

**244069-10-BC
Vancouver Registry**

**In the Provincial Court of British Columbia
(BEFORE THE HONOURABLE JUDGE OULTON)**

**Vancouver, B.C.
May 15, 2023**

REX

v.

PATRICK HENRY FOX

PROCEEDINGS AT SENTENCING

BAN ON PUBLICATION 486.5(1) CCC

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PATRICK HENRY FOX

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BAN ON PUBLICATION 486.5(1) CCC

Crown Counsel:

**T. Laker
R. Elias**

Appearing on his own behalf:

P. Fox

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Proceedings

BAN ON PUBLICATION 486.5(1) CCC

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(VIDEOCONFERENCE COMMENCES)

(ACCUSED FROM REMOTE LOCATION)

THE COURT: Please be seated.

CNSL T. LAKER: Yes, Your Honour. Laker, initial T., for the Crown. And I'm here with my colleague, Mr. Elias. Mr. Fox is appearing by video. I just wanted to advise Your Honour, very briefly, that I just explained to Mr. Fox that the Crown had provided a written response to the *Kienapple* issue and that it was just a very brief response, essentially. Just setting out the -- the test or considerations for Your Honour when deciding whether or not *Kienapple* does apply, and that the Crown takes the opposing view that Mr. Fox does with regards to the *Kienapple* issue.

Mr. Fox, can you hear us or was I quiet?

THE ACCUSED: I can hear you. I can hear you, but just so you know, I can't see the judge due to the way the camera is positioned.

THE COURT: All right, Mr. Fox --

THE ACCUSED: The bench is off to the side over there.

THE COURT: -- it's Judge Oulton speaking. We'll try and fix that.

THE ACCUSED: Oh, no, the other way, please. Okay, right here. That's good, thanks.

CNSL T. LAKER: Okay, thank you. So unless there is anything else to address, Your Honour, I just wanted to make note of that.

THE COURT: Well, yes. I mean, on that point, I've got --

CNSL T. LAKER: Excuse me.

THE COURT: -- you're written reply. It's just a page, on May 9th. And so that wasn't provided to Mr. Fox other than --

CNSL T. LAKER: No.

THE COURT: -- this morning when you were telling him that you take the contrary position and why.

CNSL T. LAKER: Yes. And I can certainly read out the written -- what I -- what I provided, but that's because of Mr. Fox's custodial status and the timing, unfortunately, there was no ability for us to be able to provide that to him, so.

THE COURT: All right. Well, what I was going to do

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1 was make sure that Mr. Fox's letter which I
2 received on May 4th, and the Crown's reply which I
3 received on May 9th, both became exhibits on the
4 trial as they -- they're additional submissions
5 that I heard and considered in writing from both
6 Mr. Fox and Crown with respect to whether
7 Kienapple applied to Counts 2 and 3 of the
8 information. That's how I was going to address
9 this.

10 CNSL T. LAKER: That's certainly agreeable to the
11 Crown. I don't know if Mr. Fox has any further.
12 THE ACCUSED: Yes, I -- I agree with that. Yes.
13 THE COURT: Okay. So Madam Clerk, I have the -- the
14 Crown's letter and the package that I received on
15 May 4th and I'm going to be filing them.
16 THE CLERK: Okay.
17 THE COURT: Okay. As I give my reasons, I'll pause at
18 the point where I had indicated that I was going
19 to file them.

20
21 [REASONS FOR JUDGMENT]

22
23 **EXHIBIT 16: Brown envelope Patrick Fox May**
24 **25, 2023**

25
26 **EXHIBIT 17: Crown letter dated May 8, 2023**

27
28 THE COURT: Are Crown and Mr. Fox ready to proceed with
29 sentencing today?
30 CNSL T. LAKER: Yes, Your Honour. With regards --
31 THE COURT: So let me just check that Mr. Fox is. Mr.
32 Fox, you ready to proceed to sentencing?
33 THE ACCUSED: Yes. I -- I am prepared, yes.
34 THE COURT: Okay.

