

Action No.: 160984423S1
E-File No.: CCQ17PAPASTESISV
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF GRANDE PRAIRIE

HER MAJESTY THE QUEEN

v.

VIRGINIA THERESA PAPASTESIS

Accused

P R O C E E D I N G S

Grande Prairie, Alberta
November 6, 2017

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Grande Prairie,
2 Alberta

3 _____
4 November 6, 2017 Afternoon Session

5
6 The Honourable Court of Queen's Bench
7 Mr. Justice Nielsen of Alberta

8
9 A. Oliver For the Crown
10 (No Counsel) For the Accused (by video)
11 R. Vogt Court Clerk

12 _____
13
14 **Discussion**

15
16 UNIDENTIFIED SPEAKER: And there's one other matter, the Papastesis
17 appeal, if that could just go to the end of the list.

18
19 THE COURT: All right. And that one there is materials on.

20
21 UNIDENTIFIED SPEAKER: That one there has materials on, yes.

22
23 THE COURT: All right.

24
25 UNIDENTIFIED SPEAKER: And I believe she's appearing via CCTV.

26
27 THE COURT: Right. I signed a judge's order this morning in
28 regards to her.

29
30 (OTHER MATTERS SPOKEN TO)

31
32 THE COURT: Please be seated everyone. Mr. Oliver.

33
34 MR. OLIVER: Yes, My Lord.

35
36 THE COURT: All right. And I think madam clerk is just
37 going to try and get Ms. Papastesis on the line.

38
39 THE COURT CLERK: Yes.

40
41 THE COURT: Or on CCTV I think it is.

1
2 MR. OLIVER: And I apologize for the delay in my arrival, My
3 Lord, I was upstairs with -- part way through a examination in chief and came down
4 immediately when I --
5
6 THE COURT: Yeah, no, no, no --
7
8 MR. OLIVER: -- quickly --
9
10 THE COURT: -- problem, we just took a -- took a ten minute
11 break here.
12
13 MR. OLIVER: Yes, sir.
14
15 THE COURT CLERK: Virginia Papastesis.
16
17 THE COURT: You interrupted your examination upstairs to
18 come do this?
19
20 MR. OLIVER: Well I completed it --
21
22 THE COURT: Ah.
23
24 MR. OLIVER: -- now the cross-examination, my chief Crown,
25 Steven Hinkley, is going to be overseeing the cross-examination.
26
27 THE COURT CLERK: Hello --
28
29 MR. OLIVER: So I left it much better, more capable hands.
30
31 THE COURT CLERK: We're looking for Virginia Papastesis. Do you
32 want me to call them on the phone (INDISCERNIBLE)
33
34 THE COURT: You better, yeah.
35
36 THE COURT CLERK: Hi, it's Ramona calling from the Grande Prairie
37 courthouse. Yeah, I'm -- yes, we're looking for Virginia Papastesis. No, I called
38 regarding Tyler Meagher (phonetic), I didn't say her. Thank you. Bye. They will get
39 her.
40
41 THE COURT: Are you -- are these folks all here on this

1 matter?

2
3 MR. OLIVER: They are, My Lord.

4
5 THE COURT: Okay. Ms. Papastesis?

6
7 THE ACCUSED: Yes.

8
9 THE COURT: Okay. We're here on this matter that the
10 Crown is appealing the decision from the trial in July before Judge Golden with respect --

11
12 THE ACCUSED: Okay.

13
14 THE COURT: -- with respect to the residency, if I can use that
15 term, at the Sturgeon Lake Cree Nation issues, okay.

16
17 THE ACCUSED: Okay.

18
19 THE COURT: Okay. And we have some folks in the
20 courtroom, Mr. Oliver is here for the Crown, he's been the Crown involved in this for a
21 while at least, we have some folks in the courtroom, who's in the courtroom, Mr. Oliver?

22
23 MR. OLIVER: Yes, My Lord. Hi, Ms. Papastesis. So the --

24
25 THE ACCUSED: Hello.

26
27 MR. OLIVER: Hello. The parties present, My Lord, and,
28 Ms. Papastesis, are -- we have Carol Gorbitt (sic) --

29
30 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)

31
32 MR. OLIVER: -- Garbitt, she's in the front row wearing a
33 purple jacket, and she is a councilor at Sturgeon Lake Cree Nation, as well as the person
34 responsible for their social portfolio, social works. Then, sir, beside her, to your left, is
35 Ms. Susan Whale (phonetic), and she is a -- again a councilor for the Nation and she has
36 the education portfolio. And behind those two ladies is Mr. Charlie Goodswimmer, and
37 he's also a councilor, and he is in charge of the public works and housing portfolio. I can
38 also advise that Chief Richard Kappo, he's had some serious health issues as of late,
39 unfortunately he did want to be here today and he sends his regrets.

40
41 THE COURT: All right, so just so you know, folks, I have the

1 complete file and Mr. Oliver had filed a -- a brief in relation to the application for leave
2 to appeal, and then I saw the Provincial Court file, Mr. Oliver, and, Ms. Papastesis, which
3 has Exhibits 1 and 2 on it from the trial before Judge Golden. So I've read those -- those
4 exhibits. And in particular Exhibit 1 is the solemn declaration of Tracey McLean of the
5 Sturgeon Lake Cree Nation and Exhibit 2 is the bylaw going back to -- well bylaw
6 number eight, 1990, so. . .

