

CANADA / JUDGMENT

Trans Mountain Pipeline ULC v. Mivasair

2022 BCSC 792

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 792 Trans Mountain Pipeline ULC v. Mivasair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trans Mountain Pipeline ULC v. Mivasair,

2022 BCSC 792

Date: 20220513

Docket: S183541

Registry: Vancouver

Between:

Trans Mountain Pipeline ULC

Plaintiff

And

David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner), Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner), Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka Robert Abress), Gordon Cornwall, Thomas Chan, Laurel Dykstra, Rudi Leibik (aka Ruth Leibik), Linda Hutchings, John Doe, Jane Doe, and Persons Unknown

Defendants

And

Attorney General of British Columbia

Intervenor

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

(re Jocelyn Pierre, April Thomas, Henry Sauls, Romilly Cavanaugh, Susan Bibbings, Miranda Dick, Heather Lamoureux and Laura Zadorozny)

Counsel for the Crown:

N. Wiberg

The Defendant, Jocelyn Pierre, appearing in person:

J. Pierre

The Defendant, April Thomas, appearing in person:

A. Thomas

The Defendant, Henry Sauls, appearing in person:

H. Sauls

The Defendant, Romilly Cavanaugh, appearing in person:

R. Cavanaugh

The Defendant, Susan Bibbings, appearing in person:

S. Bibbings

The Defendant, Miranda Dick, appearing in person:

M. Dick

The Defendant, Heather Lamoureux, appearing in person:

H. Lamoureux

The Defendant, Laura Zadorozny, appearing in person:

L. Zadorozny

Place and Date of Hearing:

Kamloops, B.C.

April 27-28, 2022

Place and Date of Ruling with Written Reasons to Follow:

Kamloops, B.C.

April 28, 2022

Place and Date of Written Reasons:

Kamloops, B.C.

May 13, 2022

INTRODUCTION

[1] On June 1, 2018, Justice Affleck of this Court granted an injunction to restrain persons from obstructing, impeding and interfering with the operations of the plaintiff, Trans Mountain Pipeline ULC ("Trans Mountain"), at its various work locations (the "Injunction"). In fall 2020, one of Trans Mountain's work locations (as defined in the Injunction) was apparently at or near Kamloops, BC.

[2] In early 2021, the Crown filed applications in this proceeding alleging that:

- a) Jocelyn Pierre, April Thomas, Henry Sauls and Romilly Cavanaugh (collectively, the "October 15 Accused") were guilty of criminal contempt of court in respect of the Injunction, arising from their presence and activities at or near Kamloops on October 15, 2020; and
- b) Susan Bibbings, Miranda Dick, Heather Lamoureux and Laura Zadorozny (the "October 17 Accused") were guilty of criminal contempt of court in respect of the Injunction, arising from their presence and activities at or near Kamloops on October 17, 2020.

(collectively, the "Accused")

[3] In its January 2020 Notice of Motion, the Crown alleged that the October 15 Accused were guilty of criminal contempt by reason of publicly disobeying the terms of the Injunction that provides:

- 1. The Defendants, any other person having notice of this Order, are hereby restrained and enjoined from:
 - a) physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to, or work in, any of the sites or work areas as set out below:

...

(iii) any other project or operations site of Trans Mountain or its affiliates, contractors, or subcontractors that has been reasonably identified as the same (such as though signage, fencing, flagging or boundary markings situated on or around the perimeter of such site) (the "Markings"),

(the sites and work areas referenced in this (a) being collectively, the "Trans Mountain Sites");

[4] In addition, the Crown alleged that the October 15 Accused were guilty of criminal contempt by in respect of para. 1(d) of the Injunction which provides that any person is restrained and enjoined from:

... burning, defacing, tearing down, or otherwise harming, any and all signage, fencing, flagging or boundary markings situated on or around the perimeter of any of the Trans Mountain Sites or the Critical Roads, including without limitation the copies of this Order that are to be posted pursuant to paragraph 9 of this Order.

