
CANADA / JUDGMENT

R. v. Berry

2018 BCSC 812

COURT

Supreme Court of British Columbia

DECIDED

24 April 2018

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2018 BCSC 812 R. v. Berry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Berry,

2018 BCSC 812

Date: 20180424

Docket: 41338-2

Registry: Prince George

Regina

v.

Edward Owen Berry

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Corrected Judgment: The text of the judgment was corrected at paragraphs [5], [6], [7], [8], [11] and [24] on May 22, 2018

Before: The Honourable Mr. Justice Tindale

Oral Reasons for Sentence

Counsel for Crown:

M.L. Ahrens

Counsel for Defence:

J. Desbarats

Place and Date of Hearing:

Prince George, B.C.

April 24, 2018

Place and Date of Judgment:

Prince George, B.C.

April 24, 2018

[1] THE COURT: Edward Berry was found guilty of Counts 1 and 2 on Court File Number 41338-2 which reads:

Count 1: Between the 14th day of April, 2014 and the 30th day of April, 2014, inclusive, at or near Prince George, and/or Vancouver, in the Province of British Columbia, did have in his possession, child pornography, contrary to s. 163.1(4) of the Criminal Code.

Count 2: Between the 14th day of April, 2014 and the 30th day of April, 2014, inclusive, at or near Prince George, and/or Vancouver, in the Province of British Columbia, did access child pornography, contrary to s. 163.1(4.1) of the Criminal Code.

[2] Today is Mr. Berry's sentencing hearing on these matters.

Background

[3] By way of brief background, on April 30, 2014, there was a fire at an apartment building located at 3172 Westwood Drive in the City of Prince George (the "Building"). The Building was heavily damaged as a result of the fire.

[4] On April 30, 2014, the accused was the sole tenant of Unit 456 of the Building. His unit was extensively damaged in the fire.

[5] The owners of the Building retained B.P.R., a property restoration company to do the demolition work required on the building. D.R. was the project manager for that work and employed by B.P.R.

[6] D.R. entered into Unit 456 of the Building and removed an iPad belonging to the accused. D.R., in contravention of his company's salvage protocols, took the iPad to his home.

[7] D.R. eventually made contact with Mr. Berry and was given the password to the iPad by Mr. Berry.

[8] D.R., upon unlocking the iPad, discovered disturbing images of young children on that device, and on June 26, 2014, he approached an RCMP constable and gave him the iPad with the password to the iPad. D.R. also gave the Constable the name of Ed Berry and Mr. Berry's telephone number.

[9] On December 2, 2014, Mr. Berry was arrested for the two charges related to child pornography.

[10] The nature of the child pornography has been admitted by Mr. Berry in an agreed statement of facts which has been marked as Exhibit 1 on the sentencing hearing. I will read that into the record:

This is an agreed statement of facts by Edward Owen Barry on sentence for purposes of the within proceeding only. The following facts and matters are hereby admitted and agreed on behalf of the accused, Edward Owen Barry:

1. There is a well accepted classification system as to the nature and seriousness of child pornography content which was laid out in R. v. Oliver, and adopted in various jurisdictions in Canada, including British Columbia, Manitoba, the Yukon Territory, and Nova Scotia (Re R. v. Pommer, R. v. Basov, R. v. Cafferata, and R. v. Missions).
2. A collection of both still images and videos were retrieved by police experts from the electronic devices seized from Mr. Berry.
3. With respect to the still images, the collection includes a total, from all devices, of between 600 and 800 images which meet the definition of child pornography. The majority of these images fall within Numbers 1 and 2 of the Oliver scale, although there are a few images which would be classified as Level 3 or 4. There are no Level 5 images.
4. With respect to the videos, 123 videos were retrieved from the MacBook Pro device. Many of these devices would appear to depict activities described as voyeurism with boys under the age of 18 years spying on older women. Of these videos, only a few involved an older woman engaged in sexual activity with a boy.
5. With respect to the remaining videos, only approximately 10 meet the definition of child pornography. Of these 10 videos, nine would be rated at a 1 or 2 on the Oliver scale, with one being at Level 3.