7
8 MR. OLIVER: Yes, My Lord.

9
10 THE COURT: Okay.

11
12 MR. OLIVER: One -- if I may, maybe I'll just give some
13 procedural history.

14
15 THE COURT: Yes.

16
17 **Submissions by Mr. Oliver**

18
19 MR. OLIVER: So, My Lord, and, Ms. Papastesis, you're aware
20 of the -- the file history with respect to the first trial date of February 16th of 2017, that
21 was the first date, and Ms. Papastesis was in attendance on that date, she had a lawyer
22 who went on the record on her behalf, and the trial was adjourned to July the 6th of this
23 year. And on that date of course she failed to attend court, it was preemptory for her on
24 that date, and so the Crown proceeded with an ex-parte trial as per Judge Golden's
25 decision.

26
27 So with respect to the procedural history before this court, the amended notice of appeal
28 was filed on July 26th with a date of today's date for the summary conviction appeal at
29 2:00 PM, and this document -- both the Grande Prairie and the RCMP in Valleyview,
30 who also work at Sturgeon Lake, worked -- put a lot of work into locating Ms. Papastesis,
31 and it was on August the 14th that the RCMP, Constable Vold (phonetic), personally
32 delivered on Ms. Papastesis the amended notice of appeal with today's date.

33
34 THE COURT: Can I just stop you, Mr. Oliver. The only
35 amendment in the notice of appeal, as I saw, was the date for today's hearing --

36
37 MR. OLIVER: Indeed, sir.

38
39 THE COURT: -- and the only reason you felt obliged to file
40 an amended notice of appeal was because the notice of appeal that you had filed was
41 originally returnable in September I think it was, and you had been unable to serve

1 Ms. Papastesis with that, and therefore I assume you were concerned that you wouldn't
2 have her served, so you filed an amended notice of appeal to delay the hearing of this
3 matter to try and get her served?
4

5 MR. OLIVER: Exactly, My Lord.

6
7 THE COURT: All right. And then she was served, as you
8 said, on August 14 with the amended notice of appeal.
9

10 MR. OLIVER: Yes, My Lord.

11
12 THE COURT: All right.

13
14 MR. OLIVER: There was a -- a further document served on
15 her on August the 22nd and that was the application for an extension by the Crown and it
16 was a date of Monday, August the 28th that the application was to be made, it was Justice
17 Germain that day in Queen's Bench here --
18

19 THE COURT: Sorry, an extension of?

20
21 MR. OLIVER: An extension of time to serve the documents on
22 her because we had the 30 day clock --
23

24 THE COURT: Oh.

25
26 MR. OLIVER: -- it was just over the 30 day clock --
27

28 THE COURT: Oh, okay.

29
30 MR. OLIVER: -- and so Justice Germain on that date --
31 Mr. Bill Mains (phonetic) attended court on Ms. Papastesis's behalf, he identified himself
32 as her common-law partner, and Justice Germain said that the justice on today's date
33 could deal with the application for an extension by the Crown, but did direct Mr. Mains
34 to give a home address for the documentation, the factum, and other documents to be
35 personally delivered. And so he provided -- Mr. Mains provided the address of 104
36 Montrose Apartments here in Grande Prairie, this letter also stated that, if you have
37 contact with Ms. Papastesis before November 6th, the hearing date, please let her know a
38 copy of the Crown's materials are at the above location, this is the residential location
39 Mr. Mains provided, or in the alternative, that she may contact my office directly to
40 obtain a copy of the same.
41

1 THE COURT: That's your covering letter?

2

3 MR. OLIVER: Yes, sir.

4

5 THE COURT: Okay.

6

7 MR. OLIVER: And so then that brings us to October the 24th,
8 and on that date, Ms. Papastesis, who had been incarcerated on unrelated matters here in
9 Grande Prairie, was personally served the factum as well as a further secondary source
10 document entitled bylaws, this is under a First Nation Governance Under Legislation and
11 Treaties document, so she was personally delivered those documents on again October the
12 24th by Constable Fragomeni, along with a covering letter that stated: (as read)

13

14 Please find a copy of the Crown's written argument with respect
15 to this matter. If you have any questions, please contact me.

16

17 And that's the last docket, sir.

18

19 THE COURT: Okay.

20

21 MR. OLIVER: So I think the factum should speak for itself, I
22 would just add, I think the one thing that it's missing at page ten, and it was something
23 that Judge Golden referred to, the *Alberta Evidence Act*, the secondary source that I've
24 provided to Ms. Papastesis, and I'll provide it to Your Lordship, I had hoped that copy
25 would be made and so I've just removed a note there on the side of page 7-45 and this is
26 just the document that I'll be referring to. The copy that Ms. Papastesis has has no
27 writing on it, other than the digital lettering. But basically, My Lord, what it says is that
28 *Indian Act* bylaws are statutory instruments within the meaning of the *Statutory*
29 *Instrument Act*, and as such they --

30

31 THE COURT: Sorry, what is this document I'm looking at?

32

33 MR. OLIVER: It's a secondary source, sir.

34

35 THE COURT: I'm not sure what that means, secondary source.

36

37 THE ACCUSED: According to the bylaw we're supposed to be
38 haters.

39

40 THE COURT: Sorry?

41

1 THE ACCUSED: According to the bylaw of Sturgeon Lake we're
2 supposed to be haters We're not supposed to be letting white people in our -- in our -- in
3 our community or in our homes, and that's not right.

