R. v. J.W.S., 2004 ABQB 407 (CanLII)

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Court of Queen's Bench of Alberta

Citation: R. v. J.W.S., 2004 ABQB 407

Date: 20040601
Docket: 0213 25667 Q1
Registry: Edmonton

Between:

Her Majesty the Queen

- and -

J.W.S.

Restriction on Publication: By Court Order, there is a ban on publishing information that may identify the accused described in this judgment as J.W.S.

**Reasons for Judgment
of the
Honourable Mr. Justice Jack Watson**

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1. Introduction

[1] [ORALLY[1]]: This is the matter of Her Majesty the Queen v. J.W.S., Case Number 0213-25667-Q1. This matter came before me on March 22, 2004 for trial on four counts, the trial dates having being selected of March 22nd to 23rd of 2004, and those trial dates having been set on December 10th of 2003.

[2] Despite the misuse of words by the Defendant in addressing me and in stating his position, I have taken what the Defendant has said to me as amounting to a request for an adjournment of this particular trial.

[3] In a moment, I will talk in more detail about the manner and content of how the Defendant has made statements towards me relative to his position, but before I do that, it seems to me I should summarize what I gather to be the basis of the Defendant's application for an adjournment in this matter.

2. Basis of the Application

[4] As I gather, the adjournment request has two main features. The first is that, as expressed to me yesterday, March 22nd of 2004, the Defendant was arriving here with some expectation that this matter would be some sort of a *habeas corpus* hearing, or some sort of a "settlement proceeding", or something of that sort as he attempted to express it to me – and not a criminal trial. This is a matter of some concern in relation to the request for the adjournment.

[5] The second element of what the Defendant said to me was that Crown Counsel had failed to make his disclosure obligations fully and completely, and in a timely way. Specifically, J.W.S. contended that Crown Counsel had failed to provide him with disclosure of a specialized type which the Defendant – in the course of his submissions made to me – has characteristics which appear to exceed that which is of normal disclosure in matters of this sort.

[6] As to the first element, therefore, of what the Defendant has by way of a request for an adjournment, the Defendant asserted in a robust and sometimes even demanding manner that, in fact, this proceeding was not a criminal trial and not a criminal trial within the competence of the Court to which he felt he was entitled.

[7] He has attempted to explain to me, from time to time, the nature of that particular Court that he is referring to. But in so doing, he has not used language with which most people in the legal system are familiar – except for the nature of the words themselves as opposed to their meaning or connotation as he wishes to put forward.

[8] Essentially though, the Defendant's position appears to be that notwithstanding his various positions in the Provincial Court as I have just outlined them by reading them out from the Information and the Indictment, and notwithstanding the various appearances before various judges who would have been sensitive to his concern, he is of the opinion that this is not a trial.

[9] It seems to me that I should infer that in fact he would have been told that this was a trial. However, that is only a secondary element of what I have to deal with here.

[10] The second element of the request for the adjournment that the Defendant has put forward, as I mentioned before, is a request or a challenge to the adequacy of the Crown's disclosure in relation to this case.

[11] It does emerge, and did emerge during the course of the initial sessions of this matter which took place yesterday morning and yesterday afternoon, that in fact the Crown was in default in relation to disclosure in that Crown Counsel had proceeded on the assumption that disclosure having been made to Defence Counsel in the past, this was such as would have percolated through to the Defendant in person.

[12] It is quite apparent to me that whatever may have happened in relation to that, it was advisable for Crown Counsel to, in fact, ensure that the Defendant did receive, personally, the material that was referred to by way of ordinary Crown disclosure in this matter.

[13] Consequently, as a result of that, I asked Crown Counsel to provide the Defendant with the disclosure materials which were available to the Crown. These were provided, according to what Crown Counsel told me, personally by Crown Counsel in the morning, approximately 11:15 a.m., yesterday.

[14] Between 11:15 a.m. and approximately 2:30 in the afternoon, the Defendant, therefore, would have had an opportunity to have this particular material. But Crown Counsel suggested to me that, in fact, the Defendant seemed to be somewhat resistant about receiving this material at the time it was being presented. However, I draw no inference from that.

