

**SUPREME COURT OF YUKON**

Citation: *R. v. Hureau*, 2014 YKSC 48

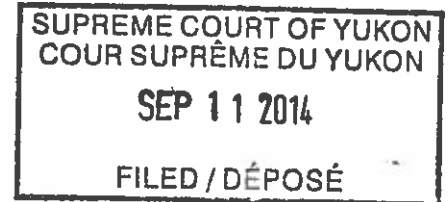
Date: 20140813  
S.C. No.: 14-01507  
Registry: Whitehorse

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**AND:**

**RAYMOND ANDREW HUREAU**



Before the Honourable Mr. Justice T. Heeney

Appearances:  
Eric Marcoux  
J. Robert Dick

Counsel for the Crown  
Counsel for the accused

**RULING ON *CERTIORARI* APPLICATION**

[1] HEENEY J. (Oral): The Crown has brought this application in the nature of *certiorari* to quash a portion of the decision of Judge Lilles made July 25, 2014, on the basis that part of that decision exceeded the jurisdiction of the Territorial Court judge.

[2] The finding of Judge Lilles was two-fold. First, he found that Mr. Hureau, the accused, was unfit to stand trial if he was unrepresented by counsel. The judge also found, however, that Mr. Hureau would be fit to stand trial if he was represented by counsel. In other words, he was sufficiently fit to instruct counsel but he was not fit to conduct a defence on his own.

[3] The *Criminal Code* provides for two possible verdicts on a fitness hearing: either fit to stand trial or unfit to stand trial. The *Code* does not contemplate the verdict pronounced by Judge Lilles that he is fit to trial if he is represented. In making that finding, Judge Lilles exceeded his jurisdiction.

[4] The term "unfit to stand trial" is defined in s. 2 of the *Criminal Code*, and that reads as follows:

"unfit to stand trial" means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

- (a) understand the nature or object of the proceedings,
- (b) understand the possible consequences of the proceedings, or
- (c) communicate with counsel;

[5] It is important to note that the definition is disjunctive. It uses the word "or". On a plain reading of that definition, it means that a person is unfit to stand trial if that person is unable to conduct a defence on his own, or to instruct counsel to do so. If either one of those conditions is met, then the person is, by definition, unfit to stand trial.

[6] In this case, Judge Lilles found as a fact -- and that fact is not open to me to interfere with in this proceeding -- that this accused, Mr. Hureau, is unable to conduct a defence on his own. He therefore meets the definition of being unfit to stand trial.

[7] That is the end of the analysis. It is unnecessary to consider the second part of the disjunctive definition as to whether he would be able to instruct counsel to do so.

[8] So therefore on the judge's own findings, the verdict that the accused is unfit to stand trial is a valid verdict, supported by his findings of fact, and is within his jurisdiction.

[9] The other part of his verdict that the accused would be fit to stand trial if he is

represented by counsel is, as I have already found, outside the jurisdiction of the Court.

[10] So the application for *certiorari* is granted and an order will go accordingly, quashing that portion of the verdict that was made without jurisdiction, but not interfering with that portion of the verdict which was within the jurisdiction of the Court.

[11] MR. MARCOUX: Okay. Thank you.

[12] The Crown was seeking, then, an order to remit this matter before the Yukon Review Board, pursuant to s. 672.45 of the *Criminal Code* for a disposition hearing to be held as soon as practicable and, in any event, within 45 days, pursuant to 672.47 of the *Criminal Code*.

[13] THE COURT: Um-hm.

[14] MR. MARCOUX: And I can draft an order to that effect later on this afternoon and forward it to the Court once it's ordered.

[15] THE COURT: Okay.

[16] Mr. Dick, did you have any comments on the Crown's proposal?

[17] MR. DICK: No, that's procedure.

[18] THE COURT: All right. Thank you.

[19] An order will go in that regard.

"T. A. Heeney R.S.J."

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HEENEY J.