35
36 **SUBMISSIONS ON SENTENCE FOR CROWN BY CNSL T. LAKER:**

37
38 CNSL T. LAKER: Yes, Your Honour, Mr. Fox does have
39 prior criminal record. And I will provide a copy
40 of his JUSTIN conviction list for you which can be
41 filed. As Your Honour will note, and you are
42 without a doubt somewhat familiar with his
43 background in light of the facts that are being
44 presented before Your Honour in the -- in the
45 trial, he was found guilty and sentenced back in
46 2017 for criminal harassment of his ex-spouse. He
47 received a three-year jail sentence to be followed

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1 effectively, because of the time that he spent in
2 custody. And then that was followed by the
3 probation order of three years.

4 Since that time, he has breached that
5 probation order on a number of occasions and that
6 is set out towards the bottom of page one of his
7 JUSTIN conviction list through to page 2. The
8 last sentence that he received for breaching was
9 before The Honourable Judge Denhoff back on
10 February 25th of 2022. Effectively, he received a
11 12-month jail sentence with that probation order
12 of three years to follow. In light of your
13 Honour's decision today, the Crown submits that an
14 appropriate sentence for the breach that's before
15 Your Honour is an 18-month jail sentence. That is
16 a -- that's taking into account the aggravating
17 nature of Mr. Fox's continuing breaches. There
18 is, in the Crow's submission, no mitigating
19 factors such as an early guilty plea or anything
20 of that nature. And -- and what I can advise is
21 that, essentially, as of today, Mr. Fox has spent
22 one year in custody, so he is at a time served
23 situation.

24 So the next question really to consider is
25 with regards to the probation order and whether or
26 not there should be a separate probation order
27 imposed by Your Honour. What I note is that there
28 is an additional two years left on Mr. Fox's
29 current probation order that was imposed by Judge
30 Denhoff. What -- in light of Your Honour's
31 comments with regards to the ambiguity revolving
32 around the reporting condition, the question here
33 is whether or not the probation order by Judge
34 Denhoff should actually be amended so that it's a
35 more clear --

36 THE COURT: Well, that's a separate application in
37 front of Judge Denhoff.

38 CNSL T. LAKER: Okay.

39 THE COURT: I believe. I don't think I should be
40 amending --

41 CNSL T. LAKER: Okay.

42 THE COURT: -- Judge Denhoff's probation order.

43 CNSL T. LAKER: Okay. So what my suggestion would be
44 is whether or not Your Honour would consider a
45 further probation order of three years and it
46 would only include conditions of no contact,
47 direct or indirect, with Desi Capuano and, as

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1 well, the condition that Your Honour has convicted
2 Mr. Fox of, and that is the condition that
3 prohibits him from disseminating, distributing any
4 materials that relates to her. Because,
5 obviously, that is the Crown's sole concern at
6 this point is that Mr. Fox discontinues the
7 behaviour that he's demonstrated in the past that
8 relates to Ms. Capuano.

9 And then what the Crown intends on doing is,
10 in the very short term, bringing an application
11 before Judge Denhoff to -- to address the
12 reporting condition as it -- since it's still,
13 essentially, in effect. And we don't want to
14 place Mr. Fox in another situation where he could
15 be found to be potentially breaching that
16 condition, especially if it's not entirely clear.

17 THE COURT: Well, I mean, I'll let Crown consider it,
18 but if Crown accepts my analysis about a reporting
19 part and continuing obligation part, then with
20 respect to the reporting part, my analysis, at
21 least, is that that's no longer binding --

22 CNSL T. LAKER: Yes.

23 THE COURT: -- on Mr. Fox.

24 CNSL T. LAKER: Yes.

25 THE COURT: It's just the continuing obligation part
26 that is.

27 CNSL T. LAKER: Yes.

28 THE COURT: Because I've already given my -- my reasons
29 for that. So just to reply to your comment
30 that -- that Mr. Fox could be in danger of
31 breaching again. I think the Crown office has
32 to -- has to consider that.

33 CNSL T. LAKER: Yes, absolutely. Absolutely, Your
34 Honour. And what I can also advise is that Mr.
35 Fox, I don't -- he's not going to be aware, but
36 his last -- he also received a further decision
37 today from the Court of Appeal about his most
38 recent appeal. And that was dismissed, Your
39 Honour. And Mr. Fox wouldn't be aware of that
40 since he was appearing on this this morning. So
41 he no longer has anything else current before the
42 court, just so Mr. Fox is well aware of that
43 situation.

