

CANADA / JUDGMENT

R. v. T.A.P.

2022 BCSC 510

COURT

Supreme Court of British Columbia

DECIDED

30 March 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 510 R. v. T.A.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. T.A.P.,

2022 BCSC 510

Date: 20220330

Docket: 179528

Registry: Victoria

Regina

v.

T.A.P.

Restriction on publication: Pursuant to s. 486.4(2) of the Criminal Code, R.S.C., 1985, c. C-46, restricting the publication, broadcasting, or transmission in any way of evidence that could identify a complainant or witness referred to in this judgment.

Corrected Judgment: Redactions were made to this ruling on February 24, 2026 to further anonymize it to conform to the s. 486.4(2) publication ban. This was done in order to permit publication of the ruling.

Before: The Honourable Madam Justice Ker

Ruling on Application #6 - Voir Dire #4 Admissibility of Videorecorded Statements

Counsel for the Crown:

P.J. Cheeseman

Counsel for the Defence:

G.D. Simair

Place and Date of Trial/Hearing:

Victoria, B.C.

January 24-28, 2022

Place and Date of Ruling given to Parties with Reasons to follow:

Victoria, B.C.

February 3, 2022

Place and Date of Judgment:

Victoria, B.C.

March 30, 2022

Table of Contents

Introduction.. 3

Background.. 5

B. and E.'s disclosures. 6

T.'s disclosure. 6

Analysis. 8

Overview.. 8

Was T.'s video-recorded statement made in a reasonable time?. 10

Would Admission Interfere with the Proper Administration of Justice?. 14

Redactions. 17

Conclusion.. 20

Introduction

[1] The accused, T.A.P., is charged on an eight-count indictment with offences of incest, sexual assault, sexual touching, and making child pornography. There are three complainants in this case. As they are all under 18 years old, I will refer to them by the initial of their first name in order to conform to the applicable publication ban and protect their privacy. Two of the complainants, B. and E., are the children of the accused. The third complainant, T., is a childhood friend of B.

[2] The general time period covered by the indictment is August 9, 2012 through August 9, 2019.

[3] The Crown has filed an application pursuant to s. 715.1 of the Criminal Code R.S.C. 1985, c. C-46 [Code], to have four video-recorded statements obtained from the three complainants admitted into evidence at the trial of T.A.P. The video-recorded statements are as follows:

- i. B. provided two video-recorded statements to the police, one on August 9, 2019 to Cst. S.B. and a second on January 30, 2020 to Cst. E.P.;
- ii. E. provided one video-recorded statement to the police on August 9, 2019 to Cst. S.B.; and
- iii. T. provided one video-recorded statement to the police on January 20, 2020 to Cst. M.L.

[4] Section 715.1(1) of the Code provides:

Evidence of victim or witness under 18

715.1 (1) In any proceeding against an accused in which a victim or other witness was under the age of eighteen years at the time the offence is alleged to have been committed, a video recording made within a reasonable time after the alleged offence, in which the victim or witness describes the acts complained of, is admissible in evidence if the victim or witness, while testifying, adopts the contents of the video recording, unless the presiding judge or justice is of the opinion that admission of the video recording in evidence would interfere with the proper administration of justice.

[5] Section 715.1 of the Code contains four statutory criteria or pre-conditions that must be satisfied in order for a video-recorded statement to be admitted into evidence in the trial:

1. The witness was under 18 years of age at the time of the offence;
2. The video must have been made within a reasonable time following the alleged offence;
3. The witness must describe the acts complained of; and
4. The witness must adopt the contents of the video-recorded statements while testifying and be available for cross-examination.

[6] In addition, the Court retains a residual discretion to not admit the video recording into evidence notwithstanding the four pre-conditions being satisfied, if it determines the admission would interfere with the proper administration of justice.

[7] I heard the voir dire for this application on the week of January 24, 2022. The three complainants, and the officers who conducted the interviews of the three complainants, testified about the circumstances surrounding the taking of the video-recorded statements. All four video-recorded statements were played during the voir dire. The complainants each adopted their video-recorded statements and were available for cross-examination.

