

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 POA matter)

BEFORE: Ellies R.S.J.

COUNSEL: *J. Plamondon, B. Bencze, A. Hauk, A. Francis, R. Pe*, Counsel for the Crown
M. Swinwood, Counsel for the Accused

HEARD: June 9, 2020

ENDORSEMENT

- [1] A further teleconference was convened today to discuss the document entitled “Constitutional Issues”, dated June 4, 2020, which Mr. Swinwood provided to the trial coordinator on June 8.
- [2] Mr. Swinwood agrees that the issues raised in the Notices of Constitutional Question filed on behalf of his clients are these:

Under ss. 25 and 27 of the Charter:

1. Whether the laws under which the charges have been brought do not apply because the lands on which the offences occurred are not part of Canada.

Under s. 35 of the Charter:

2. Whether the laws under which the charges have been brought do not apply because they infringe the accused persons’ traditional use and trade of cannabis and hemp.

Under s. 7 of the Charter:

3. Whether the laws under which the charges have been brought do not apply because they interfere with the accused persons’ economic well-being in relation the trade of cannabis and hemp.

4. Whether the laws under which the charges have been brought do not apply because they are part of an effort at genocide and apartheid.

Under the Duty to Consult

5. Whether the prosecution(s) should be stayed because the accused persons have asserted a declaration of Indigenous title to the land on which the offences occurred and the Crown has failed since then to fulfil its duty to consult.
- [3] In addition to the phraseology we discussed during the conference call, I have added the words “to the land on which the offences occurred” in framing the last issue. In the event that I have misinterpreted this issue by adding them, I would ask that Mr. Swinwood advise immediately by writing to the trial coordinator and to opposing counsel, failing which we shall proceed on the basis that I have properly framed all of the issues.
- [4] A further teleconference will be held on June 16 at 10 a.m. to discuss how the various issues might be dealt with during the pandemic. Unless advised otherwise by the trial coordinator, the call-in details will be the same.



Ellies R.S.J.

Date: June 9, 2020