

Indictment No. CR-19-00018130-00BR

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEIRDRE MOORE

A P P L I C A T I O N

BEFORE THE HONOURABLE JUSTICE K.B. Phillips

ON November 8, 2019 at 161 ELGIN STREET, OTTAWA, ONTARIO

APPEARANCES:

M. Savage

Counsel for the Crown

J. Hale

Amicus Curiae

Deirdre Moore

In Person

(i)
Table of Contents

SUPERIOR COURT OF JUSTICE
T A B L E O F C O N T E N T S

	Page No.
5 Submissions by Mr. Savage	7
Reasons for Decision	8
Submissions by Mr. Savage	10 & 24
Submissions by Deirdre Moore	13 & 22 & 25
10 Submissions by Mr. Hale	20
Reasons for Ruling	28

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LEGEND

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[sic] Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) Indicates preceding word has been spelled phonetically

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FRIDAY, NOVEMBER 8, 2019

THE COURT: Good morning.

MR. SAVAGE: Good morning, Your Honour.

MR. HALE: Good morning, Your Honour.

5 THE COURT: Good morning. Are you Ms. Moore?

DEIRDRE MOORE: I am, Your Honour.

THE COURT: Good morning.

DEIRDRE MOORE: Good morning.

THE COURT: Mr. Savage?

10 MR. SAVAGE: Yes. I have Mr. Hale here; he's been appointed here as *amicus* to this case.

THE COURT: Good morning, Mr. Hale.

MR. HALE: Good morning, Your Honour.

15 THE COURT: Mr. Savage, I have read your notice of application.

MR. SAVAGE: Yes.

THE COURT: Do you have a *Criminal Code* in front of you?

20 MR. SAVAGE: I do not but I'm familiar with the provisions.

THE COURT: I want you to take me through the jurisdiction that I have under section 521 of the *Code*. You will need a *Criminal Code*.

MR. SAVAGE: Yeah, I'm....

25 THE COURT: I'll pass you one. So you have brought an application under this section.

MR. SAVAGE: Yes.

THE COURT: And it speaks...

MR. SAVAGE: Which would be 521 I believe.

30 THE COURT: ...yes, it speaks to;

"If a justice, or a judge of the Nunavut Court of Justice, makes an order...the

prosecutor may... *[et cetera]*"

And section 2 defines a justice as a provincial court judge.

MR. SAVAGE: Yes.

THE COURT: So my read of this section is that my options are confined to subsection (6).

MR. SAVAGE: So, Your Honour is saying that because the order was married by a Superior Court Justice, Your Honour can't hear the matter, is that?

THE COURT: Well, I mean, I am asking you. You brought an application on the -- as a result of an order made by Justice Hackland of the Superior Court of Justice.

MR. SAVAGE: Yes.

THE COURT: And section 21 speaks to a justice, which is a provincial court judge.

MR. SAVAGE: Right.

THE COURT: So, I...

MR. SAVAGE: My thinking Your Honour, was that I'm not -- I'm not alleging an error. I'm asking Your Honour to review the order in the sense that alleging an error in the order. Obviously, that can only be done by -- by a higher court, which would be the Court of Appeal.

THE COURT: You are asking me to vacate it. So I am asking you, what power do I have to vacate the order made by Justice Hackland?

MR. SAVAGE: Well I got the vacate from subsection (8) (e). In the alternative I'm simply asking for an amendment of the order. I mean I used the phraseology of vacate, and substitute, an order

releasing, just because of that section. But what we're asking is to amend the current order to add a condition.

5 THE COURT: Again what -- tell me the authority I have to review and amend an order made by my own court? Because 8(e) speaks to an order previously made by the justice, which Justice Hackland is not.

10 MR. SAVAGE: No. It was my understanding that this section, perhaps erroneously, could be used to -- to amend an order as long as I'm not alleging an error in the original decision. In the alternative, I think Your Honour would have inherent jurisdiction to address the bail issue as a -- as a judge of the Superior Court. If Your Honour disagrees with me, I would ask just for some time to address that issue. I could address Your Honour further on it. Well, looking in the annotations, Your Honour, and, at least in my
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20 copy, there's a case *R. v. Saracino*, [1989] 47 CCC(3rd).

THE COURT: H'hmm.

MR. SAVAGE: It says;

25 "An application may be made under this section, although the order sought to be reviewed is that of a judge under s. 520 rather than an order of a justice...[or]except where there has been a substantial change in circumstances, [and] the judge conducting the
30 second review should not interfere with the existing order unless it is established the judge conducting the first review made an

error in principle in application..."

DEIRDRE MOORE: Pardon me, Mr. Savage, you're mumbling. What section are you just reading, please?

MR. SAVAGE: Yes, this is from the annotations for 5 -- section 521.

DEIRDRE MOORE: Annotation and sorry, what copy of the *Criminal Code* do you have there?

MR. SAVAGE: This is the Martin's copy.

DEIRDRE MOORE: What year?

MR. SAVAGE: This is 2017 but I believe the annotations remains in 2020.

DEIRDRE MOORE: Thank you.

THE COURT: I suppose the issue there is that Justice Hackland wasn't operating under section 520.

MR. SAVAGE: No, a detention review. But I could perhaps find that case and note it up and see if the reasoning applies.