4
5 THE COURT: Okay, well you'll get a -- you'll get a chance,
6 Ms. Papastesis, here to respond, I'm just -- I'm just going to have -- I'm just going to
7 have a discussion with Mr. Oliver. So this is a -- this is --

8
9 THE ACCUSED: And then the stress that I've been living
10 through this -- with the Sturgeon Lake people, they took my life, they took my family,
11 took everything from me, and they think it's okay, no, it ain't. I, as a foster child, grew
12 up in foster care, and Charlie Goodswimmer in that courtroom is a rapist, arrest him. I
13 know he raped me.

14
15 THE COURT: Ms. Papastesis --

16
17 THE ACCUSED: And then now they're still doing it.

18
19 THE COURT: Ms. Papastesis, can I just -- can I ask you just
20 to step back maybe one or two steps. No, no, and -- look there, that's -- that's great.
21 You -- all we could see before was the top of your head, Ms. Papastesis, so --

22
23 THE ACCUSED: Oh, I'm sorry.

24
25 THE COURT: No, no, no, that's fine, you wouldn't have
26 known that. So you -- you understand what this is all about here, do you, ma'am? That
27 this is a --

28
29 THE ACCUSED: What's that?

30
31 THE COURT: You understand that this is about -- I'm sorry, I
32 forget the individual's name, Mr. Chris (phonetic) --

33
34 THE ACCUSED: Well ever since --

35
36 THE COURT: -- Chris --

37
38 THE ACCUSED: -- Tracey McLean --

39
40 MR. OLIVER: Hanson.

41

- 1 THE COURT: Chris Hanson (phonetic), thank you.
2
- 3 MR. OLIVER: Yes, sir.
4
- 5 THE COURT: Chris Hanson apparently -- that you allowed
6 Chris Hanson to -- to live at the residence that you were living --
7
- 8 THE ACCUSED: No, I let him rest, because they wanted to rest,
9 and I didn't know what they were doing, or what they had, or anything, it was the
10 kindness out of my heart that I opened my door, and I wasn't for Chris, it was to Erin --
11 Erin Tremblay (phonetic), so I opened my door to her, it wasn't to him, and she is a
12 Treaty -- she is from Sturgeon Lake.
13
- 14 THE COURT: But Mr. Hanson, as I read the transcript, was
15 found in your house. In fact --
16
- 17 THE ACCUSED: Yes, he was, but I didn't know what he had
18 done or what he had said, and according to the bylaw, out of my 45 years in Sturgeon
19 Lake, I didn't know I was supposed to be a hater, I did not know that I am not supposed
20 to let a white man in my home, I didn't know that I'm not supposed to have white
21 children with white men.
22
- 23 THE COURT: Okay. You're -- you're going to get a chance
24 to respond to Mr. Oliver here in a minute, but I'm going to hear from Mr. Oliver first,
25 okay. I -- I understand your position, unfortunately for you, you missed the trial on --
26
- 27 THE ACCUSED: I know I did, and I'm so sorry, it's not my
28 fault, I'm living on the streets because of Sturgeon Lake --
29
- 30 THE COURT: Okay.
31
- 32 THE ACCUSED: -- and I lose all my stuff all the time, it ain't
33 my fault.
34
- 35 MR. OLIVER: My Lord, I can advise that the document there,
36 the secondary source, is actually from Woodward, Wood Ward, W-O-O-D-W-A-R-D,
37 Native Law and that's where that text is from, but I -- I just bring that forward just to, I
38 think reinforce the point that the bylaw is a statutory instrument within the *Statutory*
39 *Instruments Act*, and, as such, it's freely available to the public and it is also exempt from
40 publication in the --
41

1 THE ACCUSED: It was not in my times.

2

3 THE COURT: Okay, Ms. -- Ms. Papastesis, you're going to
4 get a chance to respond, but don't keep interrupting, okay. You'll --

5

6 THE ACCUSED: Sorry.

7

8 THE COURT: -- you'll -- you'll -- you'll get a chance
9 momentarily.

10

11 MR. OLIVER: Yes, sir. So it is exempt from publication in
12 the Canada Gazette, and, as such, it's not an instrument of which judicial notice is
13 required to be taken. And of course, as my factum provides, it was and remains posted
14 on the First Nation Gazette website, sir.

15

16 THE COURT: I -- I wasn't -- to be honest, Mr. Oliver, I
17 wasn't sure if Judge Golden was concerned about that, and I think your point was well
18 taken about the *Criminal Code*, the Crown doesn't provide the *Criminal Code*, that's the
19 law and we're -- as -- as -- as citizens of Canada, we're taken to know the law and not be
20 ignorant of it, and your argument was similar with respect to these bylaws, but wasn't
21 Judge Golden's problem with respect to Ms. McLean and -- sorry, have I got that right,
22 McLean -- yeah, Ms. McLean, Tracey McLean, her evidence with respect to
23 Ms. Papastesis being a permanent resident on the reserve and Christopher (phonetic) --
24 Christopher Hanson not being granted residence on the Sturgeon Lake Cree Nation, and
25 you -- you make a point in your brief about, well Ms. McLean was there Judge Golden
26 could have asked her questions and I think his response to that would be, and I think he
27 said this in the transcript, it's not up to the court to decide who's going to be called, that
28 was in your hands and you chose not to call her. So the -- the question is not so much
29 about the bylaws in my mind, but about the evidence with respect to Ms. Papastesis and
30 Mr. -- Mr. Hanson in their residence.

