

ONTARIO COURT OF JUSTICE

DAVID BRENNAN

APPLICANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE OF CONSTITUTIONAL QUESTION

TAKE NOTICE that at the prosecution of the Section 10 (2) of the Cannabis Act charge as against David Brennan, the Applicant intends to raise constitutional challenges to the charge at a date and time to be set by the Provincial Court Judge and which is now set for an appearance in Provincial Court in Parry Sound for August 15th, 2019, on the grounds listed below:

The Grounds are:

Charter of Rights and Freedoms:

1. Section 25. The Guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:
 - a) Any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
 - b) Any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

2. Section 35 (1). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(3) For greater certainty in subsection (1) “treaty rights” includes rights that now exist by way of land claim agreements or may be so acquired.
3. Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
4. Section 8. Everyone has the right to be secure against unreasonable search or seizure.
5. United Nations Declaration on the Rights of Indigenous Peoples Articles: 3, 4, 5, 6, 7(1) and (2), 10, 12, 24.

The Constitutional Principles to Be Argued:

1. Section 25 and 35 (1) and (3)

The Rowan Proclamation of March 11, 1854 states as follows:

“Proclamation Extending the Provisions of the Act 13c c.74 III Victoria – To certain Indian lands on Lakes Huron, Superior, Nipissing, Nipigon.

Whereas in and by an Act of the Parliament of this Province passed in the session thereof held in the thirteenth and fourteenth years of our reign, chaptered amongst the Public General Acts of the Session in which the same was passed as chapter Seventy-Four and intituled, “An act for the protection of the Indian in Upper Canada from imposition and the property occupied or enjoyed by them from Trespass and Injury,” it is amongst other things in effect enacted that the provisions in the tenth, eleventh and twelfth Sections in the said Act contained should extend and be construed to extend to such Indian hands only in Upper Canada, as the Governor of this Province for the time being should from

time to time, by Proclamation under the Great Seal thereof, think fit to declare, and, make subject to the same, and so long as such Proclamation should remain unrevoked and in full force. And whereas it has been deemed expedient by Our Administrator of the Government of Our Said Province that the said provisions should be extended to the following lands, that is to say, the various Indian Reserves on the borders of Lake Huron, Superior, Nipissing and Nipigon and contiguous thereto and described as follows”

2. Furthermore, the Rowan Proclamation forbade the entry of constables, sheriffs or Justice of Peace from entering the said territory.
3. The Rowan Proclamation continues in force and has never been revoked. Along with the Royal Proclamation of October 7, 1763, the land upon which the said offence was alleged to have been committed, is unceded indigenous territory and is protected from imposition, trespass or injury by others. Together, these Proclamations deprive the Crown of jurisdiction.
4. Furthermore, 2236 Highway 69 Henvey Inlet First Nation is not Henvey Inlet First Nation land, nor the Crown's and is the traditional unceded land of the Amikwa Algonquin Anishnabe Nation of which David Brennan is a member.
5. Section 8 of the Charter also is violated when the Crown has no jurisdiction in the territory by virtue of the Royal Proclamation of October 7, 1763 and the Rowan Proclamation of March 11, 1854.
6. Section 7 of the Charter is violated when the Crown seeks to impose legislation in unceded territory, thereby depriving the Applicant of a means for economic subsistence, within a regime that has committed genocide and apartheid as against the collective and the individual since at least 1608.

Articles of the United Nations Declaration on the Rights of Indigenous Peoples are incorporated in the constitutional challenge by virtue of the legal principles enunciated in R v Hape. 2007 CARSWELLONT 3563.

The Constitutional Principles to Be Argued:

1. Lack of jurisdiction – Section 25 and Section 35 of the Charter of Rights and Freedoms.
2. Lack of Jurisdiction – Section 8 of the Charter of Rights.
3. All the rights enunciated in Section 7 of the Charter of Rights, as it refers to liberty and security of the person and the rights enunciated in the United Nations Charter of Rights of Indigenous Peoples, Articles 3, 4, 5, 6, 7(1) and (2), 10, 12, 24.

Genocide and Apartheid

4. The National Inquiry into Missing and Murdered Indigenous Women and Girls (“National Inquiry”) observed as follows:
 - a) The Canadian justice system is premised on settler-colonial society’s values, beliefs, laws, and policies. It is a justice system that fails to include Indigenous concepts of justice. The Canadian justice system has been imposed on Indigenous Peoples and has oppressed and replaced the Indigenous justice systems that served Indigenous communities effectively since time immemorial.” Vol. 1A Page 717
 - b) Decolonizing approaches involve recognizing inherent rights through the principle that Indigenous Peoples have the right to govern themselves in relation to matters that are internal to their communities; integral to their unique cultures, identities, traditions, languages, and institutions; and respect to their special relationship to their resources, which many witnesses described as their relatives. Vol. 1B page 171

The significant, persistent, and deliberate pattern of systemic racial and gendered human rights and Indigenous rights violations and abuses – perpetuated historically and maintained today by the Canadian state, designed to displace Indigenous Peoples from their land, social structures, and governance and to eradicate their existence as Nations, communities, families, and individuals – is the cause of the disappearances, murders, and violence experienced by Indigenous women, girls, and 2SLGBTQIA people, and is genocide. Vol 1B page 174

An absolute paradigm shift is required to dismantle colonialism within Canadian society, and from all levels of government and public institutions. Ideologies and instruments of colonialism, racism, and misogyny, past and present, must be rejected. Vol. 1B page 174

- c) In its supplementary Report, entitled: “A Legal Analysis of Genocide,” The National Inquiry stated as follows:

National Inquiry is of the opinion that the definition of genocide is international law, as it stands, encompasses the past and current actions and omissions of Canada towards Indigenous Peoples. Supplementary Report page 7

The insidious and gradual nature of the obliteration of Indigenous peoples, and the lack of a uniform national policy spearheaded by a totalitarian mastermind, differentiate colonial genocide from our traditional understanding of what constitutes a genocide.⁵³

These distinguishing factors have, unfortunately, allowed the Canadian consciousness to dismiss Canada’s colonial policies as racist and misconceived, rather than acknowledge them as explicitly genocidal and, even, ongoing. Supplementary Report page 11

- d) The Crimes against Humanity Act, 2005, defines apartheid as:

“inhumane acts of a character similar to those referred to in paragraphs committed in the context of an institutionalized regime of systemic oppression and domination by one racial group over any other racial group or groups and committed within the intention of maintaining that regime.

- e) The Indian Act of Canada fits the definition of the Crime of apartheid. The Applicant is the victim of the apartheid policy of the Indian Act and lives within the consciousness of genocide as defined and outlined in the Report of the National Inquiry.

Statutory Provisions or Rules Upon which the Applicants Rely:

1. United Nation Declaration on the Rights of Indigenous Peoples.
2. Constitution Act, 1982. Charter of Rights and Freedoms
3. Convention on Genocide, UN. 1948.
4. Crimes Against Humanity Act and War Crimes Act S.C. 200 C24.
5. National Inquiry into Missing and Murdered Indigenous Women and Girls.

Articles or Books to be referred to:

To be included in subsequent factum for constitutional challenge.

Cases to be referred to:

To be included in subsequent factum for constitutional challenge.

Relief Sought is:

1. Stay the charge.

Date: August 8, 2019



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