- [8] In addition to the viva voce evidence and the video-recorded statements played during the voir dire, the following was filed: admissions of fact (filed as Exhibit 1 in the voir dire); transcripts of the video-recorded statements; and a one-page document containing seven photographs (filed as Exhibit #D in the voir dire).
- [9] Counsel for T.A.P. did not contest the admissibility of three of the video-recorded statements: the two statements provided by B. and the one statement provided by E. Accordingly, these three statements were ruled admissible.
- [10] Counsel for T.A.P. sought redactions from the statements of B. and E. provided on August 9, 2019.
- [11] Counsel for T.A.P. contended that T.'s video-recorded statement ought not to be admitted and advanced two grounds for excluding this recording:
- i. The recording was not made within a reasonable time after the alleged offence; and
 - ii. Admission of the recording will interfere with the proper administration of the justice.
- [12] In the alternative, counsel for T.A.P. argued that, if T.'s statement is admitted, he seeks a redaction to T.'s statement, as well as one photograph contained in Exhibit #D.
- [13] On February 3, 2022, through a memorandum to counsel, I advised counsel of the result of this voir dire, stating that I was satisfied that all four video-recorded statements were admissible in the trial pursuant to s. 715.1 of the Code. I ordered a redaction to B.'s statement, two redactions to E.'s statement, and no redactions to T.'s statement or the photograph in Exhibit #D. I indicated in the memorandum that oral reasons would be provided during the trial at a convenient break in the proceedings. These are my reasons.
- [14] I do not propose to review the evidence or the background in respect of the video-recorded statements from B. and E. in light of the concession that they were admissible pursuant to s. 715.1 of the Code.

Background

- [15] Regarding the admissibility of T.'s January 22, 2020 video-recorded statement, I heard from two witnesses:
- i. Cst. M.L., who conducted the interview of T.; and
 - ii. The complainant, T.

B. and E.'s disclosures

- [16] B. and E. advanced their allegations against T.A.P. on or about August 9, 2019, a few days after they returned to Victoria, B.C. from a three-week driving vacation through B.C., Alberta, and Saskatchewan with their father.

- [17] On August 2, 2019, on the last night of their road trip, T.A.P., B., and E. stayed in a hotel in Abbotsford, B.C., where T.A.P. allegedly sexually assaulted B. and tried to have sexual intercourse with her. B. resisted, yelled at T.A.P., and fled the hotel room she was in with him. E. heard an argument between B. and T.A.P. She went looking for B. in the hotel hallway when T.A.P. directed E. to find her sister. E. located B. in a stairwell near their rooms.
- [18] On August 3, 2019, T.A.P., B., and E. returned to Victoria. Sometime between their return to Victoria and August 9, 2019, B. made a disclosure about T.A.P.'s alleged abuse.
- [19] As noted earlier, both B. and E. were interviewed by Cst. S.B. of the [REDACTED] R.C.M.P on August 9, 2019. These interviews were video-recorded and are what comprise B. and E.'s video-recorded statements.

T.'s disclosure

- [20] T. first disclosed her alleged sexual abuse by T.A.P. to her mother's boyfriend, J.S., when he returned from a weekend ski trip on or about January 20, 2020.
- [21] On January 22, 2020, T.'s mother contacted the police to advise that T. had disclosed that T.A.P. had sexually abused her. This is when T.A.P.'s alleged offending against T. first came to light.
- [22] T. had not disclosed the alleged offending to anyone prior to this time, as she had promised B. that she would not do so. At some point shortly before January 22, 2020, T. asked B. if it was alright to tell someone about what T.A.P. had done to them. B. told her it was okay to do so.
- [23] T. had made a limited disclosure to her step brother's friend (who was 15 years old), about a year before speaking to the police. However, her evidence established that the scope of that disclosure was not detailed and was extremely circumspect.
- [24] When interviewed by Cst. M.L. on January 22, 2020, T. had just turned 15 years old. T. had just turned 17 years old when she testified at the voir dire.
- [25] In her statement, T. outlined an incident in July 2018 where both T. and B. had been lying on T.A.P.'s bed. T. said that T.A.P. had placed his hands on their backs, under their shirts, and was patting their backs like burping a baby. When T.A.P. tried to move his hands closer to her stomach and breasts, T. described rolling away from T.A.P. This incident in July 2018 would have been 19 months before T. disclosed the offending and provided her statement to the police on January 22, 2020.
- [26] In T.'s video-recorded statement, she outlined that the last time T.A.P. tried to do anything sexual with her and with B. was shortly after T.A.P. had moved out of their previous residence and into a new residence on D. Rd. According to the admissions of fact, that move occurred in June 2018, when T. was 13 years old. T. turned 13 years old in late December