THE COURT: See, if you go to 525(5), it would appear that this speaks to the scenario that you are acting on. This is the order -- this is the section upon which Justin Hack [sic] -- Justice Hackland was acting.

MR. SAVAGE: Yes.

THE COURT: So I am a judge having jurisdiction in the province where an order under subsection (4) has been made, and it gives me options if I am satisfied that there are P-G to believe that the accused has either contravened or is about to contravene the order upon which she's been released, or that she has committed an indictable

offence. I may thereafter issue a warrant for her arrest.

MR. SAVAGE: Yeah, I'm not asking that she be arrested. That's not....

THE COURT: I know, but see I have to act in accordance with the law.

MR. SAVAGE: Yes.

THE COURT: And I'm asking you to show me how I have jurisdiction to review, vacate, or change, an order of the same court on which I sit. The *Criminal Code* has certain provisions that allow for just judges of different levels to review decisions, and the only one I see that allows a justice to weigh in on and change something at the same level as him or her, is section 525(5), which leads to a bit of an absurd result, that being a warrant for the arrest of the accused.

MR. SAVAGE: I do see subsection (6) which -- (7), which would then permit Your Honour to then....

THE COURT: Yes, that's right, so.

MR. SAVAGE: Yeah.

THE COURT: So strangely it would prompt me to issue a warrant for arrest, if I'm compelled to do so, and then immediately have what is effectively a bail hearing.

MR. SAVAGE: Yes. So, perhaps I could I have a brief recess just to turn my...

THE COURT: Yeah.

MR. SAVAGE: ...mind to that?

THE COURT: I mean that's where I landed, as strange as that sounds.

MR. SAVAGE: Yes.

THE COURT: Because it seems to run contrary to Ms. Moore's security of the person interests.

MR. SAVAGE: Yeah.

THE COURT: Let alone the broader, efficient administration of justice.

MR. SAVAGE: Yes.

THE COURT: And common sense.

MR. SAVAGE: Yes.

THE COURT: But I have to have a basis upon which to act in law. I can't just arbitrarily come in and hear, you know, a complaint or a variation application of a brother justice of mine and this is the only way I see myself having jurisdiction.

MR. SAVAGE: Yes.

THE COURT: Whether it can be finessed or otherwise accomplished in a perfunctory way or whether I ought to simply invent a new method, because it would seem absurd to have Ms. Moore arrested if only to trigger a bail hearing.

MR. SAVAGE: Yes.

THE COURT: I'll let you reflect on this.

MR. SAVAGE: Yes.

THE COURT: And you can make submissions in about 15 minutes.

MR. SAVAGE: Yes.

R E C E S S

U P O N R E S U M I N G:

MR. SAVAGE: I have some case law for Your Honour. I provided copies to Mr. Hale and to Ms. Moore. So ultimately, I believe that these cases would

R. v. Moore
Submissions by Mr. Savage

5 hold that there is authority under section 521 to
review an order made under section 525. *R. v.*
Saracino is the case that was cited in the
annotations. This case directly addresses the
issue of whether or not an order made under 520 or
521 could then be reviewed further by the court of
the same judge under those sections and finds that
it can. *R. v. Moccasin*, which is 1999 SJ No. 855,
10 which is a decision of the Saskatchewan Court of
Queens Bench, my apologies, addresses the issue of
whether 520(1) can be used to vacate an order
under section -- under section 525 and finds that
it can be. The relevant discussion, I think,
15 'cause as I read the facts in this case, the
accused in this case had been released pursuant to
a detention review in section 525. The Crown was
seeking to revoke that or amend that under 5 --
section 525 and they determined that there was no
jurisdiction under that section but that there was
20 jurisdiction under section 527(1). And the
authority, I think, sort of begins at paragraph 7,
and the discussion of 521 starts at paragraph 10.
DEIRDRE MOORE: Excuse me, Your Honour, I had no
time to review this case law or -- or look for
25 other case law that refute it. I just want to
make a note of that. It wasn't part of their
arguments that were provided in the Application 48
hours ago.
THE COURT: I understand that.
30 MR. SAVAGE: And you'll see at paragraph 11, it
cites the *Saracino* case as authority for this
proposition.

R E A S O N S F O R D E C I S I O N

PHILLIPS, J. (Orally):

5 Well it is odd, to say the least, for a judge to begin the day giving the gears to the Crown for jurisdictional compliance with the *Criminal Code* and then shift to essentially constructing a procedure that appears on its face to be inconsistent with the law.

10 However, I have decided to do that very thing. I am guided, in part, by the cases provided by the Crown from courts in Saskatchewan and also Ontario, but also because I have an overarching obligation to the administration of justice to be fair to all concerned, especially any accused individual, and not tread unnecessarily into anyone's rights or interests.

15 On a strict reading of the law, my only ability to review the decision of a brother judge made under section 525 would fall under section 525(5), which would oblige me to issue a warrant for the arrest of Ms. Moore.

20 That makes no sense. It is directly inconsistent with her security of the person interest and it would accomplish nothing except infringement thereupon and delay. The only thing arrest could do is compel her attendance before the court, something unnecessary given that she is sitting right here in front of me.

R. v. Moore

Reasons for Decision - Phillips, J.

