

Action No.: 130781800Q1  
E-File No.: ECQ16VADERTRAV  
Appeal No.: \_\_\_\_\_

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

Crown (Respondent)

v.

TRAVIS EDWARD VADER

Accused (Respondent)

Canadian Broadcasting Corporation; Edmonton Journal,  
a Division of Postmedia Network Inc; Global News,  
a Division of Corus Entertainment Inc; CTV, a Division  
of Bell Media Inc; and the Canadian Press

Third Party

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PROCEEDINGS

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Edmonton, Alberta  
September 13, 2016

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Law Courts, Edmonton, Alberta

2 \_\_\_\_\_  
3 September 13, 2016 Afternoon Session

4  
5 The Honourable Court of Queen's Bench  
6 Mr. Justice Thomas of Alberta

7  
8 A. Finlayson, Q.C. For the Crown

9 E. Joumaa For the Crown

10 N. Whitling For the Defence

11 M. Woodley For the Media

12 A. St. Georges Court Clerk

13 C. Erickson, CSR(A) Court Reporter

14 \_\_\_\_\_

15

16 **Discussion**

17

18 THE COURT: Good afternoon.

19

20 MR. FINLAYSON: Good afternoon, My Lord.

21

22 MR. WOODLEY: Good afternoon.

23

24 THE COURT: So I have a short oral decision, and I am aware  
25 of all of your identities, so we will not go through that formality. This will take about ten  
26 minutes.

27

28 **Decision**

29

30 THE COURT: This is my decision on an application by the  
31 Applicants, Canadian Broadcasting Corporation, the Edmonton Journal, a division of Post  
32 Media Network Incorporated, Global News, a division of Corus Entertainment  
33 Incorporated, and CTV, a division of Bell Media Incorporated, and the Canadian Press.  
34 That application was heard on last Wednesday, September 7th.

35

36 The Respondents who spoke to this application on that date included Mr. Travis Vader,  
37 represented at that time by Mr. Beresh, Q.C., and Her Majesty the Queen, represented by  
38 Mr. Finlayson, Q.C., and Mr. Stewart.

39

40 Mr. Vader, through his counsel, supported the application, as did members of the McCann  
41 family who expressed their support through Ms. Janice Johnson of the Canadian

1 Broadcasting Corporation. Ms. Johnson had made the Affidavit in support of the  
2 application.

3  
4 The relief sought by the Applicants includes, firstly, an order permitting the Applicants to  
5 use electronic devices capable of recording and transmitting audio and video feed of a  
6 proceeding to be held before me at 10:00 a.m. on September 15, 2016, in this courtroom,  
7 Courtroom 317, at the Law Courts in Edmonton, Alberta. Secondly, an order permitting  
8 the Applicants to broadcast that proceeding by streaming, sharing, and transmitting the  
9 video and audio recordings live on the internet, through radio, television, and internet  
10 based news services.

11  
12 It is common ground that as a Judge of the Court of Queen's Bench of Alberta I have  
13 jurisdiction to grant the relief which has been applied for on this motion, and I confirm  
14 that is correct. In deciding whether to exercise my discretionary authority in this case, I  
15 have had regard to this court's electronic and wireless devices policy, effective January  
16 2012 which contemplates the use of electronic and wireless devices in the courtroom.

17  
18 Counsel for the Applicants urged me to exercise my discretion in accordance with the  
19 well established *Charter* principles which are often described as the Dagenais/Mentuck  
20 test as reframed and expanded by subsequent decisions of the Supreme Court of Canada.  
21 Mr. Kozak argued that this is a test that puts the burden of displacing the general rule of  
22 openness in respect to court proceedings on the party making the application to restrict the  
23 openness rule. I agree with Mr. Kozak, Q.C., that the Crown, which is the party resisting  
24 the application to permit a fixed camera to record and then broadcast my decision has the  
25 burden of displacing the general rule of openness. In short, I accept and adopt the  
26 analytical framework proposed by the Applicants.