2017. Accordingly, the probable last incident of alleged sexual abuse occurred between January 2018 and June 2018, before T.A.P. moved into the new residence. Thus, the largest time gap between the probable date of the last incident of abuse is 24 months, from January 2018 to January 2020. Conceivably, it is less than 24 months; however, for the purposes of this application, I will assess the elapsed time between the probable date of the last incident of abuse and T.'s disclosure as being 24 months, though I acknowledge it may well have been closer to 19 months.

[27] T. explained in her statement that she did not disclose the activity earlier because she had promised B. she would not do so. T.'s reasons for not disclosing the offending earlier are all intrinsic to her own personal circumstances:

- i. T.A.P. was the father of her good friend B. and T.'s mother was good friends with T.A.P.;
- ii. Earlier, when T. wanted to tell somebody, B. had made T. promise not to tell anyone so that she would not lose her dad; and
- iii. T.A.P. told T. not to tell anyone as there would be trouble. He also told T. that no one would find the picture evidence as he had hidden it.

[28] Once B. disclosed the offending by speaking to the police, T. eventually asked B. if it was okay to tell someone about what had happened to her. When B. said it was okay to do so, T. eventually disclosed to J.S. Within two days of that disclosure, T. provided her video-recorded statement to Cst. M.L.

Analysis

Overview

[29] The legal principles governing the admissibility of video-recorded statements are not in issue in this application. In *R. v. T.R.J.*, 2014 BCSC 1611, Justice Fitch (as he then was) outlined the purpose of s. 715.1 of the Code as follows:

[43] Section 715.1 was enacted in 1988 to address the realities of child abuse and to accommodate the needs of child witnesses. The provision was designed to address these problems by seeking to "preserve an early account of the child's complaint" in order to "assist in the discovery of the truth" and to provide a more effective "procedure for the introduction of the child's story into evidence at trial": *R. v. L.O.D.*, [1993] 3 S.C.R. 569 at para. 34.

[44] More specifically, the twofold purpose of the provision is to: (1) enhance the ability of the court to discover the truth by preserving what is likely the child's most accurate and best recollection of the alleged event; and (2) to prevent or substantially reduce the likelihood of inflicting further injury upon the child witness as a result of their participation in the court proceedings: *R. v. F.(C.C.)*, [1997] 3 S.C.R. 1183 at paras. 18-24.

