



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
NORTHERN TERRITORY

Rex Wild QC  
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13 September 2001

Donald Bruce Henderson  
c/- Ms. Suzan Cox  
NT Legal Aid Commission  
6<sup>th</sup> Floor, National Mutual Building  
9-11 Cavenagh Street  
DARWIN NT 0800

Dear Sir/Madam

**RE: POLICE v DONALD BRUCE HENDERSON- 20106328**  
**NOTICE PURSUANT TO SECTION 105A OF THE JUSTICES ACT**

DONALD BRUCE HENDERSON take notice that a preliminary examination will be conducted at the Court of Summary Jurisdiction at Darwin on 19 September 2001 whereby you have been charged with:

UNNATURAL OFFENCES X 59  
INDECENTLY ASSAULT A GIRL X 20  
ASSAULT OCCASIONING ACTUAL BODILY HARM X 1

The justice conducting the preliminary examination will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements.

Please find attached the following:

- (a) a copy of the information;
- (b) a list of persons who have made statements which are proposed to be tendered to the Justice at the preliminary examination;
- (c) copies of such statements;
- (d) a list of the documents and things (if any) referred to in those statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
- (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
- (f) a copy of each document mentioned in the list.

Please find set out hereunder the terms of ss.105A and 105B of the *Justices Act*.

"105A PROCEDURE WHERE PROSECUTOR PROPOSES TO TENDER WRITTEN STATEMENTS TO THE COURT

- 1) Where a person is charged with an indictable offence, the prosecutor, not later than 14 days, or such shorter period as a Justice may approve, before the date fixed for the taking of the preliminary examination, may give to that person a notice in writing -
  - (a) informing him of the time and place of the preliminary examination;
  - (b) stating that the Justice conducting the preliminary examination will be asked to admit written statements as evidence without requiring the attendance of the persons who made the statements; and
  - (c) setting out the terms of this section and section 105B.
- (2) A notice under sub-section (1) is not duly given unless it is accompanied by -
  - (a) a copy of the information;
  - (b) a list of persons who have made written statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
  - (c) a copy of each of those statements;
  - (d) a list of the documents and things (if any) referred to in those statements which the prosecutor proposes to tender to the Justice at the preliminary examination;
  - (e) where a thing, not being a document, cannot adequately be described in that list, a photograph of that thing; and
  - (f) a copy of each document mentioned in the list.
- (3) A notice and accompanying documents may be given to a defendant in any manner in which a summons issued in respect of an information may be served under any provision of this Act.
- (4) The giving of a notice under sub-section (3) may be proved in the same manner as the service of a summons.
- (5) Where a notice has been given to a defendant under this section, the prosecutor, not later than 7 days, or such shorter period as a Justice may approve, before the date set down for the preliminary examination, shall file with the clerk a copy of the notice together with a copy of each document and photograph accompanying the notice.
- (6) Where copies are filed with the clerk under sub-section (5), he shall transmit them before the preliminary examination to the Justice before whom the defendant will appear for the preliminary examination.
- (7) The prosecutor, if so requested by the defendant or his counsel or solicitor, shall, before the taking of the preliminary examination, permit the defendant or his counsel or solicitor to inspect the

documents and things referred to in the list (if any) given to the defendant in pursuance of sub-section (2) (d).


