
CANADA / JUDGMENT

R. v. Anderson

2016 BCSC 2170

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 2170 R. v. Anderson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Anderson,

2016 BCSC 2170

Date: 20161018

Docket: 26322

Registry: Vancouver

Regina

v.

Debbie Arlene Anderson

Before: The Honourable Mr. Justice Brown

Oral Ruling re Application for Adjournment

In Chambers

Counsel for the Crown:

S. Manery

K. DeJong

Counsel for the Accused:

G.P. Bogue

Place and Dates of Hearing:

Chilliwack, B.C.

October 17 - 18, 2016

Place and Date of Judgment:

Chilliwack, B.C.

October 17 - 18, 2016

- [1] THE COURT: Before we begin I will, so to speak, set the stage. Before the court are two notices of motions: a memorandum and a letter that will be addressed. They were sent to the Vancouver Registry late last week. I was not sitting last week when they were forwarded to me.
- [2] I will consider the materials in detail, but for now, only in brief. Ms. Anderson seeks an adjournment of the trial to give her time to apply for an order that this court relinquish jurisdiction over her regarding the charges she faces and to relinquish jurisdiction to a Clan Grandmother of the Métis.
- [3] She also seeks an order that a date be set for the hearing of the actual application, the date to be no later than by November 30.
- [4] She also seeks a transfer of the file to Vancouver for the hearing of the application.
- [5] She also seeks an order that I recuse myself and that a judge be appointed with experience in Aboriginal law; or alternatively, that a "chancellor" be appointed to hear the proposed application.
- [6] Regarding a change of venue, I should point out from the outset that a change of venue requires a separate formal application. Counsel convenience is not an accepted ground for a change of venue. Further, with the exception of two interlocutory hearings in Vancouver, Chilliwack has been the venue for this case ever since Ms. Anderson elected trial by judge and jury, and Justice H. Holmes ordered Chilliwack would be the venue of the trial.
- [7] As for the assigning of a judge with experience in Aboriginal law, judges in this court are not divided into specialities. Supreme Court hearing schedulers assign judges to trials and hearings in consultation with or at the direction of the Associate and Chief Justice. A party's wishes do not determine the assignment of judges.
- [8] This matter has been set for trial in the Chilliwack Registry for many months now. It originally had been set before a jury following Ms. Anderson's election until her very recent re-election to trial before a judge alone.
- [9] The trial has been adjourned at the behest of the accused three times. The most recent trial date was confirmed at a previous pretrial conference. But I will not belabour the history of the proceedings at this point now, setting aside the question of an adjournment until I dispose of the aspects of the application. Today, matters will proceed this way. I have

reviewed the extensive application materials and memorandum filed by counsel for Ms. Anderson; and so have a good grasp of the nature of the requested pretrial application and of the propositions counsel intends to advance at a hearing, were the application for a hearing to be granted.

- [10] Such an application will not take place today, of course. The quite detailed contents of the materials, particularly the memorandum, reveal the essentials and little in the way of further oral submissions is necessary at this point. I should note for the record that although this matter was scheduled to commence, the list for today is very heavy. I am the only Supreme Court judge sitting in Chilliwack this week and as it is, some of the other matters set for today will likely have to be adjourned. I have given this matter priority and the lateness of the application has caused considerable scheduling disruption in this court.
- [11] As for our proceedings, of course I will need to hear from Crown counsel. I will have to consider the purposes counsel wishes to pursue in the application Ms. Anderson seeks, the merits of the materials she relies on and their prospects for success to determine whether the proposed lengthy pretrial hearing and an adjournment of the trial is justifiable: *R. v. Vukelich*, (1996), 108 C.C.C. (3d) 193 (B.C.C.A.).
- [12] This requires some delving into some of the proposed submissions and findings on their merits without actually having to hear the whole matter and making a final determination. I hope to give reasons today if possible on the order sought by Ms. Anderson. If not, it will have to be set over for early tomorrow morning, probably 9:30 a.m. Pacific time.

[SUBMISSIONS BY COUNSEL FROM 10:08 TO 10:33: A.M.]

(PROCEEDINGS ADJOURNED)

(OTHER MATTERS SPOKEN TO)

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[SUBMISSIONS BY COUNSEL FROM 11:42 A.M. TO 12:31 P.M.]

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

- [13] THE COURT: As I mentioned earlier, I hope to give an oral ruling as soon as possible on the orders sought by Ms. Anderson, This might require some stand down. I expect the reasons will probably take about an hour, possibly more, to deliver. As is the case with oral reasons for judgment, and considering the limited time available to me to prepare, I reserve the right to edit the transcript for brevity, clarity, etc., and to make appropriate corrections.

[14] I will turn first to a more detailed summary of the orders sought today. One of the motions seeks an order that this court relinquish jurisdiction to ASMIN Clan Grandmother Ikway Michine. There is no material before the court from her. The motion states further:

TAKE NOTICE that an Application involving a Pre-Trial Motion will be made to the court on Oct. 17, 2016 on behalf of the defendant challenging the jurisdiction of the court over this defendant who asserts her Article III Right to Self-Government under the UN Declaration of the Rights of Indigenous People (UNDRIP), and accordingly she is under the jurisdiction of the Clan Grandmother of the ASMIN (Metis).

[15] Accordingly, the order sought is "[f]or the Provincial Court to relinquish jurisdiction to the Clan Grandmother."

[16] I should just note in passing that this is not the Provincial Court of British Columbia, rather, the Supreme Court of British Columbia.

[17] The second document is an application for an adjournment pending a motion regarding jurisdiction. The application goes on to state as follows:

1. The Defendant has hired Counsel from Ontario who is competent in Aboriginal Laws and Traditions and their interplay with British Common Law principles.
2. That new counsel has brought a Motion to challenge the Jurisdiction of this court over the Defendant, and to challenge the qualifications of Justice Brown to hear this Historic Aboriginal criminal case.
3. As new counsel is in Ontario, the Defendant proposes that:

A. The Motion regarding Jurisdiction be transferred to Vancouver Superior Court.

[18] That should read "Supreme Court of British Columbia, Vancouver Courthouse". I have already disposed of that matter and the correct procedure for obtaining a change of venue.

B. Justice Brown confer with the Chief Justice regarding the Justice and/or Chancellor qualified in Vancouver to hear this Motion.

[19] I have already dealt with that.

C. The Motion to be scheduled for hearing not later than November 30, 2016.

D. The Trial to be adjourned to 90 days after the ruling in the Motion to allow for any appeal as the appeal will likely involve the competency of the Justice.

[20] Also forwarded by Mr. Glen P. Bogue, Ms. Anderson's intended new counsel, is the following letter, addressed to the Chief Justice of B.C. and to me as the presiding trial judge, copied to Ms. Manery, Crown counsel:

Re: Historic Criminal Case. R. v. Anderson. Vancouver #26322

Your Honours and Ms[.] Manery,

I am new counsel for the Defendant.

Per the ... finding of the Truth and Reconciliation Commission, Canada set out to destroy the heritage of the Clan Mothers, with the effect that neither the Defendant, nor the Crown nor the current Justice Brown are properly educated in Aboriginal Laws and Traditions.

The status of both the Metis and the Non-Status (Treaty) Indigenous Peoples was only recognized by the SCC this past April in Daniels v. Canada, and accordingly we are all on new ground.

The Defendant has brought a Motion, and an Application to have that Motion heard in Vancouver before Adjudicator(s) competent in Aboriginal Laws. We ask the Chief Justice be involved in the composition of this panel, with the consent of the ASMIN Clan Mother Ikway Michine.

Glenn P. Bogue

(E-Signed)

[21] As mentioned, that is not how judges are assigned to cases in this court.

[22] Counsel's notice of application runs to 13 pages. The materials counsel relied on consist entirely of the Memorandum of Fact and Law, 'E-signed' by Mr. Bogue, dated October 11, 2016.