- [30] More recently, in *R. v. D.M.D.*, 2019 BCSC 1027, Justice Riley also outlined the objectives of s. 715.1 of the Code in this way:
- [11] The case law interpreting and applying s. 715.1 of the Criminal Code indicates that the provision has two key objectives. The first is to enhance the fundamental truth-seeking role of the courts. The second is to reduce the likelihood of inflicting further injury on a child witness or complainant as a result of involvement in the criminal justice system: *R. v. C.C.F.*, [1997] 3 S.C.R. 1183 at para. 29.
- [12] With regard to the truth-seeking objective, s. 715.1 allows for the creation and admissibility of a record of what is likely to be the best recollection of the event in issue to aid in ascertaining the truth: *C.C.F.* at para. 21. In other words, s. 715.1 is a mechanism for preserving and admitting at trial an "early account" of the incident: *C.C.F.* at para. 41.
- [13] With regard to the objective of reducing trauma, s. 715.1 prevents or materially reduces the stress or trauma that can be visited upon a child as a result of being required to participate in court proceedings dealing with matters that would be distressing or disturbing to the child. The provision does this by allowing for the taking of a videotaped statement in circumstances that are less formal and less overwhelming to the child witness: *C.C.F.* at para. 22.
- [14] Section 715.1 is basically a statutory exception to the hearsay rule. It permits an out-of-court statement to be admitted for the truth of its contents, provided that certain statutory preconditions are met: *C.C.F.* at para. 17. The statute uses the phrase "victim or witness", but I will use the term "complainant" for ease of reference.
- [15] The five statutory preconditions that must be met under s. 715.1 are: (1) the complainant must have been under the age of 18 at the time of the alleged offence; (2) the video recording must have been made within a reasonable time after the alleged offence; (3) the complainant must describe the acts complained of in the video recording; (4) the complainant must, while testifying, adopt the contents of the video recording; and (5) the video recording shall not be admitted if the presiding judge is of the opinion that its admission would interfere with the proper administration of justice: *R. v. T.R.J.*, 2014 BCSC 1611.
- [31] On the current application there is no issue with preconditions one, three, and four, as outlined in *D.M.D.* at para. 15. The admissibility of T.'s video-recorded statement turns on resolution of the following two issues: (a) whether the video-recording was made within a reasonable time after the alleged offence (precondition two in *D.M.D.* and *T.R.J.*), and (b) whether the admission of the video-recorded statement would interfere with the proper administration of justice (precondition five in *D.M.D.* and *T.R.J.*).

Was T.'s video-recorded statement made in a reasonable time?

- [32] In T.R.J., Fitch J. distilled the general principles found in the jurisprudence that address the question of whether a video-recording has been made with a reasonable time after an alleged offence:
- [71] First, the period of time which must be "reasonable" is the period between the commission of the alleged offence and when the witness provided the video recording concerning that offence. The period does not, for the purposes of s. 715.1, run from the date of disclosure: R. v. Lucas, 2001 BCCA 361.
- [72] Second, where, as in this case, the alleged offence involves repeated acts of sexual abuse over a period of time, it would seem that the operative starting date of the period which must be reasonable is the probable date of the last incident of abuse: R. v. Archer (2004), 202 C.C.C. (3d) 60 (Ont. C.A.) at paras. 73-74.
- [73] Third, whether the time period between the alleged offence and the making of the video recording is "reasonable" is a case-specific inquiry which must take account of all the circumstances: R. v. L.O.D. at paras. 73-77.
- [74] Fourth, in conducting the analysis, courts must be mindful of the fact that children, for a number of well-documented reasons, often delay disclosure of sexual abuse, and for substantial periods: R. v. L.O.D. at para. 75; R. v. W.(R.), [1992] 2 S.C.R. 122 at 136.
- [75] In R. v. S.(P.) (2000), 144 C.C.C. (3d) 120 (Ont. C.A.) at 137, Moldaver J.A. (as he then was) expressed the view that:

In considering whether a videotape has been made within a reasonable time, the court must balance a number of factors, the most important being the reasons for the delay and the impact of delay on the child's ability to accurately recall the events in issue.

- [33] The determination of what is reasonable is not a mathematical calculation, but rather an exercise of judicial discretion based on the totality of the circumstances: T.R.J. at para. 80; D.M.D. at para. 17.
- [34] Both Fitch J. in T.R.J. at para. 76 and Riley J. in D.M.D. at paras. 17-18 enumerated a non-exhaustive list of relevant factors to be considered in the assessment of the reasonableness of the delay, including:
- i. The age of the child;
 - ii. The length of time in issue;
 - iii. The reason for any delay between the date of the alleged offence and the taking of the video-recorded statement;
 - iv. The nature of the relationship between the child complainant and the accused;
 - v. Any significant intervening events (between the offending behaviour and the making of statement) that might impact on the statement; and,

vi. The potential impact that the passage of time may have had on the complainant's ability to recall the events.