- [5] I have not yet seen the Notice of Motion in respect of the October 17 Accused, but I am assuming that similar allegations are advanced.
- [6] The Accused have either pleaded not guilty or, having refused to enter a plea, the Court entered a not guilty plea for them.
- [7] Since the Accused's first appearances in January 2021, there have been a number of court hearings toward advancing the matter in order to address the allegations. Those efforts have, by and large, related to the Crown's disclosure and the scheduling of trial dates. Many trial dates have been scheduled for two separate trials for the October 15 and October 17 Accused, respectively. For a variety of reasons, none of those trials have proceeded. No new trial dates have been rescheduled.
- [8] Throughout that time, the Accused have been self-represented, save for certain adjournment applications.
- [9] The Accused have filed two applications. In the first instance, they seek an order that the Court stay the charges against them. In addition, they advance certain arguments under the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 being Schedule B of the Canada Act, 1982 (U.K.), 1982, c. 11 [Charter]. To a large degree, the applications are duplicative. The focus of both applications (which I have paraphrased below) is toward seeking a finding of:
- a) common law abuse of power / abuse of process and pursuant to the Court's ability to control its own process;
- and/or
- b) violations of ss. 2, 7, 8, 9, 10, 11, 12, 15(1), 24(1)(2), 25, 26 and 31 of the Canadian Charter of Rights and Freedoms and ss. 35(1) and 52(1) of the Canadian Constitution, 1982;
- as well as Constitution Act, 1867.
- [10] The Crown opposed the applications.
- [11] At the conclusion of this hearing, I dismissed the applications, with reasons to follow. These are the reasons.

THE APPLICATIONS

- [12] The Accused's arguments on this application are very wide-ranging and diffuse, but very consistent between them. At the outset, I would note that many of the Accused's submissions are more appropriately addressed at any trial.
- [13] Substantively, the Accused allege that it would be an abuse of process to proceed with the allegations against them.
- [14] For the purposes of this hearing, the Accused's arguments can be practically grouped into nine main headings:
- a) They challenge the jurisdiction of this Court over them and with respect to the allegations. They also dispute the jurisdiction of this Court to have granted the Injunction in the first place, claiming they are only here "under duress". They assert that the alleged offences took place on unceded territory of the Secwepemc'ulecw First Nation (the "First Nation"), which was never transferred to Canada with the free and informed consent of all 15,000 members of the First Nation;
 - b) They claim that Trans Mountain's pipeline project is a major threat to the environment and particularly, the First Nation and its peoples;
 - c) They refer to many of the issues that have been identified in our society in relation to Indigenous peoples, including to the residential school system. They refer to the myriad of problems that are currently found in Indigenous communities in Canada, including drug and alcohol abuse, sexual abuse and suicide. They assert that the Canadian government has failed to address those issues;
 - d) They claim that the participants in this proceeding--the government of Canada (since it indirectly owns Trans Mountain), the Chiefs and Bands of the First Nation under the Indian Act, R.S.C., 1985, c. I-5 who have signed agreements with Trans Mountain, the RCMP and the courts/judges--all have a conflict of interest;
 - e) They raise various concerns regarding their treatment upon arrest by the RCMP;
 - f) They raise various issues concerning the Crown's disclosure to date;
 - g) They claim unfairness in the prosecution of the matter to date, including delays;
 - h) They claim that it is unfair for the matter to proceed, as addressing the allegations has and is expected to continue to take time and effort away from their personal lives and cause them pain, suffering and financial hardship; and
 - i) If the matter is to proceed against them, they want a "trial manager" to be appointed, different than the presiding judge in order to ensure trial fairness. They would also like a new judge appointed who is familiar with "Indigenous law" and "Indigenous rights and title".

[15] In these reasons, I do not intend to mention and address all of the numerous statements or assertions set out in the applications. However, I wish to assure the Accused that I have considered all of their arguments carefully. To the extent that any argument is not specifically addressed, it is dismissed as being without merit.

LAW CONCERNING ABUSE OF PROCESS

[16] The Crown has provided some authorities that outline the relevant test to establish an abuse of process that will justify the Court staying a prosecution.