27  
28 I have considered the submission of Mr. Finlayson, Q.C., for the Respondent Crown, but I  
29 am not convinced that allowing a fixed camera to record and then broadcast the  
30 proceeding will create a serious risk to the administration of justice. Most of the Crown's  
31 argument in this case was to the effect that granting the application would cause a flood  
32 of such motions to descend upon the court. I am not convinced that this is a real risk.  
33 Certainly there is no evidence that convinces me that will happen in the future. It is a  
34 purely speculative risk.

35  
36 My decision on this particular application is that it is a one off decision on a unique set of  
37 facts. Future applications for such relief will always have to be made either to the trial  
38 judge or one of this court's administrative judges, namely the Chief Justice or Associate  
39 Chief Justice of the Court of Queen's Bench of Alberta. And such applications will have  
40 to be made in the context and circumstances of a particular case. In the result, I am not  
41 convinced that there will be a serious risk to recording and publishing in this case

1 provided certain limits are imposed through my formal order which will be prepared to  
2 implement this decision.

3  
4 In coming to my decision, I want to note that there are some important public policy  
5 considerations which I have had in mind in making a decision to grant the application,  
6 and those considerations align with the overarching openness principle. They include,  
7 firstly, the decision on this application will serve to raise public awareness. The final  
8 judgment in this long running case will be issued on September 15. In other words, the  
9 making of this decision will provoke interest in the decision on the trial of Mr. Vader to  
10 be pronounced on Thursday.

11  
12 Secondly, allowing this application will serve to promote the role in the courts of the  
13 accredited media, a group composed of professional journalists who have the skills to  
14 understand and effectively communicate about court processes and the decisions made in  
15 the various levels of courts in Alberta. Supporting and strengthening the role of the  
16 accredited and professional journalistic community in the justice system is in the public  
17 interest.

18  
19 Finally, drawing the attention of the public to the fact that a decision has finally been  
20 made in this matter will increase confidence in the judicial system. The judgment  
21 involved here will be lengthy, and I trust those that take the time to read it will find my  
22 reasoning process to be transparent and comprehensible. My decision will also serve to  
23 educate the public about the difference between a trial by a judge and jury as opposed to  
24 the situation in this case, a trial by judge alone, in that the public may become more  
25 aware that judges are obligated by law to give reasons for their decision, which are both  
26 comprehensible and transparent, whereas a decision in a jury trial does not involve the  
27 publication of the reasons for why a jury came to the conclusion that it did.

28  
29 I am drafting the overview of my decision to facilitate the recording and live streaming of  
30 the proceeding on Thursday, and I indicated last week when I heard the application that I  
31 would not be reading the full judgment on that day for a number of reasons, and I will  
32 just put them on the record.

33  
34 Firstly, it is much too long to read. The final draft is 131 single spaced pages, including  
35 two appendices. It has 710 separate paragraphs. At last count it contained almost 68,000  
36 words. I just found out you can -- there is a Google program that will count words for  
37 you. I estimate it would take five to six hours to read it, or a whole day, at least a whole  
38 day of court time.

39  
40 The final judgment deals with a number of very complex forms of scientific and  
41 technological evidence which would be difficult to understand, even if it was read slowly.

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And finally, the final judgment is based on the evidence of 89 witnesses, some of whom were called and recalled several times over the 54 sitting days during the 12 weeks taken for this trial. These 89 witnesses, at least some of them, spoke to 208 exhibits which in turn are very -- some of them are very large aggregations of scientific and telecommunications data, photographs, and charts.

In summary, the scope and scale of the formal written judgment is simply too large to read out in court in its entirety. Therefore, other than the bottom line verdicts, which I will read out, I am going to provide a very high level overview of my written decision and that overview has been designed to allow the public to get a general idea of my approach to the decision-making process.

Just so it is very clear on the record of this trial, the formal judgment is the actual filed written decision plus the pronouncements of the verdicts. Paper copies of the filed judgment will be available for most participants who show up on Thursday to hear my orally delivered overview and the pronouncements of the verdicts.

The electronic version of the formal written judgment will be available on the CanLii website, and I will ask the media Applicants to provide hot links to that source from their sites. I will just ask them; I cannot make them do it.

Accordingly, for all of these reasons, the application is granted and we will now turn to discuss the details of the formal order to implement this decision. And I wonder, Mr. Woodley, whether you have a draft order.