- [35] The focus of the analysis should be on the extent to which the passage of time can be said to have impacted on the complainant's ability to recollect and describe the events. The factors I have just enumerated should be considered through that lens. In considering the reasons for any delay, the court must be mindful of the fact that children sometimes delay disclosure of sexual abuse allegations for a number of reasons: T.R.J. at para. 74; D.M.D., para. 18.
- [36] In respect of the admissibility of T.'s video-recorded statement, counsel for T.A.P. focussed his submission on points (iii), (v), and (vi) of this list of relevant factors as provided in both T.R.J. and D.M.D.
- [37] T.A.P.'s alleged offences pertaining to T. occurred on numerous occasions over several years, but stopped in or about July 2018, shortly after T.A.P. moved into the new residence. In T.'s statement, she outlined that she and B. refused to engage in the activity initiated by T.A.P. in July 2018 and that is when it stopped for her. T. was eight years old when the alleged offending started and, as noted earlier, was 13 years old in the summer of 2018 when it stopped. She had just turned 15 when she provided her statement to the police. Certainly, T. was an older child than some child complainants and so concerns about potential impact on memory are attenuated slightly.
- [38] T. was not so young during the period of alleged offending that the delay raises obvious concerns about her ability to recall the events. In her statements, T. provided fairly specific details about certain incidents and conduct. The delay does not cause concern about her ability to recall the incidents.
- [39] For the purposes of this voir dire, I accept T.'s evidence regarding the probable date of the last incident of alleged abuse and find that the last incident of sexual activity that T. described occurring was when T.A.P. was still at the previous residence, likely sometime between January 2018 and June 2018. Thus, the delay between the probable date of the last incident and T.'s statement is between 19 and 24 months. As previously noted at para. 26 of this ruling, I will assess the elapsed time between the probable date of the last incident of abuse and T.'s disclosure as being 24 months
- [40] In T.R.J., Fitch J. addressed the jurisprudential spread on length of delay at paras. 81-84:
- [81] In some cases, delays of two to three years have been found to be reasonable: S.(P.) [two years found to be reasonable]; R. v. Quash, 2013 BCSC 2498 at paras. 36-59 [22 months found to be reasonable]; R. v. G.(S.), [2007] O.J. No. 2203 (S.C.J.) [three years found to be reasonable]; R. v. J.J., 2008 ONCA 133 [three years found to be reasonable].
- [82] It should be noted, however, that substantially shorter periods have been found to be unreasonable: R. v. Gallie, [2002] O.J. No. 3860 (S.C.J.) [one year found to be unreasonable]; R. v. Rohrich, [2009] O.J. No. 4050 (S.C.J.) [14 months found to be unreasonable].

- [83] These cases are not inconsistent with one another. They simply represent the case-specific application of a framework of interacting principles, some of which will be entitled to more weight in a particular case than in others.
- [84] Generally speaking, delays longer than three and a half years have often been found to be unreasonable: Lucas [45 months found to be unreasonable]; R. v. W.(G.), 2014 ONSC 507 [three and a half years found to be unreasonable]; R. v. B.(A.G.), 2011 ABPC 260 [four years found to be unreasonable].
- [41] The reason for the delay between the probable date of the last incident and the disclosure is largely intrinsic to T. The delay was entirely due to T.'s reluctance to disclose the abuse. A number of points inform the assessment of this factor including that:
- i. T.A.P. told T. not to tell anyone as it would mean trouble;
 - ii. B. made T. promise she would not tell anyone so B. would not lose her dad;
 - iii. T. and B. were childhood friends;
 - iv. T. eventually asked B. if it was okay to tell someone and, when B. said it was, T. disclosed to J.S., her mother's boyfriend.
- [42] Two days after disclosing to her mother's boyfriend, T. provided her video-recorded statement to the police.
- [43] In so far as potential intervening events that might impact T.'s recollection or statement, I understood counsel for T.A.P. to contend that T.'s possible discussion of events with B. (collusion), as well as her knowledge of sexual matters from other sources (like reading books that included descriptions of sexual assault and taking sex education classes in school), are circumstances that may have affected T.'s recall. In my view, those are not matters that impact her ability to recall, they are matters more suitable for cross-examination at trial as to why she might be making such allegations. There is no evidence that would support an inference that such intervening events impacted T.'s ability to recall the events.
- [44] T.'s statement contains fairly specific descriptions of incidents of abuse, including a "69" incident which she explained to Cst. M.L. Her statement also contained a more general description as to how the offending is alleged to have occurred and that it occurred over years.
- [45] Like the circumstances in T.R.J., description of conduct, such as T.'s detailed description of the "69" incident and other acts that she says T.A.P. made her do, are all instances of highly invasive conduct that does not lend itself to misinterpretation or ambiguity: T.R.J. at para. 104. Accordingly, on a threshold basis, these factors enhance the reliability of her recollection.