31

32 MR. OLIVER: Yes, I agree, My Lord. I think if you look at
33 the transcript, Judge Golden makes it clear that he does believe that the bylaw should be
34 certified and I don't think that that's the central issue, and I -- I think the court may find
35 that it doesn't require that certification, so that issue may not be contentious or of central
36 dispute here, but I agree with you, and I agree with Judge Golden, that the Crown calls its
37 case, I'll just say that the February 16th trial date, the Crown put on the record, and this
38 was said to the court, that *Canada Evidence Act* notice, along with a copy, had been given
39 and that the Crown would be relying on that document for the truth of it. And so the
40 question I think is admissibility and then weight, and Judge Golden's decision, though he
41 accepts it, he admits it as --

1
2 THE COURT: He admitted it, yes.
3
4 MR. OLIVER: -- an exhibit, there's -- there's no weight that he
5 ascribes to it, that he puts on the record as to why he's not relying on it, save for the fact
6 that it's not certified, which again, it's sort of a circular and fatalistic sort of argument on
7 his part, that if it's not certified, it's not proper, but he had already admitted it, so if he
8 hadn't admitted it, if -- to -- to -- to begin with when the Crown was calling its evidence,
9 if he had said, well, there's an issue with its admissibility, the Crown would have called
10 Ms. McLean, she was readily available, as she had been on February the 16th.
11
12 THE COURT: She sat through the whole day of February 16th
13 or whatever it was.
14
15 MR. OLIVER: Indeed, sir.
16
17 THE ACCUSED: I was here -- I was there too.
18
19 THE COURT: Yes, you were there too, as was your lawyer
20 at --
21
22 THE ACCUSED: Yeah.
23
24 THE COURT: -- the time.
25
26 THE ACCUSED: Yeah, I was.
27
28 THE COURT: Yeah.
29
30 MR. OLIVER: And --
31
32 THE ACCUSED: All day.
33
34 MR. OLIVER: And I'll just say, you know, and I think I make
35 it clear in the factum, and I reinforced with Constable Fragomeni, who reinforced to
36 Ms. Papastesis, this isn't about punishment on the part of Ms. Papastesis. Yes, the
37 Crown's seeking --
38
39 THE ACCUSED: It is so.
40
41 MR. OLIVER: -- that the acquittal be overturned and that a

1 conviction be entered, but it's seeking a -- a -- a one dollar fine as a penalty, which is --
2 of course Your Lordship is well aware of what the potential penalties are for --

3
4 THE COURT: Up to \$1,000 isn't it?

5
6 MR. OLIVER: Indeed, and 30 days in gaol -- and/or 30 days in
7 gaol. And so it really isn't about further aggravating the life of Ms. Papastesis. I can say
8 that the councilors present and Chief Kappa have made that clear, but they've worked
9 very hard and for a considerable period of time collaboratively with the RCMP and with
10 the -- with my office, the Crown is not required to prosecute these bylaws, but in this
11 instance, my office, given the safeguards in place and the collaborative work with the
12 RCMP, and the Chief and council, we are willing to prosecute these bylaws, and it's
13 having an affect.

14
15 THE COURT: Well you don't have -- your -- your office
16 doesn't have to prosecute them, but they may prosecute them, and --

17
18 MR. OLIVER: Indeed.

19
20 THE COURT: -- and your office has decided to do that.

21
22 MR. OLIVER: Yes, My Lord.

23
24 THE COURT: Yeah.

25
26 MR. OLIVER: And I think if you look at -- you know, Judge
27 Golden is very much alive to the social issues at the First Nation, and specifically this
28 matter at hand, the factual matrix that play in this case, and I'll just say, and I think my
29 introduction speaks to it, there -- there are growing pains, but what the Nation asks for
30 and the Crown relays to this Honourable Court, is that it needs some binding direction
31 and the request here isn't made lightly, and in no way does it seek to make things more
32 difficult on the Provincial Court, our resources especially in this jurisdiction are extremely
33 strapped --

34
35 THE COURT: I don't think your jurisdiction is unique in
36 that --

37
38 MR. OLIVER: No.

39
40 THE COURT: -- regard.

41

1 MR. OLIVER: Indeed. Indeed. This process, given that it has
2 backing and support in procedural and substantive law, would make it easier both on the
3 court, and on the First Nation, and the Crown, and the RCMP to properly deal with these
4 matters in the Provincial Court.

5
6 THE COURT: But I don't think Judge -- I mean, I'm not sure,
7 you're -- you're looking for some kind of a precedent here, the only issue in my mind
8 is -- is did Judge Golden make an error in admitting the -- the statutory -- or solemn
9 declaration, and then -- and then essentially discounting it too, or putting no weight on it
10 then.