## **Discussion**

MR. WOODLEY:

I have not prepared a draft form of order at this stage. I wanted to deal with some of the technical requirements just to make sure that the Court is aware of what will be needed from a technical perspective. And then once we have feedback from counsel and the court, we will certainly undertake to prepare the order in accordance with your direction, Sir.

And so, in fact, today we have brought the individuals who will be responsible for operating the camera and dealing with the live feed so that they can hear the court's direction. Essentially what we're looking for is permission from the court to bring in one fixed, but swivelling camera that will be set up in the courtroom. In terms of the shots that we intend to take, we would have a wide pan of the courtroom and then close-ups on Your Lordship as the decision is being read. And the consortium -- I think this has been addressed last time -- undertakes not to show the Defendant. I think that was one of the

1 issues that had been addressed.

2

3 In terms of the setup for the transmission, there are essentially two options open to the  
4 media consortium to deal with the transmission. The first one is to use a wireless system  
5 that uses the cellular network, and what we need to do is to bring up a box that will allow  
6 us to test whether or not that will be possible from this courtroom. That is here today,  
7 not in the courtroom but in an automobile, and we can bring that up immediately after the  
8 proceedings to ensure that that system will work.

9

10 If for some reason that system does not work, the backup system is to actually have  
11 cables running to the video camera, and we would need to deal with courthouse staff to  
12 coordinate that, if that's required. So we'll know shortly after the close of proceedings  
13 today which of those two systems we'll be able to use.

14

15 In terms of setup, I understand from your reasons, Sir, that you'll be starting at 10:00 a.m.  
16 on Thursday for the reading of your decision. If the wireless system works, we anticipate  
17 that having access to the courtroom at approximately 8 o'clock will allow us to have the  
18 set up we need to and to do the necessary tests. If it's the more -- slightly more  
19 complicated cable process, we may seek access to the courtroom on Wednesday afternoon  
20 to make sure that that is set up so that there is no delays on Thursday morning.

21

22 In terms of audio, the request that we have is that we have a single microphone clip that  
23 Your Lordship would wear while delivering the reasons, or alternatively, a stationary  
24 microphone on the desk that -- the acoustics here are difficult to pick from the camera.  
25 That would involve simply setting up in advance on the day of.

26

27 And I believe that those are the main technical issues that, you know, in our view have to  
28 be addressed in any particular order. If there are other concerns or directions the Court  
29 wishes to address, certainly I can respond to those.

30

31 THE COURT: Just a couple of questions. One on the mic  
32 system. The systems here are quite sophisticated in the sense of picking up audio.  
33 Maybe you can have a look at tapping into the court system. I do not have a problem  
34 with being mic'd up, but. . .

35

36 MR. WOODLEY: Perhaps what I'll do is when we're looking at  
37 testing the wireless link, we can talk about whether or not it's possible to hook into the  
38 system. My understanding is that may be the more complicated approach, and it may be  
39 easier to simply have either a mic or a wire.

40

41 THE COURT: Just one other comment. This courtroom is

1 usually used for celebratory events and the picking of juries. The box for the accused is  
2 over there. I think you -- my practice is when I -- is to address the person who is on  
3 trial. And so I think that is the way I will be facing when I . . .

4

5 MR. WOODLEY: And that makes sense also from the perspective  
6 of undertaking not to show the accused. If the camera is in that area, he would not be in  
7 the shots, is my understanding.

8

9 THE COURT: Okay. Anybody else have anything to say?  
10 Mr. Finlayson?

11

12 MR. FINLAYSON: Sorry, My Lord. But only in relation to my  
13 friend's comment about a wide pan of the courtroom. My understanding was that there  
14 was only going to be Your Lordship reading the decision, the summary of the decision  
15 was going to be broadcast. Is that correct? By wide pan, would you be panning the  
16 gallery or other participants?

17

18 THE COURT: Are you just talking about the shield behind  
19 me?

20

21 MR. WOODLEY: So my understanding is that the camera will be  
22 stationary. It would be on a swivel. And the idea is that from a panned out perspective,  
23 it's possible that you would see the backs of individuals sitting at counsel table, and then  
24 there would be the ability to focus in on you as you're reading your decision.

