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*R. v. Harper*, 2002 YKSC 7

Date: 20020225  
Docket No.: 00-00593D  
Registry: Whitehorse

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS MOSES HARPER

NARISSA SOMJI

For the Crown

FIA JAMPOLSKY and GORDON COFFIN

For the Defence

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**  
(Should complainant be required to testify)

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[1] VEALE J. (Oral): I will rule, then, that we should proceed to hear the expert evidence on the issue of trauma, and I think, Ms. Somji, I appreciate that you have to talk about the medical condition to talk about the trauma. No difficulty with that, but just be aware that you should not tread into issues that go further than that, and I cannot anticipate those, but I am sure that Mr. Coffin or Ms. Jampolsky will be on their feet if there is an issue arising as the evidence is given.

[2] MS. SOMJI: Okay.

[3] THE COURT: Is there any issue about the -- I see the expert is reading his newspaper. That is a smart move on his part. Is there any issue about the expert's ability, expertise, area of expertise, that sort of thing? Because I think you have to go and establish that.

[4] MS. SOMJI: I do, Your Honour, and I believe that we will -- and, again, the expertise is based on, one, their experience as medical practitioners with this particular person and what they understand to be the medical condition of that person. That would be something outside the knowledge of the average person. We would have to understand how the disease perhaps operates to them being -- to understand some of the specific behaviors. So I will be starting with Dr. Anzarut, and I will be seeking to qualify Dr. Anzarut as an expert in neurology to give opinion evidence on a) the current medical condition of the complainant, S.D. - which I don't believe there's an issue with - and then since the other stuff is said not to be led at this time, the potential impact of the court process on her medical condition, whether there exists a possibility of trauma or risk of harm. And, Your Honour, I'm just wondering if we could have a --

[5] THE COURT: You did want to deal with the arraignment of the accused, did you?

[6] MS. SOMJI: I did, and the other issue, as well, Your Honour, is that if I am going to possibly need this witness again at a later time and date, I would appreciate being able to at least have a moment with the witness to speak to them. I anticipate as soon as this is over they --

[7] THE COURT: You mean between giving evidence?

[8] MS. SOMJI: Well, potentially having to give evidence twice. I believe they're on a fairly tight schedule, may have to attend a clinic as early as eleven o'clock and --

[9] THE COURT: I'm sorry. Are you asking permission to speak to the witness?

[10] MS. SOMJI: Yes.

[11] THE COURT: Sure. Now?

[12] MS. SOMJI: Yes, I would --

[13] THE COURT: Let's arraign the accused and then have your break.

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VEALE J.