- [46] As Justice Moldaver (as he then was) expressed in *R. v. S.(P.)*, [2000] O.J. No. 1374 (O.N.C.A.), referred to in para. 75 of T.R.J., while there are a number of factors to balance in assessing a "reasonable time," the two most important factors are: the reasons for the delay and the impact of delay on the child's ability to accurately recall the events.
- [47] In T's case, the reasons for the delay are intrinsic to her and her reasons for not wanting to disclose. Her detailed statement also establishes that the passage of time between the probable date of the last alleged incident and her video-recorded statement has not negatively impacted her ability to recall the events.
- [48] T. was 15 at the time of her video-recorded statement. Her statement was taken within two days of T's disclosure of the abuse to J.S., her mother's boyfriend. She had an independent recollection of a number of events with T.A.P. and B., and was able to describe aspects of the conduct in a manner that indicated an independent recollection of the events.
- [49] Taking all these circumstances into account, I conclude that the video-recorded statement taken by Cst. M.L. on January 22, 2020 was created within a reasonable time after the last incident of alleged offending.

Would Admission Interfere with the Proper Administration of Justice?

- [50] Where the first four statutory pre-conditions to admissibility under s. 715.1 have been satisfied, the Court retains a discretion to exclude the video-recording if its admission would interfere with the proper administration of justice.
- [51] In *R. v. L.(D.O.)*, [1993] 4 S.C.R. 419, Justice L'Heureux-Dubé enumerated a number of factors that a trial judge should take into account in considering whether to exercise their discretion to exclude a video-recorded statement. These factors were approved in *R. v. F.(C.C.)*, [1997] 3 S.C.R. 1183.
- [52] In *F.(C.C.)* at para. 51, Justice Cory writing for the Court, stated that the discretion to exclude video-recorded statements should be "limited to those cases where its admission would operate unfairly to the accused. These cases will be relatively rare." Cory J. went on to direct that the power to exclude evidence should not be used to determine issues of weight: *F.(C.C.)* at para. 52.
- [53] The factors to consider under this branch of the analytical framework were enumerated in *L.(D.O.)* at 463 and confirmed in *F.(C.C.)* at para. 51. They are as follows:
- (a) The form of questions used by any other person appearing in the videotaped statement;
 - (b) any interest of anyone participating in the making of the statement;
 - (c) the quality of the video and audio reproduction;
 - (d) the presence or absence of inadmissible evidence in the statement;
 - (e) the ability to eliminate inappropriate material by editing the tape;

- (f) whether other out-of-court statements by the complainant have been entered;
- (g) whether any visual information in the statement might tend to prejudice the accused (for example, unrelated injuries visible on the victim);
- (h) whether the prosecution has been allowed to use any other method to facilitate the giving of evidence by the complainant;
- (i) whether the trial is one by judge alone or by a jury; and
- (j) the amount of time which has passed since the making of the tape and the present ability of the witness to effectively relate to the events described.

[54] In the case at bar, only factors (d), (e), (h), and (j) enumerated above are in issue.

[55] In so far as (d) and (e) are concerned, these two items should be considered together. I will simply note that edits or redactions can be made if there is any inappropriate or inadmissible material in T's statement. Counsel for T.A.P. argued in the alternative that one redaction was required. I will address that point momentarily.