[17] In *R. v. Keyowski*, [1998] 1 S.C.R. 657 at 658, the Court stated:

The availability of a stay of proceedings to remedy an abuse of process was confirmed by this Court in *R. v. Jewitt*, [1985] 2 S.C.R. 128. On that occasion the Court stated that the test for abuse of process was that initially formulated by the Ontario Court of Appeal in *R. v. Young* (1984), (1984) 40 C.R. (3d) 289. A stay should be granted where "compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency", or where the proceedings are "oppressive or vexatious" ([1985] 2 S.C.R. at pp. 136-37). The Court in *Jewitt* also adopted "the caveat added by the Court in *Young* that this is a power which can be exercised only in the 'clearest of cases'" (p. 137).

[Emphasis added.]

[18] In *R. v. O'Connor*, [1995] 4 S.C.R. 411 at para. 59, the Court reconfirmed the test for abuse of process, as stated above.

[19] The Court in *O'Connor* also addressed disclosure issues in the context of abuse of process and an accused's rights under s. 7 of the Charter. At para. 82, the Court confirmed that:

a stay of proceedings is only appropriate "in the clearest of cases", where the prejudice to the accused's right to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued.

[20] Finally, the Crown refers to *R. v. Vader*, 2016 ABQB 55, as an example of a case where the court analyzed where there had been an abuse of process arising from Crown disclosure issues. In doing so, at para. 25, the Court referred to looking at the conduct of the RCMP and the Crown for any "improper purposes, unfair steps, or that the Crown was 'gaming the system' in its favour".

[21] In *Vader*, the Court did not find any abuse of process and therefore declined to consider whether a stay would be the appropriate remedy (para. 53).

[22] Many of the Accused argue that these cases are distinguishable, as being in relation to serious offences, such as murder and sexual assaults.

[23] The simple answer to this argument is that the test articulated in Keyowski, as confirmed in O'Connor, and applied in Vader, equally applies to criminal contempt charges. Allegations of criminal contempt are serious and the consequences can also be serious, if a person is convicted.

DISCUSSION

[24] I will address the issues listed above as follows.

Unceded Territory / Jurisdiction

[25] The Accused, Ms. Pierre, Ms. Thomas, Mr. Sauls and Ms. Dick, are Indigenous people. The remainder of the Accused are described as "friends, guests and allies" of the First Nation Accused.

[26] The Accused challenge the jurisdiction of this Court over them and with respect to the allegations, claiming that the location of the alleged criminal contempt is on "unceded Indigenous territory". They also dispute the jurisdiction of this Court to have granted the Injunction in the first place.

[27] Recently, in these proceedings, I addressed and rejected the same arguments by other Indigenous persons who were accused of breaching the Injunction: see *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCSC 2304 at para. 20. I need not repeat what is set out in those reasons, including the numerous case authorities, save to repeat from *R. v. Ignace* (1998), 156 D.L.R. (4th) 713 (B.C.C.A.) at para. 12, leave to appeal ref'd (1998), 120 B.C.A.C. 62 (note) (S.C.C.):

[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.

[28] Many of the Accused advanced arguments on these applications based on George R., Proclamation, 7 October 1763 (3 Geo III), reprinted in R.S.C. 1985, App. II, No. 1 (the "Royal Proclamation of 1763") suggesting that it formed the basis of a defence. However, Affleck J. in *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 2472 at para. 39 observed that there is no judicial authority that has applied that document in a manner that would influence the outcome of the criminal contempt proceedings against Indigenous accused.

- [29] In addition, Justice Marchand (as he then was), in *R. v. August-Sjodin*, 2020 BCSC 826, addressed similar arguments of an Indigenous accused to the effect that he was exempt from the application of provincial legislation by reason of his Indigenous status. Justice Marchand dismissed what he described as the accused's "pseudo-legal arguments infused with Indigenous rights arguments", including in relation to the Royal Proclamation of 1763 (paras. 3 and 23).
- [30] Accordingly, I am bound by the law in that this Court has jurisdiction over the Accused even if they are Indigenous and even if the location of the alleged criminal contempt is on "unceded Indigenous territory", an allegation about which I make no finding. In addition, with respect to all of the Accused, the Injunction must be accepted as valid and enforceable unless it is set aside or varied; the arguments of the Accused amount to an impermissible collateral attack.
- [31] I acknowledge the statements in the Accused's affidavits that they intend to launch constitutional challenges to the jurisdiction of this Court and to challenge the granting of the Injunction. If and when that occurs, those issues can be further addressed.