105B. WRITTEN STATEMENTS MAY BE ADMITTED IN EVIDENCE

- (1) Subject to this section, where a prosecutor has duly given notice to a defendant under section 105A, the Justice at the preliminary examination may admit a written statement, a copy of which accompanied that notice, as evidence of the matters stated and the statement shall thereupon constitute depositions of the person who made it.
- (2) A written statement shall not be admitted in evidence by the Justice unless -
  - (a) the accuracy of the statement is verified by the person making the statement by statutory declaration made pursuant to the *Oaths Act*;
  - (b) it contains -
    - (i) a statement that the person who made it has attained the age of 18 years; or
    - (ii) if the person has not attained that age, a statement of the person's age;
  - (c) it contains a statement that, before he signed it, the person who made it read the statement or had it read to him; and
  - (d) if it contains a statement that, before he signed it, the person who made it had it read to him, it contains a further statement indicating whether that person is disabled so that he cannot read it and, if so, the nature of the disablement.
- (3) Where a person has made a written statement which, but for this sub-section, would be admissible under sub-section (1), that statement shall not be admissible where the defendant, not later than 5 days before the date set down for the preliminary examination, gives notice in writing to the prosecutor that he requires the attendance at the preliminary examination of the person who made the statement.
- (4) Where the defendant gives notice in writing to the prosecutor under sub-section (3), he shall file a copy of that notice with the clerk.
- (5) Where the defendant has given notice under sub-section (3), he may, at any time before the preliminary examination, notify the informant in writing that he withdraws that notice and this section shall apply as if the notice under sub-section (3) had not been given.
- (6) Notwithstanding the failure by the defendant to give notice under sub-section (3), he may object at the preliminary examination to a written statement being tendered in evidence and the Justice may, if he thinks fit, uphold the objection and require the person who made the statement to attend and give evidence before him.
- (7) Where, under this section, the Justice admits a written statement, he may, of his own motion, require the person who made the statement to attend before him to give evidence.
- (8) Where it appears to the Justice that any part of a written statement tendered in evidence under this section is inadmissible

according to the rules of evidence, he may, where the statement is otherwise admissible under this section, admit that statement, but where he does so, he shall identify the part that is inadmissible and shall, with reference to that part, write on the statement the words "ruled inadmissible" or words to that effect.

- (9) Where the Justice admits a written statement under this section, the prosecutor may call the person who made the statement to give oral evidence and that person and any other witnesses, not being witnesses called by the accused person, who attend before the Justice -
- (a) shall be examined in the presence or hearing of the defendant and, if the defendant so desires, in the presence or hearing of his counsel or solicitor; and
  - (b) may be cross-examined by the defendant or his counsel or solicitor.
- (10) Where a Justice admits a written statement under this section, the statement -
- (a) is, for the purposes of sections 116, 131, 139 and 175, a deposition of a witness; and
  - (b) is, for the purposes of section 152 a deposition of a witness notwithstanding the fact that the deposition was not taken in the presence of the defendant."

Yours faithfully



ANTHONY ELLIOTT  
Crown Prosecutor

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**LIST OF PERSONS WHO HAVE MADE WRITTEN STATEMENTS  
WHICH THE PROSECUTOR PROPOSES TO TENDER TO THE  
JUSTICE AT THE PRELIMINARY EXAMINATION**

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- 1.
- 2.
- 3.
- 4. **Carmen Victoria McMAHON**
- 5.
- 6.
- 7. **REDACTED**
- 8. **Sergeant Roger NEWMAN**

**LIST OF EXHIBITS WHICH THE  
PROSECUTOR PROPOSES TO TENDER TO THE JUSTICE  
AT THE PRELIMINARY EXAMINATION**

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1. Floor and locality plans (3) drawn by AJB
2. Floor plan drawn by AJD
3. Floor plans (2) drawn by AJE
4. Floor plan drawn by AJF
5. Nose X-ray report by Mr. VEnclovas concerning Carmen McMahon (formerly Mary Whittaker) dated 12 June 1968
6. Chest X-ray report by Dr. Strang concerning Carmen McMahon (formerly Mary Whittaker) dated 4 December 1970
7. Aerial photograph of locality of Retta Dixon Home (pre cyclone) with handwritten notations by Donald Henderson
8. Floor plan of Cottage 2 at Retta Dixon Home drawn by Donald Henderson.
9. Transcript of audio taped record of interview between Sergeant Roger Newman and Donald Bruce Henderson conducted on 6 March 2001 together with.