

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

PATRICK JR ADZIN

Corrected judgment: A corrigendum was issued on April 7, 2026, the corrections have been made to the text and the corrigendum is appended to this judgment.

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Restriction on Publication: By Court Order, there is a ban on publishing information that may identify the person described in this judgment as the complainant. See the *Criminal Code*, s.486.4

**MEMORANDUM OF JUDGMENT
ON MOTION FOR DIRECTION**

OVERVIEW

[1] The Crown filed a motion for direction, seeking guidance from the Court on the disclosure of materials to counsel for the complainant in anticipation of an application by the accused to obtain production of records under s 278.3 of the *Criminal Code*.

[2] Following the oral hearing, I directed the Crown to disclose the materials in question to the complainant's counsel. In the interest of expediency, I indicated at the time that I would provide reasons for this decision at a later stage. These are those reasons.

BACKGROUND

[3] Mr. Adzin is facing charges that are often referred to as historical. He is charged with sexual interference, sexual assault and unlawful confinement in relation to events the Crown alleges occurred in 2014 when the complainant was 15 years old.

[4] During the police investigation, an officer obtained a recorded statement from the complainant's former school counsellor. The police provided the fruits of their investigation to the Crown, as they usually do, including the recording of the statement, a transcript of the recorded statement, and police reports that reference the contents of the statement made by the counsellor.

[5] The Crown takes the position that these materials fall within the definition of "record" set out at s 278.1 of the *Criminal Code* and, as a result, did not disclose the recording and the transcript of the counsellor's statement to the accused. They disclosed to the defence a redacted copy of police reports that contain information about this statement but withheld all information related to the counsellor's evidence. Instead, the Crown provided defence counsel with a letter, commonly referred to as a *Mills* Letter, indicating that they are in possession of the materials in question and that they have assessed that these records are likely relevant to issues related to the reliability and credibility of the complainant.

[6] The defence filed an application under s 278.3 of the *Criminal Code* to obtain the production of these records, with the first stage of this application scheduled to be heard on March 27, 2026. Under s 278.4 of the *Criminal Code*, a complainant has standing to be heard on the defence application for production and can be

represented by counsel at the hearing. The complainant has chosen to be represented by counsel.

[7] Generally, when the Crown is in possession of records that will be the object of an application for production under s 278.3 of the *Criminal Code*, they provide the complainant or counsel for the complainant with a copy of the records in question in advance of the hearing. This allows the complainant to consider whether they wish to waive the protective measures of the statutory regime under s 278.2(2) of the *Criminal Code*. If an application for production is required and heard, it allows the complainant or counsel for the complainant to prepare adequately for the hearing. However, in this case, the Crown has concerns that disclosing the counsellor's statement to the complainant might affect the accused's right to a fair trial. Accordingly, the Crown is bringing the present motion for direction.

[8] The issues I must decide are the following:

- my jurisdiction to hear this application;
- the complainant's standing;
- whether the materials related to the evidence of the counsellor are records; and
- if I should direct the Crown to disclose the records or portions of the records to counsel for the complainant.

[9] I will address these issues in turn.

LEGAL ANALYSIS

Jurisdiction

[10] The first question is whether I have jurisdiction to give directions to the Crown regarding disclosure to the complainant's counsel.

[11] The *Criminal Code* sets out the rules that govern applications for production, commonly known as the "*Mills* regime." Section 278.3(5) stipulates that the complainant is entitled to receive service of the application filed by the accused seeking the production of the records. The legislation is however silent on whether the Crown has disclosure obligations to the complainant. The parties argue that I have the authority, under my trial management power, to issue directions to the Crown regarding disclosure.

[12] In *R v J.J.*, 2022 SCC 28 [*J.J.*], the Supreme Court of Canada examined the interpretation and the constitutionality of the *Criminal Code*'s record screening regime. The record screening regime is the provisions that relate to the use of records in possession of the accused, which are different from the provisions that govern applications to obtain third-party records like in the present case. In the context of the record screening regime in which *J.J.* was decided, the majority, although specifically indicating that the rules they set out were meant to reduce the need for motions for direction, endorsed the use of motions for direction to assist the parties through the stages of the process as a discretionary exercise of the presiding judge's trial management power (paras 103–105).

[13] Although the issues addressed in *J.J.* differ from the issue before me, I agree with the parties that the decision supports the position that when there is ambiguity regarding the parties' obligations about a records application, the prudent approach is to seek direction from the Court by way of motion for direction.