The Accused

- [11] Mr. Berry is 55 years of age, having been born on March 12, 1963. He is married and has a son and daughter. His son lives at home with Mr. Berry and his wife. His daughter is in university.
- [12] At the time of this incident, Mr. Berry was employed by the Ministry of Children and Family Development as the Executive Director of Northeastern British Columbia. Mr. Berry has worked for the Ministry since 1990, other than for a brief hiatus in 2002, and then again between 2007 and 2010. As a result of these charges, Mr. Berry was terminated from that employment.
- [13] Mr. Berry found employment in January of 2017 at BC Preferred Restoration, however, he also lost that job. Mr. Berry reports having considerable financial issues including considerable outstanding credit card debt.

- [14] Mr. Berry does not have a criminal record.
- [15] I have had the benefit of a psychiatric report prepared on December 12, 2017 by Dr. Evan Lopes. Dr. Lopes notes that Mr. Berry was sexually abused between the ages of 11 and 16 by a counsellor at a boys and girls club.
- [16] Dr. Lopes also notes that Mr. Berry was diagnosed with major depression in 1986 for the first time and in December 2014. At that time, Mr. Berry was placed in a hospital for approximately 30 days. He is presently taking medication to treat depression.
- [17] Mr. Berry also reported to Dr. Lopes that beginning in June 2014 he had attempted suicide on different occasions.
- [18] Dr. Lopes opines that Mr. Berry, "does show a low level of insight into his offending behaviour and being relatively unaware of his risk factors and triggers".
- [19] Dr. Lopes, however, does opine that based on the available information, Mr. Berry is not considered to be a danger to the community. His present risk of reoffending based on dynamic stability is likely more accurately perceived in the low range.
- [20] Dr. Lopes recommends that Mr. Berry successfully complete the Sex Offender Treatment Program.
- [21] I have also had the benefit of a pre-sentence report prepared on January 3, 2018 by Kathy Davies, a probation officer out of New Westminster.
- [22] Ms. Davies notes that Mr. Berry's father was an alcoholic who was physically and emotionally abusive to him, as well as his other family members. Ms. Davies also notes that Mr. Berry concedes that he drank heavily from 2011 until 2014, and he reported he was feeling isolated from his family and support system because of his employment in Northern British Columbia. Mr. Berry stated that he has not drank since 2014.
- [23] I have also had the benefit of a number of reference letters filed on behalf of Mr. Berry which are included in his book of materials on sentencing and have been marked as Exhibit 3. These letters include letters from family, friends, previous colleagues and employers. They all speak very highly of Mr. Berry.
- [24] Most strikingly is a letter dated October 13, 2017 written by Mr. Berry's wife, Karen Berry, which says the following, in part:

On an evening in mid December of 2014 after a long day of meetings for me in Victoria, I returned to our condo in Vancouver with dinner for Ed and my son I was greeted at the elevator by an RCMP officer telling me that my husband and my son had been arrested for accessing child pornography. I nearly collapsed as I felt my world imploding. The officer later explained that it was my husband Ed that was the "suspect". To say that I was shocked, would be an understatement. This man that I have known and loved for decades was not someone I would have ever envisioned with such a charge. This day, his subsequent suicide attempts and

hospitalizations, the shame of the charge, losing his job, not once but twice, has turned our family sideways.

I have seen the effect on his soul and do not believe in any way he will be before the courts again. This experience has had a deeply traumatizing effect on Ed and have borne witness to his pain as he moved through the process. I have supported him throughout and intend to continue to do so.

I am aware that this letter is for the courts and may be used as such. I will gladly appear in person to provide my beliefs about Ed and his character. He is a man of integrity and honour that experienced something very traumatizing both in his young life and subsequently in 2014 with a fire in his apartment, the flames from which he ran for his life and went directly to an office and started working.

[25] There is also a letter from Elaine Clark who is a practitioner in clinical counselling. She writes, in part, in her letter of April 2018 the following:

I believe that his early childhood experiences created a belief that he was guilty, this has driven him to act out and reinforce this belief in times of stress. His attention to child pornography was a way to feed his subconscious belief. We have spent many hours (including holotropic breathing and hypnotherapy), slowly correcting this mistaken belief. I know that now Ed thinks of himself as someone he can be proud of, and no longer feels the need to prove his mistaken belief.