Environmental Concerns

- [32] Similar to other persons who have been accused of criminal contempt in this proceeding, the Accused argue that Trans Mountain's expansion project poses a threat to the environment, including the traditional territory of the First Nation.
- [33] The Accused express the need, if not the responsibility or "duty", to fight against the project to stop this "threat".
- [34] I have emphasized many times to the Accused that we are only at the preliminary stage of these proceedings and, as of now, no trials have taken place. It remains to be seen whether the acts of the Accused, as proven at trial, constitute a breach of the Injunction (the 'actus reus' component of the criminal offence). In addition, it remains to be seen whether the Crown can prove the necessary mental state on the part of the Accused sufficient to ground the allegations (the 'mens rea' component of the criminal offence).
- [35] In other words, the motivations or intentions of the Accused at this time are not in play and will only become relevant at a trial.
- [36] However, I would state for the benefit of these self-represented Accused that the only mental state that the Crown needs to prove for criminal contempt is well settled. For example, in *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCSC 2246, I stated:
- [73] The Crown must establish, beyond a reasonable doubt, that Mr. Leyden disobeyed the Injunction in a public way with intent, knowledge or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court.

[74] The decision in *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCSC 1247 at para. 89, Affleck J. cited Carey at para. 38 for the required "intent" to establish civil contempt:

It is well settled in Canadian common law that all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice

At para. 90, Affleck J. added that the "distinguishing feature of criminal contempt is knowledge or recklessness that public disobedience will tend to lower the authority of the court".

[37] Accordingly, any environmental concerns are irrelevant at this stage. Even assuming this was the motivation of the Accused, such motivations certainly do not establish any abuse of process that would justify a stay of the charges.

General / Personal Indigenous Issues

[38] It is difficult to synthesize the Accused's arguments in this respect. They seemingly argue that any past injustices visited upon Indigenous peoples in Canada are somehow to be addressed (at least in part) by a stay of these charges.

[39] I have been referred to various issues, including those arising from recent events in relation to residential schools. The Accused refer to "genocide", "oppression" and "systemic racism" and they allege that the Canadian and BC governments have failed to address these issues, including through reconciliation. To some degree, the Indigenous Accused also refer to their and their family's personal difficulties arising from these issues.

[40] Many of the Accused who are Indigenous refer to this proceeding as only adding to their "suffering".

[41] It is not the role of this Court in this proceeding to address these matters. They can only be addressed, if at all as appropriate, in other venues.

[42] At bottom, these matters are irrelevant to the issue at hand, namely whether there has been any abuse of process that would justify a stay of the charges.

Conflict of Interest

[43] The Accused claim that the participants in this proceeding--the government of Canada (since it indirectly owns Trans Mountain), the Indian Act Chiefs and Bands who have signed agreements with Trans Mountain, Trans Mountain, the RCMP and the courts/judges--all have a conflict of interest.

[44] This argument is without merit.

- [45] Trans Mountain is a legal entity that is allowed to operate in Canada within legal limits. In early 2018, Trans Mountain sought the granting of the Injunction to protect its right to be free of interference in its operations from those who would seek to impose their own will and beliefs to disrupt them.
- [46] The RCMP is acting within the bounds of its mandate in enforcing the order of this Court (the Injunction). Further, this Court is, as discussed above, in a position to uphold its authority and to uphold the rule of law by entertaining these criminal contempt proceedings.
- [47] No conflict of interest arises. The prosecution cannot be said to be an abuse of process in these circumstances.

Arrest Issues

- [48] Many of the Accused raise various concerns regarding their treatment upon arrest by the RCMP while enforcing the Injunction. For example, many refer to such matters as overly tight handcuffs, not being advised of their rights, being denied water and natural light while in custody and being held in a solitary cell for a lengthy period of time.
- [49] This untested evidence in no way rises to the level of proving the "clearest of cases" of an abuse of process that would justify a stay of the charges.
- [50] The Accused can raise these issues at trial if they wish, when the evidence can be presented and tested in a proper fashion.