[14] I find that I have jurisdiction to hear this application under my trial management power.

Complainant Standing

[15] At the hearing of the motion for direction, I granted the complainant standing and allowed their counsel to make submissions.

[16] Pursuant to s 278.4(2) of the *Criminal Code*, when the records relate to the complainant, the complainant has standing to participate at the hearing of an application under s 278.3 of the *Criminal Code*. The complainant also has the right to be represented by counsel (s 278.4(3)). As indicated above, the *Criminal Code* is silent on questions related to disclosure provided to the complainant.

[17] In *J.J.*, the majority ruled, at paragraph 105, that:

“In deciding the motion for directions, we are of the view that the presiding judge retains the discretion to provide notice to complainants and allow them to participate. This discretion is available to the judge because the motion for directions itself involves an exercise of the trial management power.”

[18] Although the type of motion for direction envisioned in *J.J.* was different, in my view the same principle applies here, and I find that I can grant the complainant standing on this motion for direction.

[19] The next question is whether this is a case that justifies granting the complainant such a standing. I find that it is.

[20] The complainant receiving disclosure of the materials is key to their ability to prepare for the application for production and it can affect how meaningfully they can participate in the hearing for which they have standing under the statutory regime. I should hear from the complainant's counsel before deciding what disclosure they will receive from the Crown. Giving the complainant's counsel the opportunity to explain how my decision might affect their ability to put forward the complainant's position is appropriate.

Records

[21] The parties take slightly different positions on whether the police statement and the police reports are in fact records, as defined by s 278.1 of the *Criminal Code*. The Crown and the complainant say they are. The defence argues that because they have not seen the materials, they cannot take a firm position on whether these materials are records. However, defence counsel indicated that for the purpose of the motion for direction, the defence accepts that the materials in question are records.

[22] The reason this issue arises is because a police statement and police reports do not usually fall into the definition of records. Section 278.1 of the *Criminal Code* defines what a "record" is. It stipulates:

For the purposes of sections 278.2 to 278.92, record means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, **but does not include records made by persons responsible for the investigation or prosecution of the offence.** (emphasis added)

[23] In this case, the materials in question are not part of the counselling file. They are materials created by the investigators with the participation of the complainant's former counsellor. The issue is whether the statement and the police reports are excluded from the protection of the *Mills* regime because they are "records made by persons responsible for the investigation or prosecution of the offence."

[24] Defence counsel invited me to leave this issue for the next step in this process, which is Stage 1 of the production of records application. I believe I must rule on this issue now. The materials have been described with sufficient detail to allow me to decide if they fall within the definition of record without having to review them. In addition, I would not have more information about the materials at Stage 1 of the production application when the issue I will have to decide is whether I should order the Crown to produce the materials to the court for review.

[25] What I am asked to do is to direct the disclosure of one witness statement, the school counsellor's, to another civilian witness in this case, the complainant. It is unusual for this to be permitted because of the risk of witness contamination. If the materials are not records, there is no valid reason for the complainant's counsel to obtain a copy. As a result, whether the materials are records is an essential aspect of my decision on this application.

[26] The Crown filed the decision of *R v Woloschuk*, 2024 ONSC 6765 [Woloschuk]. In that case, the accused faced charges of sexual offences against several children. During the police investigation, an officer obtained a witness statement from one of the complainants' psychotherapist. Before interviewing the psychotherapist, the police obtained a signed authorization from the young complainant and her mother for the release to the police of medical information from the psychotherapist. During the interview, the psychotherapist provided information about the contents of the complainant's therapy sessions. The psychotherapist read portions of the therapy records verbatim to the detective. The police did not obtain a copy of the therapy records. The defence argued that the statement and the related police notes were not protected by the *Mills* regime because they were made by the detective during the police investigation.

[27] Ruling on a motion for direction, the Court rejected the defence's position. It noted therapeutic and counselling records are enumerated categories of records under s 278.1. The Court further found that:

- The complainant's expectation of privacy is not diminished or extinguished because the information in the counselling records is now in the possession of the police and reduced to a witness statement. (para 31)
- Converting excerpts of counselling information from records in the possession of the psychotherapist into a witness statement does not alter the fundamental nature of the information itself and their significant privacy interest. (para 32)

- While the police created the statement, the information recorded in it was created by a psychotherapist, not an investigator, as part of the investigation. (para 33)

[28] The Court concluded that the police conducting interviews with the complainant's psychotherapist cannot extinguish the complainant's reasonable expectation of privacy in the contents of those records, whether they are contained in the physical records or the police-obtained statement. (para 34)

[29] I agree with the principles set out in *Woloschuk*.