I have seen Ed consistently since June 2017 we do 90-minute sessions every two weeks and he does homework in between. Ed plans to come to my group session soon. He is just beginning to look forward to a future where he feels good about himself with a new understanding of why he felt compelled to do something that he knew was wrong.

Position of the Parties

Crown Counsel

[26] The Crown seeks a sentence of one year jail to be followed by three years of probation. In addition, the Crown seeks a number of ancillary orders. The Crown seeks a SOIRA order for a period of ten years; a DNA order, an order pursuant to s. 161 of the Criminal Code for a period of ten years and an order forfeiting the various electronic devices and pornographic material in the possession of the RCMP.

[27] The Crown argues that the principles of denunciation and deterrence are paramount sentencing objectives in this case.

[28] The Crown notes that great caution must be exercised in consulting sentencing cases to ensure that the effect of successive legislative amendments from 2005, are properly taken into account. In that regard, Crown's referred the court to the decision in *R. v. Inksetter* 2017 ONCJ 574 at paras. 17 - 20, which read:

- [17] Prior to November 1, 2005, there was no minimum sentence for either possession of or making available child pornography. On that date, the Criminal Code was amended to provide for a minimum sentence of 45 days (with the maximum of 5 years remaining the same) for possession of child pornography where proceedings were by indictment. The same amending statute established a minimum sentence of one year for making child pornography available (with the maximum of 10 years remaining the same) where proceedings were by indictment.
- [18] In 2012, the Code was amended to increase the minimum sentence for possession of child pornography to 6 months (with the maximum of 5 years remaining the same) where the proceedings were by indictment. The sentence for making child pornography available where the proceedings were by indictment was not changed.
- [19] In 2015, the Code was amended yet again to increase the minimum sentence for possession of child pornography to 1 year from 6 months and the maximum sentence to 10 years from 5 years where the proceedings were by indictment, and to increase the maximum sentence for making child pornography available to 14 years from 10 years where proceedings were by indictment, leaving the minimum sentence at 1 year.
- [20] As Arbour J. noted at paragraph 75 of *R. v. Morrissey*, 2000 SCC 39 (CanLII), [2002] 2 s.C.R. 90, mandatory minimum sentences must be read consistently with the general principles of sentencing and, in particular, the principle of proportionality - that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Consequently, when Parliament enacts a minimum sentence, the effect is that it acts as an inflationary floor, raising the range. This is particularly true, in my view, where the low point of the pre-amendment range was lower than the new mandatory minimum.
- [29] The Crown argues that there are a number of mitigating circumstances in this case, which are:
- Mr. Berry has no previous criminal record.
 - Mr. Berry has a good employment history.
 - Mr. Berry, prior to these incidents, demonstrated a pro-social lifestyle.
 - Mr. Berry lost his career as a result of being convicted.
 - Mr. Berry's mental health issues somewhat lessen his moral culpability.
 - Mr. Berry has expressed remorse.
 - Mr. Berry has abided by the terms of his bail.
 - Mr. Berry invited a directed verdict once the search and seizure issue was litigated.
 - The charging period is short.

- The images were not an overly large number, or the most depraved kind.
- Mr. Berry has a network of family and friends to support him.
- Dr. Lopes' opinion as to his likelihood to reoffend.

[30] The Crown, however, based on the decision in *R. v. Leask*, 2013 BCSC 926, submits that Mr. Berry should not receive the mandatory minimum sentence.

[31] The Crown argues that there are a number of aggravating circumstances in this case, primarily Mr. Berry was employed as an executive director for the Ministry of Children and Family Development, and also the Crown argues that the pornography was located on his personal devices.

[32] The Crown submits that in this particular circumstance, Mr. Berry was in a position of trust or authority in relation to the victims or the children depicted in the unlawful videos and images. As such, the Crown argues that s. 718.2(a)(iii) and 718.2(ii.1) of the Criminal Code are applicable on the sentencing hearing. In that regard, the Crown relies on the following cases: *R. v. Johnston*, 2011 NLCA 56; *R. v. McNeice*, 2013 BCCA 98 and *Ontario College of Teachers v. Teeple*, 2014 OBOCT 102.

