

**In the Supreme Court of British Columbia
(BEFORE THE HONOURABLE MR. JUSTICE BUTLER AND JURY)**

**Quesnel, B.C.
November 10, 2015**

REGINA

v.

ROY ARTHUR TOPHAM

**PROCEEDINGS AT TRIAL
(Excerpt - Submissions by Counsel re
Charge to Jury)
(DAY 12)**

COPY

Crown Counsel:	J. Johnston
Defence Counsel:	B. Johnson

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EXHIBITS

MARKED E FOR IDENTIFICATION: Judge's first draft of the charge to the jury - 60 pages 12

MARKED F FOR IDENTIFICATION: Final draft of the charge to the jury, which was read out by the court - 62 pages 13

RULINGS

NIL

Quesnel, B.C.
November 10, 2015

(JURY OUT)

THE CLERK: In the Supreme Court of British Columbia, this 10th day of November, 2015. Continuing the matter of Roy Arthur Topham, 25166-3.

MS. JOHNSTON: Thank you, My Lord. Jennifer Johnston for Provincial Crown.

MR. JOHNSON: Barclay Johnson for Mr. Topham.

THE COURT: Now I just want to explain for you what I've just had handed to you. One is the almost-filed version, and the other is just a track changes version so that if you want to line up paragraphs with your comments to the final version, you can do that. You may not need to do so, but in any event I thought I'd give you both of those.

Now I understand I just received Mr. Johnson's brief summary of the position. I'll obviously have to add that in.

MR. JOHNSON: I didn't put a staple through that, My Lord.

MS. JOHNSTON: Thank you, My Lord. My Lord, I have Crown submissions on charge to the jury plus a disk, and I'm wondering if it might make sense to stand down and we could read all the paper which has just exchanged hands.

THE COURT: All right. We'll do that. And what I want to tell you about the - the changes, because there are a fair number of changes. Substantively, the defence's I've changed a fair bit because I think I had misstated the Crown's onus in that, and so I've put it a little more clearly, which is quite simply the Crown bears the onus of disproving beyond a reasonable doubt the defence's, but not - they don't have to do it - and it implied they had to do it for each one of them, even though I said otherwise, so I've - I changed that. I've added in some comments about the evidence for ingredients 5 and 6, which you'll see, but they're general comments, they're not specific comments to passages in the material. And I think that's primarily where the changes are. There's other changes which are less substantive.

So why don't we stand down, and I'll look at that and see if we can finalize this.
MR. JOHNSON: My Lord, before doing so, I've passed up my comments with regard to the charge as well.
THE COURT: All right.
MR. JOHNSON: Thank you.
MS. JOHNSTON: I - I'm going to ask for a full half hour, if that pleases the court.
THE COURT: Certainly, and I'm -
MS. JOHNSTON: Thank you.
THE COURT: And this is just a - the electronic version of that?
MS. JOHNSTON: Trusting my assistant to have done it properly, yes.
THE COURT: All right. I don't think I need that. I'm just going to leave that with you.
MS. JOHNSTON: Thank you.
MR. JOHNSON: My Lord, I have a thumb drive that I've passed up as well.
THE COURT: Yes, but I'm assuming that has -
MR. JOHNSON: It's exactly a copy of what -
THE COURT: All right. All right. And does that have the -
MR. JOHNSON: Changes that I'm suggesting?
THE COURT: No, not the changes, but does it have the summary of your defence position to be added?
MR. JOHNSON: Yes.
THE COURT: All right, thank you. We'll adjourn.
THE CLERK: Order in court. This court is adjourned for half an hour.

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

THE CLERK: And My Lord, we are back on record.
THE COURT: Thank you. Now I have reviewed the submissions of both of you and I've made a number of changes to the - to the charges as a result of that. I wanted to raise one of them that Mr. Johnson raised, and that is in relation to the definition - no, not the definition, in relation to the - the question of hatred and a review of the evidence and the description of hatred, essentially the legal - the legal test.
In the original version that I gave you of the charge, I included Mr. Johnson's statement in his earlier submissions that, in other words, the Crown must prove that Mr. Topham intended to cause discrimination and other harmful effects to people of the Jewish religion or ethnic origin. When I look at the definition of hatred in -
MR. JOHNSON: *Watcombe* [phonetic]?
THE COURT: Not in *Watcombe*, in *Keegstra*.
MR. JOHNSON: In *Keegstra*.
THE COURT: It's - I think that lowers the bar by putting that statement in, which is why I changed it in the second version that you had, which states that -
MS. JOHNSTON: I'm sorry, My Lord, what paragraph?
THE COURT: I'll get you the paragraph in a moment. Paragraph 82, "Sixth Ingredient, Hatred".
MS. JOHNSTON: In the new draft, 82?
THE COURT: That's in the new draft. And the last sentence of that paragraph reads:

In other words, the Crown must prove that Mr. Topham intended to promote vilification, detestation, and scorn of people of the Jewish religion or origin.

Rather than:

The Crown must prove that Mr. Topham intended to cause discrimination and other harmful effects to people of the Jewish religion or ethnic origin.

I think that raises the bar, the revised version, but it's different from what you submitted, and so -

MR. JOHNSON: No.
MS. JOHNSTON: I'm sorry, My Lord, I'm afraid I didn't follow. If Your Lordship could tell me what you've added to paragraph 82?
THE COURT: I have - I changed from the original version, the one that you got yesterday, which was in paragraph 83:

In other words, the Crown must prove that Mr. Topham intended to cause discrimination and other harmful effects to people of the Jewish religion or ethnic origin.

I changed that to:

In other words, the Crown must prove that Mr. Topham intended to promote vilification, detestation and scorn of people of the Jewish religion or ethnic origin.

And I raise this only because of Mr. Johnson's submissions on definition of hatred, because I think that what I have said is in accord with *Keegstra* and that it covers that issue, and so I just wanted to indicate that I'm not accepting what you suggested, which talks about cause, because we're talking about promotion, not cause. But I also thought that the language you used was too low, it wasn't - didn't express hatred in the terms that's required in *Keegstra*.

MR. JOHNSON: My Lord, I was - I was simply with the second submission trying to suggest that there be some causal connection between the - the statement and the effect.
THE COURT: Well, I - but I think that's - that that comes down to the jury's inference regarding the intent. If the intent to promote it, then you must intend to cause it, so - and I don't want to change the words in the statute, which are don't/ aren't cause.
MR. JOHNSON: Yeah. I think I brought Your Lordship's attention to that case, which of course is a defamation case, not a criminal case, but I think that the wisdom of the Supreme Court in that case suggests that there be some attempt at actually identifying the causal connection.

THE COURT: Well, I'm - as I say, I'm not going to do that.

MR. JOHNSON: All right.

THE COURT: Now do you have any other comments, and I can tell you that I've accepted some but not all of your other submissions; I'm

saying that to both of you. I have included the OED definition of hatred, and - pardon me, anti-Semitism in my comments about neither Mr. Rudner nor Mr. Atzmon being permitted to give opinions or not, you can't accept their opinions on whether or not statements caused - statements were anti-Semitic, or whether statements promoted hatred, which is I think your concern about anti-Semitism and that definition which has hatred in it. Now I think I've said it quite directly that they can't use that, they have to decide.

MR. JOHNSON: And My Lord, I just wanted to make sure that it was clear - clear that the word *anti-Semitism* does not equal hatred. It doesn't have a component in the definition.

THE COURT: Well, and I tried to -

MR. JOHNSON: That was my only purpose.

THE COURT: I had tried to express that by saying what they couldn't take from - from the opinions, and I've now added that definition to it.

MR. JOHNSON: I don't know, My Lord, if you're interested in hearing some more comments. Obviously, this is a process that could go on for a while.

THE COURT: It could, but if there's anything of significance that either of you wants to raise, please do.

MR. JOHNSON: Do you want to go first?

MS. JOHNSTON: [Inaudible/not near microphone].

MR. JOHNSON: I've got, let's see, five little asterisks. A - if I could turn to paragraph 84 on page 26. I've got to get my other reading glasses here. Sorry, My Lord.

THE COURT: Paragraph 84?

MR. JOHNSON: Yes. And I wanted to add, after the words where you've written, "You will have to review enough of the statements communicated by Mr. Topham to satisfy yourself regarding his intentions to promote hatred." And then I wanted it also to read, "or not to promote hatred."

THE COURT: Yes, yes. Yes.