[30] In the present case, the complainant consented to the police obtaining a statement from their former counsellor, but the complainant did not provide a written consent and the evidence before me is silent on whether it was a fully informed waiver, one including the complainant being informed of their right to obtain independent legal advice before giving their consent.

[31] The fact that private information obtained by the counsellor during the counselling relationship with the complainant has been gathered by the police through a witness statement does not extinguish a complainant's privacy interests in the information and it should not exempt it from the protection of the *Mills* regime. It would defeat the purpose of the regime to protect the notes taken by a counsellor but not the information obtained by the counsellor during counselling sessions because of the way it was conveyed to the investigator. What matters is the nature of the information and its source, not the format in which it is kept.

[32] The exemption for "records made by persons responsible for the investigation or prosecution of the offence" from the definition of record in s 278.1 is only "eminently logical", as stated by the Supreme Court of Canada in *R v Quesnell*, 2014 SCC 46, when understood in a way that does not undermine the objectives of the statutory regime. Adopting a restrictive interpretation of s 278.1 that excludes the counsellor's witness statement, and the associated police reports would be contrary to the objectives of the regime, including society's interest in encouraging that complainants of sexual offences obtain treatment and the right of complainants to the full protection and benefit of the law.

[33] I find that the school counsellor's statement, the transcript and the associated police reports are records.

Disclosure to the Complainant

[34] This leaves the core issue on this application, which is whether I should direct the Crown to disclose the records, or portions of the records, to the complainant's counsel.

[35] As I indicated above, s 278.3(5) of the *Criminal Code* stipulates that the accused has an obligation to serve the application for production on the complainant at least 60 days before the hearing. The legislation is silent on whether the complainant is entitled to anything more in terms of disclosure.

[36] I am aware that, in this jurisdiction, the common practice is for the Crown to provide the complainant or their counsel with a copy of parts of the police's investigative file, though only those that emanate from the complainant, which typically also includes a copy of records. As indicated above, this allows the complainant to consider whether they wish to waive the application of the regime under s 278.2(2) of the *Criminal Code* and if they do not, it allows the complainant or counsel for the complainant to prepare adequately for the hearing.

[37] The Crown did not take a position on whether I should direct the disclosure of the records in this case. Instead, the Crown highlighted the factors that weigh in favour of disclosing and those that support the opposite conclusion. Crown counsel noted that it is highly unusual for a complainant to gain access to another witness' statement because of the risk of contamination. In addition, this is a case involving historical allegations and the counsellor's statement was obtained several years after the relevant discussions with the complainant, which the Crown submitted could heighten the risk of an adverse impact on trial fairness. On the other hand, the Crown stressed the importance of disclosure to allow the complainant's counsel to prepare adequately for the application for production. In addition, they noted the right to a fair trial does not guarantee a trial conducted in a way that is ideal or most advantageous to the accused. The Crown also invited me to consider that the right to cross-examination is not unlimited and that ambushing complainants with their own records can be unfair. They further noted that advanced disclosure does not prevent effective cross-examination because the complainant can be questioned about their access to disclosure materials and their evidence can be compared with prior police statements.

[38] The complainant's counsel argued that they should receive disclosure of the records, essentially for the reasons the Crown submitted favour disclosure.

[39] Defence counsel indicated that the accused takes no issue with the complainant having access to the counsellor's witness statement and related police reports. I take from defence counsel's submissions that the defence is not concerned that the disclosure of the records to the complainant's counsel will affect the fairness of the trial.

[40] At the hearing, the issue was raised whether I should review the records before deciding if they should be disclosed to the complainant's counsel. Counsel for the complainant strongly objected, arguing that it would, in essence, circumvent Stage 1 of the production application. Crown counsel invited me to consider whether I could decide the issue without having reviewed the records.

[41] I agree that if it is possible to rule on this issue without reviewing the records, that is how the court should proceed. The Crown, who is in possession of the materials, and who is the party who is seeking direction from the court, indicated that, apart from general concerns about the possibility of witness contamination, there are no additional specific concerns that engage the accused's right to a fair trial. In addition, the accused agrees with the disclosure of the materials to the complainant's counsel. Considering the nature of the records, the nature of the concerns raised by the Crown and the positions of the parties, I am satisfied I can consider the relevant factors and reach a fair conclusion without having reviewed the materials.