[15] Apparently, however, Crown Counsel went on to say that the Defendant, when he returned to Court, put the material back on the table, or threw it on the table, and did not appear to be particularly interested in looking at it.

[16] It emerged in discussions between myself and the Defendant and Crown Counsel that the Defendant probably had not made any particularly significant effort to study this material, although I cannot be sure that he did not. It was suggested by the Defendant that, in any event, the materials which had been provided to him were, in some sense, useless, or irrelevant, or incomplete, as they were not the sort of disclosure at which the defendant claimed to be entitled to.

[17] With my strong encouragement to read the disclosure materials as provided, which were again, handed to him in open Court yesterday afternoon, the trial was set over from yesterday afternoon to this morning for further consideration as to whether the trial should proceed or not.

[18] The Crown was asked to have its witnesses re-attend. I understand that there is at least, the civilian witness who I saw yesterday in attendance, and I would assume the police officers are here as well.

3. Context of the Application

[19] Dealing with the question of the adjournment then, requires some discussion of the context, it seems to me, of this particular matter. As mentioned before and as I read out to the Defendant, the Indictment contains four Counts but they are the same four Counts that were on the Information which charged him in the first place.

[20] These were: firstly, a Count of possession of a stolen vehicle not exceeding $5,000.00; secondly, possession of a screwdriver for the purposes of breaking into a vehicle or other thing; thirdly, a Count of operating a motor vehicle while disqualified, and fourthly, a Count of possession of methamphetamine.

[21] All these Counts are said to have occurred on November 9th of 2002, which is quite a long time ago. In fact, the passage of time in the history of this matter, is causing me some concern, which I have to weigh in the balance in determining whether or not the adjournment is appropriate.

[22] Crown Counsel did not provide me with an opening address in relation to this particular matter, but did explain that the total disclosure provided to the Defendant consisted of copies of perhaps some ten pages of what was called an R2 yesterday, which was presumably some form of police report.

[23] Apparently, this was also coupled with some witness statements and some other documentation that was described as assessment reports. Crown Counsel had also indicated yesterday that he felt that this would be, what he called, a "half day trial". I take it from that, that Crown Counsel was telling me that this was a fairly straight forward matter.

[24] The Indictment itself, identified only three witnesses at the bottom, but also the civilian witness – who would be the owner of the vehicle – was identified within the text of Count Number 1, and in fact, has been identified to me as the witness present in court yesterday and today.

[25] I understood from what was said yesterday that, in fact, Mr. Sundar, the complainant, was not feeling well or had a medical appointment in the afternoon yesterday.

[26] In any event, without having reviewed the preliminary inquiry transcript or hearing an opening statement of Crown Counsel, it seems to be reasonable to infer that the core of this particular case is a set of allegations surrounding one sort of transaction.

[27] Putting the four Counts together, I must say, in attempting to draw an inference as to the degree to which this might a straight forward case, that it does not seem to me to be a matter of rocket science. It seems to be fairly clear what the types of Counts would generally involve. I make no particular assumptions, but the face of the Indictment leaves me with no reason to question Crown Counsel's suggestion that this would be a fairly simple or a short trial.

[28] So I have to turn then to the circumstances of the Defendant. The Defendant did not have Counsel representing him when the trial started. The Defendant has not apparently had Counsel for some time. As the consequences of various discussions I have had with the Defendant during the course of this matter, I became concerned that the Defendant had chosen to discharge his Counsel who appeared at the preliminary inquiry and to represent himself for rather unwise reasons.

[29] It seems to me that the Defendant has chosen, at some stage of the process, to proceed in the matter which is probably set out in affidavit items 2 and 3 which were presented by Mr. Downey[2] with J.W.S.'s consent.

[30] That is to say, the Defendant appears to have chosen to re-configure his legal association with the nation[3] in a way, viz. in terms of how he perceives himself as a citizen of Canada[4] and the rights that he has as a person charged with offences[5].

[31] The endorsements on the Information, as I mentioned before, indicate that he has had several appearances in the month of November and December, 2003, and one in January, of 2004. Although he appeared in front of three different judges, it appears that he appeared several times before Mr. Justice Sanderman. On all of those occasions, the Defendant had no counsel.