44 The only other additional submissions that I
45 have relates to an order that I'm going to ask
46 Your Honour to -- to make that Mr. Fox immediately
47 returns the laptop, hard drive, and written

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1 materials provided to him by Crown counsel. And
2 it says when any of the following events occur, if
3 the present case is being finally determined -- if
4 his appeal is being finally determined, and
5 further orders that the accused, Patrick Fox, if
6 he is to be released from custody from a
7 provincial correctional institution, he shall
8 return the laptop, hard drive, and any written
9 materials to the warden, or his or her designate,
10 prior to leaving the provincial correctional
11 institution where he may be held.

12 THE COURT: so in other words, Mr. Fox probably hasn't
13 seen this -- this order --

14 CNSL T. LAKER: No.

15 THE COURT: -- this additional order you're submitting.

16 CNSL T. LAKER: No.

17 THE COURT: But you're telling me -- essentially, Mr.
18 Fox, I'm -- I'm looking at it, the -- the court is
19 asking me to order -- I'll read it to you [as read
20 in]:

21
22 The accused, Patrick Henry Fox, will
23 immediately return the laptop, hard drive,
24 and written materials provided to him by
25 Crown counsel when any of the following
26 events occur.

27
28 I think you might want an "and" between.

29
30 a) If the present case has been finally
31 determined.

32
33 So in other words, the decision I just gave. And
34 I haven't sentenced yet, so that's not completely
35 done. And then there is no "and", but I think
36 there is an implied "and" --

37 CNSL T. LAKER: Yes.

38 THE COURT: [As read in]:

39
40 b) If his appeals have been finally
41 determined.

42
43 And I might add that and in there. Because
44 what -- what Ms. Laker just told me, and she said
45 you don't know it, but she said that you had an
46 appeal at the Court of Appeal that was dismissed
47 today, and that means that your appeals have been

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1 finally determined, the outstanding appeals, okay?

2 Are you following?

3 THE ACCUSED: Yes, but --

4 THE COURT: Yes.

5 THE ACCUSED: -- there is an immediate appeal that's
6 going to come from this conviction, though.

7 CNSL T. LAKER: Well, if there is, I -- I think the
8 Crown still requires the materials to all be
9 returned and then if Mr. Fox does file further
10 materials, then we can certainly start that
11 process of providing him with everything. Because
12 the situation is is that he's going to be out of
13 custody and that Crown -- he should not be
14 maintaining the Crown's laptop, hard drive, and --
15 and also the written materials that the Crown has
16 provided him.

17 THE COURT: So perhaps Crown wants to amend the order
18 because Mr. Fox does have a right of appeal of the
19 decision I've just made to -- so perhaps Crown
20 wants to amend the order that I'm looking at right
21 now to only say, "requiring Mr. Fox to return the
22 laptop, hard drive, and written materials provided
23 to him by Crown counsel when the present case
24 has --

25 THE ACCUSED: But -- I'm sorry to interrupt, but I can
26 say I have no objection at all to returning all of
27 the Crown's hardware to them at any time. I mean,
28 even right now, I mean, they can have the
29 Corrections come to my cell and get it. I have no
30 objection to that.

31 THE COURT: Right. They're -- they're asking me to
32 make that order, Mr. Fox. And so what -- what I'm
33 thinking is that I should cross off the -- if his
34 appeals have been finally determined. And the
35 Crown is asking me to sign the order, and I'll do
36 it after I finish sentencing, if we do finish
37 sentencing today, because that's when this matter
38 is truly over from -- from a court perspective.
39 That's when I'm done, is when I've sentenced you.

40 But if you don't have any objection, then,
41 it -- it's just an order that once I've sentenced
42 you in this matter, you'll return the laptop, hard
43 drive, and written materials provided to you by
44 Crown counsel and you'll return it to the warden,
45 or his or her designate, prior to leaving the
46 provincial correctional institution where you are
47 held.