[23] The memorandum is difficult to follow, partly because it is shot through with immaterial, unproven assertions of a conspiratorial nature; and also with assertions with no logical nexus to the court's jurisdiction or to propositions that would lead to a legitimate defence for Ms. Anderson. It effectively amounts to a challenge to the Canadian Government's jurisdiction to charge income taxes against Métis people (or indeed anyone), as well as to the court's jurisdiction to hear criminal cases with Métis or aboriginal accused.

[24] The proposed application relies on and attributes much to Daniels v. Canada, (Indian Affairs and Northern Development), 2016 SCC 12 [Daniels] to which I will refer shortly.

[25] In Part I of the application, titled "Overview", counsel stated, "the British have forced a Crown Corporation on the Land known internationally as 'Canada', where the British Crown imposed a regimen by force to extract the resources of a Land that did not belong to them." The application states that "[i]n so doing, the British Crown committed horrendous acts of Genocide on the Aboriginal People, including a system of Cultural Genocide, as recognized by the Chief Justice McLachlin of the SCC, that continues to this very day."

- [26] I note the historical mistreatment of Indigenous people in Canada has been addressed in numerous Supreme Court decisions and by Parliament, and also responded to in numerous decisions of this Court, decisions of the British Columbia Court of Appeal, as well as appellate courts of the Provinces, as the country seeks to make amends for past injustices. But counsel's commentary has no relevance, direct or indirect, to the court's jurisdiction in this case.
- [27] Part II of the Memorandum of Fact and Law attached to the notice of motion sets out what are characterized as "The Facts".
- [28] At para. 1, it is asserted that Ms. Anderson's matrilineal line is Coast Salish and her patrilineal line Scottish; and accordingly, that she is Métis. Her status as a Métis is not in issue at this point.
- [29] Counsel then comments in the memorandum on matters that are not in issue, i.e. regarding the effects of the Oregon Treaty between the U.S. and Canada on the "Coast Salish". That is not material to the matter at hand.
- [30] At para. 3 of the notice of application, counsel referred to the Supreme Court of Canada decision in Daniels, submitting it had expressly overturned the decision of the Federal Court of Appeal and removed any historic restriction set out in the R. v. Powley, 2003 SCC 43 [Powley] decision regarding who is a Métis. That is partly correct but incomplete.
- [31] The appellants in Daniels sought three declarations (at para. 2):
- (1) That Métis and non-status Indians are "Indians" under s. 91(24) [of the Constitution Act, 1867];
 - (2) That the federal Crown owes a fiduciary duty to Métis and non-status Indians; and
 - (3) That Métis and non-status Indians have the right to be consulted and negotiated with .
- [32] The trial judge in Daniels had concluded that the term "Indians" under s. 91(24) is a broad term referring to all Indigenous peoples in Canada. He declined, however, to grant the second and third declarations. The Federal Court of Appeal had accepted that "Indians" in s. 91(24) included all Indigenous peoples generally, but not non-status Indians and those Métis who do not satisfy the three criteria set out in Powley; and it upheld the first declaration, but narrowed its scope to exclude non-status Indians and included only those Métis who satisfied the three criteria set out in Powley. It also declined to grant the second and third declarations. The Supreme Court of Canada allowed the appeal in part, restoring the trial judge's declaration without the limitations imposed by the Federal Court of Appeal. Therefore, Métis people are "Indians" under s. 91(24) of the Constitution Act, 1867, s. 35, whether or not they satisfy the three criteria in Powley.
- [33] The appellants asked the Supreme Court to restore the first declaration as granted by the trial judge, and that the second and third declarations also be made.

- [34] The Crown cross-appealed, arguing that none of the declarations should be granted. It conceded, however, that non-status Indians are Indians under s. 91(24).
- [35] The Supreme Court agreed the first declaration, that Métis and non-status Indians are Indians under s. 91(24), should be granted, and allowed that part of the appeal.
- [36] The appeal of the decision of the trial judge and that of the Federal Court of Appeal not to grant the second declaration, that is, that the Crown owes a fiduciary duty to Métis and non-status Indians, was not allowed because *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 [Delgamuukw], had accepted that such a relationship exists between the Crown and Métis; accordingly, that declaration lacked practical utility.
- [37] The court found the third declaration sought, that Métis and non-status Indians have the right to be consulted by the federal government and negotiated with on a collective basis in good faith, similarly lacked practical utility because *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, 3 S.C.R. 511; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, 2 S.C.R. 257; and Powley already recognized the context-specific duty to negotiate when Aboriginal rights are engaged.
- [38] In *Daniels* at para. 51, the Supreme Court stated the following regarding federal and statutory jurisdiction:
- [51] But federal jurisdiction over Métis and non-status Indians does not mean that all provincial legislation pertaining to Métis and non-status Indians is inherently ultra vires. This Court has recognized that courts "should favour, where possible, the ordinary operation of statutes enacted by both levels of government": [quoting] *Canadian Western Bank v. Alberta*, [2007] S.C.R. 3, at para. 37 (emphasis in original).
- [39] The court went on to say at para. 51:
- Moreover, this Court has been clear that federal authority under s. 91(24) does not bar valid provincial schemes that do not impair the core of the "Indian" power [citations omitted].
- [40] I find nothing in *Daniels* that undercuts the court's jurisdiction or supports the order the defendant seeks, i.e. the court relinquish its jurisdiction with respect to the indictments in this case to a Clan Grandmother of the Metis nation.
- [41] At para. 5 of the memorandum, the following assertion is made:
5. ... [F]or 149 years "Canada" set out to destroy the Clan [G]randmother system of government and jurisdiction to adjudicate over Aboriginal and Indigenous People.
- [Note: The quotes are included because that is how counsel stated it in his memorandum.]

[42] At para. 6, counsel referred to the Supreme Court of Canada decision in *Re: Parliament*, [1980] 1 S.C.R. 54, and its reference to "Canada" as "a juristic federal unit", distinct from the Land on which said "juristic unit" is imposed. As opposed to that excerpt, counsel inserted the phrase "is imposed, by force, not by the Aboriginal Laws and Traditions of this continent". [The last phrase is not in the original quote.]

[43] At para. 7, counsel stated:

7. "Canada" is a Crown Corporation, providing perhaps government services, that is registered on the New York Stock Exchange as numbered company 0000230098, and as such is merely a subsidiary corporation of the United States Inc., which in turn is [a] subsequent corporation to the East India Trading Company, all of whom have headquarters in Washington, D.C.

[44] There is no evidence regarding this before the court, no sign it has any possible relevance, and it has no logical link to the issues before this court. It is immaterial.

[45] The following is asserted at para. 8, in subparas. 1 and 2:

- 1) The Revenue Canada Agency is a subsidiary of the Internal Revenue Service, which is a private agency that merely collects the interest debt of the private banks, which merely create "money" in their computers from compounding interest.
- 2) Both the Internal Revenue Service, and its subsidiary Revenue "Canada" Agency are bound by the U.S. Constitution, Article I, Section 8, Clause 1, that all direct taxes must be apportioned equally among the populace and hence a tax on wages, being a direct tax, is unconstitutional.

[46] The U.S. Constitution has no relevance to the work of this court. There is no logical link between this case and that unsubstantiated comment. It does not establish any link to a legitimate line of defence to the charges Ms. Anderson faces.

[47] The following paras., 9 to 13, comment on The Royal Proclamation of 1763 and the unspecified protection it conferred on the Métis, and also refers to the Métis appeal to the House of Lords as discussed in *Re: Foreign Secretary*, [1982] 1 Q.B. 898, wherein Lord Denning said the Crown is duty-bound to protect existing Aboriginal rights. In general terms, that basic precept is not in controversy in this case; and in any case, does not pursue a legitimate defence for the accused.

[48] At para. 9, counsel stated:

9. The Coastal Salish Tribe straddles the "Canada-U.S." border, an artificial construct that may bind those of 100% European extraction, but not a Métis who is protected by the Jay Treaty of 1794, which does not recognize any artificial borders on native Turtle Island.