5 It is common sense, and consistent with the fair and efficient administration of justice, that I simply operate on the review sections, whether it be 520 or 521, and not get hung up on the fact that they speak to a form of judicial hierarchy in the sense of directing that judges are empowered to review only decisions of justices.

10 So, notwithstanding the fact that I am stepping outside of strict compliance with the *Criminal Code*, the broader interests of justice, in particular the rights of Ms. Moore, require that I act as a review court over the order of Justice Hackland to determine whether its terms continue to capture the judicial interim release interests engaged by the evidence on the whole.

15 I make this decision having not heard from Ms. Moore, because I cannot conceive of her advocating against it. There is no way that she would argue for her own arrest, and therefore I do not need to call on her.

20 I am going to proceed to hear the Crown's application that Justice Hackland's order is no longer appropriate, in that it does not still accomplish the interests that were engaged before him given that the evidence has changed.

25 Mr. Savage, go ahead, Sir.

30 MR. SAVAGE: Yes, so Ms. Moore was originally arrested for the charges before the court and

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detained after a bail hearing on the basis that she, it indicated a lack of willingness to comply with the conditions imposed by the court. She subsequently then spent a significant amount of time in pre-trial detention. Then after a detention review, her -- I understand that her views changed about respecting this court's order on bail, and so she was released on the basis that she would be respecting those orders. Those orders did not contain any -- anything that spoke to posting on the internet, as it was not contemplated as part of the safety plan or the safety concerns at that time. Since her release, Ms. Moore has been posting numerous times on social media, primarily her LinkedIn account, in a manner that is consistent with her behaviour prior to her arrest that formed the nature of the charges, on the charges of criminal harassment specifically. She's posting images of her own children with accusations that Mr. Kiska is abusing them.

THE COURT: This is all contained in the tabs...

MR. SAVAGE: Yes.

THE COURT: ...appended to your application?

MR. SAVAGE: That's correct. So...

THE COURT: I've reviewed those materials carefully, including the recognizance issued by Justice Hackland and the prosecution summary contained at Tab 2.

MR. SAVAGE: ...yes.

THE COURT: You are asking me to accept those materials as being credible and trustworthy and on

an evidentiary basis for your motion?

MR. SAVAGE: That's correct, and also the material contains emails sent from Mr. Kiska, in which he details how these emails have affected him.

THE COURT: I saw that.

MR. SAVAGE: Yes, so there was some contemplation to whether or not this constitutes a continued offence of criminal harassment. However, in fairness to Ms. Moore, it was felt that the better approach, given that since her release she has so far respected the court -- the bail conditions that were imposed by Justice Hackland, that an amendment to the bail would be the most appropriate way to ask this court to address the issue in order to prevent further harm to Mr. Kiska. Since this application was filed, Ms. Moore continues to post things online in a worrying manner. She's also targeted her -- her postings towards myself. I can provide materials to the court, particularly this one in which she indicates that she has filed a complaint with the Law Society against myself.

THE COURT: She does though have a right to complain about you.

MR. SAVAGE: Yes.

THE COURT: And I am not going to get distracted by her thoughts about you Mr. Savage.

MR. SAVAGE: No and I'm not -- and that's not the basis of the application.

THE COURT: All right.

MR. SAVAGE: The basis of the application, there are other documents. This document would indicate

5 that she's posting disclosure online as part of
her postings. And then this final piece, this
posting this morning indicating her intentions
following this hearing. My point in making this
is that the focus of this application is -- is to
protect Mr. Kiska, but Ms. Moore's postings are --
are escalating in the sense that she is perilously
close to endangering herself in terms of being
10 arrested on other charges. So it's in the
public's safety interests and in Ms. Moore's
interest that she discontinue this type of
posting. Subject to any other specific questions,
I would -- those would be my submissions on the
application, Your Honour.

15 THE COURT: All right, I received these documents
but I wish to make clear that my focus is in
respect of the criminal charges currently
outstanding, and any interests engaged by those
charges, including the obligation imposed by
20 Justice Hackland to keep the peace and be of good
behaviour. It seems to me that I must confine my
analysis to what might be required to keep the
peace in the context of the outstanding
allegation. I say that because Ms. Moore, like
25 any citizen, does have the right to complain about
members of the Crown Attorney's Office. She does
have the right to call the police and make reports
of what she believes to be offences requiring
investigation and action. And while I am not
30 foolish enough to say that it has no bearing on
things, I do not want this particular application,
which is a motion to vary a judgment of Hackland,

5 J. pertaining to a certain context, to take on what I see, as extraneous issues, that being allegations of improper communication or indirect publicity surrounding justice system participants. Of course it will have relevance at trial, and it may affect the outcome of that proceeding, but here I want the record to reflect that I am laser focussed on the criminal allegation and whether the release structured by Justice Hackland adequately accomplishes the objectives of interim release.

10 MR. SAVAGE: I would agree with Your Honour, and I accept Your Honour's comments on that -- that point, yes.

15 THE COURT: All right. Thank you. Ms. Moore, as you know, the Crown says that Justice Hackland's order, made just recently on October 30, 2019 ought to include a term that you be prohibited from posting on social media. Do you understand that?

20 DEIRDRE MOORE: Absolutely, Your Honour.

THE COURT: And what then, do you have to say about that?

