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1 IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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3 TABLED DOCUMENT NO. 38-90-(2) Tabled on OCT 25 1990

4 IN THE MATTER OF:

5
6 HER MAJESTY THE QUEEN

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8 VS

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10 CARL HENRY TAMAHOINA HANAK

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16 Transcript of Proceedings held before His Honour, Chief Judge J. R.
17 Slaven, sitting at Yellowknife in the Northwest Territories on
18 Tuesday, July 9th, A.D., 1985.

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20 APPEARANCES:

21 MR. J. D. SUTTON:

Counsel for the Crown

22 MR. V. FOLDATS:

Counsel for the Defence

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CLERK OF THE TERRITORIAL COURT OF THE N.W.T.
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FILED
JUL 15 1985
YELLOWKNIFE

1 THE CLERK: Carl Henry Tamahoina Hanak.
2 MR. FOLDATS: Your Honour, I represent Mr. Hanak who goes by
3 the name of Henry. Your Honour, there is a single information
4 before you charging an offence under Section 246.2 (a) and it
5 is Defence's position that it is a Crown onus show cause.
6 THE COURT: Well, he was arraigned, I take it, in Coppermine
7 July 2nd. He's prepared to elect at this time?
8 MR. FOLDATS: Yes, Your Honour.
9 THE COURT: Stand up, please, Mr. Hanak. Carl Henry Tamahoina
10 Hanak, on the charge that on or about the 2nd day of July,
11 1985, at or near the Hamlet of Coppermine in the Northwest
12 Territories, did in committing a sexual assault on Susie Himiak,
13 use a weapon, namely a rifle, contrary to Section 246.2 (a) of
14 the Criminal Code. You have the option to be tried by a
15 Magistrate without a jury or you may elect to be tried by a
16 Judge without a jury or you may elect to be tried by a Court
17 composed of a Judge and a jury. How do you elect to be tried?
18 MR. FOLDATS: Supreme Court Judge and Jury, Your Honour.
19 THE COURT: Sit down, Mr. Hanak. So, we will want to set a
20 date and place for the Preliminary?
21 MR. SUTTON: Yes, sir, suggesting the next circuit to Copper-
22 mine, Your Honour.
23 MR. FOLDATS: I believe that's September 3rd.
24 THE CLERK: September 3rd at 11:00 a.m., Your Honour.
25 THE COURT: September 3rd, 11:00 a.m. Is that okay with the
26 Crown?
27 MR. SUTTON: Yes, sir, agreeable.



1 THE COURT: Now, Mr. Hanak is in custody on a warrant signed
2 by Judge Bourassa on the 2nd of July until this date. What
3 are we going to do?

4 MR. SUTTON: The Crown seeks to have him detained, sir, pend-
5 ing the Preliminary Inquiry.

6 THE COURT: And the onus is on the Crown?

7 MR. SUTTON: Yes, it is, sir.

8 THE COURT: Mr. Foldats?

9 MR. FOLDATS: Yes, my instructions are to seek release of the
10 accused.

11 THE COURT: We will have a show cause?

12 MR. SUTTON: Yes, sir.

13 THE COURT: Is this the last matter this afternoon?

14 MR. SUTTON: I believe it is.

15 THE COURT: What about the Whitemans?

16 MR. SUTTON: That's been adjourned until the 26th, I think,
17 sir.

18 THE COURT: So, we will have a show cause, Crown onus. Who
19 was on that circuit, Madame Clerk?

20 THE CLERK: Just this last circuit, Your Honour, to Coppermine?
21 July 2nd, I was there.

22 THE COURT: What Judge is there September 3rd?

23 THE CLERK: You are, Your Honour.

24 THE COURT: Well, I guess, gentlemen if I was going to hold
25 a trial I wouldn't want to hear the show cause now, but I think
26 since I'm only going to hear a Preliminary on September 3rd
27 and I would take it that some circumstances of the alleged

1 offence will be put before me day.