[49] The offences Ms. Anderson faces arose in the Province of British Columbia. The Coast Salish Nation is not a party to this matter. There is no logical link between that information and the pursuit of a legitimate defence for Ms. Anderson.

[50] At para. 12 counsel states:

12. Those Aboriginal Rights, existing as of 1982, are enshrined in Section 35 of the Canada Act of 1982, to which document our European based culture refers to as a Constitution, however the document is merely another Act of Parliament .

[51] [I note that the Constitution enshrines certain Aboriginal Rights.]

which expressly declares that Parliament is STILL supreme over any rights articulated therein. This is not a Republic.

[52] Counsel continues at para. 13:

13. Not only is the Canada Act of 1982 silent on the rights of the Indigenous People, the document's authority is undermined by the fact that the body politic that relies on the BNA Act of 1867 are relying on an Act that was not properly ratified by the British House of Commons, ... a quorum of 40 members of the house was not present (rather there were only 10 members) [present].

[53] Those matters are not in issue here before this court. They do not logically or principally pose a legitimate defence to the charges Ms. Anderson faces. The authority and the legitimacy of the Constitution, and Aboriginal Rights pertaining to it, have long since been disposed of, albeit the Constitution continues to be a work in progress and is of course the subject of many decisions by the Supreme Court of Canada and appellate courts. But those foregoing assertions have no bearing on and pose no legitimate defence to the charges Ms. Anderson faces. They deal with matters determined elsewhere. Most of those matters are not justiciable. Counsel refers to documents without linking them in any way to a principle that directly or indirectly gives rise to a legitimate line of defence.

[54] I am quoting the following paragraphs, without comment, because they implicitly speak to the merits and quality of the proposed application, which in turn underlies the reasons Ms. Anderson requests an adjournment of the trial, to schedule a pretrial hearing on this court's jurisdiction on this case to be set for no later than November 30, 2016.

[55] The memorandum proceeds further stating at para. 14:

14. Further, the very authority of Mary Elizabeth Windsor [a reference I think to her Majesty, but this is the language counsel used] is rendered illegal by the following:

A) Her claim to legitimacy runs back to Edward IV, who in 2004 was proven to be a bastard child of Edward III by Historian Dr. Michael Jones, who found evidence that Edward IV was in battle in Rouen, France, throughout the Summer of the conception of Edward the IV, who was born in April of 1442.

B) Prior to the Hanoverian takeover of the British throne, Britain passed a Succession Law forbidding the Crown from swearing allegiance to the Vatican, which Law Mary Elizabeth broke during her 1952 Coronation when she swore a fealty to the Holy See.

[56] The basis for that is indiscernible; but its irrelevance is clear.

C) Through the Vatican-Bank of England cabal Mary Elizabeth has used private Corporations, like HSBC and RBC, to impose restrictions on the Aboriginal People of Turtle Island via illegal and immoral compound interest that today has netted RBC a net worth in its TRUST account of \$114 Trillion. None has gone to the Aboriginals.

[57] Counsel expanded on that in his reply to Ms. Manery's response.

[58] Further, in subparagraph D):

D) Furthermore, Mary Elizabeth Windsor arranged in 1982 to have Canada "borrow" monies from the private Bank of International Settlements (BIS) in Switzerland, which spawned various of her private banks on Turtle Island like HSBC, RBC, CIBC, Scotia Bank and BMO.

E) Private Banks like HSBC have been fined internationally for illegal activities that amount to Crimes Against Humanity, and HSBC is implicated, with the Vatican in ritual sacrifice of children in Montreal.

[59] That is a matter outside the knowledge or jurisdiction of this court, as are the preceding statements in that series of paragraphs.

[60] In the next subparagraph:

F) Mary Elizabeth Windsor has long participated in the killing of Aboriginal children and was convicted along with Pope Benedict and Stephen Harper of murder by the ITCCS.

[61] ITCCS is unknown to this court. If it made any pronouncements, they are not recognized in this court. None of those assertions pursue a legitimate defence or raise a judicable matter for this court to dispose of, and I pay no regard to them.

[62] At para. 17, counsel noted that on May 10, 2016 federal ministers removed Canada's objector status to the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP"). Counsel further stated in the application, in part:

17. ... [A]ccording to UNDRIP's Article III, Ms. Anderson may now declare her political freedom from "Canada" and return to the jurisdiction of ASMIN Clan Grandmother Ikway Michine.

[63] Counsel did not mention UNDRIP Articles 2 and 4. Articles 1-4 state:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous people and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3 [the one that is relied on here]

Indigenous people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

[64] Although Canada has withdrawn its objection to the Declaration in the UN, it has not ratified or adopted the UNDRIP into Canadian law. Meanwhile, the article is not relevant to the court's jurisdiction or to the questions before the court in this case.

[65] Counsel then proposed at para. 18 of his memorandum that the Supreme Court decision in *R. v. Guerin*, [1984] 2 S.C.R. 335 left open the question of just who owned this land. Counsel further stated:

18. Somehow the Queen still owns the land of Canada, whereas under the Clan Grandmother System, females own the land of Canada due to the fact that the mitochondria of their DNA runs all the way back to Eve, living in Ethiopia, 200,000 BCE, and the females own the land by Allodial Title [i.e., by occupation and defence], - not a political theory of Europe.

[66] Counsel then referred to The Geographic Project, a DNA study.

[67] These propositions fall far and away from the jurisdiction and the indictments at hand. I will not comment on them, which is not to acknowledge that this or other submissions have any purchase on the matter before the court. I will comment in passing only that *Guerin* dealt with an Indian Band that had surrendered valuable surplus reserve lands to the Crown to be leased to a golf club. The terms negotiated by the Crown were much less favourable than those the Band had approved at the meeting where they agreed to surrender some land. The main issue in that case was the Crown's breach of its fiduciary duty to protect the Band's interests when acting on its behalf. None of that is relevant here.

[68] I note that at para. 97 of the decision, the court stated:

Indians have a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown.

- [69] There is considerable jurisprudence on the subject of title and jurisdiction, not the least of which is Delgamuukw. In any case, in my view, none of this assists the defendant's position on this application.
- [70] At para. 19, counsel proposed that:
19. In order to enable themselves to extract the resources from the land owned by Aboriginal females, the Vatican Bank in collusion with the Bank of England had to impose a Paternalistic system, the Diocese, along with a numbering system for its "subjects". The Birth Bond system places a 9 digit CUSIP Number on every child in "Canada" regardless of their choice, or their Aboriginal Heritage. That number is a bonded corporation, the value of which is the labour of the human to which it attaches.
- [71] Counsel provided no proper basis any for these assertions, which resemble Freeman-on-the-land legal theories. In any case, they are not linked to any legitimate proposition that bears on the court's jurisdiction and do not pursue a legitimate defence in this case.
- [72] At one point in his submissions, counsel strongly endorsed the accused's right to govern her affairs according to the tenets of Freeman-on-the-land. Those legal theories, if they can be considered as such, have been roundly and unreservedly rejected by many courts in Canada, including this one and advance no legitimate defence in this case. Counsel's declamation on this does not assist Ms. Anderson in any respect.
- [73] At para. 20, counsel submitted:
20. Corporations like RBS and HSBC trade in that Bonded Corporation, which is equivalent to a slave trade ...
- [74] [I note parenthetically that on September 26, Ms. Anderson presented the argument that she had discovered she had become a victim of human trafficking, and on that basis the Crown case could not proceed against her.]
- [75] At para. 21, counsel continued in that same vein with the following submission:
21. People of Canada as "Citizens" may participate in this Corporate Structure, and it has been held to extend to numerous Aboriginals who choose to surrender their land claims and become part of the "Corporate Band" system known as the Assembly of Federated Nations (AFN) [Emphasis in original.]
- [76] At para. 22, counsel refers to expert testimony that has been given in an Ontario case about the selection of Chiefs by the Clan Grandmother. That case has no relevance here.
- [77] At para. 23, counsel stated:

23. In *Delgamuukw v. B.C.* ... @ p. 1100, the SCC clearly held that Aboriginal Laws are equal to British Common Law, and @ [1091] made the distinction of a "surrendered" people, as opposed to the Sovereign Metis (and Non-Status Indigenous) who are awaiting Treaty. Accordingly, Ms Anderson demands to be heard before the Clan Grandmother, not the Courts of "Canada" regarding what constitutes a "crime" in the Aboriginal world. [Emphasis in original.]
- [78] The references to *Delgamuukw* in the applicant's memo appear to refer to paras. 148 and 131 of that decision. The passage on page 1100 of *Delgamuukw*, at para. 148, does not "clearly hold that aboriginal laws are equal to British common law," as argued in the memo. Rather, it provides that aboriginal law is a component of the aboriginal perspective on land, which must be considered along with the common law in determining proof of occupancy for the purposes of aboriginal title claims. The passage on page 1091, at para. 131, is similarly restricted to aboriginal title, the court simply affirming that "surrender to the Crown in exchange for valuable consideration" remains possible despite the limitations on the use of title lands discussed in the preceding paragraphs of *Delgamuukw*.
- [79] The passages from *Delgamuukw* on which the accused relies are much too narrowly restricted to support the applicant's arguments; and in any event, do not pursue a legitimate defence.
- [80] In *R. v. Pena*, 1998 CarswellBC 163, 103 B.C.A.C. 273 [Pena], the Court found that the trial judge had not erred in dismissing an application for a declaration that the Supreme Court of British Columbia had no jurisdiction to try the appellants for offences under the Criminal Code.
- [81] The Court of Appeal spoke directly to the point, explaining at paras. 1-4:
- [1] The appellants were convicted before Mr. Justice Josephson and a jury on 20 May 1997 of various offences charged under the Criminal Code ... arising out of events which took place in the summer of 1995 at or near Gustafsen Lake in the Province of British Columbia.
- [2] During the course of the trial, the appellants brought an application for a declaration that the court was without jurisdiction to hear the Indictment on the grounds that the alleged offences occurred on land which had not been acquired originally by the Crown from the natives by treaty or purchase.
- [3] When the application was made by the appellants, the Attorneys General of British Columbia and Canada applied at the outset to dismiss the application on the grounds that the point of law upon which the application was based had been determined by the British Columbia Court of Appeal and, applying the principle of *stare decisis*, the determination was binding on the trial judge.
- [4] In dismissing the application, the trial judge referred to the following decisions of the Court of Appeal in which the same point had been considered and dismissed: *Delgamuukw*; ...*R. v. Williams*, [1995] 2 C.N.L.R. 229, 52 B.C.C.A. 296...; and *R. v. Clark* (March 14,

1997), „Vancouver Registry CA022880 BCCA, [leave to appeal to the Supreme Court of Canada refused, (July 31, 1997)...In the latter case, Gibbs J.A., whose reasons were concurred in by MacFarlane and Proudfoot JJ.A., declined to hear the jurisdictional argument on an appeal from a contempt conviction arising in the early pre-trial stages of these proceedings on the ground that arguments [were] founded on similar jurisdictional propositions had been made in *Delgamuukw v. British Columbia* and *R. v. Williams* as well as in other jurisdictions and that the arguments had repeatedly been rejected.

- [82] The court noted at para.10 that in *R. v. Williams*, [1995] 2 C.N.L.R. 229 (B.C.C.A.), the Court of Appeal had adopted the following concisely stated reasons of Cohen J. in the judge's rejection of the same argument in relation to jurisdiction over Aboriginal accused: Cohen J's reasons were reproduced:

I accept the respondent's submission that the result in *Delgamuukw* [...] makes it plain that no aboriginal jurisdiction superior to laws intended to govern all inhabitants of this Province survived the assertion of sovereignty. Furthermore, as *Delgamuukw* upheld the finding of McEachern C.J.B.C. (as he then was) that the Royal Proclamation has never applied to this Province, the appellants cannot rely upon the Royal Proclamation as support for their position.

I conclude that the decision in *Delgamuukw* is binding upon this Court and governs the issues raised in the instant appeals. As, in my view, correctly stated by the Crown submission: "There is no residual aboriginal sovereignty capable of displacing the general jurisdiction of the Provincial Court to try persons, whether aboriginal or non-aboriginal, for offenses under the Wildlife Act and Criminal Code throughout British Columbia, whether or not the alleged offenses took place 'beyond the treaty frontier'.

- [83] In *Pena* at paras.11 and 12, the court stated:

- [11] Nothing in the Supreme Court of Canada's recent decision in *Delgamuukw* [...] casts doubt on that reasoning. In *Delgamuukw*, in para. 141, the Supreme Court confirmed that "the purpose of s. 35(1) [of the Constitution Act, 1982] is to reconcile the prior presence of aboriginal peoples in North America with the assertion of Crown sovereignty...". The court also reaffirmed, at para. 170, its statement in *R. v. [Jones]*, [1996] 2 S.C.R. 821 that "rights to self-government, if they existed, cannot be framed in excessively general terms". ... [Emphasis added]

- [12] It is well established that the courts of British Columbia have jurisdiction over aboriginal accused where an offence has allegedly been committed within the Province, regardless of whether or not the territory could be said to be "beyond the treaty frontier", or is "unsurrendered ground", as that terminology is used by the appellants in their argument before this Court.

- [84] Several other cases reaffirm this conclusion.

- [85] In *Sackaney v. Canada*, 2013 TCC 303, the Court dismissed the appellant's argument that there was an inherent aboriginal or treaty right to tax immunity. The appellant's argument was set out in para. 9 as follows:
- [9] The appellants' pleadings are somewhat rambling and do not contain a concise statement of the issues they are raising. However, the essence of their arguments is that:
- (i) they have an inherent aboriginal and treaty right to immunity from taxation which is protected by subsection 35(1) of the Constitution Act, 1982, [...].
 - (ii) the application of paragraph 87(1)(b) of the Indian Act violates section 35.1 of the Constitution Act, 1982 because no constitutional conference was held prior to the "implementation of the Income Tax Act in 1985". Furthermore, Canada has failed to carry out its fiduciary responsibility to aboriginals and its duty to consult with aboriginals and its obligation pursuant to the United Nations Declaration on the Rights of Indigenous Peoples [...] by not calling a constitutional conference prior to the enactment and enforcement of paragraph 87(1)(b).
 - (iii) paragraph 87(1)(b) of the Indian Act, [...] violates the Appellants' equality rights guaranteed by section 15(1) of the Charter.
 - (iv) taxation of their off-reserve income violates their mobility rights guaranteed by section 6 of the Charter.
 - (v) the Court does not have jurisdiction to hear this matter and lacks judicial procedures required to recognize the inherent rights of aboriginals.
- [86] At paras. 10 to 12, the court stated:
- [10] The appellants' first argument is predicated on the existence of an inherent aboriginal or treaty right to tax immunity. The appellants do not explicitly set out the basis of this alleged immunity, but from other statements in their Amended Notices of Appeal and Notice of Constitutional Question, I understand them to be claiming that the Crown does not have jurisdiction to impose tax on aboriginals because they have never agreed to pay tax and have not been consulted on the issue.
- [11] Counsel for the respondent argued that it is clear aboriginals do not have general immunity from taxation in Canada. The appellants have not put forward any authorities to support this position, and the jurisprudence is overwhelmingly against it.
- [12] The appellants' position amounts to a denial of the sovereignty of the Crown over aboriginal people in relation to taxation. The contrary view, that aboriginals are subject to the provisions of the Income Tax Act, flows from the fact of Canadian sovereignty over aboriginal peoples living in Canada. In *Nowegijick v The Queen*, [1983] 1 SCR 29, Dickson J. wrote at paragraph 24 that:

Indians are citizens and, in affairs of life not governed by treaties or the Indian Act, they are subject to all of the responsibilities, including payment of taxes, of other Canadian citizens.