25 DEIRDRE MOORE: A couple of things, if I just may, note a couple of errors made in the Crown's presentation. First and foremost, I was detained for three months based on allegations by the complainant, my ex-husband I've been trying to divorce for four years, on secondary grounds. Allegations that I was establishing a pattern of criminal harassment. I intend to defend myself against those charges of criminal harassment,

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5 specifically with respect that my attendance at
the house to provide gifts and messages to my
children were -- did not cause any fear. As an
aside, that's the reason I was detained on
secondary grounds, that I was establishing a
pattern of harassment, not as the Crown just
stated that I refused to comply with conditions.
So that was an error on his part, and secondly, he
also was showing you posts, and again, this wasn't
10 included in submissions. I didn't get a copy of
what he just prepared or presented to you, so I
have no idea what sort of character assassination
might occur from that. But I did bring a copy of
what I did post this morning. I have a copy for
15 Your Honour, as well as the Crown, if you're
interested in seeing it. It was an article on
LinkedIn with respect to how to differentiate
between willful blindness and blind justice, and
it's because I do have significant issues with
20 respect to the manner in which Mr. Savage has
conducted himself throughout these proceedings for
the past four months. I don't want to get
sidetracked on my evidence. I do plan to go to
Ottawa Police Services later this morning but
25 just, I do have a copy here of what was faxed to
Mr. Savage, he confirmed receipt of this on August
14th, which guided him to -- through 14 pages of
testimony that I wrote while detained, providing
him with evidence him with evidence specifically
30 with respect to the allegations that the
complainant makes against my mental health. So
when I see in the Crown's submissions,

consistently, and I had to endure this on October 30th when Mr. Karimjee was -- was preparing his arguments to the court, arguing that I should not be detained because I was a danger to the community, I can speak to that later. But for example, in this Application, it says quite clearly in paragraph 4 that Ms. Moore has been diagnosed with various mental health issues.

THE COURT: H'hmm.

DEIRDRE MOORE: And has consistently displayed a pervasive belief that Mr. Kiska is conspiring with the CAS. Well, the Crown already had evidence of the psychiatric abuse I have endured by Kiska. This is was written in a Factum that I used in Family Court in 2017, to successfully argue a motion to amend my answer to seek damages for multiple violations in civil law as well as violations of the *Criminal Code*, including defamatory liable. So I have...

THE COURT: So I have -- so I have read everything that you've filed, Ms. Moore.

DEIRDRE MOORE: Yes.

THE COURT: I read your LinkedIn information, all your context. I read about your -- your initiatives in band shell ventilation. I read the whole thing.

DEIRDRE MOORE: Well, okay.

THE COURT: So, I want you to know that I am right up to speed about you and all that -- that you bring to the table, at least insofar as what you've put in this very comprehensive package. What I need you to do is to tell me what you would

lose, in your view, from being prohibited to post on social media.

5 DEIRDRE MOORE: Well my -- because of the history, I'm a chartered financial analyst, four-year business degree, started my own business in 2003, was a successful consultant in the financial services industry. But because of what has occurred since I started trying to divorce the complainant, my professional reputation in financial services was destroyed. I can provide evidence when my trial occurs. Also I became very compelled, given the sort of suffering I've endured, to start a non-for-profit, back in 2015. So what I wasn't able to include in my -- in my submission to the court, because I only had 24 hours, was the evidence contained in this 2017 factum, which shows that I started writing to the Ottawa Hospital back in 2015. I started applying to the Spark Program, and I will answer your question, but just to let -- just so you know, this -- this posting to social media with allegations and -- and -- of criminal harassment and defamation of Kiska, the complainant, they're false. I've been working towards helping other survivors or victims of domestic violence without the bruises since 2015 by connecting with these institutions, VESTA, looking for a fundraising opportunity, the Mental Health Commission of Canada. I was on the board of the Community Mental Health Association in Ottawa for two years and I am connected to the current chairman of the board, Brenda Morris. She is one of my LinkedIn

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R. v. Moore

Submissions by Deirdre Moore

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people as is Tim Simboli, the Executive Director. I brought a list with me. I didn't -- I don't think I included it in submission, Your Honour, because I respect the privacy of my connections and I didn't really want to get it in -- into the wrong hands but I am happy to provide you with a copy of the 640 connections I currently have. They are primarily mental health practitioners and social workers throughout the province of Ontario, including a number of psychiatrists. In fact, this morning someone posted on LinkedIn a message specifically to other therapists who deal with victims of narcissists, in explaining, you know, if you don't have experience in that, you should not be treating that patient, 'cause there's -- there's perils, and so I responded back to him. So again, I'm becoming more known and people are introducing themselves to me. I have another example here, again, I can provide you with a copy of an individual who wrote to me just yesterday saying, he looked forward -- he's involved in adult learning, project and program science and;

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Thank you for sending me the invite to connect. I look forward to learning and working with you in the future.

Chairman of the Board, CMHA, I look forward to when our paths cross again.

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So not only are my updates -- well first of all they're completely accurate, factual and truthful. So any allegation of defamation because of the false statements, I can prove is incorrect.

