or potentially contradictory to, two statements provided to the RCMP. The recorded statements to the RCMP were given later in the day on October 5, 2024, and on October 15, 2024.

[16] The weight to be given to the recorded statements by the nurse would be determined at trial based on evidence produced to establish the circumstances surrounding the recording.

[17] Following the recording of the disclosure, the nurse's notes address the assessment of the complainant during the initial visit. There are further entries at 6:45 a.m. in relation to a call from the complainant, 7:10 a.m. in relation to a call from the RCMP regarding the complainant, 9:37 a.m. in relation to the complainant returning to

the nursing station, and finally at 12:05 a.m. in relation to the patient's activities at the nursing station.

[18] I am mindful of the Supreme Court's acknowledgement in para. 126 of *J.J.* that this assessment "does not render essential evidence inadmissible, such as prior inconsistent statements for the purpose of credibility or reliability assessments". Despite some concern regarding the circumstances with respect to the note taking, a prior inconsistent statement is a very important triable issue that warrants the record being admissible in part. That is, the portion of the record that sets out the prior inconsistent statement as articulated by defence counsel at the hearing is admissible. This portion includes all of the first page of the document, marked at the bottom as page 123, and the continuation on the page marked 124 to the second line ending "WH".

[19] The remainder of the document, relating to the treatment of the complainant and subsequent interactions with the nurse, is inadmissible. Defence counsel argued that this latter portion of the record should be admitted as it helps establish the timeline of events and opportunity for the complainant to talk to a third party. This is not essential evidence, particularly given the Crown submission that the investigating officer can confirm the timeline of events.

[20] In making this decision, I have considered the factors in s. 278.92(3) of the *Criminal Code* and find the following to be applicable to this record:

(a) "the interests of justice, including the right of the accused to make a full answer and defence": A prior inconsistent statement in relation to

the sequence of events of the allegation before the court is “essential evidence” as stated in *J.J*.

(b) “society’s interest in encouraging the reporting of sexual assault offences”: Medical records are highly personal and the disclosure beyond the prior inconsistent statement would discourage the reporting of sexual assault offences.

(c) “society’s interest in encouraging the obtaining of treatment by complainants of sexual offences”: Overbroad use of medical records at trial would discourage complainants from seeking medical treatment.

(d) “whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case”: defence satisfied the court that the limited admissibility of the report would meet this objective.

(g) “the potential prejudice to the complainant’s personal dignity and right of privacy”: there is a risk in the treatment portion of the record of this occurring, and which was a factor in limiting the scope of admissibility.

Emergency Medical Services Patient Care Record

[21] Defence counsel submits that this document should be disclosed as there are some references to time and references to medications provided to the complainant. He points to an entry on page 1 beside the word “notified” on the form the handwritten entry of “11:50”, which he argues is relevant to the timeline of events. The medications and

dosage are listed on the second page, but do not include a time of them being provided. The submission regarding the relevance of this document was not lengthy, nor was it convincing. On its face, the time entry holds little relevance and without expert testimony the medications hold little relevance.

[22] The use of this record without the proper context would be highly prejudicial.

[23] The application with respect to this document is denied.

Emergency Department General Report prepared by Dr. Warchawski

[24] This report was prepared on admission to the hospital in Whitehorse and the assessment of the complainant at 3:30 p.m. on October 3, 2024.

[25] Defence counsel's application is for the observations of the doctor on the first page of the document for the purpose of cross-examination as the information sets out that she was vague and difficult to wake up. These observations, considering the time of the alleged assault and the medivac to Whitehorse, have very limited probative value and could be highly prejudicial. Defence counsel's argument did not satisfy me that the content of the record would be important to the right of the accused to make a full answer and defence.

[26] The record has a series of chronological entries in the final three pages, each page containing two of six marked pages. Defence counsel applies to have the sixth page, located on the final page of this record, to be admissible for cross-examination. He argues that the entry regarding her mood at approximately 7:30 p.m. on October 3, 2024, will assist in attacking the credibility of the complainant. I am not satisfied that the

mental state of the complainant, given the passage of time and travel following the alleged incident, would carry any probative value and find that it could be highly prejudicial.

[27] The application with respect to this document is denied.

Sexual Assault Note prepared by Dr. Boon

[28] The complainant was seen several times on October 3, 2024, by Dr. Boon who attended to perform the sex assault kit examination. Her interaction with the complainant was between 16:40 and 21:20, during which time she notes that the complainant "is drowsy and sleeping". Her notes include a brief history of the incident and the observations made during her exam. As with the observations made by Dr. Warchawski, these observations, considering the time of the alleged assault and the medivac to Whitehorse, have very limited probative value and could be highly prejudicial. Defence counsel's argument did not satisfy me that the content of the record would be important to the right of the accused to make a full answer and defence.

[29] Defence counsel submits that the reference in the record to the alcohol level recorded sometime after 17:10 is relevant to the defence. The doctor notes an "alcohol level of 55" taken "after my last visit", which looks, on review of the record, to have been at 17:10.

[30] There is no information before the Court on what this measurement means in the context of blood testing in a hospital nor what the number “55” represents. Standing alone without the interpretation of an expert it is of little probative value. The arbitrary use of this entry would be highly prejudicial if relied on out of context.

[31] The application with respect to this document is denied.

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PHELPS C.J.T.C.