[32] From these various endorsements, I am prepared to assume that, in fact, each of the judges who were involved in this matter would have been sanguine about the legal rights of the Defendant and, in fact, been quite concerned to ensure that the benefits of representation by Counsel – as I attempted to explain them to him today – were transmitted to him.

[33] I, likewise, am of the view that it would be reasonable to assume that Mr. Justice Sanderman would have been also concerned about ensuring that the benefits of the legal process were also explained to J.W.S..

[34] However, based on what J.W.S. has said to me up to this point, I am dubious that J.W.S. took up any advice that was given to him in that particular respect, as he appears to have decided to continue with this representation process of the manner in which he has expressed himself, namely, this form of quasi-legal type of self representation, which he has put forward.

[35] Despite the vigorousness of his various contentions, the Defendant cannot convert the record of this matter to suit any such theories or purposes, whatever they might actually be. I am not satisfied, or persuaded, nor do I have any doubt of that, that the Defendant would have been misled by any of the previous judges.

[36] Indeed, the multiple appearances before Justice Sanderman suggest to me that he would have been fairly carefully taken and dealt with in order to ensure an adjudicatively fair process here.

[37] The Defendant advised me yesterday that he was going to be assisted or had been assisted in the past, including in front of Justice Sanderman, by a person he called a "friend of the court", by which the defendant apparently meant someone other than a lawyer who would be participating to assist him.

[38] This view, perhaps, resembled the notion of a "MacKenzie Friend" which is discussed in English jurisprudence[6], or the concept of *amicus curiae* as known in Canada[7]. Indeed, J.W.S. has referred to the concept "friend of the court" which is the English translation of *amicus curiae*. However, any such resemblance was set aside on the further explanations of the Defendant.

[39] The Defendant, although he had some reluctance from time to time in speaking to me about this, intimated this friend was perhaps a member of a group of such friends who were willing to involve themselves in the legal process.

[40] The Defendant suggested that one such friend, who appeared to be somebody that he referred to as "Timothy Shawn". Yesterday, I asked him if that was a Mr. Wishewan[8]. The Defendant was not quite specific as to whether that was the case or not not[9].

[41] The Defendant did not, however, suggest that this the "friend" that was apparently assisting him before Justice Sanderman, or that he would have assist him now, would be a lawyer at any time.

[42] It would appear that the "friend" appears to be a person like Mr. Downey who appears also committed to the same perspective, shall we say, in connection with how the legal process works in Canada.

[43] It seems to be a perspective that characterizes the legal process in a distinctly different manner than most of us that have been trained and have gone through this legal process would consider it.

[44] So when the matter came over this morning, the Defendant had said yesterday that he was going to arrange to have a "friend" here. Indeed, as mentioned, Mr. Downey did, in fact, appear.

[45] I should indicate that the understanding that the Defendant has relative to legal representation seems to be also indicated by the document that he filed which is Exhibit 1, which is something called a "Power of Attorney". That is what they call it – the authors of the document. I have no reason to question the authorship of the document *per se*, but it is a unique document in the way it self expresses about the legal terminology that applies to things.

[46] Now the Defendant, in speaking to me and in speaking to Crown Counsel, to my mind, parroted a number of expressions which struck me as being some sort of special argot which had been designed by individuals for the purposes of self representation in the legal courts of Canada, particularly in Alberta.

[47] This kind of contrived language, it seems to me, cannot be particularly helpful to any Defendant, let alone J.W.S., who appears to be a young fellow and a person who, despite his articulate nature, has perhaps been misguided by this unfortunate insinuation of strange ways of looking at how the legal process works.

[48] I mean that when the Defendant would speak to me, he would often express himself in what would have to be characterized as artificial and incorrectly adapted terms that amounted to pseudo-legalisms in connection with the legal process.

[49] With that in mind, it seems to me that I have to be very concerned about whether or not the Defendant really appreciates the nature of the matter that he is facing in this particular instance. In that sense, I would add to the fact that he was only recently arraigned despite the identity of the charges between now and the past, and also, that a disclosure problem arose which has been mentioned before.