R. v. Moore

Submissions by Deirdre Moore

5 Everything I state is truthful and usually with a
corresponding document that proves it's truthful.
Having only been released a week ago and living at
the EFry Bail House with not much money, I
certainly don't have the capacity to create false
documents, as I can prove the CAS has done. So by
-- so I've been working on this initiative to
survive in the situation that I fully expect to
have, and where my husband is eventually charged
10 and incarcerated for years, I get my children back
and -- and I'm not worried about our future
because I will have spent four years building my
reputation back in -- in the social services and
healthcare industry having -- I'm already
15 providing value to health care practitioners,
teachers, the 640 people that are -- that are on
this list. So by preventing me to basically move
forward with my life as I endure four trials right
now, the criminal trial because of the ex-husbands
20 allegations, and the CAS's illegal obtaining of a
court order in 2019, that removed from my
children's lives, a civil action I have against a
family law lawyer who did nothing but set me up
for failure against the ex-husband, and then
25 there's Family Court, the divorce is still ongoing
and because the complainant, ex-husband, committed
fraud, which I can prove, to arrive at support
alleg -- support payments of \$1200 a month when he
makes two to three hundred -- sorry, two to three
30 hundred thousand a year, basically am
participating in what I can only call the unlawful
eviction of me and theft of my -- all of my

5 belongings. So I need to go to Family Court to --
to bring a motion to have my support increased to
what it should be. So it's back to the question
of posting to LinkedIn. As I endure all of these
forms of assault, SAQOTU Inc, which is a company I
-- I incorporated in 2016 is also, aside from
speaking engagements and everything else I hope to
do, is develop templates for victims so that they
don't have to -- if they can't afford to hire a
10 lawyer to help them through these issues, then
maybe I can just help them, you know, a little bit
with providing legal templates. It's something I
did in the financial services industry. I used to
earn equivalent of \$200,000 a year providing --
15 making templates for businesses. So I'm quite
capable of creating templates for individuals to
use when they need to go to say, Family Court and
-- and win a motion against a narcissistic ex-
husband. So I'm basically marketing my services
in anticipation of getting my life back. Nothing
20 I say is false and because there's evidence of me
enduring Kiska's ongoing abuse, financial,
emotional, psychological, psychiatric, everything
but the bruises, which the Crown has evidence of.
25 It's not harassment and it's certainly not
defamation, it's me trying to survive in
anticipation of me getting my children back when I
-- I succeed at my motions on the Family Court
side. And if you have been through all the
30 materials, then I -- I'm prepared to walk through
and explain if Your Honour has any questions, but
I guess my main argument is, I've been working on

R. v. Moore

Submissions by Deirdre Moore/Mr. Hale

this non-for-profit and making connections with people for four years.

THE COURT: Thank you.

DEIRDRE MOORE: Thank you, Your Honour. Mr. Hale, is there anything that you think needs to be added, Sir?

MR. HALE: I suppose the one comment I'd make is so far, we seem to be presented with an all or nothing proposition. It's either there is no -- no change to the bail or there's a change that prohibits my client -- or prohibits Ms. Moore from accessing social media at all. I think there is a possible middle ground of -- of restricting commentary on social media so that -- so that Ms. Moore does not discuss the case before the courts at the moment. I don't think this is an all or nothing proposition. Having said that, Ms. Moore, as Your Honour noted, does have freedom of speech. She has not done anything illegal. If she had then -- then I assume she would have been charged with a breach or with some substantive offence. The order made by Justice Hackland last Wednesday, some nine days ago, addressed the concerns that were brought to His Honour's attention at the time, and I think we all agree that -- that the order was fair and comprehensive. Ultimately, the issue is whether in order to protect the integrity of the trial or to protect specific members of the public, the court needs to make some order varying the bail. So, you've heard from Mr. Savage and from Ms. Moore about what types of postings are out there now, I think it's up to Your Honour to

determine whether -- whether she's coming close to crossing a line where -- where the postings may amount to some indirect harassment.

5 DEIRDRE MOORE: So Your Honour, may I just say something now that he's brought this up? This...

THE COURT: I'll call on you in due course.

DEIRDRE MOORE: ...thank you.

THE COURT: It's important that I hear from you, but...

10 DEIRDRE MOORE: I - I, thank you.

THE COURT: ...it's also important that I hear from one person at a time.

DEIRDRE MOORE: I apologize, Your Honour.

15 MR. HALE: So, we've heard from Ms. Moore about a much broader initiative that she's undertaken several years ago that's not specific to this case and Mr. Kiska and her family law matters. She seems to have a number of supporters in -- in therapeutic fields who seem to be working with her to some degree. So, I don't think there needs to be -- I don't think there's -- there's any basis, any evidence before Your Honour to support some ban completely on her accessing social media in connecting with professionals on LinkedIn or for
20 posting about her initiative. I think what it boils down to is whether there's a legitimate concern about postings of -- that are specifically about Mr. Kiska and about this case that name him or the children. So I would leave it at that, Your Honour, but there may be a middle ground.