[33] The Crown argues that while Dr. Lopes has assessed Mr. Berry has a low risk for reoffending he also noted that Mr. Berry shows a low level of insight into his offending behaviour and he should maintain contact with a psychiatrist.

[34] The Crown also argues that a s. 161 of the Criminal Code order should be made for a period of ten years, in effect to mirror the SOIRA order for the protection of the public.

Mr. Berry

[35] Counsel for Mr. Berry argues that a fit sentence is six months in jail to be followed by two years of probation. He is in agreement with the ancillary orders, except for an order pursuant to s. 161 of the Criminal Code. He argues that these orders are only made in rare circumstances and typically made where the offender is considered to be a risk to the public. Mr. Berry argues that this order should not be made, and if it is, should be considerably shorter than ten years. In that regard, Mr. Berry relies on the decisions in *R. v. Pommer*, 2008 BCSC 737; *R. v. Ingvaldson*, 2012 BCPC 437 and *R. v. M.T.* [2016] B.C.J. No. 1749.

[36] Counsel for Mr. Berry does not dispute that his position with the Ministry is an aggravating factor on the sentencing hearing. However, he does dispute that he was in a position of trust or a relationship to the children or victims that he had no direct contact with. In this case, he argues that s. 718.2(a)(ii.1) and (iii) of the Criminal Code are not applicable because Mr. Berry did not specifically abuse these victims.

- [37] Counsel for Mr. Berry notes that he suffers from Type 2 diabetes and takes medication for that condition. He was diagnosed originally in 1986 with major depression, and again in November of 2014. On November 25, 2014 until December 16, 2014, Mr. Berry was hospitalized in the psychiatric ward of St. Paul's Hospital.
- [38] Counsel for Mr. Berry notes that his position with the Ministry of Children and Family Development was very demanding. He would generally work 70 hours per week. He was also responsible for budget of \$115 million and later a budget of approximately \$600 million.
- [39] Mr. Berry was earning approximately \$120,000 per year with the Ministry when he lost his job. In addition to losing his income, he also lost his health benefits.
- [40] Mr. Berry is presently unemployed and likely will stay retired. Mr. Berry has previously sat on a number of boards including the College of Social Workers, the B.C. Federation of Youth in Care Networks, the Public Legal Education Association, West Coast Childcare Resources Society, B.C. Daycare Action Coalition, Unlearning Racism, and the Board of Registration of Social Workers.
- [41] Counsel for Mr. Berry argues that he was living in a small remote community and travelling extensively. He felt isolated from his family and friends, and began to experience severe depression and stress. He was unable to seek mental health support as he had a working relationship with many of the local mental health professionals. Mr. Berry began drinking alcohol as a form of self medication.
- [42] Mr. Berry has a deep sense of remorse regarding the offences. He advised his counsel to the following:

I am devastated that my poor choices resulted in harm to any children. This is something that I have worked my entire life to mitigate and create support systems to lessen. I acknowledge that those with careers in child protection social work are held to a higher standard and rightfully so.

- [43] Counsel for Mr. Berry also agrees that there are a number of mitigating circumstances in this case include:

- A lack of criminal history.
- The fact that Mr. Berry was struggling with alcohol abuse and mental health issues at the time of this offence. The isolation that he felt from his family was an important contributing factor to his deteriorating mental health.
- Mr. Berry has been on very strict bail conditions for nearly four years without any issues.
- Mr. Berry has strong family and community support which is reflected in the many positive letters of reference to the court.
- Mr. Berry has made positive efforts towards his own rehabilitation by attending counselling.
- He has successfully stopped using alcohol.

- The consequences and stigma involving this offence have been profound for Mr. Berry. He has lost his employment as well as his reputation. He suffers from shame and embarrassment resulting, in part, from significant media coverage in this case.
- Mr. Berry and his family have been forced to move on two occasions as a result of these offences.
- Mr. Berry was cooperative with the police and provided the passwords to his various devices.
- Mr. Berry is very remorseful.

[44] Counsel for Mr. Berry notes that the collection of images that were on his computer devices, while significant, were not in the range of the hundreds of thousands of images that are found on the facts of such decisions as *R. v. Campbell* [2017] BCJ No. 2150.