[50] When the Defendant spoke to me as well – and I hold this not against him – but he would speak to me in a frequently confrontational manner and make demands and he interrupt me, although, this morning he has actually been a little better in relation to that.

[51] Though he used terms that he "accepted" the jurisdiction of the Court, what I was left with, as an impression, was that he actually did *not* accept the jurisdiction of this Court and that in fact, he challenged the jurisdiction of this court to try him under these circumstances.

[52] This led me to think that he was attempting to speak to the record of the Court as well, because by using certain types of language, he is perhaps thinking that a higher court, at some stage, may have a different view of what has transpired in here today. That is up to him to take what steps he wishes. Lawyers do that all the time. I see nothing wrong with it.

[53] When things seem to be unsatisfactory to the Defendant, I noticed that he would turn his back to me or face towards the back, or the floor of the prisoner's box. At one stage when the Defendant lapsed into silence yesterday, I noted the fact that what he was doing, at which point the Defendant promptly changed himself and started paying attention again.

[54] This gives me reason to think the Defendant is quite well aware that everything that I am saying right now is being recorded and everything that he said up to now has been recorded. I might say though, that, despite the aggressive tone that the Defendant has used towards me, I do not feel any inclination whatsoever to find him guilty of contempt of court or anything like that.

[55] It seems to me that the Defendant is simply taking a fairly strong view. Because his strong view has not, in effect, impeded my ability to proceed with this particular matter, I do not consider him to be guilty of contempt of court in any sense that the law would recognize.

[56] In the various comments made by the Defendant, he has referred to something which raises a concern too about his ability to represent himself if in fact I force this trial to go ahead. He has mentioned the fact that he had what he called "nine psych assessments" done. He has also mentioned that in fact he is currently in the Alberta Hospital Edmonton.

[57] Crown Counsel advised that to his knowledge, in relation to the history of this particular Indictment, that the Defendant had, in fact, had two assessments conducted before the Court.

[58] In light of the fact that he has appeared before Mr. Justice Sanderman and other judges of this court and the issue of this witness to stand trial does not appear to have been raised at that time, either by him or by the judges in those instances, I am not persuaded that the mere fact that he is in the Alberta Hospital Edmonton, at the present time, should give rise to a doubt as to his capacity to represent himself, if necessary, in that sense[10].

[59] As I said previously, the Defendant is an articulate individual and does appear to me to be someone who understands much more than what he says, about what is going on.

[60] For instance, when he said he did not understand the charges as I read the Indictment to him, I did not find that to be anything more than a tactical display on his part. He appeared to be frustrated by the legal process and consequently, was quite insistent on presenting that particular image to me. In that sense, I think that that is not part of anything else than this influence that he appears to have been subject to about the way one deals with the legal process in Canada.

[61] He seems to misconceive the nature of the legal proceedings that are here. For that matter, as a consequence, he seems to be quite prepared to disorder the constitutional rights that he has, that he is entitled to in relation to defending in relation to a criminal offence and a prosecution.

[62] I do not believe that the attitude and conduct of J.W.S. in connection to this matter is reflective of a bizarre ideation or some sort of a demented characteristic about his mind. It seems to me that he has become a believer in some sense, or a presenter in some sense, of a personalized view of the justice process that he perhaps shares with Mr. Downey and others but in fact, is not something which is in accord with how we do the justice process in this country.

[63] Putting that in mind then, though, I have to say that on the balance of the question of adjudicative fairness, the un-representation of the Defendant is a matter of great concern to me.

[64] The fact that he has not received the disclosure material and has not been particularly diligent about studying it, is also a matter of some concern.

[65] On the other hand, as I mentioned before, there is that long period of time that has passed and what appears to be a fairly straight forward case that has to be faced in this instance.

[66] On balancing these matters, I have to consider the constitutionalization of this particular process. Canada has given priority to adjudicative fairness on a case by case basis over the American emphasis on due process.

[67] The American emphasis on due process is not irrelevant in Canada because our constitutional discourse and our adjudicative decision making over the years and jurisprudence have elevated a number of principles, such as the Crown's duty of disclosure and the right to be represented by counsel to levels beyond due process and to constitutional standing.