11
12 MR. OLIVER: Indeed. And, My Lord, *Tehrani*, the decision
13 from 2008 that I provided you from Quebec, at paragraphs six to 19 does provide some
14 historical context in addressing whether a copy is admissible in lieu of the original, and
15 I'll just say that what the court really says, and what I think what's important, because
16 this decision is applied by Justice Yamauchi of this court in *Gambilla*, 2015 ABQB 160,
17 which says that where the evidence has been adduced and marked as an exhibit, it
18 becomes evidence and the trier of fact -- and I'll highlight this word -- must address its
19 weight, and that simply did not happen in this case.

20
21 THE COURT: Well he's -- I mean, Justice Yamauchi at the
22 bottom of page 47 in quotes from Sopinka and Lederman I think on the Law of
23 Evidence -- is that what you're looking at?

24
25 MR. OLIVER: (NO AUDIBLE RESPONSE)

26
27 THE COURT: This is tab seven in your materials, I mean --
28 (as read)

29
30 A document introduced at trial must be proven. Its authenticity
31 must be shown by direct circumstantial -- sorry, direct or
32 circumstantial evidence or by admission. Where some evidence of
33 authenticity has been adduced, the party tendering the document
34 asks that it be marked as an exhibit. It becomes evidence in the
35 case, its weight a matter for the trier of fact.

36
37 And, I mean, in a -- in a perfect world, knowing what you know now, Mr. Oliver, you
38 would have simply called Ms. McLean to the stand and had her spend five minutes on the
39 stand to testify to what she has in her -- in her solemn declaration.

40
41 MR. OLIVER: Indeed. She was present on February the 16th

1 and then again on the trial date, if there was any issue as to admissibility, which was
2 again the central feature of Judge Golden's concern, that well it's not been certified. Well
3 again my argument was, well it -- we provided a copy on February the 16th and gave
4 notice on the record, so we don't need it to be certified, we don't need the -- the original
5 copy here and you've already admitted it as an exhibit. If there had been any concern
6 presented as to admissibility, then of course you're right, we would have called her. But
7 I'll just say that the problem this creates on a go forward basis is that, again, as with our
8 resources, the First Nation, and also the -- it's a small community with people that are
9 becoming aware of the need to adhere to the -- their governing laws, having that
10 administrator present in court throughout the day of the court, I mean, this case kind of
11 speaks to why it is that we need to be able to admit these things under the *Canada*
12 *Evidence Act* and then rely on them for truth at trial, save for the defendant's ability to
13 cross examine on application. But I agree with you, if there had been that concern
14 presented on admissibility, the -- clearly the Crown would have called her.

15
16 THE COURT: I'm not sure why -- I know -- I know you're
17 looking for a setting aside of the trial decision and an enter -- entry of a conviction here
18 and then a fine of one dollar, I -- I get all of that, but what -- what is it as far -- that
19 you're looking for me that -- that -- that a setting aside of the trial decision would be on
20 the basis that Mr. -- that Judge Golden failed to provide or assign proper weight to
21 Ms. McLean's solemn declaration?

22
23 MR. OLIVER: Indeed. The best evidence rule that the judge
24 relied on, as I provided at -- at page ten of my factum, it's a -- it's a -- it's a rule that
25 isn't the best rule anymore, it's -- it's clearly a rule whose original purpose was to avoid
26 fraud and forgery, however, nowadays with the law on public documents, it -- it was
27 admitted, one, in the -- in the Crown's view due to its inherent reliability or
28 trustworthiness; and then, two, there is inconvenience that results from having the official
29 from the First Nation be present all day and then testify in court. So again, the -- the --
30 the request by Crown is, yes, to set aside the acquittal and to impose a condition with the
31 fine, but it would -- and again I don't make this request without a lot of thought and
32 without consideration, My Lord, but it would be very helpful to have some direction with
33 brevity that the declaration granted the laws under the *Canada Evidence Act* are followed
34 that there doesn't need to be the official present in court and the document doesn't need
35 to be certified --

36
37 THE COURT: Yeah, but how does someone like
38 Ms. Papastesis have an opportunity to cross-examine then? She's got to respond when
39 you give the *Canada Evidence Act* notice?

40
41 MR. OLIVER: She would, or the day of trial, as with -- as

1 with the procedure that I've experienced often, the day of trial the defendant would, you
2 know, the -- the Crown having abided by the requirements under the *Canada Evidence*
3 *Act* wouldn't have, in this case Ms. McLean, present, and with Ms. Papastesis in her case,
4 if she had attended trial on July the 6th, if Ms. McLean hadn't been present and well of
5 course Ms. McLean was there and she was there for good reason, I had asked the -- that
6 the First Nation consider and that she consider attending for that very reason, for
7 cross-examination purposes, but on a go forward basis, it's a close community, it's close
8 in proximity to Valleyview Provincial Court and the Crown would quickly undertake and
9 endeavour to have the official attend court for cross-examination purposes.

10

11 THE COURT: So so long as someone such as Ms. Papastesis
12 either gives notice beforehand or, as you say, on the morning of the trial?

13

14 MR. OLIVER: Yes, My Lord.

15

16 THE COURT: The only alternative -- the only downside is that
17 that could end up in an adjournment of the trial if you couldn't get your witness there
18 quickly or -- I mean, you certainly gave notice of that when Ms. Papastesis was there on
19 February 16th.