[45] Counsel for Mr. Berry argued that the images in his possession were in the less serious categories as set out in the decision of *R. v. Pommer* [2008] BCJ No. 1056. In that decision the court referred to the English Court of Appeal's categorization of level of child pornography and stated the following at para. 61:

In regard to the nature of an offender's collection, the English Court of Appeal in *R. v. Oliver*, [2002] E.W.J. No. 5441 at para. 10 categorize levels of child pornography from least serious to most serious in the following manner:

- (1) images depicting erotic posing with no sexual activity;
- (2) sexual activity between children, or solo masturbation by a child;
- (3) non-penetrative sexual activity between adults and children;
- (4) penetrative sexual activity between children and adults;
- (5) sadism or bestiality.

[46] Counsel for Mr. Berry argues that he did not jealously guard these images or secret them away. His offending behaviour took place over a relatively short period of time when Mr. Berry was having a mental breakdown.

[47] Mr. Berry did not pay for these images and he did not share these images.

Decision

[48] At the time of this offence, the mandatory minimum punishment for the possession of child pornography was six months in jail. The maximum penalty was five years in jail.

[49] The purpose of sentencing is found in s. 718 of the Criminal Code which states:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[50] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: (s. 718.1 of the Criminal Code).

[51] Section 718.01 deals with offences against children and states:

When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[52] Other sentencing principles are found in s. 718.2 of the Criminal Code which states:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing:

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

- [53] The possession and accessing of child pornography are serious and abhorrent crimes. The victimization of the children in these images is not just by the people who take the images or directly sexually assault the children, but by anyone who views or possesses this material.
- [54] The children in these images in this case are clearly the victims of Mr. Berry. The images are of children under the ages of 18, and as such, s. 718.2(a)(ii.1) of the Criminal Code applies.
- [55] I do, however, agree with counsel for Mr. Berry that s. 718.2(a)(iii) does not apply in these circumstances. Clearly, Mr. Berry, in his job, was in a position of trust. However, there is no evidence that in committing the offence he abused his position of trust in relation to the victims. There is no evidence that Mr. Berry had any connection to the victims in this case.
- [56] The sentencing cases provided to me by counsel support a range of sentence for Mr. Berry in these circumstances of between six months and 12 months jail.
- [57] Given the nature of the offences, the primary principles of sentencing are deterrence and denunciation.
- [58] However, Mr. Berry, but for these offences, has led an exemplary life. He has taken steps to rehabilitate himself in the form of counselling and abstinence from alcohol consumption.
- [59] There are a number of mitigating circumstances in this case.
- [60] Mr. Berry does not have a criminal record. The impact of this offence has been dramatic on him and his family because he lost his job with the Ministry and he can no longer work in his chosen career as a social worker because of this offence.
- [61] The stigma associated to this conviction has caused him to lose other employment and he has also been evicted or lost two rental homes because of this conviction.
- [62] He has a significant support system with his family and friends.
- [63] The majority of the images that were viewed fall in the categories of 1 and 2 as described in the decision of Oliver. There are, however, some images that would be classified as a Level 3 or 4. The collection of child pornography did not include a large number of images or videos.
- [64] I also consider that Mr. Berry's mental health was compromised at the time of these incidents. He was away from his family as a result of his employment and felt isolated. He was working long hours and was on-call most days. He dealt with many horrific circumstances involving children in his own employment which weighed heavily on him.
- [65] Mr. Berry has expressed remorse for his actions. Mr. Berry, in effect, could be considered to have entered a guilty plea after the voir dire was completed.
- [66] Dr. Lopes has opined that Mr. Berry is at a low risk to reoffend, although he does acknowledge Mr. Berry has some limited insights into these offences.

