

Publication of information that could disclose  
the identity of the complainant or witness has been  
prohibited pursuant to s. 483(4.1) of the *Criminal Code*

*R. v. Sharp*, 2002 YKSC 60

Date: 20021028  
Docket No.: S.C. 01-00541A  
Registry: Whitehorse

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

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS PAUL SHARP

Edward Horembala, Q.C.

For the Crown

Gordon Coffin

For the Accused

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**MEMORANDUM OF RULING  
DELIVERED FROM THE BENCH**

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[1] HUDSON J. (Oral): We are all engaged in an exercise to ensure that the rights of the accused are upheld, in addition to the necessity that the proceedings of the court and society's interest be maintained as well.

[2] When this matter commenced this morning I note for the record that the accused was in court. Further for the record, he is shackled, and handcuffed or

manacled and he proceeded to shout, to threaten people in the gallery. He refused to acknowledge my request for him to sit down and he continued to shout. Officers attempted to persuade him to sit down - there are two officers in the courtroom. He refused and further refused, and he took a swing at one of them. I have no idea whether he struck him or not. I have considered it appropriate to give him a warning that, if that kind of conduct was in any way repeated, he would be removed. His response, to as is on the record, was to say that he is not promising and he doesn't want to be here. He has also indicated that he is not interested in having anyone speak for him, or act on his behalf. Mistakenly, he has referred to government lawyers and things like that.

[3] I have therefore determined, and it has confirmed my original feeling, that this matter can proceed under s. 650(2)(a) with this condition: that the Crown may apply for him to be brought back in the event that it is deemed necessary to them for the proper presentation of the Crown's case. I will deal with it at the time.

[4] Most unusual proceedings, but the conduct is most unusual. I am considering and requesting that counsel continue on to as an *Amicus Curiae* order that and I will see how it goes - that you will be compensated, appropriately, by the Territorial Government, or any government that I care to ask.

[5] I have in mind - I have a duty, under these circumstances, to cross-examine the witnesses. In view of the nature of the case, and your familiarity, I have not been able to contemplate a reason why, even considering the

accused's statements, it would not be appropriate for you to continue in that capacity, as an assistant to the court in determining the issues of fact that are before the court. I would not ask you to make submissions. I would ask you simply to cross-examine, and if that is considered to be inappropriate, I certainly invite counsel to say so.

[6] MR. HOREMBALA: Don't have any authority for it. I am not sure I'm going to find -- I guess -- I'm not comfortable with it and I say that by the optics of it. The fact that Mr. Coffin would now be assisting the Court as opposed to acting for a client.

[7] THE COURT: Yes. You prefer that I do it.

[8] MR. HOREMBALA: I appreciate what Your Lordship says, and I appreciate the fact that, Your Lordship, needs some assistance perhaps because of the fact that he's unrepresented.

[9] THE COURT: Well, I also am continuing to hope to present a picture of fairness with this matter. That it is proceeded in the best way and that there could be somebody other than myself, would be a better one to cross-examine. Just in the same way, where an unrepresented accused is charged with sexually assaulting somebody and, for the purposes of that witness' testimony, counsel is appointed to cross-examine the complainant so that the accused doesn't do that. I'm not the accused but I think if counsel --

[10] MR. HOREMBALA: That generally doesn't happen in a situation

where the accused indicates that he doesn't want either Mr. Coffin, a government lawyer or anyone. Obviously, Your Lordship, I guess the right to appoint to make his defense is an inherent right for a trial judge. I think where the jurisdiction comes from. The example you give, is a specific section of the *Criminal Code* and for policy reasons often counsel are appointed to cross-examine a complainant.

[11] THE COURT: The person alleged to have committed the assault. Yes.

[12] MR. HOREMBALA: Yes, but there's a policy consideration there.

[13] THE COURT: There's a difference, I agree.

[14] MR. HOREMBALA: And the person who's appointed, generally, isn't ever viewed as having acted for the accused.

[15] THE COURT: For who?

[16] MR. HOREMBALA: For the accused. We haven't heard from Mr. Coffin who's asked --

[17] THE COURT: I think I've seen where the -- maybe Mr. Coffin isn't willing.

[18] MR. HOREMBALA: Mr. Coffin on the record has indicated, a

request to withdraw from the case. We are now in the position where you're asking him to continue as counsel for the trial judge.

[19] THE COURT: It's all right. I'm thinking out loud.

[20] MR. HOREMBALA: I'm thinking out loud too, My Lord, and I have a feeling that it's a little too close.

[21] THE COURT: Do you have any response?

[22] MR. COFFIN: For what it's worth, My Lord, I feel extremely uncomfortable taking that position.

[23] THE COURT: Fine. I will not press you on it.

[24] MR. COFFIN: Thank you.

[25] THE COURT: Not at all. Not at all. We'll continue to proceed.

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HUDSON J.