Disclosure

- [51] The issue of the Crown's disclosure has been an ongoing source of controversy since the first appearances by the Accused. I am advised by the Crown that the Accused received substantial disclosure by September 2021.
- [52] I have heard many competing submissions over the many hearings, including by the Crown who said that disclosure has been given and then denials by the Accused who said they have not received it. Most of these latter submissions were made by Ms. Thomas, who, by all accounts, has taken a lead position on behalf of the Accused.
- [53] Providing the extensive disclosure to many Accused has been complicated, given their living situations. Even when received, many of the Accused then denied that they were able to access the data, which was password protected.
- [54] These issues came somewhat to a head at the March 18, 2022 pre-trial conference (PTC). By then, Crown advised that substantial disclosure had been sent out on March 8, 2022. However, another disclosure issue arose at this hearing. The Crown advised that in February 2022 they were told by the RCMP that further disclosure had not been sent to the Crown in relation to the October 17, 2020 incident (despite having been told before by the RCMP that full disclosure had been forwarded to the Crown). This further and new disclosure was sent

out to the Accused shortly after the Crown vetted it and put it in the appropriate format.

- [55] A judicial management conference (JMC) was convened on April 1, 2022. At the JMC, Ms. Thomas confirmed that she had received the disclosure and other Accused also indicated receipt but ongoing difficulties accessing the data. Despite these issues, at the JMC I advised the Accused that the onus was on them to notify the Crown of any further difficulties in opening the disclosure they had received.
- [56] I agree with the Accused that disclosure by the Crown has not been perfect; however, I am satisfied that the Crown has made reasonable efforts to provide that disclosure, which has been hampered by logistical difficulties to some degree by the fact that the Accused are self-represented. I am also satisfied that the disclosure that was only recently sent out arose through inadvertence and not by any deliberate attempt by the Crown to withhold it.
- [57] The Accused also raise issues in relation to the disclosure of RCMP officers' notes or reports, contending that they are falsified or fabricated. If the Accused wish to raise that matter, they may do so at the trials.
- [58] At present, no disclosure issues have arisen that would support that this is an abuse of process on the part of the RCMP or Crown and that this is the "clearest of cases" where a stay is warranted. At present, the Accused have received disclosure that will allow them to consider the Crown's evidence and make full answer and defence.

Prosecution Unfairness

- [59] The Accused raise various vague arguments that the continuation of this proceeding against them is "unfair".
- [60] The Accused point to the time it has taken to advance the proceedings to date. I agree that there have been delays and many court hearings to address the matter. At the outset, the Court ordered that there would be two separate five-day trials for the October 15 and October 17 Accused, respectively.
- [61] Since early 2021, a number of trial dates have been scheduled, as follows:
- a) August 3-6, 9-12, 2021: on July 30, 2021, this Court adjourned the trials at the request of the Accused due to wildfires (Crown did not object);
 - b) November 15-19 and December 13-17, 2021: on November 12 and December 9, 2021, respectively, this Court adjourned the trials at the request of the Accused due to flooding/road conditions and time needed to review disclosure (Crown did not object);

- c) January 17-21, 2022 (October 15 Accused): on January 13, 2022, this Court dismissed the October 15 Accused's application for adjournment although the Crown did not object to an adjournment. At the commencement of the trial, Ms. Thomas and Ms. Cavanaugh did not attend, citing suspected COVID-19 and personal reasons, respectively. Mr. Sauls and Ms. Pierre did attend but they contended they could not proceed since Ms. Thomas was their "support person". Crown was ready to proceed. Court adjourned the trial;
- d) March 21-25, 2022 (October 17 Accused): at the March 18, 2022 PTC, this trial was adjourned due to the newly identified disclosure by the Crown; and
- e) April 25-29, 2022 (October 15 Accused): at the April 1, 2022 JMC, this trial was adjourned due to the scheduling of these applications.

[62] I agree that the proceedings to date have been somewhat convoluted and difficult. However, most of the delay to this time arises from the Accused's applications to adjourn the trial dates for various reasons, including natural disasters, COVID-19 and personal reasons, which arose through no one's fault.