MR. JOHNSON: These are just minor changes, I hope. At page 48, the new paragraph 168.

THE COURT: Just a moment, sorry. Sorry, now this -

MR. JOHNSON: Okay. And it's where you say, "In summary, you will . . ." -

THE COURT: No, sorry, give me the reference again.

MR. JOHNSON: It's page 48, the new paragraph 168. Do you have that, My Lord?

THE COURT: All right.

MR. JOHNSON: Where you say:

In summary, you'll have to consider all of the evidence, including the numerous references in Exhibits 2, 3, and 4, to the people targeted . . .

I have some problem with "people targeted". I think that's too strong. I would like to have that taken out and so it just simply reads, "the people criticized by Mr. Topham."

And I'm just about finished here, I think this is the last one. Yeah, on page 50, and that's the new paragraph 166.

THE COURT: Sorry, one?

MR. JOHNSON: Page 50, new paragraph 166.

THE COURT: I'm nowhere near 166 on page 50.

MR. JOHNSON: Oh. I'm reading from the revisions with the -

THE COURT: Oh, you're reading from that, yes - no, that has the old paragraph numbers.

MR. JOHNSON: Oh, okay. It's under the Review of Evidence, subject of Public Interest section.

MS. JOHNSTON: No, 166 is crossed out on the bottom of page 150 in Your Lordship's marked-up - the one that tracks changes, that's what I have.

THE COURT: Yeah, I'm not looking at that. I didn't bring that in because that -

MR. JOHNSON: Oh, okay.

THE COURT: I brought in the revised. What's the new paragraph which is listed?

MS. JOHNSTON: I'll find it for Your Lordship. It's probably 177.

THE COURT: Okay.

MR. JOHNSON: This has got me going then. Okay.

The Crown says that the statements in Exhibits 2, 3, and 4 cover a wide range of matters which could not reasonably be considered to be relevant to the subject of public interest. The Crown says that the real substance of the matters discussed is nothing more than anti-Semitism.

And again we've got that - I guess that issue regarding the use of that word, it's to be -

THE COURT: I don't think we do in the - in the defence.

MR. JOHNSON: As long as I - I guess it's understood that anti-Semitism does not have a component of hatred in it, then I think we're okay, but . . .

THE COURT: I - I don't think we need it for the defence.

MR. JOHNSON: All right.

THE COURT: We're talking about what is the subject and whether it has hatred or not in it is irrelevant.

MR. JOHNSON: Those are my only changes, My Lord.

THE COURT: All right.

MR. JOHNSON: Thank you.

THE COURT: And I can tell you I've made the changes there were outlined in your - less so in your draft submissions - or defence submissions regarding the draft, but more in your argument about the defence under (d) applying to Christians in relation to -

MR. JOHNSON: Elizabeth Dilling?

THE COURT: Elizabeth Dilling, yes. So I've made the change, because that necessitated a change in the - in the instructions.

MR. JOHNSON: Thank you, My Lord.

THE COURT: Ms. Johnston?

MS. JOHNSTON: Your Lordship - I'm just going to have to cross-reference, because I did what my friend did and used the cross - the track changes sheet.

THE COURT: All right.

MS. JOHNSTON: So I'll just find it in the new; that will take me an extra additional minute, please.

Page 25, paragraph 86.

THE COURT: Yes.

MS. JOHNSTON:

You do not have to accept as truthful anything that Mr. Topham says in his editor's notes.

The documents aren't in for the truth of its contents, so I don't know if that's understandable to the jury.
THE COURT: Well, I think it's easier to describe it in this term, rather than to say the documents are not in for the truth of their contents. I think I'm saying the same thing, but I'm putting it in a simpler - I mean I suppose I could add a sentence after that sentence, "The documents were not admitted for the truth of their content."

MS. JOHNSTON: But I don't believe that they are admissible for the truth of its - truth of their contents.

MR. JOHNSON: That's what he just said.

THE COURT: Yes.

MS. JOHNSTON: Like, for example, and this is not going to be well-expressed, My Lord, but when we get to the defences and reasonable belief that they're true, for most of it, if not all of it, there is no evidence upon which the jury could conclude a reasonable belief that it's true. And in the Crown's submission, they need to be very clear that they can't take Mr. Topham's assertions [sic] in the materials themselves as evidence that the matters are true.