[87] The court then continued at paras. 13:

[13] Similarly, in *R v Sparrow*, [1990] 1 SCR 1075, the Supreme Court stated at page 1103 that:

It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition to which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vests in the Crown . . .

[14] In light of these pronouncements of the Supreme Court, it is clear that the appellants' claim of an inherent aboriginal right to tax immunity, based on a claim that aboriginals did not agree to pay tax and have not been consulted on the matter, is incompatible with the Crown's sovereignty over Canadian territory.

[15] Since the claim of an inherent aboriginal right to tax immunity is unfounded, it is clear that the appellants' arguments relating to section 25 of the Charter and subsection 35(1) of the Constitution Act, 1982 cannot succeed.

[88] At para. 16, the court set out s. 25 of the Charter.

[16] Section 25 of the Charter reads:

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from many 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.

[89] At para. 17 it is clear that the court intended to set out s. 35(1), however it mistakenly repeated s. 25. Section 35(1) states, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed".

[90] At paras. 18 - 19 the court continued:

[18] In *Mitchell v. M.N.R.*, 2001 SCC 33 McLachlin C.J. explained that the effect of the enactment of subsection 35(1) of the Constitution Act, 1982 was to elevate existing common law aboriginal and treaty rights to constitutional status.

[19] It is also clear that the aboriginal rights protected by section 25 of the Charter are those rights recognized by the Royal Proclamation or those existing by way of land claims at the time the Constitution Act, 1982 came into force or rights acquired by way of land claims after that point. In *R. v. Kapp*, 2008 SCC 41 McLachlin C.J., writing for the majority, stated that "not every aboriginal interest or program falls within the provision's scope" and that "only rights of a constitutional character are likely to benefit."

[91] In *R. v. Williams*, [1994] B.C.J. No. 2745 (C.A.), the court had dismissed the appellant's argument that the Provincial Court that had convicted them of offences under the Criminal Code was without jurisdiction because the offences occurred in places that had not been ceded or surrendered to the Crown by treaty.

[92] At para.16, Justice Hollinrake quoted at length from the Provincial Court judgment, with which he ultimately agreed. The only portion I will quote is this:

I conclude that the decision in *Delgamuukw* is binding upon this Court and governs the issues raised in the instant appeals. As, in my view, correctly stated by the Crown submission: "There is no residual aboriginal sovereignty capable of displacing the general jurisdiction of the Provincial Court to try persons, whether aboriginal or non-aboriginal, for offenses under the Criminal Code ."

[93] In *R. v. Crischuk*, 2010 BCCA 391, at para. 3, the trial judge found the question of whether the accused was a member of a Native Band by adoption was not relevant to the court's jurisdiction to entertain allegations of criminal conduct, citing *Pena*. In short, the Court of Appeal in that quite recent decision upheld and confirmed *Pena*.

[94] Returning now to the remainder of the defendant's submissions. At para. 24, the following submission is made:

24. As Canada has breached its Fiduciary Duty, the Maxims of Equity take precedence over Common Law Statutes like the Criminal Code and the Revenue Canada Act, as held by the SCC in *Canson v Boughton* [1991] 3 SCR 534 to expressly apply regarding Breach of Fiduciary Duty, where that breach involves breach of contract (or herein, Treaty).

[95] The memorandum goes on to state:

Those principles are repeated in S. 44 of the Law and Equity Act of B.C.

That provision has no relevance to this matter.

[96] I note that *Canson* was a civil damages claim, the main issue in that case being the measure of damages in equity as opposed to at common law. The damages stemmed from a solicitor's breach of a fiduciary duty owed to one of the parties on purchases of land the solicitor represented. The case engaged the justices in rather complex and nuanced considerations of the relationship between equity and common law, particularly in the area of damages, which itself can become a very complex area of the law.

[97] *Canson* does not support an argument that the Supreme Court of Canada has adopted the principle of criminal equity, which is not really, to be accurate, a recognized operative legal theory of law in Canada, at any rate not in this court. In any event, it does not raise a matter or legitimate line of defence relevant to the charges faced by Ms. Anderson.

- [98] In passing on this matter, I note that at para. 25, counsel refers to an uncited article in the Harvard Law Review regarding "criminal equity"; and at para. 26, an uncited article by "Poppo". Citing the latter, he stated:
26. [T]he Maxims do apply in Criminal court situations, ever since the Star Chamber back in the Middle Ages. Criminal Equity applies in personam and demands that all people are equal, so Mary Elizabeth Windsor is equal to the Clan Grandmother.
- [99] The logical and factual lines leading to that conclusion or the question before this court are not discernible. I was able to find a research reference to the Poppo's article, which included this citation, "A.E. Poppo, Court of Criminal Equity, 16 J. Am. Inst. Crim. L. & Criminology 151", this citation was published in 1925 - the series ran from May 1925 to February 1926, and it was published I believe in 1925, according to the article that counsel just handed up during his submissions. There is really no profit in taking up more time to delve into that article or the precepts of criminal equity, but I note that the early paragraphs in that very old article state:

The term "criminal equity" is not one which is often met with in common speech even amongst the legal profession let alone amongst those who do not frequent the halls of justice, yet it means a great deal to the average individual. In its modern form it appears in the guise of "natural justice," present in the mind of every judge but not administered in any particular court, nor based upon any particular principle. [Emphasis in original.]

- [100] It should be mentioned that Ms. Anderson made a submission on "criminal equity" at the last pretrial conference before the trial, apparently reading at the time from a document that someone had prepared for her. I rejected those submissions at that time.
- [101] In any event, standing on earlier submissions that counsel advanced in the memorandum, and expanded on during his oral submission, counsel proposed to put these rhetorical questions to the court at paras. 27-28:
27. Put another way, by what principle does Mary Elizabeth Windsor displace the Clan Grandmother and claim any land foreign to her as a Queen?

In Canada, there is none post Guerin, yet Criminal Courts insist on taking property belonging to the Clan Mothers.

28. At what point was Ms. Anderson's tie to the matrilineal line back to Clan Grandmother severed? It hasn't been severed, and cannot be severed, as it is mitochondrial. Any assault on the property of a female Aboriginal is a continuation of the initial assault of the Lording God of Genesis 2 on the First Woman who today has been proven by DNA to have existed. Access to the Godhead of Ms. Anderson was guaranteed by The Royal Proclamation of 1763 via a guaranteed Treaty process that has not yet taken place.

- [102] The memorandum continues at para. 29:

29. S. 35 of the Canada Act of 1982, protect Aboriginal rights existing in 1982, which entitles Ms Anderson to have this Motion heard by a Chancellor in Equity, as was the right of everyone under British authority prior to the 1881 Judicature Act.

[103] This remark reflects a misapprehension of the Courts of Chancery, its roots and its history, and of the role of chancellors. Chancellors do not preside over cases in this court or any court of law in Canada.

[104] I will read into the record the following paras: 30-32, 34-35, I am not going to comment on them, just read them into the record. Paragraphs 30-32 and 34-35 state as follows:

30. S. 35 ensures that the Aboriginal wealth is protected from a Prime Minister who, at 1 hour and 13 minutes of his Oath of Office swore an oath to keep his deliberations with the Queen and her Privy Council "secret," and thereafter to pass a budget of 3.5 Billion that is woefully short of sharing the resources of this land 50-50 as required by The Two Row Wampum Treaty of 1613.

31. Moreover, "Canadian" history is one of theft by a European governmental system of property, whether it be the Aboriginal diamonds just taken by DeBeers company without any percent to Aboriginals, an immoral and internationally illegal claim on the land belonging to Clan Grandmothers, and an immoral claim on the property (land or monies) of Ms. Anderson that form the very base of the Wealth of HER Nation, the ASMIN.