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1 THE ACCUSED: Sure.
2 THE COURT: Yes, okay. I think -- I think this order
3 needs to be amended slightly, let me just have a
4 look at it. It's the next step after sentencing,
5 but maybe -- should I -- maybe I'll give it back
6 to Crown to -- to either retype or take out the
7 parts that are not going to apply.
8 CNSL T. LAKER: Yes. And that really is just
9 subsection (b), Your Honour.
10 THE COURT: Also, you might want to tighten it up, that
11 you want to -- him to return the materials given
12 to him in relation to this prosecution and return
13 them specifically to the -- to the warden before
14 he leaves the jail.
15 CNSL T. LAKER: Yes, okay.
16 THE COURT: Because there is a bit of --
17 CNSL T. LAKER: Yes.
18 THE COURT: Just --
19 CNSL T. LAKER: Thank you.
20 THE COURT: Okay. So does that complete the Crown's
21 submission? Crown is seeking that I impose a time
22 served sentence and is seeking three further years
23 of probation with the statutory conditions, with
24 the condition that is condition five on the
25 current order that Mr. Fox not have any contact or
26 communication, directly or indirectly, with D.C.,
27 or any of her friends, relatives, employers, or
28 coworkers. That he shall not disseminate,
29 distribute, publish, or make publicly available
30 the current condition six. And the order that
31 we've just been discussing that Mr. Fox, when
32 he -- when he gets out of jail, is going to return
33 the laptop, the written material, and whatever
34 else he's been provided with in relation to this
35 prosecution. Does that -- does that complete the
36 Crown's submissions on --
37 CNSL T. LAKER: Yes.
38 THE COURT: Okay. Okay, Mr. Fox.
39
40 **SUBMISSIONS ON SENTENCE BY ACCUSED:**
41
42 THE ACCUSED: Yes. First up, I want to ask this order
43 about returning the laptop and the material. Is
44 that in a separate order, or is the Crown seeking
45 for that to be part of the probation order?
46 THE COURT: They are asking for that as a separate
47 order. They're not --

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1 THE ACCUSED: Okay, great.
2 THE COURT: -- asking for it as part of the probation
3 order.
4 THE ACCUSED: Right, right. Good, I was going to say,
5 the probation order wouldn't take effect until I
6 get released anyway, and so I don't see how they
7 could require me to return the material before I'm
8 actually released under the probation order.
9 THE COURT: Right.
10 THE ACCUSED: But anyway, with regard to the 18 months,
11 I have no submissions on that. I honestly don't
12 care. With respect to the Crown's request for
13 further probation, I want to point out that there
14 are other copies of the website online, cache
15 copies that I have absolutely nothing to do with.
16 And this has already been well established in the
17 previous matters. Like, for example, in
18 archive.org, there is a copy of the website on
19 there. I can't make this U.S. based, non-profit
20 organization that makes cache copies of websites
21 on the internet, I can't make them take this down.
22 And so by imposing these conditions that require
23 me to take all steps to ensure that copies of that
24 no longer exist on the internet, it's -- it's
25 impossible. Like --
26 THE COURT: So --
27 THE ACCUSED: The other point I want to make is --
28 THE COURT: So -- so just -- sorry to interrupt you
29 there. But I'm not going to --
30 THE ACCUSED: Sure.
31 THE COURT: -- put condition four on -- on this
32 probation order and Crown is not asking me to.
33 Okay, so -- so the conditions they're asking, in
34 addition to the statutory, are condition five, you
35 shall have no contact or communication, directly
36 or indirectly, with Desiree Capuano, any of their
37 friends, relatives, employer, or coworkers.
38 Condition six, you shall not disseminate,
39 distribute, publish, or make publicly available in
40 any manner whatsoever, directly or indirectly,
41 information, statements, comments, videos, or
42 photographs which reefer to depict by name or
43 description Desiree Capuano or any of her friends,
44 relatives, employers, or coworkers.
45 THE ACCUSED: Okay. My apologies, I thought they were
46 also seeking to re-enforce condition four, but
47 without the reporting requirement.

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1 THE COURT: No, Crown has indicated that they may --
2 they may decide what they're going to do about
3 that. They may go back in front of Judge Denhoff
4 and ask her to, you know, either party --

5 THE ACCUSED: Sure.

6 THE COURT: -- can apply to change a condition of
7 probation. They're going to consider what they
8 would like to do with that. But -- but properly,
9 that should go back in front of the judge that
10 made the order to change it. I wouldn't change
11 another judge's order.