[56] Counsel for T.A.P. contends that, as T. has been granted other accommodations in giving her evidence under s. 486.1 and 486.2 of the Code (testifying via CCTV from a different floor in the courthouse, and having a support person and a support dog), this militates in favour of excluding her video-recorded statement.

[57] Respectfully, I cannot agree with this point. A young witness's use of other testimonial accommodations to assist her in recounting her evidence is not a reason to exclude a video-recorded statement. I agree with the Crown's submission that exclusion of a video-recorded statement is, as noted in F.(C.C.), limited to these rare cases where its admission would operate unfairly to the accused.

[58] In F.(C.C.) Cory J. concluded the reasons with this observation:

[55] If it can reasonably be done, a sensitive judicial system should, with the aim of s. 715.1 in mind, interpret the section in a manner that will attempt to avoid further injury to children resulting from their participation in the criminal trial process. That must of course be done within the balanced bounds of always ensuring that the accused enjoys the fundamental right to a fair trial. The definitions and procedures set out in these reasons strive to achieve these aims.

[59] As noted earlier in T.R.J. at para. 44 and F.(C.C.) at paras. 18-24, one of the purposes of s. 715.1 of the Code is to prevent or substantially reduce the likelihood of inflicting further injury upon child and adolescent complainants as a result of their participation in the court proceedings.

- [60] Asking an adolescent complainant to recall events such as alleged assaults, where their sexual integrity has been violated by a parent, guardian, or family friend, is often traumatic. Courts should encourage measures which reduce the traumatic effect of the court process on a child or adolescent complainant. Video-recording a statement in a more relaxed environment assists in obtaining a full account of painful memories outside of the more stressful and formal courtroom environment.
- [61] Regarding the factor enumerated in point (j), counsel for T.A.P. contends that because T. is now 17 years old, and therefore older and more mature, her ability to effectively communicate militates in favour of excluding the statement and requiring T. to provide viva voce evidence instead of hearing the video-recorded statement as her evidence in direct examination.
- [62] Counsel for T.A.P. further contends that, because of T.'s age and maturity, any infliction of injury would be at the lower end of the spectrum and that she is better able to deal with stressful circumstances than a ten-year-old complainant.
- [63] Again, this is not part of the calculus for excluding a video-recorded statement. F.(C.C.) makes it clear that exclusion is reserved for rare cases where admission would be unfair to the accused.
- [64] Counsel's contention that T.'s maturity and ability to effectively communicate, as demonstrated in her evidence on the voir dire, are not reasons to exclude her video-recorded statement. While T. may well be older and more mature than E., she is still an adolescent being called upon to recount events relating to alleged violations of her sexual integrity when she was a young girl. The same reasoning of reducing the infliction of stress, trauma, and further injury to an adolescent complainant by admitting the video-recorded statement pursuant to s. 715.1 applies to factor (j).
- [65] Taking into account all of the factors and considerations that I have reviewed above, both individually and cumulatively, I conclude that admission of the video-recorded statement given by T. on January 22, 2020 would not interfere with the proper administration of justice as contemplated by s. 715.1 of the Code. Accordingly, this statement is admissible as evidence in the trial.

Redactions

- [66] Counsel for T.A.P. sought redactions over several passages in E.'s August 9, 2019 statement of dated August 9, 2019; one passage in B.'s August 9, 2019 statement; and one passage in T.'s January 22, 2020 statement.
- [67] The Crown opposed any editing of the statements in issue and argued that the impugned passages were not being rendered for a hearsay purpose but rather as "narrative" to provide context to the case to assist in explaining certain activities and reactions.