25 THE COURT: Thank you. Ms. Moore, you wanted to speak?
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R. v. Moore

Submissions by Deirdre Moore

5 DEIRDRE MOORE: Thank you so much, Your Honour, I
-- I hadn't had an opportunity, Mr. Hale was
assigned -- appointed my *amicus curia* on the
insistence of the Crown Attorney. We have had not
very much opportunity to speak. So all I would
say is that since August, during my detention,
I've been updating many on the trials and
tribulations of the ongoing situation and that
forcing me to revert to mail, given my financial
10 hardship, because of the lack of spousal support
being provided by the complainant, and the
insistence of Crown to force me to prepare
materials, take taxis to respond to emergency
court orders and allegations. My distribution
15 list since August does include the Ottawa Citizen,
McLeans, Globe of Mail, Ottawa -- Ottawa Police
Services, the Office of the Independent Police
Review Directorate, Jennifer Howard of the NDP,
Jonathan Dickie of the Green Party, the Honorable
20 Jodi Wilson-Raybould, who drafted Bill C-78, I was
an avid supporter of that back in July of 2017 --
2018, as well as let's see, who else, Amnesty
International, given my detention and my full
deprivation of rights, of course writing to the
25 Law Society. Elizabeth Fry in Peterborough,
Ottawa Victim Services, Ottawa Coalition to End
Violence Against Women, Jessica Peloso(ph) is my
counsellor at the Eastern Ottawa Recourse Centre,
Tammy Piniche (ph) who works at the Western Ottawa
30 Resource Centre, Reanin Wong (ph), I could go on
and on. I didn't bring with me my tracking sheet.
I have distributed, I think I'm at A-M, so that

R. v. Moore

Submissions by Deirdre Moore

would be 26 times a, b, c, d -- a, b, c, d, e, f, g, h -- 9 times 26, over 200 documents, whether it be testimony or evidence that I have had counsellors in a position to career back to me. I've been photocopying order -- when I was detained for three months at OCDC I had a lot of sympathy from the guards and senior executives there, given my situation, and I was distributing materials for three months, updating folks on the fact that there's been, I don't know how many, 12 hearings since these allegations were crafted on July 26th. So by forcing me to revert to that system of updating those involved and hoping for my success, is financial hardship that I -- is very hard for me to endure, given the fact that the complainant refuses -- he's four months overdue his fraudenly [sic] -- fraudulently acquired support order. And I respectfully request my ability to continue to work on my non-for-profit initiative, preparing legal templates for victims of domestic violence, as well as updating them and then I go -- as I go through these four court cases. They are relevant and thank you for hearing that new submission.

THE COURT: Mr. Savage, what do you say about this middle ground that Mr. Hale proposed?

MR. SAVAGE: I think -- so I think it would be difficult, Ms. Moore's postings about her professional activities seem to centre on her experience with the court system, and it's not just the criminal trial, it's the Family Court system as well. One of the articles that I gave

R. v. Moore
Submissions by Mr. Savage

5 to Your Honour as a supplementary piece, which was titled "Defending Mother's Who Commit Six Minute Crime". On the second page of that, so -- so the backside of the front page, you'll see at the bottom of that first paragraph Ms. Moore's talking about Family Court proceedings and she makes the statement;

10 So and so [indiscernible] lawyer, Wade Smith, Baker, are trying to illegally obtain through perjury, defamatory liable, false information and fabricating evidence, another court order. I had better know the consequences if I'm forced to violate it again just to tell my children I love them.

15 She's indicating further potential intention of violating court orders in here.

THE COURT: Sorry, I -- take me where that is again?

MR. SAVAGE: It -- it's...

20 THE COURT: So "Defending Mothers Who Commit a Six Minute Crime"?

MR. SAVAGE: ...yes.

THE COURT: You said page 2?

25 MR. SAVAGE: The very top of that page. If you read that first paragraph.

THE COURT: Oh, sorry, yeah. Okay.

30 MR. SAVAGE: So all of her professional endeavours seems to be centred around her court activities as she's also just explained here and it's, I mean, this -- this line particularly caused Mr. Kiska some concern, as violating that order is the basis of her criminal charge. So although I would not

5 seek to prohibit Ms. Moore from communicating with people. There are other methods of communicating with people but the public posting of messages on social media about her trials and tribulations are -- are what is the source of the problem.

DEIRDRE MOORE: Your Honour, if -- Your Honour?

THE COURT: You go ahead.

10 DEIRDRE MOORE: Thank you, Your Honour, very much. The reality is that if, as per Tab 20, and this is again, just what I could accumulate in the short 24 hours. There are multiple, stop the Children's Aid Society from taking children from good parents, is my first print screen. There's another website, stop the CAS where they say the Children's Aid Society, Ottawa Children's Aid Society is notorious for workers and lawyers fabricating evidence. And if you flip to Tab 22, this is just again a quick sample. I have dozens of samples. The first one is the forgery where CAS worker Mohammad Syed signed for lawyer, Tara McDougall. The second page shows that I was served 15 minutes before the hearing when they placed this court order on me. I had no opportunity to prepare materials to defend myself against the false allegations. On page 4, they'd live -- they listed zero reasons for the restraining order. On page 5, this is a print screen that Mohammad Syed printed regarding my false arrest in Quebec, I was found not guilty and then he has even listed a counsel for defence. Well I -- I self-represented. So there's -- and again, this is only what I -- there's other ones.