[68] The constitutional approach that we have in this country has rules and obligations of due process that are connected with the primary object of ensuring that there would be a truly fair trial proceeding.

[69] This proceeding is, and this approach is not focussed exclusively, however, on formulaic thinking. It has to be done in the context. It has to be understood that formulaic representations such as the Defendant has presented to me – even if their main effect may be to distract or to, in a sense, obstruct what is going on – are not particularly of assistance in terms of determining what is the best thing to do in relation to a case like this.

[70] The Supreme Court of Canada in a case called ***Phillips***[11] approved a keystone decision of our Court of Appeal as to the rights of unrepresented persons to a fair trial including the right to have the protections that the fair trial rights involve guaranteed by the of involvement of the judge. Crown Counsel made reference to Section 650 of the *Criminal Code* in relation to that particular point[12].

[71] It does seem to me that – I am satisfied that J.W.S. would not retain Counsel at any stage if this matter was adjourned. He would therefore continue to represent himself and presumably, in a manner which is consistent with the manner that he has represented himself up to now.

[72] In that particular sense then, I have to consider whether or not an adjournment would be realistic in terms of improving his position to deal with disclosure as he has claimed rightly to be late and delayed in this particular matter.

[73] In that particular respect, I am satisfied that he had plenty of time to read the material that was provided to him yesterday and elected not to do so, preferring instead to raise this as a further complaint this morning in relation to whether the trial should proceed or not.

[74] It does seem to me that under those circumstances, I could have no confidence that in fact he would study that particular material any more thoroughly later for the purposes of preparing a defence. I can only assume that in fact on the next occasion, he would appear in Court with similar challenges to the jurisdiction of this Court to try the case in the first place.

[75] This is the type of situation, it seems to me, that is covered by that concept that a person who chooses to represent themselves has a fool for a client. This is a principle which is mentioned by a dissenting judge of the U.S. Supreme Court in a case called ***Faretta*** years ago[13].

[76] The situation though is that in Canada, as in the United States – although the United States has stronger due process rules under their 6th Amendment – a person has a right to self representation in this country, and no unwilling accused can have a defence counsel or the obligations of a defence counsel enforced upon that particular person[14].

[77] The person has the right, both by statute in Canada and indeed, by common-law principle to represent themselves. But having done so, it has to be borne in mind that the Supreme Court of Canada has held in a case called ***Swain***[15] which encouraged the view in later cases called ***Brigham***[16] and ***Taylor***[17] that if a person chooses to exercise the autonomy they have in terms of legal representation and does so badly, it is something which is not necessarily going to constitute a denial of adjudicative fairness in relation to a particular case[18].

[78] In this instance, it seems to me that – as I am proceeding on the assumption as I have made before that this would be a fairly straight forward case – that if in fact J.W.S. participated in a manner which was different from the manner he has participated up to now, and actually listened to the evidence, wrote down what the witnesses said, asked the witnesses questions, and exercised the various other forensic rights that any person has in relation to a criminal matter, he could be fairly represented in relation to this case and fairly tried[19].

[79] In that particular regard too, I agree with what Crown Counsel said that it would be my obligation to ensure that the witnesses are duly cross-examined – if the Defendant does not choose to do so – to ensure that, in fact, all of the evidence is unfolded in a manner giving rise to a reasonable theory as to what the defence of the Defendant may be in relation to each and every one of these particular Counts.

[80] It should be recalled that each and every one of these Counts has to be established beyond a reasonable doubt both as to a mental element and as to a physical element – all four Courts.

[81] So, in that particular respect, it seems to me that while I would not in any way descend into the arena and act as Counsel for the Defendant, I could ensure that the Defendant's trial in this particular matter and on these matters would be a fair one, in the substantive sense.

[82] I emphasize again, "the substantive sense", because in Canada we emphasize substantive rights and adjudicative fairness, and not simply automatic reactions or due process tie-ins that are more to the appearance of justice rather than for the fact of justice.

[83] I am concerned however, about the appearance of justice in this instance in that I do not like to preside in relation to a trial where a person is unrepresented, especially a young person who appears to be under certain deflections as to exactly how to represent himself.