THE COURT: How about if I say, however, you do not have to infer as truthful anything that - or, you may or may not infer, you do not have to draw inferences of truth. How about if I just take out that sentence entirely, so that it reads - I say this:

Because his words, rather than books or articles he has published, may provide you with more information from which you can draw inferences, his statements, whether about his intentions, his opinions, his background, or his concerns, must be examined critically like any other statements. You must examine them in context to determine what if any inferences you can draw from them.

So that just takes out the entire reference to truthfulness, and leaves it.

MS. JOHNSTON: I think - thank you. And 87.

THE COURT: Just a moment. All right. Yes.

MS. JOHNSTON: I suggest, "Further I would be cautious about which inferences you can draw from Exhibit 10 or the article, *Killing the Hundredth Monkey*."

THE COURT: Yes.

MS. JOHNSTON: Because I think what Your Lordship's concern -

THE COURT: Yes, I think that's better.

MS. JOHNSTON: Thank you. And Your Lordship may consider this. I think it's the new paragraph 176, and Your Lordship may consider this too tiny a revision.

THE COURT: Yes, 176?

MS. JOHNSTON: One - paragraph 176:

You should look at as many statements as you need to review in order to determine if . . . -

-- and the Crown is requesting:

. . . the statements which may promote hatred are relevant as a subject of public interest.

And on the same lines, and I'll explain why in a minute -

THE COURT: Sorry, just -

MS. JOHNSTON: I can just hand up my sheet.

THE COURT: Oh, oh, yes, yes. No, okay, I follow that.

MS. JOHNSTON: I can also just hand this up.

THE COURT: No, that's fine.

MS. JOHNSTON: And then in paragraph, I guess it would be 160 - the next paragraph down:

The Crown says that the statements in Exhibits 2, 3, and 4 . . .

-- and cross out "cover a wide range of matters", and put in, instead, "which promote hate", and Your Lordship can see that we brought the "may" because now we're stating the Crown's position as opposed to the court's position in the preceding paragraph, if that makes sense.

THE COURT: Just say the whole thing so I understand the Crown's -

MS. JOHNSTON: How about if I hand it up?

THE COURT: All right.

MS. JOHNSTON: And Your Lordship will see it, and I'll explain - and again, my reason for wanting this is relatively minor, so I'll explain that why - why as well.

THE COURT: Well, I - I think I understand. All right.

MS. JOHNSTON: And My Lord, I think it's a minor issue, but there's a few articles like, for example, on smart metres which the Crown is not quibbling with in any fashion, so that focuses the jury's attention on what the actual issue is. My Lord, I think that's it, if I could just have a minute.

THE COURT: All right.

MS. JOHNSTON: I'm not sure that this para - this statement was true. I'm - and I could be wrong about this, but page - well, it's paragraph 164, and you talk about the lengthy book, *The Controversy of Zion*.

THE COURT: Yes.

MS. JOHNSTON: I thought that it was Mr. Atzmon's evidence that he read the whole thing. I'm - I'm reasonably - I'm actually quite sure on that point.

THE COURT: Well, I thought - well, I may just be wrong about that. Do you have a recollection of that?

MR. JOHNSON: He said - he said he had read the whole thing, but it had been some time.

THE COURT: All right. All right.

MR. JOHNSON: Some time ago.

THE COURT: All right.

MS. JOHNSTON: And just so Your Lordship is clear, the Crown's major concern in the reasonable - reasonably believed to be true is that the jury understands that they can't take Mr. Topham's assertions [sic] in the materials themselves as evidence upon which they can find objectively that they're reasonably true.

THE COURT: And I appreciate that. It's a difficult concept to -

MS. JOHNSTON: I know.

THE COURT: -- describe to a jury and I've tried to deal with it as best I can.

MS. JOHNSTON: And my - some of my changes that I requested, they were - they were getting at that theme, whether or not I succeeded either is a separate question entirely.

THE COURT: All right.

MS. JOHNSTON: Thank you.

THE COURT: Well, I'll make the changes. We're going to have to bind up the copies for the jury, so I expect we'll - we won't get going for probably 45 minutes or so.

MS. JOHNSTON: Thank you. If I could have one - just one second, please, just . . . I'm sorry, My Lord, I'm just drawing my - my friend had mentioned an issue to me that he hadn't brought up to Your - to His - and I'm not suggesting he should bring it up, I just want to remind him.