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R. v. Moore

Submissions by Deirdre Moore

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There's fabricated hospital documents, fabricated police reports and -- and so, when I -- when I said in my article I wasn't kidding. I need to understand what the sentencing is because if the CAS is illegally obtaining court orders to rip me out of my children's lives, which qualifies as child abuse. This -- I should have stayed at Tab 20. Page 3 on Tab 20 they actually addressed it. That parental alienation is emotional child abuse. I received permission from Justice Darlene Summers, that was two years ago in 2017, to seek damages for attempted parental alienation. I submitted to Wade Smith, the complainant's lawyer last week a request, if he would consent to amendment to my amended answer to, among other things, the leap that were attempted it from the damage I seek, because he has accomplished pure a hundred percent parental alienation. So in my article, it's -- I have no criminal record and I have no criminal intent. But if -- if in the Superior Court of Justice of Ontario, the CAS is able, for whatever reason, to -- to aqua -- to league -- to acquire restraining orders using perjury, false documents, defamatory liable, fabrication of evidence. Well I mean, at some point -- I didn't plan on being an activist. I was an advocate for mental health, an advocate for victims but at some point, someone's got to do something with the Children's Aid Societies who are breaking a lot of laws on the Family Court side to abuse children. And this is not a paranoid thought or gesture, this is well

R. v. Moore

Submissions by Deirdre Moore

5 supported and all anyone needs to do is spend ten minutes researching this issue. I first became involved back in 2013, when a member of the NDP was attempting to get an Ombudsman in place for what was called the MUSH sector. The MUSH sector, for anyone not knowing, is the Children's Aid Society's, police services, hospitals and nursing homes. And I can assure you that the Ombudsman that they did get put in place has no power
10 whatsoever. They actually only open an investigation after a children -- after a child has died. So my -- my efforts and articles and everything else has no criminal intent whatsoever. I'm raising it, Your Honour, I'm simply raising awareness on the horrific crimes that are being committed, as I -- I've labelled it, and this is what goes out on my group emails and as well as my posts, it's;

20 Taxpayer Funded Domestic Violence and Child Abuse.

I estimate that my ex-husband has cost the Ontario taxpayer about two-million dollars in seven years through forced hospitalizations, forced remand detentions in jails and prisons, OHIP, psychiatry,
25 hospital budgets, police services, CAS services, court services. He caused this one, right? He called the Crown up; he called the Crown Attorney and says she's posting online. And here we are on our 12th or 13th hearing since my arrest. This is all costing everybody money. I have no criminal
30 intent. I don't want to violate a court order, and I certainly don't want to be put in handcuffs

R. v. Moore

Reasons for Ruling - Phillips, J.

and shackles again. But somebody has to speak up about this stuff, Your Honour, and that -- that's really all I'm doing here.

THE COURT: All right, thank you.

DEIRDRE MOORE: Thank you for -- thank you.

R E A S O N S F O R R U L I N G

PHILLIPS, J. (Orally):

This is a motion brought by the Crown to vary the order made by Justice Hackland on October 30th, 2019, whereby, pursuant to section 525 of the *Criminal Code*, he released Ms. Moore on a recognizance with conditions.

For reasons given earlier this day, I have decided to hear the Application, notwithstanding the fact that it does not strictly comply with the bail review provisions of the *Criminal Code*. As stated, it is in keeping with the proper and efficient administration of justice, and more particularly, in keeping with Ms. Moore's rights and interests, that I hear this application in this manner at this time.

The Crown request is essentially that I add to Justice Hackland's order a term prohibiting Ms. Moore from posting anything on the internet through what are known as social media platforms. I speak here of things like LinkedIn, Facebook, and similar.

R. v. Moore

Reasons for Ruling - Phillips, J.

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There is evidence before me, that I accept as credible and trustworthy, that since October 30th, 2019, Ms. Moore has posted on her social media platform, information that is directly relevant to the criminal charges outstanding. In essence, she has much to say that is negative about her ex-partner in the context of what is obviously a very acrimonious ongoing divorce.

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The task before me engages two competing interests. First, Ms. Moore has a right to express herself pursuant to section 2 of the *Charter*. In addition, of course, she has a liberty interest that ought not be infringed upon without cause or in accordance with law. She asserts that social media posting is important to her because she has been engaged for some years now in raising awareness about what she sees as injustices stemming from the justice system and related agencies.

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Furthermore, she speaks to ambitions in the field of business or general advocacy requiring that she use social media to market her services in anticipation of, as she puts it, "getting her life back".

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She sees social media posting as a form of reputation maintenance, and reputation building. Also, she aims to raise awareness in respect of what she calls taxpayer funded domestic violence and child abuse.

R. v. Moore

Reasons for Ruling - Phillips, J.

5 I pause to note here that advocacy about dissatisfaction in respect of the justice system is perfectly allowed. It is also true that social media is entirely legitimately used for the maintenance of connections, networks, reputation *et cetera*. This need not have a business purpose but often does.

10 At the same time, Ms. Moore is accused of serious criminal misconduct, and while she is presumed innocent of those charges, she is properly bound by an interim release order compelling her to keep the peace and be of good behaviour. I must therefore assess her legitimate section 2 freedom of expression interests in light of that reality.

15 On the other side of the coin, running contrary to her right to free expression, are two factors, one of which is directly relevant, the other only indirectly but perhaps even more important. The first is that the outstanding charges upon which she has been released through the Hackland, J. order include an allegation of criminal harassment. That offence, of course, prohibits anyone from repeatedly communicating with, either directly or indirectly another person, knowing that that other person is harassed in the sense of reasonably in all the circumstances, fearing for their safety or the safety of anyone known to them.