32. Paradoxically, Britain's own Adam Smith, who penned perhaps the greatest tome addressing the moral justification for a lifeless corporation to extract the wealth of its people, drew the very distinction between Direct and Indirect taxes that protect the middle class wage from being taxed by the royal family.

34. The trust herein was created when Mary Elizabeth Windsor took land not belonging to her, per Guerin, then either breached by actions (taking without contributing 50 percent) or by Ottawa's utter failure to act to protect Aboriginals as required by S. 35. Now as stated in Daniels:

"As the curtain is indeed opening wider on the history of Canada and its Indigenous Peoples, the inequities are increasingly revealed."

35. It should be noted [as] well that "Canada" patriated its Constitution in 1982; it could not be Matriated, which is a term translated as the Matri-sophic concept of the Iroquois, wholly unknown to the Vatican-British system, but known in Ancient Greece, Egypt and Sumer. The Clan Mothers harken back to the Eye of Isis Treaty (408 CE) which recognized the Clan Mothers as the Supreme Law.

[105] A purpose of reading these passages into the record is that they speak implicitly, not wishing to be disrespectful, to the quality and nature of the submissions that have been made and upon which the court is being asked to adjourn this trial.

[106] At paras. 37 to 38, counsel addresses the question of whether I should recuse myself from this matter. I take no offence regarding that position. It has no influence on decisions I have reached on this matter.

[107] I will recite paras. 37 - 39 and the order sought in Part IV:

37. Pursuant to S. 6(4) of The Provincial Court Act , Justice Brown is required to swear an Oath of Allegiance to Her Majesty the Queen, her heirs and successors, and not to the Clan Grandmother who is a Partner in Confederation whose rights as existing in 1982 are to be protected by the Justices of Canada.
38. Per para 14 above, Mary Elizabeth Windsor is no longer eligible to wear any Crown of the Queen, especially in light of the residential school murders undertaken by Her churches, as testified by Aboriginal eye witnesses at the ITCCS hearing in Belgium in 2013, and by her private banks controlled from the City of London, who fund child rituals.
39. Further, Justice Brown is not trained as a Chancellor, and likely has no experience in Aboriginal Laws and Traditions or the Law of Ma'at (Natural Justice and the Matriarchal Equitable Principles) without which he is not judicially qualified to hear the Motion, let alone the trial, or empanel an Aboriginal panel approved by the Clan Grandmother and the Chief Justice of B.C.

The Defendant Seeks an Order returning her to the jurisdiction of the ASMIN Clan Grandmother Ikway Michine.

[108] I note that at p. 121 of the commissioner's Truth and Reconciliation Report, which I have read, the commissioner noted:

Traditional Knowledge Keepers and Elders have long dealt with conflicts and harms using spiritual ceremonies and peacemaking practices, and by retelling oral history stories that reveal how their ancestors restored harmony to families and communities. These traditions and practices are the foundation of Indigenous law; they contain wisdom and practical guidance for moving towards reconciliation across this land.

[109] Of course, community governance and practices vary among Indigenous communities.

[110] Counsel advised the court he represents both the Clan Grandmother Ikway Michine, as well as Ms. Anderson, which I find very problematic. Ms. Anderson handed up a letter dated February 2, 2016, to a Minister Dianne Lebouthillier of the Canada Revenue Agency, ostensibly from Clan Grandmother Ikway Michine. It is difficult to make out the letter's content, but it appears to address differences between her and Revenue Canada. I find no authority binding on this court in any form that requires relinquishment of its jurisdiction over Ms. Anderson and her indictment to a Clan Grandmother.

[111] I note in passing some documents handed up by Ms. Anderson (without notice) indicate some Ontario Indigenous communities are working towards the development of a justice system to dispose of some matters in their respective communities. That has no bearing on the matters before this court.

[112] At the outset of these reasons, I noted the difficulty of finding a logical train of propositions in the memorandum, partly because it contained so much immaterial information and unproven assertions, some of an extreme or conspiratorial nature, with little in the way of discernible logical links between the various assertions or to the jurisdiction of this court and the matter before it. Much of what was referred to was far beyond the purview of this court and its responsibilities. Most of what was asserted does not withstand a modicum of inquiry. Practically speaking, none of it raises a judiciable issue relevant to this case.

(PROCEEDINGS ADJOURNED BRIEFLY)

(PROCEEDINGS RECONVENED)

[113] THE COURT: Out of respect for our legal process, I have delved into the materials more deeply than is usually necessary. I have sought to strike a balance between deciding and disposing of the proposed application altogether, and delving into the matter enough to fairly assess its merits.

[114] Before I conclude this part of my ruling, it should be mentioned that the documents handed up by Ms. Anderson, besides being handed up without notice, were not properly placed into evidence through a witness or, at the least, attached to an affidavit of a witness with a person who could swear to or solemnly affirm the maker and the provenance of the document. However, I did peruse them and I am aware of their contents.

[115] Counsel referred to an unreported ruling by Madam Prothonotary Martha Milczynski of the Federal Court dated September 7, 2016 and identified only by its docket number, T-195-16. In it, the court dismissed the plaintiffs' action pursuant to Rule 221 of the Federal Courts Rules, SOR/98-106 on the grounds that it was an abuse of the court's process. The plaintiffs claimed damages in the range of two to three quadrillion dollars and sought a number of declarations, including that the plaintiff "Sir Andrew [M]iracle is a sentient, living being and therefore the decisions of Ontario courts are not binding without his consent." The court noted that many of the plaintiffs' allegations were inflammatory and scandalous, including references to "theft of identity, rape and murder, a birth bond system to manufacture debt, and references to the United Nations, the Pope, and questions about the Queen's lineage to Edward III." The court concluded that the action could not proceed as it concerned matters that had already been determined elsewhere, were not within the jurisdiction of the court, or were generally confusing, rambling, and scandalous and did not give rise to a cause of action. Reading between the lines of the decision, it appears that some of the plaintiffs' claims in that case resembled certain of the allegations set out in Mr. Bogue's Memorandum of Fact and Law. I agree with the court's analysis in that case to the extent that it characterized these types of allegations as scandalous, inflammatory, and irrelevant.

Summary of ruling on adjournment for purposes of pretrial application

[116] In summary, I find no merit in the proposed application for an adjournment. I find the application will likely fail. The memorandum's lack of merit was abundantly clear. I accordingly find no basis for an adjournment so that the application can be set no later than November 30. I will not order an adjournment so that a hearing can be set November 30 to consider the application that is proposed, even if it were fleshed out somewhat. The court's jurisdiction will not be relinquished and the accused will not be transferred to the jurisdiction of the Clan Grandmother as demanded by the accused.

[DISCUSSIONS BETWEEN COURT AND COUNSEL]

(PROCEEDINGS ADJOURNED TO OCTOBER 18, 2016)

(PROCEEDINGS RECONVENE OCTOBER 18, 2016)

[117] This is a continuation, in a sense, of the reasons I gave on Ms. Anderson's application to adjourn the trial and to have a hearing set no later than November 30 of this year on the question of jurisdiction. Counsel advised yesterday, for the first time, that he and a colleague intended to represent Ms. Anderson at the trial throughout. The materials themselves, however, had indicated only that Ms. Anderson sought an adjournment so that a hearing could be set to determine whether this court had jurisdiction over Ms. Anderson and whether it should relinquish jurisdiction to a Clan Grandmother.

[118] Yesterday, I gave reasons in which I concluded there is no proper foundation to the proposed application and that it had no merit, and I declined to order an adjournment for what I concluded was a purpose that had no proper legal foundation.

[119] I stress that although I was dealing with the merits of the foundational materials as a whole and some of its individual constituent elements, I find the Supreme Court and appellate authorities I referred to put the jurisdictional question in this case beyond question and not in issue.

[120] As I was not feeling well yesterday, the day had been a full one with no other judge available to assist on the other matters on the list, I advised the court that I would reflect on the matter of adjournment further overnight and address it the following morning, which is now.