[63] Since spring 2022, the Court has attempted to reschedule trial dates, only to be met again with Accused's repetition of arguments advanced at this hearing, arguments that had begun as early as January 2021. For this reason alone, I do not accept Ms. Thomas' suggestion that the Accused are ill-prepared to advance these applications. The Accused have now been required to prepare documents to properly advance arguments that the charges against them should be stayed, and the trials should not proceed. These applications have been scheduled to address those issues in advance of the trials. The Accused did not seek an adjournment of their own applications.

[64] The Accused, led by Ms. Thomas, continue to refer to these proceedings as serious and that there is some complexity to them. She refers to the Accused needing time to prepare. I agree the matters are serious and for the sake of argument, that some complexity arises. I have been encouraging the Accused to seek and obtain legal advice for some time now. At present, the Accused have been afforded a substantial amount of time to address the matter, including with counsel if they wish. At some point, the matter has to proceed and that time is now.

[65] In any event, the procedural difficulties encountered in addressing the allegations against the Accused in no way rise to an abuse of process that would justify a stay of the charges. By any measure, the Accused have failed to establish the high bar of "clearest of cases".

[66] Nothing has occurred in the time since this matter began that affect the rights of the Accused to make full answer and defence.

Impact on Lives of Accused

[67] The Accused claim that it is unfair for the matter to proceed, as addressing the matters are taking time and effort away from their personal lives. They also vaguely argue that the proceedings are causing them pain, suffering and financial hardship. Ms. Thomas in particular argues that the Court is "wasting" her time.

[68] I would guess that any person facing criminal contempt charges would face the same or similar personal consequences in these circumstances.

[69] These personal consequences in no way justify a stay of the charges.

Conduct of Trial

[70] If the matter is to proceed, the Accused request:

- a) a "trial manager" to be appointed, different than the presiding judge to ensure trial fairness;
- b) A few months to allow them to put forth a constitutional challenge; and
- c) If a new judge is appointed, someone who is knowledgeable about constitutional law and criminal law. They would also like a judge familiar with "Indigenous law" and "Indigenous rights and title".

[71] I have been assigned as the case management judge in this matter since November 2019, when Affleck J. retired from the Court. Since that time, I have managed all of the criminal contempt matters, including hearing all trials, just as Affleck J. did.

[72] I see no reason not to be the presiding judge at the trial of these matters, on the basis of trial fairness. As of now, I know nothing of the particulars of the allegations beyond what is found in the Notice of Motion. The fact remains that the Accused are presumed innocent and that the Crown will be required to prove its case beyond a reasonable doubt, just as in the numerous trials already convened in this matter.

[73] The Accused's allegations that the Court (and myself in particular) are biased, conflicted and/or racist are nothing but vague and unsubstantiated allegations.

[74] As for trial timing, I expect that any new trial dates will afford the Accused time to prepare and also mount whatever constitutional or other challenge they wish to advance. As of April 28, 2022, they are aware that the trial dates are being discussed towards confirming the scheduling of the two new trial dates.

[75] Finally, the Court is well-versed in constitutional and criminal law in adjudicating this matter. It is unclear to me what the Accused mean by reference to "Indigenous law" and "Indigenous rights and title", particularly as it may be relevant to these proceedings. If the Accused refer to any such "Indigenous law" and "Indigenous rights and title", I am sure that the Court will be duly informed so that it can be taken into consideration, if proven and if relevant.

CONCLUSION

[76] For the reasons stated above, none of the arguments of the Accused have merit. In particular, they have not demonstrated to any degree that the continuation of these proceedings against them are an abuse of process, i.e., that they are oppressive or vexatious, per the Keyowski test. The Accused have also failed to establish any misconduct on the part of the Crown that would amount to an abuse of process. The fact remains that the Accused have not been prejudiced in any way by the conduct of the proceedings to date and they are now in a position to make full answer and defence at a trial.

[77] The applications are dismissed and the trials will proceed.

[78] Given that I am providing these reasons and that the notices of applications are in writing, I am not ordering that the Crown order a transcript of this hearing for the benefit of the Accused (as I did for earlier hearings). The Accused can order transcripts if they wish.

"Fitzpatrick J."

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