30 The gist of the communications that form the

R. v. Moore

Reasons for Ruling - Phillips, J.

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complaint advanced by the Crown are that Ms. Moore's social media posts are repeated efforts to communicate indirectly that her ex-partner has done wrong in the context of the dissolution of their relationship. They seek to malign him and jeopardise his reputation. Given that they are posted to LinkedIn, a well-known business networking site, they are inferentially intended to undermine his business.

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It is my estimation that the indirect communications captured by the social media postings could very well stand on their own as instances of criminal harassment. At minimum they would be relevant evidence in the trial of the allegation to that effect already on the table.

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I spoke to another factor that I said was only indirectly related to the outstanding criminal charges, but is arguably more important, and that is that Ms. Moore, in posting her social media messages, sees fit to involve the children, including photos of them and references to them. This is distressing to the Court.

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All adults involved in Family Court proceedings are obliged to put the best interests of their children at the forefront. Children should be kept out of the conflict. Conflict ought to remain exclusive to what could be described as the adult sphere. The postings in question could very well do harm to these children...

R. v. Moore

Reasons for Ruling - Phillips, J.

DEIDRE MOORE: Your Honour.

THE COURT: ...and I incorporate that...

DEIDRE MOORE: May I...

THE COURT: ...in my analysis.

DEIDRE MOORE: ...that was before my arrest, Your Honour.

THE COURT: I've heard from you Ms. Moore.

The submissions in the matter gave rise to a proposition of something of a middle ground, that being that the court consider an order that Ms. Moore not be prohibited from posting to social media, but that she be prohibited from discussing directly, or indirectly, anything related to the case before the court.

While that proposition does have some attractiveness, I find on balance that it would be insufficient in all the circumstances. The problem is, as I read this record of social media posts, in particular the LinkedIn messages and other internet postings, that Ms. Moore has so salted the earth that everyone who views her social media postings from now on would understand what she is referring to when she makes her allegations of taxpayer funded domestic violence and child abuse. It seems impossible to me, in the circumstances, that she could advocate her position without being seen to be communicating about the complainant and, more importantly, her children.

R. v. Moore

Reasons for Ruling - Phillips, J.

5 The bottom line is, on balancing all the variables, Ms. Moore's social media free expression interest is outweighed by the need to have her keep the peace and be of good behaviour and refrain from interfering with the administration of justice or indeed committing further criminal offences while awaiting trial.

10 The Crown's Application is allowed. The order made by Justice Hackland shall have an addition made to it. While on release, Ms. Moore is no longer permitted to post any message of any kind on any form of social media. This shall include, Facebook, LinkedIn, or the like.

15 I appreciate that social media is a useful outlet and tool for advocacy but Ms. Moore, in the circumstances, has lost her right to use it and she can perform her expressive activities through other mechanisms.

20 Anything else, Crown?

25 MR. SAVAGE: There was an issue of the posts, particularly with the pictures of the children that are currently on her site, as part of this order, that at least -- at least as it pertains to the pictures of the children, that they be removed by her as part of this order as well.

30 THE COURT: Ms. Moore?

DEIDRE MOORE: Your Honour, the reason I had put my children...

THE COURT: Yeah.

R. v. Moore

Reasons for Ruling - Phillips, J.

5 DEIDRE MOORE: ...photos online in the first place is my very real concern that because my ex-husband is a malignant narcissist that he would try to leave the country or at least move...

THE COURT: H'hmm.

10 DEIDRE MOORE: ...with my children. I have no problem removing the pictures of my children because they have been on there, but again, that was the reason, my very real concerns that he was close to be caught, arrested and imprisoned, that he might try to flee. The only reason I posted my children's photos and I'm happy to take -- to remove them.

15 THE COURT: I am happy that you are happy to remove them. By keeping them up you are maintaining them as a communicative act, which you ought not do.

DEIDRE MOORE: Your Honour, I was...

20 THE COURT: Keep the kids out of the conflict that you have with your ex. That is adult business. It has nothing to do with them, especially in the sense of public exposure.

DEIDRE MOORE: ...I was concerned for their safety, that they would...

25 THE COURT: Yeah, no.

DEIDRE MOORE: ...be removed, and that's the only reason I did that.

30 THE COURT: Take it down. It is bad for them. It will stigmatize them by letting everyone in the world know who they are and what their living context is.

DEIDRE MOORE: Certainly.

R. v. Moore

Reasons for Ruling - Phillips, J.

THE COURT: And that is bad news.

DEIDRE MOORE: I remain very concerned for my children's well being.

THE COURT: You can be concerned without publicizing their identities and the context in which they are growing up.

DEIDRE MOORE: They are being parented by [indiscernible] narcissist.

THE COURT: I consider the matter finished unless anyone else has anyone else has anything to say.

MR. SAVAGE: No, Your Honour.

THE COURT: All right, thank you all.

...PROCEEDINGS CONCLUDED

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Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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I, **COLLEEN McQUARRIE**, certify that this document is a true and accurate transcript of the recording of **Regina v. Deirdre Moore**, in the Ontario Court of Justice, held at Ottawa, Ontario, taken from recording 0411_CR35_20191108_094132__10_PHILLIKE.dcr, which has been certified in Form 1 by Tatum Verville.

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