MR. JOHNSON: My Lord, I understood, from the revisions or the draft, that most of what I had said was taken out; that's my understanding.

THE COURT: In paragraph 7 of the -

MR. JOHNSON: Yeah, I believe it's paragraph 7 was out, wasn't it?

THE COURT: What I said in my email to you yesterday is it's not going to be in -

MR. JOHNSON: You're going to make a separate -

THE COURT: -- in this, but I'm going to say those things to the jury at that point in the - in the charge.

MR. JOHNSON: That's fine, but My Lord -

THE COURT: Because I think it's a different issue, it's a correction on what was said rather than part of the final charge.

MR. JOHNSON: I agree.

THE COURT: So I don't think it should be in writing given to them.

MR. JOHNSON: Right. Having said that, on page 5, under 7(e).

THE COURT: Just a second, page 5.

MR. JOHNSON: 7(e)

THE COURT: 7(e). Okay, I don't have that with me here, but tell me what it is.

MR. JOHNSON: I'll just read it. It dealt with Exhibit Number 10, and Number 7, as I understood it. You make a comment:

However, Mr. Topham's biographical information is not relevant to the essential ingredients of the charges, or to the defences to those charges.

And I would like that out. I think my friend and I have agreed that that's not what we had intended when we were talking about putting that -

THE COURT: Well, I think it's a matter of law. It's not. That's why I'm saying that. It's a matter of background information. If your friend wants - is comfortable with that coming out, I think - I mean I think it's wrong in law, that's why I'm saying that.

MR. JOHNSON: Well, I'm - I'm just getting back to the evidentiary understanding. My understanding of relevance and that there has to be a causal connection between two points, basically.

THE COURT: But I - I'm saying that it's not relevant to the essential elements, so each of the essential elements, none of those need any of that information.

MR. JOHNSON: Okay, with all due respect, thank you.

THE COURT: Which is why I'm - which is why I'm saying that. Ms. Johnston?

MS. JOHNSTON: My Lord, I did - I did what I told my friend I would do, which is - which is put in Exhibit 10 on the same basis as all the other - other. It's not really for the Crown to -

THE COURT: And I was - what I - I'm directing that at the background information, which is not directly relevant to essential elements in the charge, which I'm explaining, so -

MR. JOHNSON: That's the third time we've raised this issue and I think we've got the same answer, so -

THE COURT: You get the same answer. All right. Well, we'll break for I hope only 45 minutes.

THE CLERK: Order in court. Court is adjourned for 45 minutes.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

THE CLERK: And we are now on the record.

THE COURT: Thank you. Now counsel received copies of the charge.

MS. JOHNSTON: I have not.

THE CLERK: Yeah.

MS. JOHNSTON: I didn't realize this was it. Yes, I have.

THE COURT: You have?

MS. JOHNSTON: It's right here.

THE COURT: Good. Good. And I think we had one for Mr. Topham as well.

MR. JOHNSON: Yes.

THE COURT: You've got yours, Mr. Topham?

THE ACCUSED: Yes, thank you.

THE COURT: Yes, good. All right. What I'd like to do is I'd like to mark that as an exhibit for identification, and we'll also mark the draft as an exhibit for identification, so we'll have both of those, the draft first and then the final version second.

THE CLERK: The draft will be E, and then the final version F.

THE COURT: Thank you.

MARKED E FOR IDENTIFICATION: Judge's first draft of the charge to the jury - 60 pages

MARKED F FOR IDENTIFICATION: Final draft of the charge to the jury, which was read out by the court - 62 pages

THE COURT: And now we'll bring in the jury.

(JURY IN)

THE COURT: Ladies and gentlemen of the jury, we've now reached the stage where I'm going to give you my charge. I apologize again for the delay this morning; that was my fault. I should have realized it was going to take me longer to get this ready to go, so here we are.

(CHARGE TO THE JURY, FROM 1:36.10 - 2:42.45 P.M.)

THE COURT: Now I'm going to stop here and take the afternoon recess, and we'll continue at paragraph 105 after that.

(JURY OUT)

THE COURT: We'll take the break.

THE CLERK: Order in court. Court is adjourned for 15 minutes.

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
(PROCEEDINGS RECONVENED)

THE CLERK: And we're back on the record.