2 MR. SUTTON: Yes, sir, that would be my intention.

3 THE COURT: Well, I will be the one holding the Preliminary
4 on September 3rd.

5 MR. FOLDATS: Your Honour, Defence has no objection to that.

6 THE COURT: The thing is that in a show cause I hear evidence
7 that may not be admissible on a Preliminary or a trial.

8 MR. FOLDATS: Your Honour, the Defence has no objection to that.
9 It is our position that Your Honour could disabuse himself of
10 the knowledge he gains today and the position of the Defence
11 could well change prior to September 3rd.

12 THE COURT: I'm not that worried. I'm only holding a Prelim-
13 inary, not a trial. Okay, I just wanted to tell you that.

14 MR. SUTTON: I appreciate that, sir. Thank you. Subject to
15 your discretion, of course, my friend and I have agreed that
16 the evidence on which the Crown is relying in respect of the
17 charge would be put to you by way of my reading of the facts
18 that are alleged by the Crown at this stage. It's alleged,
19 Your Honour, that on the 2nd of July, 1985, at Coppermine,
20 sometime after midnight, this accused, Henry Hanak, entered
21 House 133 with the intention of sexually assaulting Susie Himiak,
22 who is 16 years of age. Mr. Hanak had been drinking earlier
23 at the beer dance and had drunk six beers. Once he got in the
24 residence--

25 THE COURT: How many beers?

26 MR. SUTTON: Six beers. He found the victim alone in the
27 residence. He took a rifle belonging to the owner of the res-

1 idence, Jack Himiak, that's a .22 rifle from its case and
2 found that it was loaded. The victim was sleeping in the bed-
3 room. He sat on the bed beside her. She woke up startled and
4 told him to leave. He pointed the rifle at her head and told
5 her he wanted to sleep with her, to go to bed with her. The
6 young victim started to cry and told him, no. He said he would
7 kill her if she didn't comply. He told her he didn't care if
8 he went to jail. He set the rifle down on the dresser at that
9 point and persisted until the victim removed her clothes.

10 She resisted. He picked up the rifle from the dresser again
11 and informed her that he would do it, that is kill her, because
12 he had the guts to do it. He started to remove his clothes,
13 refusing to leave until he had intercourse with her. She,
14 fearing for her life, took her clothes off. He got on top of
15 her and they had intercourse, which lasted only a few minutes.

16 He ejaculated inside of her. At that point, there was a
17 knock at the front door which he had locked when he entered
18 the residence. She pushed him off and another individual came
19 into the residence through the rear door and found the accused
20 standing naked in the bedroom doorway. The other individual
21 was told not to come into the room. The other individual could
22 hear the victim whimpering in the bedroom and realized something
23 was wrong, left the residence and phoned another friend who
24 called the police.

25 After that individual left, the accused closed the bedroom
26 door. The victim by that time had got dressed. He wanted to
27 have intercourse again so he ordered her to take her clothes

1 off again. He tried to pull her pants down. She tried to re-
2 sist. He threatened to shoot her if she resisted any further
3 so she took her pants off and he laid on top of her again. By
4 that point, the third individual who had been called by Miss
5 Klengenberg had come into the house arrived at the residence.
6 She went in and asked the accused what he was doing and the
7 accused pulled on his pants.

8 A third individual told the accused she was going to call
9 the police and left the room. He at that point grabbed the
10 rifle and ejected the shells. He hid the rifle under the bed
11 and put the shells in his pocket. He put his clothes on, told
12 the victim not to say anything and left the residence.

13 Police arrived a short time later. The victim told a story
14 to the police. The police found the rifle under the bed. The
15 victim was taken to the Nurses Station where she was examined
16 by the Nurse using a standard sexual assault kit.

17 The victim's clothing was seized. At 11:33 in the morning,
18 that's about an hour, just over an hour and a half later, the
19 police attended at the accused's residence. He was arrested
20 for sexual assault using a weapon and advised of his right to
21 Counsel, read the standard police warning and taken back to
22 the Detachment where his clothing was seized.