[84] But on the other hand, and after thinking about this anxiously this morning, it seems to me that it would make a farce out of the administration of justice if I was to have this situation adjourned yet another time, in light of the history of it up to now – although this is only the first time it has been set down for trial – when it is not, to my mind, in the best interests of this particular Defendant to have this trial adjourned[20].

[85] This matter has been hanging over his head long enough. These charges are, it seems to me, not particularly serious charges in the compendium of charges that I have seen under the criminal law. Under the circumstances, it seems to me that the fairest thing to do relative to this particular case is to bring this trial to its natural conclusion as a trial in the criminal sense that we have in the existing legal process we have in this country.

5. Conclusion

[86] As a consequence then, I am denying the request for the adjournment made by J.W.S. J.W.S., you will have to do your best to pay attention. I will ask that the Clerk provide you with a – a pen and a pad of paper, if there is one handy there, and if you do not have one, I will give you mine, and the trial will proceed this morning on its merits.

[87] [As it happens, when the evidence unfolded, the Defendant participated to a degree and did cross-examine Crown witnesses not without effect. Ultimately, the Crown was unable to prove its case on any of the Counts and they were all dismissed.]

Heard and delivered orally on the 23rd day of March, 2004.
Dated at the City of Edmonton, Alberta this 1st day of June, 2004.

**Jack Watson
J.C.Q.B.A.**

Appearances:

John Benkendorf
for the Crown

J.W.S.
In Person

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[1] Edited for publication. Footnotes and headlines added.

[2] A non-lawyer by the name of William Downey appeared on March 23, 2004, as a "friend of the Court" and, with the consent and encouragement of J.W.S., filed two strange documents as Exhibits. Mr. Downey did not otherwise participate in the matter.

[3] The Defendant in his oral comments to me, and in documents which had been filed with the Court on prior occasions, and in 'affidavits' which purported to annex 'public notice' forms said to have been published in local newspapers, would refer to himself as '[J-W: S], an Heir and Successor as flesh, blood and bone, bound as subject in life, to and with Her Majesty Queen Elizabeth II, Her Heirs and Successors'. [Name edited out.]

[4] For example, a document putatively filed by him or on his behalf with the Court purporting to be dated November 13, 2003, said that he "accepted and publicly noticed the acceptance of all the flesh, blood and bone, genuine, distinct, group in life, bound by their Oath and allegiance to the flesh, blood and bone, known as Her Majesty Queen Elizabeth II, Her Heirs and Successors, and appointed as a bonded OFFICER and / or ASSIGNEE for Her Majesty Queen Elizabeth II, Her Heirs and Successors, with the order, by appointment and the duty of the position, for the Honor of Her Majesty, to obey, to uphold and, as fiduciary, to fulfil Her Majesty's agreements and the Supreme Laws for CANADA and the trust indentures therein, to provide the protection, entitlements and benefits due the beneficiaries of the aforesaid trust indentures."

[5] For further example, the Defendant demanded to know who I was, and demanded that I confirm my position as one of Her Majesty's judges according to his own definition of my role.

[6] See, for example, Noueiri (Richard Helal) v. Paragon Finance PLC, (September 19, 2001) [2001] E.W.J. No. 3965 (QL), [2001] EWCA Civ 1402 (QL), [2001] 1 W.L.R. 2357 (Eng.C.A.C.D. Nos. B2/2001/1063A, 1395, 1468). See in particular paras. 57 to 59.