THE COURT: Let's bring in the jury.

(JURY IN)

THE COURT: All right. We're back at page 31, at paragraph 105. I'm about to talk about defences.

(CHARGE TO THE JURY, CONTINUING, FROM 3:06.40 - 4:12.02 P.M.)

THE COURT: You may now retire.

(JURY OUT)

THE COURT: Any additional submissions, comments?

MS. JOHNSTON: My friend can go first. I may not have any. I made a couple of notes, but I want to reconsider them before.

THE COURT: All right.

MR. JOHNSON: My Lord, I just wanted to say that there was one slip of the tongue on paragraph 211 where you said, "alternative", when I think you meant what was read to be "affirmative".

THE COURT: Oh, okay. I obviously missed that.

MR. JOHNSON: That would be a good thing for me, possibly, but . . . the -

THE COURT: Sorry, paragraph 211?

MR. JOHNSON: Yeah, it's 211. I think there was just a bit of a stumble there and -

MS. JOHNSTON: Third line down. I can't say I personally caught it.

MR. JOHNSON: Yeah, said, "a reply in the alternative", and it should be "affirmative" as written.

THE COURT: Oh.

MR. JOHNSON: And the only other point that I wanted to raise was wherever the word *targeted* appears, I would like to have the word *directed* as we had discussed earlier. I think that there was only paragraph 95, 101, 103 that I could see. But maybe just a general word, if you're - if you're in agreement, where the word *targeted* appears, it should be *directed*.

THE COURT: I think *targeted* and *directed* are really - really mean the same thing and I don't think it's worth giving an instruction about that.

MR. JOHNSON: Okay.

THE COURT: I mean if you'd caught me ahead of time, I may well have -

MR. JOHNSON: Corrected it.

THE COURT: -- changed it, but I don't think it's significantly different, and I mean I did change it where you told me to - where you suggested it, but I just think it's not worth going through it -

MR. JOHNSON: Okay.

THE COURT: -- because I think it does appear about five or six other times; I noticed that as I was reading it.

MR. JOHNSON: Those are all my comments.

THE COURT: All right.

MS. JOHNSTON: Paragraph 209, "Books and materials posted on radicalpress.com", that's certainly true. Your Lordship doesn't -

THE COURT: Sorry, where - where - paragraph 209?

MS. JOHNSTON: Paragraph 209, at the bottom under the heading, "Books and materials posted on radicalpress".

THE COURT: Oh yes, okay.

MS. JOHNSTON: There's no possibility that the jury will think - because clearly Your Lordship didn't mention this at all in the defences that the mere fact of republication means there is a defence. And the only other thing that occurred to me as I was listening to Your Lordship, and it may - and I apologize in advance, this might not be a reasonable consideration, but there's no possibility the jury will think, for example, that - let's assume - let's assume the Crown proves their case, but they decide the defences apply on, say, 70 of 75 of the comments, but the other five are fine. They won't be left in any - the absence of any specific instruction won't mean that they think that because the defence applies largely to many of the statements, therefore there's an acquittal. Do they understand that we only need one statement per count in order for a conviction? Because Your Lordship has just referred to everything in plural, like statements, throughout. That was badly worded, but I think Your Lordship understands my point.

THE COURT: I do.

MS. JOHNSTON: I'm not sure whether or not - like I'm not sure whether or not that would be confusing for the jury. I'm not sure it's an issue.

THE COURT: You know, I think it probably would be confusing, and I think that it's - it's very evident in relation to the essential ingredients of the offence that that is so. I don't think it's necessary there and so I don't see how the defences could take that away, in other

words that they could think that because in some instances a defence may apply that it doesn't otherwise. I just think that if I try to explain that, it's going to be a mess.

MR. JOHNSON: A dog's breakfast.

MS. JOHNSTON: The only - the only - I was thinking about this as I was going through it. If Your Lordship did think there was a need to clarify, then on paragraph 187, then you could simply add at the end of the paragraph, "for at least some of the statements". And then the comparable paragraph for Count - Count 1, if Your Lordship was concerned about - about that problem. Oh, actually, better yet [as read in]:

After Crown must prove beyond a reasonable doubt that one or more of these three ingredients did - does not apply for at least one or more of the statements.