[121] Before going into specifics, I should first address some of the history of this case.

[122] I agree with the Crown the facts in this case are straightforward. A number of evidentiary issues have already been disposed of in previous pretrial hearings. There are no Charter issues that have to be addressed. The Crown alleges Ms. Anderson was a so-called "Educator" within an organization called the Paradigm Education Group. It is alleged that it held materials purporting to teach students a method of how to be exempted from taxes by restructuring their identity, and in the result avoid any obligation to pay taxes and to remit GST.

- [123] The Crown will lead evidence to show Ms. Anderson taught Paradigm's theories to over 100 students and that students had to agree either to pay her a portion of their earnings or instruct their employer to deduct the entitled portion and remit it to Ms. Anderson, who also allegedly sold and distributed Paradigm materials.
- [124] Over the period between the 2005 and 2006 tax years, she allegedly earned \$165,000 from those activities, and remitted a portion of those earnings to Russell Porisky, Paradigm's founder, while failing to pay any income tax.
- [125] Count 1 alleges that Ms. Anderson failed to declare the business income she earned as an educator on her 2005 and 2006 T1 tax returns contrary to s. 239(1)(a) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.).
- [126] Count 2, a tax evasion count, the Crown alleges that Ms. Anderson failed to pay the taxes she owed on the business income she earned as an educator for the 2005 through 2007 taxation years contrary to s. 239(1)(d) of the Income Tax Act.
- [127] Count 3 relates to GST evasion and alleges that Ms. Anderson failed to collect and remit GST from her Paradigm students contrary to s. 327(1)(c) of the Excise Act, R.S.C. 1985, c. E-15.
- [128] Count 4, counselling fraud, alleges that, during the period of December 31, 2001 to August 26, 2010, Ms. Anderson taught and advanced the Paradigm theories to her students; and that this amounted to counselling fraud.
- [129] Absent the testimony of four former students and some witnesses called to testify with respect to the sources of the documents, the Crown's case is almost all documentary and in electronic and paper form. Some evidence will be tendered by affidavit and some records tendered pursuant to ss. 29 and 30 of the Canada Evidence Act, R.S.C. 1985, c. C-5. Crown has provided informative will-says in its synopsis of the case, which is admirably clear and complete. From it, a diligent counsel could quite quickly grasp the full extent and nature of the case, including mens rea and actus reus issues, the law and mistake of law, in fact, and so on.
- [130] There are many documents although only a relatively small portion of them will be put into evidence. The accused has had access to them for over two years. They are in digital and paper form. Crown counsel intended to present the case digitally, backed up by paper copies as exhibits. I approved this procedure, approved in other cases, some time ago. As mentioned, although there are many documents, they do not all have to be put into evidence by the Crown. Some are more important than others are and some are representative of others. That is for the Crown to deal with in its presentation of the case.
- [131] Some documents were seized pursuant to lawful search warrants from the Porisky residence, and some from Ms. Anderson's residence.

- [132] The Crown intended to call 13 continuation witnesses regarding the searches and the documents seized. Some of them are in retirement; some of those witnesses were prepared to testify yesterday afternoon, but due to the court having to dispose of the application for the adjournment and to give reasons in other matters that I had to dispose of, it was not possible to proceed at that time.
- [133] Ms. Anderson was asked to admit the continuity of items seized by the Canada Revenue Agency during those searches. She has not done so, without explanation. This has necessitated the calling of witnesses to establish this, which also lengthens the trial, of course. It is very rare in a case such as this for continuity to be an issue, doubtless most counsel, if representing her, would not contest continuity.
- [134] The trial was originally scheduled for four weeks. If continuity were not in issue, it could complete in far less time.
- [135] I provided Ms. Anderson a full set of written instructions on the mechanics of a jury trial and evidentiary matters, in plain English, with much explanation and directions to resources available to her.
- [136] As noted earlier, yesterday, Ms. Anderson recently re-elected trial by judge alone. Crown counsel estimates the case now could complete in ten days, but surmised that given the recent history of the case thought three weeks should remain set aside to be safe.
- [137] In any event, the court schedule has been seriously disrupted, because if the matter were to be further adjourned, new dates would have to be set aside, not to mention other cases that could have populated this time lost due to the eleventh-hour application for an adjournment. The courts in British Columbia are among the busiest in Canada and there is a tremendous demand on court time, so any time we lose that much court time it is highly disruptive.
- [138] Originally, Ms. Anderson elected trial by a Provincial Court judge. That court set a three-week trial to start March 12, 2013. However, about three weeks earlier, on February 20, 2013, and following a preliminary inquiry at which Ms. Anderson represented herself, she elected to be tried by judge and jury. On April 5, 2013, Ms. Anderson was ordered to stand trial; and on May 8, 2013, Madam Justice Holmes ordered the venue for the trial to be Chilliwack.
- [139] On October 17, 2013, Ms. Anderson's trial was scheduled for six weeks, to start November 17, 2014. In the period between February 28, 2014 and August 20, 2014, I heard Ms. Anderson's application for further disclosure and other various applications she brought, including constitutional and jurisdictional challenges. I disposed of those, ordering that no voir dire would be held on certain issues as there was no proper foundation for them. The October 24, 2014 reasons were originally not published, but were eventually published, cited as 2014 BCSC 2002.

- [140] In *R. v. Anderson*, 2014 BCSC 1720, I adjourned the six-week jury trial scheduled to commence on November 17, 2014, due to Ms. Anderson's ill health. On December 14, 2014, the trial was re-scheduled for four weeks, to start on November 16, 2015, with a pretrial conference on June 2, 2015, and jury selection on November 2, 2015. Ms. Anderson applied to adjourn the trial, making known, at that time, her intention to bring a Rowbotham application. She had been denied legal aid. She was supplied with ample information, straightforward guidance, on what was required. She never filed an application. The court has never had full disclosure of Ms. Anderson's assets, but Crown counsel opposed the application because she evidently owned her own home, according, Crown advised, to the Land Registry.
- [141] On June 22, 2015, Associate Chief Justice Cullen ordered a joint voir dire and appointed me to adjudicate the common issue of admissibility of documents seized from the Porisky residence for this matter and two related matters: *R. v. Lawson*, Vancouver 26576-3; and *R. v. Miller*, Vancouver 26756-2. Mr. H. Gawley was retained to represent Ms. Anderson on that matter. He advised the court that Ms. Anderson consented to an order; as set out in *R. v. Anderson*, 2016 BCSC 1043, that the DVD created by Peter Koch contain the true copies of a folder labelled "Educator Debbie Anderson", and that the content of the folder is admissible against Ms. Anderson at trial on her indictment.
- [142] I neglected to mention, as I had momentarily forgotten, an articling student represented Ms. Anderson for part of the disclosure application and on her adjournment application. Assisted and overseen by his principal, C.D.R. Maddock, Q.C., made what I thought were able submissions. At the September 7, 2016 pretrial conference, I set a deadline for the filing of any Charter notice of September 23, 2016. On September 23, 2016, Justice Verhoeven approved Ms. Anderson's re-election to trial by judge alone and the jury panel had to be undone. The court was advised of Ms. Anderson's retention of counsel and intention to apply for an adjournment, as discussed earlier, just late last week. I was not sitting at the time and was not apprised of it until October 8, 2016.
- [143] Counsel for Ms. Anderson submitted in passing that given Ms. Anderson had suffered a head injury she obviously was not capable of representing herself at trial. Ms. Anderson had a car accident about two years ago. It is quite some time ago now, but as I recall provided information, it was primarily a soft tissue injury. I recall some concussive-type symptoms, but as I recall the medical evidence, going back a long time now, there was no diagnosis of a brain injury: 2014 BCSC 1720.
- [144] Ms. Anderson has been directed on more than one occasion to provide the court with updated information on her medical condition following her accident. She has never done so. The accident now is going on two years ago. She addressed the court at the last pretrial conference assisted by a document she read from, [asking the court to stay the charges because she had just learned she was a victim of human trafficking]. I found no merit in it, but I mention that because she presented it without any difficulty, albeit she had a document to read.