[7] *Amicus curiae* were involved at the Supreme Court of Canada in Fleming (Dr. Russell) et al. v. Starson (Prof. Scott) a.k.a. Schutzman (Scott Jeffery) (named Starson v. Swayze), [June 6, 2003 SCC 32 (CanLII), 2003] 1 S.C.R. 722, 225 D.L.R. (4th) 385, 304 N.R. 326, 173 O.A.C. 210, 1 Admin. L.R. (4th) 1, [2003] S.C.J. No. 33 (QL), 2003 CarswellOnt 2079 (S.C.C. No. 28799; 2003 SCC 32) and at the Court of Appeal in Trociuk (Darrell Wayne) v. British Columbia (Director of Vital Statistics) et al., [June 6, 2003 SCC 34 (CanLII), 2003] 1 S.C.R. 835, 36 R.F.L. (5th) 429, 226 D.L.R. (4th) 1, [2003] 7 W.W.R. 391,14 B.C.L.R. (4th) 12, 36 R.F.L. (5th) 429, 304 N.R. 201, 183 B.C.A.C. 1, 107 C.R.R. (2d) 277, 301 W.A.C. 1, 2003 CarswellBC 1350 (S.C.C. No. 28726; 2003 SCC 34) from (May 23, 2001) 2001 BCCA 368 (CanLII), 200 D.L.R. (4th) 685, 90 B.C.L.R. (3d)152 B.C.A.C. 243; 250 W.A.C. 243 (B.C.C.A.No. CA025972; 2001 BCCA 368).

[8] A person named Timothy Shawn Wishewan has, it seems, purported to represent other persons before Courts in Correia (John) v. The Wawanesa Mutual Insurance Company and Barbara Mackintyre (Barbara) et al., (April 20, 2001) [2001] A.J. No. 507 (QL) (Alta. Q.B. No. 0003 20822; 2001 ABQB 312); R.v. Jones (David), (June 16, 2000) [2000] A.J. No. 715 (QL) (Alta. Q.B. No. 00030497CO); R.v. Main (James), (January 31, 2000) 2000 ABQB 56 (CanLII), [2000] A.J. No. 128 (QL) (Alta. Q.B. No. 9903-2781-C2; 2000 ABQB 56). A person named Timothy Shawn Wishewan has since appeared for himself seemingly somewhat similar stylized but idiosyncratic language for his self-representation: R.v. Wishewan (Timothy-Shawn), (May 3, 2004) [2004] A.J. No. 514 (QL), 2004 CarswellAlta 568 (2004 ABQB 335; Alta. Q.B. No. 031006083X1).

[9] Other documents given to the Court either by or for the Defendant over time referred to people said to be named "Douglas Bracewell" and "Bill Hutchison". I do not know if such persons actually exist.

[10] On the Court file is a copy of a letter dated October 17, 2003, by Dr. W. Friend, a Consultant Psychiatrist at the Alberta Hospital Edmonton, referring to a remand of the Defendant to that Hospital for assessment in October, 2003. Dr. Friend described the Defendant as "highly uncooperative" and "sarcastic". The Defendant apparently told Dr. Friend he was "only eligible for the 'world court'". In Dr. Friend's view, "[J.W.S.]'s behaviour is, to a very large extent, the product of an antisocial personality disorder. I do not believe that he has a true psychotic illness." Dr. Friend did recommend that the Court appoint Counsel for him as he felt it was "not clear to me that [J.W.S.] is fit to a sufficiently high degree to defend himself in court". However, the Defendant told Dr. Friend that "he intends to defend himself in court".

[11] R.v. Phillips (Michael Alan), (October 17, 2003) 2003 SCC 57 (CanLII), 18 Alta. L.R. (4th) 1, 15 C.R. (6th) 51, 339 A.R. 50, 312 W.A.C. 50, 311 N.R. 94, 18 Alta. L.R. (4th) 1, [2004] 2 W.W.R. 585, [2003] S.C.J. No. 56 (QL), 2003 CarswellAlta 1478, [2003] A.W.L.D. 449 (S.C.C. No. 29609; 2003 SCC 57) dismissing appeal from (January 10, 2003) 2003 ABCA 4 (CanLII), 172 C.C.C. (3rd) 285, 320 A.R. 172, 288 W.A.C. 172, 9 C.R. (6th) 57, [2003] 5 W.W.R. 623, 12 Alta. L.R. (4th) 211, 2003 CarswellAlta 7, [2003] A.J. No. 14 (QL) (Alta. C.A. No. 0103-0191-A3; 2003 ABCA 4).

[12] Amongst other things, Section 650 of the *Criminal Code* recognizes self-representation. Section 650(3) provides as follows: "650(3) An accused is entitled, after the close of the case for the prosecution, to make full answer and defence personally or by counsel."

