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the identity of the complainant or witness has been
prohibited pursuant to s. 486(4.1) of the Criminal Code.

Date: 20030124
Docket: 01-00541A,
01-00668C
Registry: Whitehorse

R. v. Sharp, 2003 YKSC 9

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

Appearing for Defence

**MEMORANDUM OF RULING
DELIVERED FROM THE BENCH**

[1] HUDSON J. (Oral): The Crown has indicated a difficulty in securing an undertaking to perform this assessment from either British Columbia or Alberta, or to provide the facilities.

[2] MR. ULLYETT: Yes, My Lord. Throughout this week, the Department of Justice, the Yukon Department of Justice, Court Services Branch, has been in contact on a number of occasions with both the forensic psychiatric unit of the Riverview Hospital in Port Coquitlam, B.C. and, as well, the Alberta Hospital in Edmonton, Alberta in order to carry out the order of the court. The Court Services Branch has experienced a number of difficulties in arranging for Mr. Sharp to attend at either of those facilities. Unless the court wishes me to, I won't go into the details, but I can tell the court that at the moment, the Alberta Hospital in Edmonton through

a Ms. Diane Chorostkowski, who is the Forensic Court Coordinator at the Alberta Hospital, she has advised the Court Services Branch that a Dr. Singh would be available to come to the Yukon on February 23rd of this year and perform the required assessment. So, My Lord, I would submit that is the best arrangement that we have been able to come up with at this time.

[3] I am advised that Dr. Singh has done these types of assessments before. In fact, he has done other psychiatric assessments on other Yukoners. I appreciate that may be irrelevant, but we do have an available psychiatrist and a hospital that is willing to assist in making the appropriate arrangements.

[4] THE COURT: Under those circumstances, then, if that were to be the order, the amendment to the order, in whose custody, then, would you see Mr. Sharp?

[5] MR. ULLYETT: Well --

[6] THE COURT: It could not be Dr. Singh's?

[7] MR. ULLYETT: No, not Dr. Singh, My Lord. Mr. Sharp is currently in the custody of the Superintendent of the Whitehorse Correctional Centre and that would be Ms. Sharon Hickey. But looking at the provision in the *Criminal Code*, My Lord, and in particular (1) of s. 752.1.

[8] THE COURT: Yes.

[9] MR. ULLYETT: In that first paragraph in (1), looking at the

words:

...or can have an assessment performed by experts.

It may be advisable, My Lord, if the Court is inclined, to name specific individuals, to name Ms. Sharon Hickey as the custodian, though she is not the one that would necessarily perform or arrange things.

[10] THE COURT: Who does she report to?

[11] MR. ULLYETT: Pardon?

[12] THE COURT: Who does she report to?

[13] MR. ULLYETT: She reports to Noreen McGowan, who is the Assistant Deputy Minister of Corrections. The point that I wish to make, My Lord, is that the person who would -- looking at the words of the *Code* -- the person who would have the assessment performed -- would arrange for the assessment to be performed, would be the individual that we would be dealing with at the Alberta Hospital.

[14] THE COURT: Oh, somebody would instruct her?

[15] MR. ULLYETT: That is correct.

[16] THE COURT: That is not an artificial construct. So who would that be?

[17] MR. ULLYETT: She would be instructed, most likely, My

Lord, by Paul Cowan of the Court Services Branch.

[18] THE COURT: Does he have any powers over Corrections?

[19] MR. ULLYETT: No, he does not.

[20] THE COURT: Well, we have to go higher then. We have to go to the Assistant Deputy Minister or the Deputy Minister.

[21] MR. ULLYETT: If that is the case, My Lord, you may wish to consider the name of Noreen McGowan, who does have power over Corrections and the Whitehorse Correctional Facility, who could request --

[22] THE COURT: She could have delegated to her by the Deputy Minister the function of having an assessment done by experts.

[23] MR. ULLYETT: That's correct.

[24] THE COURT: Right.

[25] MR. ULLYETT: She would be the functionary, if you will. She could be the functionary that would request the Alberta Hospital to perform the assessment.

[26] THE COURT: Exactly, and she would instruct Ms. Hickey.

[27] Any questions or submissions that counsel has?

[28] MR. HOREMBALA: No, other than to speak to the other terms of the order, should Your Lordship be inclined.

[29] THE COURT: I am inclined to get on with it and nominate the Assistant Deputy Minister McGowan to do it, to be the named party who will then have the custody through Ms. Hickey or whoever else she chooses, I presume it will be Ms. Hickey, to do their jobs. She also will provide the arrangements for, in this case, Dr. Singh or whoever else she deems appropriate.

[30] MR. HOREMBALA: The order that is filed has two other provisions, and although it is the intention, as I understand it now, for the psychiatrist to come to Whitehorse, in speaking to my friend Mr. Coffin there is no harm in leaving clause 3 as is, in the event.

[31] THE COURT: I need a copy of it. I do not have one here.

[32] MR. HOREMBALA: It would not be inconsistent with the form of the order.

[33] THE COURT: Again, please.

[34] MR. HOREMBALA: It would not be inconsistent with the order that you propose to make.

[35] THE COURT: Paragraph number 3?

[36] MR. HOREMBALA: Yes.

[37] THE COURT: No:

To and from such locations as this order....

Absolutely, yes.

[38] MR. HOREMBALA: So 2 and 3 would remain.

[39] THE COURT: So number 1 would read:

The respondent is remanded for an assessment pursuant to s. 752.1 of the *Criminal Code* to the Assistant Deputy Minister of Justice, Noreen McGowan.

To the custody of. It does not say the custody of. Who is a person who can have an assessment performed by experts. Anything else, then?

[40] MR. COFFIN: I have no difficulty with that, My Lord.

[41] THE COURT: Anything else then?

[42] MR. HOREMBALA: No, My Lord.

[43] THE COURT: Prepare that order and I will sign that immediately. Thank you.

HUDSON J.