- [68] L.(D.O.) and F.(C.C.) both include, in the factors to consider under the interests of justice analysis, whether there is an ability to eliminate inappropriate material by editing the tape. Inappropriate material includes both irrelevant material and inadmissible material.
- [69] In so far as narrative evidence is concerned, it is evidence that assists in providing a logical framework for the presentation of the allegations that make up the offences in the case. Narrative evidence helps the trier of fact understand how the case developed. However, due to the dangers of misusing such evidence, including the dangers of using a prior consistent statement as part of the narrative, this evidence must actually be required to properly provide context.
- [70] Counsel for T.A.P. relies on *R. v. Dinardo*, 2008 SCC 24 at para. 37 to support his position on this point. In *Dinardo*, Justice Charron, writing for the Court, dealt with the limited purpose of prior consistent statements of child complainants being admissible as narrative or context evidence as follows:
- [37] In some circumstances, prior consistent statements may be admissible as part of the narrative. Once admitted, the statements may be used for the limited purpose of helping the trier of fact to understand how the complainant's story was initially disclosed. The challenge is to distinguish between "using narrative evidence for the impermissible purpose of 'confirm[ing] the truthfulness of the sworn allegation'" and "using narrative evidence for the permissible purpose of showing the fact and timing of a complaint, which may then assist the trier of fact in the assessment of truthfulness or credibility" *McWilliams' Canadian Criminal Evidence* (4th ed. (loose-leaf)), at pp. 11-44 and 11-45 (emphasis in original); see also *R. v. F. (J.E.)* (1993), 85 C.C.C. (3d) 457 (Ont. C.A.), at p. 476).
- [38] In *R. v. G.C.*, [2006] O.J. No. 2245 (QL), the Ontario Court of Appeal noted that the prior consistent statements of a complainant may assist the court in assessing the complainant's likely truthfulness, particularly in cases involving allegations of sexual assault against children. As Rouleau J.A. explained, for a unanimous court:

Although properly admitted at trial, the evidence of prior complaint cannot be used as a form of self-corroboration to prove that the incident in fact occurred. It cannot be used as evidence of the truth of its contents. However, the evidence can "be supportive of the central allegation in the sense of creating a logical framework for its presentation", as set out above, and can be used in assessing the truthfulness of the complainant. As set out in *R. v. F. (J.E.)* at p. 476:

The fact that the statements were made is admissible to assist the jury as to the sequence of events from the alleged offence to the prosecution so that they can understand the conduct of the complainant and assess her truthfulness. However, the jury must be instructed that they are not to look to the content of the statements as proof that a crime has been committed.

The trial judge understood the limited use that could be made of this evidence as appears from his reasons:

[I]t certainly struck me while the fact that you go and tell somebody that you were molested doesn't confirm the fact that you were molested. I'm struck by the manner or the way it came out, tends to confirm [the complainant's] story -- how they were reading this book, and how the thing came up about child sexual abuse.

In cases involving sexual assault on young children, the courts recognize the difficulty in the victim providing a full account of events. In appropriate cases, the way the complaint comes forth can, by adding or detracting from the logical cogency of the child's evidence, be a useful tool in assisting the trial judge in the assessment of the child's truthfulness. This was such a case. [Emphasis added.]

[71] In addition to objecting to some passages as unnecessary or irrelevant narrative evidence, counsel for T.A.P. also objected to certain passages as containing instances where the complainant was speculating as to what was going on in the mind of the other complainant.

[72] My February 3, 2022 memorandum to counsel outlines what redactions I ordered over the statements of E. and B. and why. It also explains why I rejected the one proposed redaction over T.'s statement and the one photograph in Exhibit #D on the voir dire. That memorandum is incorporated into these reasons without the need to repeat it and contains my analysis of why redactions were ordered or proposed redactions were rejected.

Conclusion

[73] All four video-recorded statements from the three complainants are admissible on the trial proper, pursuant to s. 715.1 of the Code. Redactions were ordered for one passage in B.'s August 9, 2019 statement and two passages in E.'s August 9, 2019 statement. No redactions were sought in respect of B.'s June 30, 2020 statement. The one redaction sought in T.'s statement was rejected, as was the redaction of one photograph on Exhibit #D on the voir dire.

"Ker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/05/2022BCSC0510cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-t-a-p-2022>

Prepared on 29 October 2026 · Esheria