[42] The Crown proposed a framework to decide if the complainant's counsel should receive disclosure of the records. They suggest that I consider the following factors:

- the right of the complainant to participate meaningfully in the production application;
- the potential impact the disclosure of the materials could have on trial fairness; and
- the means to alleviate any potential negative effect of disclosing the records.

[43] This framework aligns with the guidance of the Supreme Court of Canada in *J.J.* when the Court commented on the importance for the complainant to have sufficient knowledge of the record to participate meaningfully in the hearing (para 91) while also recognizing that there are circumstances when trial fairness concerns are such that the presiding judge should direct that the application or portions of the application not be disclosed (para 96).

[44] In my view, the same balancing of competing interests must be achieved in the context of an application under s 278.3 of the *Criminal Code*.

[45] Counselling records can contain some of the most private information about a complainant. Fundamental rationales behind the *Mills* regime include encouraging the reporting of sexual offences and encouraging complainants to obtain treatment. To give full effect to the regime's ameliorative measures, the complainant's counsel must be able to participate meaningfully in a production application. Meaningful participation in such a hearing is not possible without sufficient knowledge of the records. This does not mean that the complainant is entitled to the disclosure of the records in all cases but, in my view, withholding the records from the complainant should be the exception.

[46] In this case, the balancing of the interests at play favours the disclosure of the records to the complainant's counsel. I recognize that it is unusual for a civilian witness, such as the complainant, to obtain a copy of the statement of another witness. I am mindful that the complainant is the main witness for the prosecution in this case and that her credibility and reliability will be central issues at trial. However, I see little distinction between the complainant having access to the audio recording and the transcript of a counsellor's statement and the complainant receiving a copy of a counsellor's handwritten notes. In both scenarios, there is a possibility that the complainant's evidence will be influenced by the counsellor's recorded recollection of what was said during counselling sessions. In addition, the defence will be able to highlight the risk of contamination through the cross-examination of the complainant on her access to the disclosure and on her prior statements to police which alleviates the risk of an adverse impact on trial fairness.

[47] At the hearing, I directed the Crown to disclose the records to the complainant's counsel subject to any redactions. There was a debate about the legal basis for the Crown redacting the materials that will be disclosed. I indicated that if the complainant wishes to challenge the Crown's redactions, they can bring the matter back before me to decide whether the redactions are justified.

CONCLUSION

[48] The Crown sought direction from the court on the disclosure of materials to counsel for the complainant in the context of a production application. I granted standing to the complainant on this application and heard submissions from their counsel. I concluded that I have jurisdiction to hear this application under my trial management power. I also found that the materials in question, the recording of the

statement, a transcript of the recorded statement, and police reports that reference the contents of the statement made by the counsellor are records as defined by s 278.1 of the *Criminal Code*. Finally, I concluded that, in the circumstances of this case, the complainant's counsel should obtain disclosure of the records before the hearing of the production application.

“ANNIE PICHÉ”

Annie Piché
J.S.C.

Dated at Yellowknife, NT, this
27th day of March 2026

Counsel for Crown:	Alison Lewis
Counsel for Defence:	John Hale
Counsel for the Complainant:	Cornelia Mazgarean

Corrigendum of the Memorandum of Judgment
of
The Honourable Justice Annie Piché

1. An error occurred in Paragraph 1.

Paragraph 1 reads:

[1] The Crown filed a motion or direction, seeking guidance from the Court on the disclosure of materials to counsel for the complainant in anticipation of an application by the accused to obtain production of records under s 278.3 of the *Criminal Code*.

Paragraph 1 has been amended to read:

[1] The Crown filed a motion for direction, seeking guidance from the Court on the disclosure of materials to counsel for the complainant in anticipation of an application by the accused to obtain production of records under s 278.3 of the *Criminal Code*.

2. The citation has been amended to read:

R v Adzin, 2026 NWTSC 18.cor 1

(The changes to the text of the document are highlighted and underlined.)

Corrigendum of the Memorandum of Judgment
of
The Honourable Justice Annie Piché

1. An error occurred on the Heading of the Judgment on the first page.

The Heading read:

**MEMORANDUM OF JUDGMENT
ON MOTION FOR DIRECTION OVERVIEW**

The Heading has been corrected to read:

**MEMORANDUM OF JUDGMENT
ON MOTION FOR DIRECTION**

The word **OVERVIEW** was removed from the Heading.

2. 2. The citation has been amended to read:

R v Adzin, 2026 NWTSC 18.cor 2

(The changes to the text of the document are highlighted and underlined.)

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