[13] Faretta (Anthony) v. California, (June 30, 1975) 422 U.S. 866 (U.S.S.C. No. 73-5772). See also Martinez (Salvador), (January 12, 2000) U.S. (U.S.S.C. No. 98-7809) and Godinez , Warden v. Moran, (June 24, 1993) 509 U.S. 389 (U.S.S.C. No. 92-725). A Defendant must knowingly and intelligently waive his 6th Amendment right to Counsel, but other than that he appears to have the right to defend himself if he chooses to do so when competent to decide.

[14] An edifying discussion of the history of representation is set out in R.v. Robinson (Claude) and R.v. Dolesj (Alois), (October 27, 1989) 1989 ABCA 267 (CanLII), 73 C.R. (3d) 81, 70 Alta. L.R. (2d) 31, 100 A.R. 26, 51 C.C.C. (3d) 452, 63 D.L.R. (4th) 289, [1989] A.J. No. 950 (QL), 1989 CarswellAlta 154 (Alta. C.A. Nos. 18701, 18882 and 19266).

[15] Swain (Owen Lloyd) v. Ontario (Attorney General), [May 2, 1991 CanLII 104 (SCC), 1991] 1 S.C.R. 933, 63 C.C.C. (3d) 481, 5 C.R. (4th) 253, 3 C.R.R. (2d) 1, 47 O.A.C. 81, 125 N.R. 1, 12 W.C.B. (2d) 582, 4 O.R. (3d) 383, 83 D.L.R. (4th) 193, [1991] S.C.J. No. 32 (QL), 1991 CarswellOnt 109 (S.C.C.No. 19758). See para. 33.

[16] R.v. Brigham (Thomas Bernard), (December 22, 1992) 1992 CanLII 3812 (QC CA), 79 C.C.C. (3rd) 365, 52 Q.A.C. 241, [1992] A.Q. No. 2283 (QL), 1992 CarswellQue 305 (Qué.C.A. No. 500-10-000078-897).

[17] R.v. Taylor (Dwight Raymond Montgomery), (November 13, 1992) 1992 CanLII 7412 (ON CA), 77 C.C.C. (3rd) 551, 17 C.R. (4th) 371, 11 O.R. (3rd) 323, 59 O.A.C. 43, 13 C.R.R. (2d) 346, [1992] O.J. No. 2394 (QL), 1992 CarswellOnt 120 (Ont.C.A. Nos. C11156, C11765 and C12118), at p. 38 of the Quicklaw text [p. 567 C.C.C.] stated: "An accused who has not been found unfit to stand trial must be permitted to conduct his own defence, even if this means that the accused may act to his own detriment in doing so. The autonomy of the accused in the adversarial system requires that the accused should be able to make such fundamental decisions and assume the risks involved."

[18] See also R.v. Fabrikant (Valery I.), (March 27, 1995) 1995 CanLII 5384 (QC CA), 97 C.C.C. (3d) 544, 39 C.R. (4th) 1, 67 Q.A.C. 268, 1995 CarswellQue 4, [1995] J.Q. No. 300 (QL) (Qué. C.A. No. 500-10-000287-936), leave to appeal to S.C.C. denied (August 17, 1995) [1995] 3 S.C.R. vi, 193 N.R. 400n, 42 C.R. (4th) 411n, 98 C.C.C. (3d) vi (S.C.C. No. 24677).

[19] See for example R.v. Hodgson (Donald Allan), (May 27, 2004) (2004 ABCA 183; Alta. C.A. No. 0301-0139-A). See also R.v. Rain (Muriel Mary), (October 1, 1998) 1998 ABCA 315 (CanLII), 223 A.R. 359, 183 W.A.C. 359, 130 C.C.C. (3d) 167, [1999] 7 W.W.R. 652 (Alta. C.A. No. 9603-0585-A) leave denied, (April 1, 1999) 239 N.R. 197, 250 A.R. 192, 213 W.A.C. 192 (S.C.C. No. 27041).

[20] The Defendant spent some significant period of time in pre-trial custody on these Counts until granted judicial interim release by Justice Sanderman.