20

21 MR. OLIVER: Yes, My Lord.

22

23 THE COURT: Okay. So you're not in any way suggesting
24 there's -- to trying to do an end run on the ability of an accused person, such as
25 Ms. Papastesis to have the right to cross-examine?

26

27 MR. OLIVER: No, and if you look at February the 16th,
28 Ms. McLean went through quite an ordeal in court that day --

29

30 THE COURT: Yeah, I know, she sat there --

31

32 MR. OLIVER: -- she --

33

34 THE COURT: -- the whole day.

35

36 MR. OLIVER: Yes, and there was some dispute with --

37

38 THE ACCUSED: So did I.

39

40 MR. OLIVER: -- a change -- there was a change to --

41

1 THE ACCUSED: I hitchhiked from Grande Prairie just to go to
2 court that day.

3

4 THE COURT: Yeah.

5

6 MR. OLIVER: Yeah, and -- and we're glad you were there,
7 Ms. Papastesis. Ms. McLean of course didn't want to come back to court on July the 6th,
8 but it was very important for the Crown to have her there for that very reason.

9

10 THE COURT: Well I don't know why, I mean, do you need -
11 - do you need me to say that, you know, the *Canada Evidence Act* can be followed, the
12 Crown can do that at any time, can't you?

13

14 MR. OLIVER: I would agree, but the trial transcript I think
15 speaks to a different finding that I think it would be -- I think it would be proper and --
16 and helpful for all parties to have clear direction on that.

17

18 THE COURT: Well I suppose I could give you that and if
19 some judge in the future thinks that's wrong then they can -- they can deal with it in the
20 sense of saying, no, I want Ms. McLean here for whatever reason, I mean, there's three
21 people that could say why someone such as Ms. McLean or why -- not why -- three
22 people that could say that they want someone such as Ms. McLean to testify --

23

24 MR. OLIVER: Yes.

25

26 THE COURT: -- you as the Crown, Ms. Papastesis, or
27 someone like her, as an accused, or the court.

28

29 MR. OLIVER: Absolutely, and as Crown, my job is not to
30 secure a conviction, it's to see that there's a fair process, as with the court, and again,
31 knowing that Ms. Papastesis wasn't at court on July the 6th, we asked that she remain for
32 that very reason, that if the judge did require to hear from her, if there were issues with
33 weight that he could ask her any questions that he may have had.

34

35 THE COURT: Well again, Judge Golden seemed to say, in so
36 many words, you know, he said to you a couple of times, is that the case for the Crown,
37 and you said, yes, it is and then he said, fine, it's not my judge to call -- it's not my job
38 to call witnesses, and -- and --

39

40 MR. OLIVER: Yes.

41

1 THE COURT: -- it's not.
2
3 THE ACCUSED: I'm not even allowed to go to Sturgeon.
4
5 THE COURT: Okay.
6
7 THE ACCUSED: I can't even go get my stuff.
8
9 THE COURT: Anything else, Mr. Oliver?
10
11 MR. OLIVER: No, My Lord.
12
13 THE COURT: All right. Ms. Papastesis, you've heard
14 Mr. Oliver, you've heard the discussion he and I have had --
15
16 THE ACCUSED: Yeah.
17
18 THE COURT: -- what would you like to say?
19
20 **Submissions by the Accused**
21
22 THE ACCUSED: I just want to say -- there's nothing really to
23 say, because I'm sleeping in my van right now, living on the streets, I'm here in
24 Edmonton Remand, say hello to my son that they took from me. Thank you for the shitty
25 life you guys dealt and gave me. Thank you for raping me and my kids. Thank you for
26 nothing actually. And that's all I have to say.
27
28 THE COURT: Okay. Well those are --
29
30 THE ACCUSED: Thank you for the horrible life
31 (INDISCERNIBLE)
32
33 THE COURT: Well I'm -- I'm sorry if --
34
35 THE ACCUSED: And I want my -- I want my stuff from my
36 house.
37
38 THE COURT: You -- you've got stuff in your house here at
39 the --
40
41 THE ACCUSED: Yes, like it's been over a year, I can't even go

1 to Sturgeon Lake to go even -- I tried to go fix my lock and I was arrested, I tried to go
2 get stuff from my house and I was arrested.

3

4 MR. OLIVER: My Lord, may I say one thing?

5

6 THE COURT: Yes.

7

8 MR. OLIVER: Ms. Papastesis, may I say something?

9

10 THE ACCUSED: (NO AUDIBLE RESPONSE)

11

12 THE COURT: Mr. Oliver, go ahead.

13

14 MR. OLIVER: Yes, sir. So, Ms. Papastesis, on July 21st, after
15 this came -- after this all happened, I went to Sturgeon Lake, and I will tell you that I
16 spent hours there and the one concern that kept being reinforced by Chief Richard Kappa
17 was that the First Nation cares for you very much.

18

19 THE ACCUSED: No, they don't, they abused me, and
20 (INDISCERNIBLE) mentally, virtually, sexually, all of that, they don't care.