25

26 THE COURT: I was going to raise the same concern. Thank  
27 you. That was my understanding, it was not -- certainly not intended to ever show  
28 Mr. Vader or members of the public who might be in the audience.

29

30 MR. WOODLEY: No. And my understanding is to the extent that  
31 there will be any kind of focussing in on an individual, that individual will be you, Sir.

32

33 THE COURT: Mr. Whitling, anything to say?

34

35 MR. WHITLING: Our only concern, Sir, is that, which everyone  
36 seems to agree with, is that Mr. Vader is not going to appear on this. Our concern, of  
37 course, is that he should not be exposed to any undue public viewing in this context. But  
38 in terms of the technical matters, we don't take any position.

39

40 THE COURT: I think this -- I mean, this is not often used  
41 for -- this courtroom is not used a lot for people who are in custody. I think they



1 probably come in through that door over there. So we better make sure the camera is not  
2 picking up, if that indeed is the door that Mr. Vader comes through, that it does not  
3 accidentally pick him up.

4  
5 MR. WOODLEY: Yes, Sir, and that's one of the reasons we wish  
6 to have the individuals who would be operating the camera here today to be able to  
7 eyeball the courtroom.

8  
9 I think in terms of drafting up the order, we have the details that I believe we need to do  
10 that. It would be helpful just to confirm that we have your permission following the close  
11 of the proceedings to have that equipment brought up to do the testing today, which will  
12 then inform when we may need to have access to the courtroom in advance of Thursday.

13  
14 THE COURT: Well, the person who is in charge of the  
15 courtroom is really the clerk. Madam Clerk, can you. . .

16  
17 THE COURT CLERK: That's fine, Sir.

18  
19 THE COURT: -- accommodate that?

20  
21 MR. WOODLEY: Thank you very much, Sir.

22  
23 THE COURT: You know, and I am sure Madam Clerk will  
24 seek the assistance of the court IT people. They are the ones familiar with the cabling in  
25 this building.

26  
27 MR. WOODLEY: Thank you, Sir.

28  
29 THE COURT: I am sure that they would be pleased to assist.  
30 All right? So you will develop a formal order implementing this. I did mention the hot  
31 links thing. Part of the reason I am allowing this is to try and enhance the access of the  
32 public to this, the real decision -- the decision, and what the decision is is the written  
33 decision. So perhaps you can discuss that with your clients.

34  
35 MR. WOODLEY: We will do that.

36  
37 THE COURT: As I say, I do not think I have the power to  
38 instruct it.

39  
40 TONY BLAI: Justice Thomas, Tony Blai from the Sun  
41 Journal. I just want to point out that the CanLii decisions that come out there are

1 typically three to five days after they are given.

2

3 THE COURT: No, I have made arrangements that this one is  
4 to go up, or I have directed that it go up as soon as the proceeding in this courtroom is  
5 complete, or I give the high sign that it can go up. And it has been pre cleared to go up.  
6 But that does not mean it will go up, but I have done what I could. Anyway, that is it.

7

8 Oh, the other thing I mentioned. I see the Edmonton Sun, a division of Post Media is not  
9 included. Of course, my order would include the Edmonton Sun as an old client.

10

11 TONY BLAI: We're all one big happy family.

12

13 THE COURT: All right? All right. Anything more? We are  
14 done.

15

16 MR. WOODLEY: Thank you, Sir.

17

18 THE COURT: See you on Thursday.

19

20 MR. FINLAYSON: Thank you, My Lord.

21

22 THE COURT: Thank you.

23

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24 PROCEEDINGS ADJOURNED UNTIL 9:00 AM, SEPTEMBER 15, 2016

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1 **Certificate of Transcript**

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3 I, Celine Erickson, hereby certify that the foregoing pages are a complete and accurate  
4 transcript of the proceedings, taken down by me in shorthand and recorded by a  
5 sound-recording machine and transcribed from my shorthand notes to the best of my skill  
6 and ability.

7

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Detailed Transcript Statistics	
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