- [145] Now, Ms. Anderson seeks an adjournment of the trial for two to three months to make way for the setting and hearing of the jurisdictional application, as I have been discussing, and to have counsel represent her for that purpose. Now, counsel seeks an adjournment to no later than January 2017 so that he and his intended putative colleague, who he states is experienced in criminal law matters, can appeal my dismissal of the application to adjourn and to set a hearing date on jurisdiction and to prepare for the trial. He also mentioned their fees should be covered.
- [146] *R. v. Tortora*, 2010 BCCA 547 [Tortora], is instructive. In that case the B.C. Court of Appeal considered an appeal in which the accused's counsel had withdrawn from the case, evidently because he could not afford to pay his lawyer to finish the trial and so needed time to raise money to retain new counsel. In considering the matter, the court adopted the principles set out in *R. v. Beals*, [1993] N.S.J. No. 436 (C.A.), a Nova Scotia decision. [Beginning at para. 22 of Tortora now]:
- [22] When determining whether to deny an adjournment to an unrepresented accused, I adopt as the appropriate test the following factors from *R. v. Beals*, [which I have just referred to]:
1. The decision whether to grant or refuse a request for an adjournment because an accused is not represented by counsel in a criminal trial is a discretionary one but one that must be based on reasons well-founded in the law.
 2. An accused has a constitutional right to a fair trial. Representation by counsel at trial is generally essential to a fair trial if an accused is charged with a serious offence and a complex trial can be anticipated. ...
 3. The right to counsel at trial is not absolute ... there is no constitutional right to be represented by a state funded counsel at trial. ...
 4. The right of an accused to retain counsel to represent the accused at trial must be exercised honestly and diligently so as not to delay a scheduled [time]. ...
 5. Each application for an adjournment on the ground that the accused will not have counsel at trial must be decided on its facts. Relevant facts to be taken into account by the trial judge are: (a) whether or not there have been prior adjournments due to the unavailability of counsel and the accused was warned well in advance of trial that the trial would be proceeding on the scheduled date with or without counsel. ...
- [147] In this case, Ms. Anderson has had ample opportunity and instruction to obtain counsel, to pursue a Rowbotham application, and has been given ample instruction and referral to resources for self- represented persons.
- (b) the accused's criminal record which reflects on the accused's degree of familiarity with the criminal justice system and legal aid programmes ...

- [148] Ms. Anderson does not have a criminal record. Her application made for legal aid was rejected. She represented herself at the pretrial conference and had legal representation for part of her earlier disclosure application and adjournment application.
- (c) whether the charge against the accused is simple or complex which impacts on the critical question whether or not the accused can get a fair trial without counsel ...
- [149] Most of the Crown's evidence rests in documents, many of them of duplicates, in which she is identified as the maker or a recipient. Some were seized from her home, some from the Porisky residence. It cannot be reasonably said she lacks all familiarity with them. The Crown has set out in straightforward simple terms the relevant statutory provisions that apply in this case, the applicable mens rea and actus reus principles, and the principles applicable to mistake at law or facts, also explained in the memorandum I sent to Ms. Anderson.
- [150] The next point in the Tortora:
- (d) the public interest in the orderly and expeditious administration of justice. ...
- [151] The court and Crown are not responsible for any of the delays in this matter. Dates have been offered, Rowbotham instructions given, long stretches of court lost due to adjournments. The orderly and expeditious administration of justice argues against further adjournments. Ms. Anderson's new counsel asked rhetorically yesterday, "What's the hurry?" The Supreme Court of Canada answered that question fully in *R. v. Jordan*, 2016 SCC 27. Crown counsel has had to prepare for this trial three times. Many witnesses, some now retired, have been inconvenienced. Other pressing matters were deprived of a hearing due to disrupted schedules. That is the hurry. *R. v. Jordan* is not exclusively concerned solely with the rights and interests of all accused persons involved in the litigation process and the administration of justice as a whole. The adjournment delays in this case impacts others.
6. As a general rule an accused should not be refused an adjournment if the fact that he is without counsel on the scheduled trial dates is not his fault but that of his counsel and he had no complicity in the matter. ...
- [152] I do not know long Mr. Bogue has been retained, so cannot comment on this. However, what is clear is that Ms. Anderson has had much direction and encouragement to retain counsel, and a great deal of time and opportunity to do so.
7. As a general rule an accused should be refused an adjournment if he has not acted diligently and honestly in attempting to obtain counsel and it can be inferred from the circumstances that he failed to avail himself of the opportunity to do so for the purpose of delaying the proceedings. ...
- [153] Ms. Anderson has not acted diligently considering the history of the case. The timing of the application is concerning, but without more facts I cannot infer the basic purpose was to delay the proceedings. See *R. v. Devera*, 2010 ABCA 154, where that court similarly adopted

these same principles. See also *R. v. Hazelwood*, (1994), 42 B.C.A.C. 44 (C.A.), another tax evasion case, where the accused's adjournment application due to a lack of counsel was part of the pattern of delay tactics, which can form the basis for refusing an adjournment. In *R. v. Capone*, 2004 CarswellOnt 6632 (S.C.J.), the Court of Appeal upheld the trial judge's refusal to grant an adjournment to allow the accused to make a Charter application which he viewed as having no possibility of success.

- [154] Counsel advised he intended to file an appeal forthwith and asked the matter to be adjourned for that purpose; and also to accommodate preparation for trial, which, according to his calculations, called for an adjournment to the New Year, as I mentioned. I will not agree to such delay. Counsel assured he would not delay with the appeal; I pointed out the Court of Appeal will have to decide whether to grant leave to appeal. If leave is refused, or if the appeal proceeds and is rejected, considering the nature of this case and the limited facts and law at issue, it is fair to expect a reasonably experienced counsel to be ready to proceed within a week or so of that determination. The factual and legal matrix is not so extensive or complex that it requires the months of preparation counsel alluded to.
- [155] I was particularly concerned when counsel advised that he and his colleague intended to introduce at trial the matters raised in the Memorandum of Fact and Law, including 'criminal equity.' Those matters are immaterial to the case and will not be admissible. Counsel's comment left an impression that counsel was motivated by opportunity to pursue the theories and matters he addressed in the memorandum, which, he advised the court, were authorized and guided by the Clan Grandmother, as opposed to meeting the Crown's case. He will have to satisfy this court clearly in due course where his representational interests lie.
- [156] I will adjourn the matter generally to allow time for the matter to be disposed of in the Court of Appeal. If the Court does not grant the appeal, counsel should expect an order that the trial will proceed peremptorily within one week of that order, with or without counsel. [Since amended by a memorandum to counsel providing for a Trial Management Conference to set a date.]
- [157] Considering the history of the litigation and the facts and law at play, and Ms. Anderson's familiarity, certainly by now, with the issues, however, I am in any case of the mind that Ms. Anderson, with some guidance from the bench during the trial, is capable of representing herself. It is always preferable for an accused to have counsel if possible. For now, I will seek reasonably to accommodate Ms. Anderson but adjournment of the length counsel proposed is not acceptable.
- [158] Counsel stated that if the appeal to the British Columbia Court of Appeal is not upheld, he intends to appeal to the Supreme Court of Canada. If that should occur, I will address adjournments in the event.

[159] A pretrial conference shall be set for mid-November, at which time a new trial date will be considered and set, and the court brought up to date with respect to the appeal. Any new trial date will be peremptory. If the Court of Appeal declines to hear the appeal, or does not uphold the appeal, then counsel should proceed on the understanding that they should be prepared to proceed within a reasonable time.

[160] The other stipulation I make is that Mr. Bogue and Ms. Manery will confer in good faith with respect to Ms. Anderson's admitting, or not, to continuity. That would excuse thirteen witnesses and reduce the length of trial considerably.

"N. Brown J."

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