21

22 MR. OLIVER: Very well.

23

24 THE COURT: Well, Ms. Papastesis, those are -- I'm sorry for
25 the situation you -- you feel you're in, and unfortunately those matters aren't before me,
26 I -- I can't really address those things, but as you heard Mr. Oliver say at the outset, there
27 are three different councilors here from the -- from the Nation that have sat through this,
28 they have been here all afternoon I can tell you, but they've --

29

30 THE ACCUSED: I know.

31

32 THE COURT: -- they've -- they've sat through what you've
33 heard from Mr. Oliver and what -- they've heard what you've said, and I'm sure
34 they're -- they're taking it into account. I -- I don't know what the history is, nor do I
35 want to get into that, but I've heard what Mr. Oliver says about his -- has said about his
36 meetings with the members of the Nation and I know the counsellors have been here
37 listening to what you've said, so hopefully something good might come out of that, but
38 I --

39

40 THE ACCUSED: Hopefully something will get done.

41

1 THE COURT: Sorry?
2

3 THE ACCUSED: I said hopefully something would get done.
4

5 THE COURT: Well I -- I certainly --
6

7 THE ACCUSED: Because I haven't been in my house for over a
8 year now and I've been -- I've been wanting to go home and I can't even go home.
9

10 THE COURT: All right, well I don't know that -- there's
11 certainly nothing I can do today about that, but maybe you can --
12

13 THE ACCUSED: I think Crawford was -- Al Crawford was
14 looking into suing them.
15

16 THE COURT: Okay.
17

18 THE ACCUSED: But I'll have to get a hold of him.
19

20 THE COURT: Mr. Oliver, are you in any way able to tell
21 Ms. Papastesis who she would best contact for these issues that she's just raised?
22

23 MR. OLIVER: Well, Ms. Papastesis, you're not in custody for
24 this matter and Mr. Crawford I know has helped you before, I think Mr. Crawford would
25 be the best person to contact, and if there's anything that the Crown can do, Mr. Crawford
26 can call me directly, okay.
27

28 THE ACCUSED: Okay.
29

30 THE COURT: Sorry, I -- I didn't mean that, Mr. --
31

32 THE ACCUSED: Okay.
33

34 THE COURT: -- Oliver, I meant contact at the band if she
35 wants to have discussions with someone at the Nation.
36

37 THE ACCUSED: Yeah.
38

39 MR. OLIVER: So I think that because of her recent matters,
40 it's unrelated, but there was a no go imposed, but again if Mr. Crawford or another
41 lawyer contacted me, then we could look at those conditions, because it's not the First

1 Nation that's saying that she can't come back.

2

3 THE COURT: Do you understand that, Ms. Papastesis, that --

4

5 THE ACCUSED: (INDISCERNIBLE)

6

7 THE COURT: -- it -- the -- the -- the fact that you can't go to
8 the Nation, it makes some sense from what I'm hearing, it -- it may be related to the
9 criminal charges you're now facing and there's a no -- no contact condition or some
10 reason why you're not supposed to be on the Nation, okay. Is Mr. --

11

12 THE ACCUSED: Yeah. Yeah.

13

14 THE COURT: Is Mr. Crawford -- and the other thing you
15 should know, from what I'm hearing today, is that it's not members of the council and the
16 Nation that is saying you shouldn't be there, okay.

17

18 THE ACCUSED: Yeah.

19

20 THE COURT: Is Mr. Crawford --

21

22 THE ACCUSED: Yeah.

23

24 THE COURT: -- acting for you on these matters that you're
25 now in custody --

26

27 THE ACCUSED: I wasn't able to contact any -- any Legal Aid
28 here because I'm -- I'm locked up for 23 hours a day, and I don't really have time to
29 even make a phone call, so he was supposed -- I was supposed to get a hold of him
30 through Legal Aid, I can't even get a hold of Legal Aid.

31

32 THE COURT: Okay.

33

34 MR. OLIVER: For what it's worth, My Lord -- Ms. Papastesis,
35 I've just messaged Mr. Crawford, so I'll let him know what your circumstances are and --

36

37 THE ACCUSED: Okay.

38

39 THE COURT: All right, well --

40

41 THE ACCUSED: I have court on Wednesday for failing to appear

1 in Grande Prairie.

2

3 THE COURT: You're -- you're in Provincial Court on
4 Wednesday?

5

6 THE ACCUSED: Yes.

7

8 THE COURT: Okay. Well as an officer of the court,
9 Mr. Oliver is trying to help you here and the fact --

10

11 THE ACCUSED: Okay.

12

13 THE COURT: -- the fact that he's attempting at least to
14 contact Mr. Crawford, maybe something will -- will come of that and maybe
15 Mr. Crawford by that process will be able to get a hold of you at the Remand Centre,
16 okay.

17

18 THE ACCUSED: Okay. Okay.

19

20 THE COURT: Anything else you'd like to -- to say?

21

22 THE ACCUSED: No, just tell the people of the Nation I miss
23 them and say hello to Cashe (phonetic), my son, please. I haven't seen him in three
24 years.

25

26 THE COURT: Okay, well the councilors are hearing that I
27 think. All right, Mr. Oliver, anything further?

28

29 MR. OLIVER: No, My Lord.

30

31 **Ruling**

32

33 THE COURT: All right. Well it seems to me I've spent a fair
34 bit of time reading Mr. Oliver's brief and I've read all of the transcripts from this matter,
35 going back to the original hearing before Judge Nemirsky on February 16th when
36 Ms. Papastesis and her then lawyer, Mr. Crawford, were present, and I've read the
37 transcript from the trial itself before Judge Golden on July 6th, unfortunately
38 Ms. Papastesis wasn't in attendance and the trial proceeded on -- in her absence, it was
39 peremptory on her and I -- and I make -- I make no finding that it should not have
40 proceeded, in fact it should have proceeded on that date, Ms. Papastesis, because you
41 were directed that it was going to go ahead.