That would work even better. And then in Crown's submission -

THE COURT: And then that would also -

MS. JOHNSTON: There was a comparable paragraph for both counts.

THE COURT: Yes.

MS. JOHNSTON: But then I think Your Lordship would just simply read the paragraph back with that one addition and not - not explain further, and then it would avoid the dog's breakfast concern that - that my friend raises.

THE COURT: I think that's a fair and simple way to do it.

MS. JOHNSTON: I can't - I'll - I'll try and find the other paragraph.

THE COURT: I think it's 127.

MS. JOHNSTON: Or 109.

THE COURT: I think -

MS. JOHNSTON: And 130.

THE COURT: I think it's better to do it at the end of the -

MS. JOHNSTON: Okay, thank you.

THE COURT: All right.

MR. JOHNSON: So which two paragraphs are we referring to then?

THE COURT: 187 - 127 and 187.

MR. JOHNSON: Thank you, My Lord.

MS. JOHNSTON: Thank you, My Lord, yes.

THE COURT: All right. Is that - and is that it?

MS. JOHNSTON: That is it, thank you, My Lord.

THE COURT: All right. Then I'll ask the jury to come back in.

(JURY IN)

THE COURT: Now I'm pleased to tell you this won't take very long. I have three things to point out, and you may want to take a pen in hand, if you have one. At paragraph 127, page 36, if you've got that, and this is in relation to the defence under s. 319(3)(c), I should have said this. I should have added a phrase to the end of the second sentence at paragraph 127. So the sentence should read:

The Crown must prove beyond a reasonable doubt that one or more of these ingredients does not apply for at least one or more of the statements.

And then the same addition would be made at paragraph 187, after the second sentence, so that the paragraph - the first two sentences now read:

I must remind you again that Mr. Topham does not have to prove the essential ingredients of this defence. The Crown must prove beyond a reasonable doubt that one or more of these three ingredients does not apply for at least one or more of . . .

-- it should probably "his statements" rather than "these statements" - no, I guess it's "these statements" is accurate:

. . . one or more of the statements.

Now the third thing I want to point out is, at paragraph 211, right towards the end, page 59, apparently I stated at the start of paragraph 211, I think I was getting weary, that in the second sentence, I'm told I said that: "If so, you, Mr. Foreman, should then stand and reply in the alternative", but it should be "the affirmative". So I just wanted to note that out because those are quite different.

And those are the three corrections I want to make to the charge, and you're now - you can now retire and commence your deliberations.

(JURY OUT)

(JURY COMMENCES DELIBERATIONS)

THE COURT: Now we have to wait.

MS. JOHNSTON: My Lord, I'm requesting that if there's any questions or a verdict, that there be 20 minutes leeway to return to the courtroom. Would that please Your Lordship?

THE COURT: That's always the case. It takes - takes some time to get everybody. I can't expect that you'll be sitting in the courtroom at all times. And fortunately Quesnel is not a very big place so it shouldn't be too hard to get people here, So if there's a question or if there's a verdict, yes, it'll - you'll have 15 or 20 minutes anyways.

MS. JOHNSTON: Thank you, My Lord.

MR. JOHNSON: My Lord, I was - I was wondering as well if there was a concern that the jury may have to stay up all night. I don't know that they were -

THE COURT: No, no, no, no. No, we don't do that to juries.

MR. JOHNSON: No, I know. I know that. I'm just wondering if there was a cut-off time for them that was communicated to them.

THE COURT: I've discussed the issue with the sheriffs.

MR. JOHNSON: Okay.

THE COURT: The - you know, typically I let a jury go till about nine o'clock.

MR. JOHNSON: Right.

THE COURT: At times a jury will say - will indicate that they want to keep going and will let the sheriff know that, and if that's the case, well, then I'll let them do that. All right?

MR. JOHNSON: Okay, thank you.

THE COURT: And then my - my thought is that I would tell them to start next morning at about nine o'clock or 9:30, whenever is convenient, depending on their accommodation and their wishes, but that would be -

MR. JOHNSON: Pretty standard.

THE COURT: -- that would be my inclination. All right, so we are adjourned until we're called.

THE CLERK: Order in court. This court stands adjourned to await the return of the jurors.

(PROCEEDINGS ADJOURNED AWAITING VERDICT)

Transcriber: B. Berekoff