23 He was interviewed at 11:24 that morning at which time he
24 provided a written statement. Those are the circumstances
25 that are alleged by the Crown in respect of the offence with
26 which he's charged. It is also alleged by the Crown that the
27 accused is single and lives with his mother and older brother

1 in Coppermine. He's employed as a carpenter's helper. He's
2 considered by some residents of the community to be a strange
3 individual and does not have many friends. He does not have
4 a steady girlfriend, claiming to have had sexual relations with
5 a girl in the past.

6 THE COURT: When did you first meet Mr. Hanak, Mr. Foldats?

7 MR. FOLDATS: Yesterday, Your Honour.

8 THE COURT: Do you want to put this off until Friday morning?

9 MR. FOLDATS: I'm prepared to go ahead today, Your Honour.

10 MR. SUTTON: It's indicated, sir, that the accused enjoys
11 attending the arcade and playing video games. He likes working
12 and seems to be a hard worker.

13 THE COURT: On what ground do you want me to keep him in
14 custody, Mr. Sutton? I take it he's a lifelong resident of
15 Coppermine, 21 years of age, 20 years of age?

16 MR. SUTTON: I'm not alleging any grounds on the primary ground.
17 It's the secondary ground--

18 THE COURT: Do you have a record?

19 MR. SUTTON: I have a record I would like to file.

20 THE COURT: My Golly, he has two mickey mouse assaults in
21 May of this year.

22 MR. SUTTON: Yes, sir, those are not--

23 THE COURT: Not with the same victim, were they?

24 MR. SUTTON: I have no indication. I believe they were not
25 the same victim, sir.

26 THE COURT: That's the only thing since '82.

27 MR. SUTTON: The evidence is that he had no previous involvement

with this victim in any respect, no relationship.

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4 THE COURT: Why in the name of the devil has he been arrested
and sent down here and taken up our time and the tax payer's
money. I'm not going to keep this guy in custody, My Golly.

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6 MR. SUTTON: With respect, sir, there is not only the two
7 assaults in '85, there is the earlier assault, one causing
8 bodily harm in '82. In addition to that, there is two breaches
9 of probation charges which in my submission, are an indication
10 that he's not likely to think too much of any terms.

11 THE COURT: Those guys in Coppermine have gone crazy.

12 MR. SUTTON: With respect, sir, my submission is that there is
13 too much of likelihood that he would recommit an offence on
14 a secondary ground.

15 THE COURT: I don't know why he was sent down here at all.

16 MR. SUTTON: That's the essence of my submissions, simply on
17 the secondary ground.

18 THE COURT: I find there is nothing on the primary ground
19 and actually there is nothing on the secondary ground. He has
20 a record of two minor assaults where he was fined \$100 each in
21 May of this year and he hasn't been in Court other than that
22 since 1982 and I'm going to release him. I'm going to release
23 him on the grounds that he keep the peace and be of good behaviour
24 No communication with Susie Himiak, and abstain from the
25 possession or consumption of alcohol, liquor.

26 MR. SUTTON: One further term that I would ask for, sir, is
27 that he continue to take his medication.

28
29 THE COURT: What's that?

1 MR. SUTTON: My information is that he takes a daily medication
2 Neulitol, which is an anti-psycotic drug and major--

3 THE COURT: I mistrust drugs and I mistrust the medical
4 profession and I will not order such a thing. I don't know,
5 for all I know, it's doing him more harm than good.

6 MR. SUTTON: Very will, sir.

7 THE COURT: I will order that he take medication, such med-
8 ication as may be directed by medical doctors.

9 MR. SUTTON: The medication I'm referring to is prescribed
10 by his doctor. He's under a doctor's care.

11 MR. FOLDATS: Your Honour, will that be a release in Coppermine
12 or will Madame Clerk be making arrangements for his release?