1
2 I -- I do, as I understand it, accept that the bylaws are laws, and according to the
3 provisions of the *Indian Act* and related statutes, it is not necessary to publish those
4 particular bylaws in -- in any way other than they have been published by the appropriate
5 department, and more particularly by the Sturgeon Lake Cree Nation.
6

7 As I said to Mr. Oliver during the course of argument, it seems to me that Judge Golden's
8 main issue was with respect to the statutory declaration -- I'm sorry, solemn declaration
9 by Tracey McLean, who was employed at the time as the Sturgeon Lake Cree Nation
10 director of housing, and that was entered as Exhibit 1 on the trial, Exhibit 2 then was the
11 bylaw number eight nineteen ninety. I'm satisfied that those documents were properly
12 before Judge Golden and he indicated that he was not prepared to rely on either the
13 statutory -- or solemn declaration or the bylaw because he did not have before him a
14 certified copy of the bylaw.
15

16 I am satisfied that that was not necessary in this case, particularly given the notice that the
17 Crown through Mr. Oliver had given to Ms. Papastesis on February 16th before Judge
18 Nemirshy, where Mr. Oliver, on behalf of the Crown, had provided both Ms. McLean's
19 solemn declaration and a copy of the bylaw to Mr. Crawford, who was then on record as
20 Ms. Papastesis's counsel in this matter, and Mr. Oliver made it clear that under the
21 *Canada Evidence Act* the Crown would be seeking to rely on those documents at the trial
22 when it proceeded on July 6th unless Ms. Papastesis made application to cross-examine
23 Ms. McLean on the evidence, it's clear that neither Mr. Crawford, who was on the record
24 at the time, or Ms. Papastesis, gave any notice with respect to cross-examining
25 Ms. McLean, and therefore, in my view, it was not necessary to have a certified copy of
26 the bylaws or some other form of evidence with respect to Ms. McLean's solemn
27 declaration before the judge, he could quite absolutely rely on it and the evidence in
28 Ms. McLean's affidavit is clear that Ms. Papastesis was a permanent resident of the
29 Sturgeon Lake Cree Nation at the time and was permitted to live in the particular house,
30 but that Christopher Sheldon (phonetic) Hanson was not granted residence on the Nation,
31 and therefore was in breach of the bylaw.
32

33 So I'm going to satisfy the acquittal by Judge Golden, I will enter a conviction, and in
34 accordance with the Crown's submissions and request, there will be a fine of one dollar
35 imposed on Ms. Papastesis, no custodial sentence to be served by her, but it seems to me
36 that in a perfect world Mr. Oliver would have simply put Ms. McLean in the -- in the
37 stand and she could have testified to what was in her solemn declaration. We're all a lot
38 smarter looking back than we are looking forward, Mr. Oliver, and in the circumstances,
39 in my view, that wasn't necessary for you to do that, you could have done it, but it wasn't
40 necessary given the way this had unfolded, and so the -- the acquittal is set aside on that
41 basis.

1
2 MR. OLIVER: Yes, My Lord. I question whether the fine
3 might be -- you might provide direction that the fine would be payable to the Provincial
4 Court, but then from the Provincial Court to the First Nation.
5
6 THE COURT: If the fine is pursued for one dollar, it's payable
7 by Ms. Papastesis to the Provincial Court --
8
9 THE ACCUSED: I'll pay the dollar.
10
11 THE COURT: -- and -- and will be then forwarded to the --
12 the Nation.
13
14 MR. OLIVER: Yes, My Lord.
15
16 THE COURT: All right. All right, Ms. Papastesis, in the
17 circumstances, at law I think I had to do what I just did, I'm hoping something more and
18 something good comes out of this hearing today for you, in the sense of what you've told
19 me and what the three councilors have heard, I can tell you, you probably can't see them
20 on the screen, but they are nodding and at least acknowledging to me that they've
21 certainly heard what you've had to say, okay.
22
23 THE ACCUSED: Thank you.
24
25 THE COURT: All right. And, Mr. Oliver, if you would follow
26 up with Mr. Crawford on that, that would be appreciated as well.
27
28 MR. OLIVER: I will, My Lord.
29
30 THE COURT: All right. Anything else, Ms. Papastesis?
31
32 THE ACCUSED: No.
33
34 THE COURT: All right. Mr. Oliver?
35
36 MR. OLIVER: No, sir.
37
38 THE COURT: Okay, thank you. I'm going to give you back
39 this reference which --
40
41 THE COURT CLERK: Okay, bye-bye.

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THE ACCUSED:

Bye-bye.

THE COURT:

Bye-bye. Madam clerk, you could give that

back to Mr. Oliver.

MR. OLIVER:

Thank you.

THE COURT:

Okay.

PROCEEDINGS CONCLUDED

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2

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6 recording machine during the proceedings.

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2

3 I, Lori Pahl, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
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9 (b) the Certificate of Record for these proceedings was included orally on the record
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