- [67] There are, however, also significant aggravating factors in this case. First and perhaps foremost, Mr. Berry was employed in a management position with the Ministry of Children and Family Development and he had been employed as a social worker for many years. He, better than most people, understands the tragic consequences of his actions on children.
- [68] The victims in this case were under the age of 18.
- [69] Mr. Berry's moral culpability in this case is high.
- [70] As there is a mandatory minimum sentence, a conditional sentence is not available. And, in any event, the principles of deterrence and denunciation require a jail sentence.
- [71] Section 161 of the Criminal Code allows for an order of prohibition for an offence pursuant to these sections of the Criminal Code. The maximum duration of the prohibition can be up to life. In my view, given the efforts that Mr. Berry has made in terms of rehabilitation and the fact that Dr. Lopes has opined that he is at a low risk of reoffending, I am not satisfied that I should exercise my discretion and make an order pursuant to s. 161.
- [72] Taking into account all of the above, including the mitigating and aggravating factors, Mr. Berry's somewhat unique personal circumstances and the seriousness of this offence -- Mr. Berry, if you could just stand up for a minute, please, sir?
- [73] Mr. Berry, on Count 1, I sentence you to eight months in jail to be followed by two years probation with the following conditions.
- 1) You must keep the peace and be of good behaviour.
 - 2) You must appear before the court when required to do so by the court.
 - 3) You must notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation. You must report in person to a probation officer at 250 George Street in the City of Prince George within 72 hours after your release from custody unless you have obtained, prior to your release, written permission from the probation officer to report elsewhere or within a different timeframe. After that, you must report as directed by the probation officer.
 - 4) When first reporting to the probation officer, you must inform him or her of your residential address and phone number, and you must not change your residence or phone number without written permission from your probation officer.
 - 5) You are not to be employed or volunteer in any capacity that involves being in a position of trust over a person under the age of 16 years.
 - 6) You must not possess any pornographic material or access any pornographic material by electronic means.

- 7) You are prohibited from using a computer system within the meaning of s. 342.1(2) of the Criminal Code for the purpose of communicating with a person under the age of 16 years.
- 8) You may possess only one computer system or device. To access the internet, you must provide your probation officer with any requested identifying information concerning the system or the device.
- 9) Upon reasonable request of a peace officer, you are to make available to them that computer device for inspection.
- 10) You must attend, participate in, and successfully complete any intake assessment, counselling, or program as directed by the probation officer. And without limiting the general nature of this condition, the intake assessment, counselling, or programs may relate to
 - a) alcohol or drug abuse;
 - b) mental health; or
 - c) sexual offence prevention.

[74] Those are the conditions of the probation order.

[75] With regard to Count 2, there will also be a sentence of eight months in jail to be served concurrently.

[76] As this is a primary designated offence, pursuant to s. 487.051(1), I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA National Databank.

[77] Also pursuant to s. 490.012 of the Criminal Code, you are required to comply with the Sex Offender Information Registration Act for a period of ten years.

[78] Now, with regard to the items that were to be forfeited?

[79] MS. AHRENS: If I may, prior to that, Your Honour, with respect to the SOIRA order, I have drafted a copy and I would ask that you sign it and then it can be provided to Mr. Berry.

[80] THE COURT: Thank you.

[81] MS. AHRENS: If I may ask my friend to have his client sign it; and there was one thing with respect to the terms of the probation. I was trying to write as quickly as I could, Your Honour, but I didn't catch the condition regarding employment. I understand he's not to be a -- employed or in a position of trust with anyone under the age of 16 years, but I would ask you to insert the words, "employment, whether paid or voluntary".

[82] THE COURT: All right. I said you are not to be employed or volunteer.

- [83] MS. AHRENS: Oh, I see. Thank you. With respect to the items to be forfeited, Your Honour, counsel and I have spoken of this. There should be a lapse in time of at least 31 days before coming into effect.
- [84] THE COURT: Does counsel just want to file an order to that effect and --
- [85] MS. AHRENS: Yes.
- [86] THE COURT: -- I can sign it?
- [87] MS. AHRENS: Yes, Your Honour. We have discussed this matter, in terms of the exhibit flowchart and counsel are confident, subject to anything my friend has to say, that we can make this happen.
- [88] THE COURT: All right.
- [89] MS. AHRENS: I will certainly do what I can, given that my friend is Vancouver, to facilitate the provision of documents to the RCMP.
- [90] THE COURT: All right.
- [91] MR. DESBARATS: That's agreeable, My Lord.
- [92] THE COURT: All right, thank you. Anything further?
- [93] MS. AHRENS: Not from the Crown, thank you.
- [94] MR. DESBARATS: No, My Lord.
- [95] THE COURT: All right, thank you.
- "The Honourable Mr. Justice Tindale"

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