

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. Brennan (CR-19-16-0000); R. v. McQuabbie (C-18011402); R. v. Hill (RM19074094); R. v. McGregor (4011-998-4221); R. v. Rogue (4011-998-193633); R. v. Nolan (0131-998-193170); R. v. Wigmore (0131 998-193169) and R. v. Herbert (Parry Sound Info. No. 3060-999-19-035-00)

BEFORE: Ellies R.S.J.

COUNSEL: *J. Plamondon, A. Francis, R. Pe, D. Tortell*, Counsel for the Crown
M. Swinwood, Counsel for the Accused

HEARD: July 9, 2020

ENDORSEMENT

- [1] A further teleconference was convened to discuss the defence response to the PPSC's position on how the issues set out in my June 9, 2020 endorsement should be addressed (see the document entitled "Response to PPSC NCQ issues dated June 15, 2020", dated July 2, 2020).
- [2] The defence response states that certain issues require a "full evidentiary record". However, as it turns out, that record will consist only of the defence expert report referred to in earlier endorsements, as well as the evidence of a participant in the constitutional negotiations leading up to the enactment of the *Constitution Act, 1982*. In light of that, the prosecution agrees that there is no point to pushing the issue of a written hearing with respect to any particular constitutional issue. All of the issues can be addressed after the evidence is in.
- [3] It is agreed that the lay evidence will be submitted in affidavit form. The affidavit will constitute the witness's evidence-in-chief. However, subject to the discretion of the trial judge, the defence may be permitted to lead the witness briefly through evidence designed to establish the witness's credibility.
- [4] In addition, it is agreed that the defence will submit affidavit evidence from the accused individuals sufficient to allow them to raise the constitutional issues and to make the answers to those issues relevant to the charges faced by each of them. As we put it during the teleconference: "to bring the accused individuals within the scope of the question and to make the answer applicable to them".

- [5] Mr. Swinwood advises that the defence expert will likely have his report ready by November. In order to monitor his progress and to set a date for the hearing, a further teleconference will take place on August 24, 2020 at 10:00 a.m. Unless otherwise advised, the call-in information will be the same.
- [6] Mr. Swinwood estimates that four to six weeks will be required for the hearing. That issue will be re-visited during the next teleconference.

A handwritten signature in black ink, appearing to read 'Ellies R.S.J.', written over a horizontal line.

Ellies R.S.J.

Date: July 10, 2020