12 THE ACCUSED: Okay. And the only other submission that
13 I would want to make with respect to that is,
14 these probation conditions for the past four years
15 have created a situation where Ms. Capuano could
16 easily throw a copy of the website online and then
17 call the police and tell them that it's there and
18 then I get arrested and spend another year in
19 jail. I believe I brought this up in my closing
20 submissions. And so I'm afraid that the same
21 situation is happening now. I'll get released
22 from custody, Ms. Capuano will go ahead and put
23 the website online for a day or two. I'll be
24 arrested a week later, and I'll be back in jail
25 for another year. I mean, there -- there must be
26 some requirement that the Crown must have to prove
27 that I am the one involved in putting the website
28 online. Like, it's too easy for Ms. Capuano to
29 ensure I spend the rest of my life in jail by
30 simply doing this every time I get released.

31 THE COURT: You know, you mentioned something like that
32 in your closing submissions. Your closing
33 submissions were challenging because you kept
34 giving me evidence and I had to decide the case
35 based on the evidence that was before me and you
36 heard my conclusion. The only reasonable
37 inference from what Sergeant Shook said, the
38 contents of the blog post, were that you were
39 involved in that and on that basis, I found you
40 guilty.

41 Now, it's up to you what you do. If you do
42 wind up, as you've just indicated, charged again,
43 you can always present evidence, which you didn't
44 choose to do, in -- in this particular case.

45 THE ACCUSED: I -- I understand and I appreciate that.
46 But the thing is, once I'm in jail, it's extremely
47 difficult for me to obtain any evidence of who

Submissions on Sentence by Accused**BAN ON PUBLICATION 486.5(1) CCC**

1 actually is running the website. The police can
2 obtain that evidence pretty easily from GoDaddy.
3 But there is very little that I can do, and so for
4 the Crown to put the burden on me to prove that --
5 that I'm not the one putting the website online, I
6 mean, it's -- it creates quite a hurdle for me to
7 overcome. So I'm just wondering if we could put
8 some wording in the probation condition that would
9 require them to -- before they come and arrest me,
10 require them to establish that I'm actually in any
11 way involved in it being put online.

12 THE COURT: So it would be up to the Crown to review
13 anything received from police to determine if
14 their charge approval --

15 THE ACCUSED: Mm-hmm.

16 THE COURT: -- standard is met. Which involves
17 consideration of some of the issues you're
18 raising. I have a duty to help you, but I have to
19 stop short of giving you legal advice. What I
20 could say is you should explore some of these
21 topics you're raising with a lawyer that you trust
22 and choose to speak with.

23 THE ACCUSED: Okay.

24 THE COURT: Anything further --

25 THE ACCUSED: I don't -- oh, sorry.

26 THE COURT: No, I -- I just want to make sure, anything
27 further with respect to the Crown's submissions?

28 THE ACCUSED: No, I was going to say, I have nothing
29 further.

30 THE COURT: Okay. All right, I'm going to take the
31 morning break early just to have a closer look at
32 the JUSTIN conviction list, come back, I'll
33 sentence Mr. Fox then and then I -- I know that
34 the next matter, counsel are waiting patiently, so
35 I expect that will probably get underway shortly
36 after 11. So if counsel want to return -- perhaps
37 after the break. It won't be too long after the
38 break.

39 UNIDENTIFIED SPEAKER: Would 11:15 be appropriate, I
40 think?

41 THE COURT: 11:15 will be fine. I'll be back here --
42 we'll take the break until 5 after 11. I'll --
43 and I'll give my reasons for sentence for Mr. Fox
44 then.

45 CNSL. R. ELIAS: Thank you, Your Honour.

46 THE CLERK: Order in court. All rise.

47

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1 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
2 (PROCEEDINGS RECONVENED)
3

4 THE COURT: Please be seated.

5 CNSL T. LAKER: Your Honour, my colleague and I just
6 revised the order and I think it's a little more
7 straight forward and simple, especially now that
8 we know what's happening with the appeals and
9 we're just relating it to this. So please take a
10 look and let us know if there is any additional
11 changes you would like us to do.