13 THE COURT: Well, I think the police in Coppermine should
14 pay for his transportation. I don't know why he was sent down
15 here.

16 MR. FOLDATS: Therefore, are you ordering his release in Copper-
17 mine so that the R.C.M.P. escort is required to Coppermine or
18 will, as Madame Clerk has done in the past, she has made
19 arrangements for his transportation and accommodations to
20 Coppermine or to other outlying areas?

21 MR. SUTTON: My suggestion, sir, with respect having regard
22 to your comments this morning about the public purse, that he
23 be released here with Madame Clerk making arrangements for his
24 transportation to Coppermine.

25 THE COURT: I don't think Madame Clerk can do that, you know,
26 it's a matter of the police and Social Services and there is
27 no budget in Madame Clerk's budget to do these things; is that

1 right Madame Clerk?

2 THE CLERK: When we have a show cause and the accused is
3 released, we do pay tickets back and hotel rooms.

4 MR. SUTTON: I don't know where the money comes from, but it's
5 done quite commonly.

6 THE COURT: I know, from yours and my pocket.

7 MR. SUTTON: We are the ultimate payer whether the police take
8 him back or he's released this way, but the net dollar is
9 less if he is released here.

10 THE COURT: I would like to charge it to the R.C.M.P. Detach-
11 ment in Coppermine. I don't know what the devil this guy is
12 doing down here. There is no way I'm going to keep this guy
13 in jail. I would like to charge it to the R.C.M.P. personally, th
14 Corporal in charge of Coppermine. I can't do that I guess.

15 THE CLERK: If it may assist Your Honour and because of the
16 heavy docket and he was held in custody pending a show cause,
17 Judge Bourassa ordered him to be brought to Yellowknife.

18 THE COURT: There is no blessed reason for him to be held in
19 custody. I know the heavy docket because the R.C.M.P. in
20 Coppermine put everything on the Judge's docket that should
21 be on the J. P. docket. I'm very aware of that in the last
22 six months. I'm sorry, this is a bad day for me. I'm sorry for
23 this gentlemen, I'm not usually so cranky. Bernie will tell
24 you that. Every July 9th I'm very cranky. In any event, some-
25 body will pay his way back. Tell me I can release him on an
26 undertaking and someone will pay his way back.

27 MR. SUTTON: Yes, sir.

MR. FOLDATS: Thank you, Your Honour.

THE CLERK: Those are all the matters before us today, Your Honour.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

Certified a correct transcript,



Brenda MacDougall
Court Reporter

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COPPERMINE, N.W.T.

25 July 1985

The Judicial Council
of the Northwest Territories
c/o the Minister of Justice
Yellowknife, N.W.T.

Dear Sirs:

As the Member of the Legislative Assembly for Kitikmeot West, I feel compelled to inform you of the outrage felt by many of my constituents over comments made by His Honour, Chief Judge J.R. Slaven, during proceedings held in Yellowknife on Tuesday, July 09, 1985, in the matter of Her Majesty the Queen VS CARL HENRY TAMAHOINA HANAK.


I want to point out that I am not questioning His Honour's decision, I feel very strongly that our Judiciary must be totally free from any form of interference from politicians, myself included.

After reading the transcript of the proceeding referred to above, I can, however, fully understand the massive outpouring of public indignation in my constituency and I feel that I must ask you, respectfully, to review the transcript, as I feel that the comments made bring into disrepute the administration of justice. I feel sure that such conduct is not encouraged or tolerated by the Judicial Council of the Northwest Territories.

I feel it is very important that justice be done in all cases, but perhaps even more important, that justice, in the public's eye, is seen and perceived as being done.

Comments such as made by His Honour, Judge Slaven, in the transcript referred to, destroy every effort made by the public in our communities to correct a very serious social problem, that of violence in our northern society.