12 THE COURT: Okay. Would you like me to read this order
13 to Mr. Fox?

14 CNSL T. LAKER: Yes, please.

15 THE COURT: Okay. So Mr. Fox, the order reads [as read
16 in]:

17
18 Upon application of Tara Laker and Ryan Elias
19 on behalf of the Provincial Crown, and upon
20 hearing the accused, Patrick Fox, on his own
21 behalf --
22

23 So I will ask to hear from you. For now, I'm just
24 reading the order. Although you said earlier you
25 didn't object to returning the materials you
26 received.
27

28 This court hereby orders that the accused,
29 Patrick Henry Fox, will immediately return
30 the laptop, hard drive, and written materials
31 provided to him by Crown counsel when the
32 present case has been finally determined
33 prior to be released from custody.
34

35 And then it reads [as read in]:
36

37 And further orders that this return shall be
38 to the warden or his or her designate prior
39 to leaving the provincial correctional
40 institution from which he is being released.
41

42 THE ACCUSED: Okay.

43 THE COURT: I think that perhaps I should just change
44 the phrasing slightly. Written materials provided
45 to him by Crown counsel when Mr. Fox has been
46 sentenced in this case.

47 CNSL T. LAKER: Yes, that's agreeable, Your Honour,

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1 yeah.
2 THE COURT: I'm going to make that change, Mr. Fox.
3 THE ACCUSED: Okay.
4 THE COURT: All right. I'm going to come back to that.
5 I'll read it to you again at the end of my reasons
6 for decision before I sign it, okay?
7 THE ACCUSED: Okay.
8 THE COURT: When I saw the JUSTIN conviction list, I
9 realized I made a mistake in saying that the
10 detention order in July 2022 had not been subject
11 to review. It was. I just didn't know about.

12
13 [REASONS FOR SENTENCE]
14

15 THE COURT: Do you have anything you -- you want to say
16 about that order?
17 THE ACCUSED: No.
18 THE COURT: Okay. Earlier you had said that you -- you
19 agreed with that. You were fine to return those
20 materials before you left custody.
21 THE ACCUSED: Yes.
22 THE COURT: Okay.
23 THE ACCUSED: I have absolutely no interest in the
24 Crown's 15-year-old laptop. And the data that
25 would be on it, I already have a copy of all that
26 anyway, so I -- so I have --
27 THE COURT: Okay.
28 THE ACCUSED: I have nothing further to say. I have no
29 concerns about it.
30 THE COURT: Okay, thank you. I have signed the order,
31 then. I'm just going to hand that back. And I
32 don't know if Crown wanted to make the JUSTIN
33 conviction list an exhibit?
34 CNSL T. LAKER: Yes. If it could be an exhibit at the
35 sentence.
36 THE COURT: Okay. If the JUSTIN conviction list could
37 be made an exhibit at the sentencing phase.

38
39 **EXHIBIT 1 (on Sentence): JUSTIN conviction**
40

41 CNSL T. LAKER: I believe that concludes our matter,
42 Your Honour. Thank you.
43 THE COURT: Yes, thank you. That completes the Fox
44 matter.
45 CNSL T. LAKER: Oh, I just want to confirm, Mr. Fox,
46 your email address.
47 THE ACCUSED: Yes, patrickhfox@gmail.com.

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1 CNSL T. LAKER: Okay, great. Thank you.
2 THE ACCUSED: But also, David Layton and Mark Myhre
3 have it as well.
4 CNSL T. LAKER: Yes, okay. Thank you.
5 THE ACCUSED: Thank you.
6 CNSL R. ELIAS: Thank you, Your Honour.

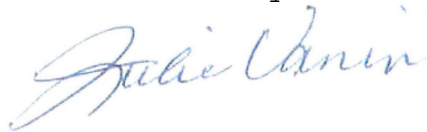
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8 (VIDEOCONFERENCE CONCLUDED)

9
10 (PROCEEDINGS CONCLUDED)

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13 Transcriber: J. Vanin
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I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.

A handwritten signature in blue ink, appearing to read "Julie Vanin". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

J. Vanin
Court Transcriber