Sincerely,


Red Pedersen, MLA
Kitikmeot West

August 8, 1985

Hon. Mr. Justice deWeerd
Chief Justice of the Supreme Court
of the Northwest Territories
Government of the N.W.T.
Yellowknife, N.W.T.
X1A 2L9

Re: Petition to Request the Dis-barring of Judge
James R. Slaven from the Territorial Court

On behalf of the concerned citizens of the community of Cambridge Bay, I am making this official request by petition, for the dis-barring of Judge James R. Slaven from being a Judge of the Territorial Court in the Northwest Territories.

As you may have already received a petition from Coppermine requesting a closer look at our justice system and to try and pinpoint its ineffectiveness, we are pinpointing one of its faults, that is requesting the removal of Judge James R. Slaven as Judge of the Territorial Courts of the Northwest Territories.

As you can plainly see the unprofessional attitude and behaviour taken by Judge Slaven during the proceedings between her Majesty the Queen vs Carl Henry Tamahcina Hanak, Tuesday, July 9, 1985, he has clearly shown the unjust treatment to the victim as so often said with other sexual assault cases.

I feel we do not need any more proof other than mention of one of many cases tried by Judge Slaven to show that he is not providing justice to our "so called" justice system. His conduct during those proceedings on July 9, 1985 brings anger and embarrassment for the justice system. If he should continue to remain a judge, we, as women are punished for being victimized and dragged through the courts to further face a ridicule from the judge whom he thinks is "petty" to be assaulted, the victim is left on her own to try and cover the embarrassment she might be feeling, having to face the community she lives in, and most of all the criminal is free to roam and made to think what he did was petty and not too much will happen to him if he does it again.

I personally feel that it is just not worth reporting a sexual assault case if the victim has to be further punished in addition to what has already happened to her.

If we continue to allow conduct of this sort, you will find more and more women will stay quiet about sexual assault cases instead of reporting them as we have been trying to tell women that it is okay for them to talk about it and make a complaint.

With this, a petition with 65 signatures is attached for your immediate attention.

Sincerely,



Helen Adamache

attch.

c.c. Red Pedersen
MLA, Kitikmeot West

Hamlet Council
Cambridge Bay, N.W.T.

Katimavik Society
Cambridge Bay, N.W.T.

Regional Director
Government of the N.W.T.
Kitikmeot Region



October 10, 1990

COMMISSIONER DAN L. NORRIS.

Dear Commissioner Norris:

I want to thank you for the invitation to attend your dinner on the occasion of the 7th Session of the 11th Legislative Assembly and the presentation of the Commissioner's Award for Public Service to James R. Slaven.

I would ordinarily be delighted and honoured to attend such a function, however, in this case, my conscience simply cannot allow me to be there; to do so would be an affront and an insult to my constituency.

You will remember the outrage in my constituency in 1985 over comments made by then Chief Judge James R. Slaven, comments made during a hearing in Yellowknife on July 9th, 1985 (copy of transcript attached).

You will also no doubt remember the public petitions from Coppermine and from Cambridge Bay (copy attached) requesting the disbarring of Judge James R. Slaven from the Territorial Court.

Further actions on this matter were public demonstrations against the Judge in front of the court building when he later presided over cases in Coppermine.

My own comments to the Judicial Council of the N.W.T. are also attached and are self-explanatory.


The feelings in my constituency towards Judge James R. Slaven have not changed since 1985, the comments made in the attached by the Judge have not been retracted by him and the comments and demands of my constituents for his removal also have not been retracted.

.../2

I firmly believe that an award for public service should be awarded only to persons who have served the public in a manner which has been both beneficial to the public and appreciated by the public. Clearly, to both myself and to my constituents, Judge James R. Slaven is not such a person.

I do not wish to cause you embarrassment over dinner by any comments I may make relating to the Judge and I have therefore decided not to attend. I do hope you understand.

Sincerely,



Red Pedersen, M.L.A.
Kitikmeot West.

attachments