PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Patterson*, 2015 NSPC 33

Date: 2015-05-20
Docket: 2708048, 2708049, 2708056
2708057, 2708058
Registry: Pictou

Between:

Her Majesty the Queen

v.

Travis Lee Darnell Patterson

DECISION REGARDING PRETRIAL APPLICATIONS

Judge:	The Honourable Judge Del W. Atwood
Heard:	19 May 2015, in Pictou, Nova Scotia
Charge:	Sections 4, 5 and 8 of the Controlled Drugs and Substances Act; section 216 of the Excise Act; section 39 of the Revenue Act
Counsel:	Bronwyn Duffy for the Public Prosecution Service of Canada Jody McNeill for the Nova Scotia Public Prosecution Service Travis Lee Darnell Patterson representing himself

By the Court:

[1] This is an expansion of the oral judgment I rendered the morning of 19 May 2015, which was abbreviated necessarily as I was dealing concurrently with the court's full arraignment docket.

[2] Mr. Patterson is charged under the *Controlled Drugs and Substances Act* with possessing, producing and trafficking cannabis; he is also charged under the *Excise Act* of Canada and the Revenue Act of Nova Scotia with possessing contraband tobacco. He elected trial in this court on the indictable production and trafficking charges, and pleaded not guilty across the board. He was represented initially by a Nova Scotia Legal Aid staff lawyer. In time, that lawyer sought leave of the court to be removed as solicitor of record, informing the court concurrently that Mr. Patterson had been served with a notice under the Protection of Property Act not to enter Legal Aid offices. Mr. Patterson was represented later by another lawyer under the terms of a legal aid certificate. Mr. Patterson dismissed that lawyer on an earlier trial date. Mr. Patterson is self-represented at this time, and his trial is scheduled for 2 June 2015, to be heard by me.

[3] Mr. Patterson brought three applications before me on 19 May 2015; on the motion of the federal prosecutor, I dismissed all three. These are my reasons.

[4] First, Mr. Patterson sought to be represented at his trial by a Mr. Enns, who had appeared with Mr. Patterson on two earlier appearances. Even assuming, *arguendo*, that it would be permissible for a person not qualified to practice law in the province to represent an accused party charged with indictable, rather than just summary, offences, allowing Mr. Enns to represent Mr. Patterson would be inappropriate. I have found Mr. Enns' conduct in court to be disruptive and dilatory, and I have little hope that his manner of advocacy would change at trial. In fact, during the hearing of Mr. Patterson's applications yesterday, Mr. Enns attempted to communicate impermissibly with me. Applying the principles which I laid out in *R. v. Martin* 2012 NSPC 73 (in which I followed our Court of Appeal in *R. v. Wolkins* 2005 NSCA 2 at para. 82, a case that dealt with the discretion of a trial court to allow a non-lawyer agent to represent a person charged with an offence), I dismissed Mr. Patterson's application to be represented by Mr. Enns.

[5] Mr. Patterson sought concurrently a declaration of statute invalidity under sub-s. 52(1) of the *Constitution Act, 1982* in relation to the provisions of the *Controlled Drugs and Substances Act* under which he stands charged, and a quashing of those charges under the provisions of s. 601 of the *Criminal Code* as disclosing offences not known to law. The federal prosecutor argued that those

applications ought to be dismissed as having no prospect of success. I agreed, and dismissed the applications.

[6] There is no doubt that a provincial court may declare unconstitutional legislation as invalid and dismiss or quash charges laid under that legislation. As was noted in *R. v. Big M. Drug Mart*, [1985] S.C.J. No. 17 at paras. 33-47, a statutory court may find unconstitutional legislation invalid, not in exercising any sort of declaratory or prerogative relief, but simply in ensuring that principle of fundamental justice that an accused person not be convicted under an invalid law.

[7] In resolving Mr. Patterson's application, the court was assisted greatly by Ms. Duffy, who, although given only a short time to prepare, pointed the court to what I consider to be the key case on point: *R. v. Turner* 2014 ONSC 2736 per Ray J. It is a decision that dealt with analogues of Mr. Patterson's applications. Essentially, what Mr. Patterson seeks is what was sought by Mr. Turner: a declaration of statutory invalidity based on the supposed repeal of provisions of the *CDSA* flowing from the well known decision of the Ontario Court of Appeal in *R. v. Parker* [2000] O.J. No. 2787, which declared the prohibition against simple possession of cannabis as unconstitutional. There are three things wrong with reasoning. First, *Parker* is not the law in Nova Scotia. Second, a finding of statutory invalidity does not repeal a statute; only the legislative body that enacted

a statute may repeal it; a court might find it of no force and effect, and that finding might have broad or limited effect, depending on the type of court that made it; but repeal is the preserve of legislatures. Finally, even the Ontario Court of Appeal itself ruled in *R. v. Turmel* [2003] O.J. No. 3877 that *Parker* had no application to other provisions of the *CDSA*, such as trafficking and the production of cannabis. This was all covered off by Ray J. in his brief but entirely lucid and correct reasoning in *Turner*. Accordingly, I dismissed Mr. Patterson's application for a finding of statute invalidity. These *CDSA* provisions are valid statutes, at least insofar as they apply to this case.

[8] I also dismissed Mr. Patterson's application under s. 601 of the *Code* to quash his charges as not disclosing offences known to law. First off, none of Mr. Patterson's arguments calls into question the justiciability of his charges dealing with his alleged possession of contraband tobacco. Further, for the same reasons I rejected Mr. Patterson's application to declare ss. 4, 5 and 7 of the *CDSA* invalid, I also dismissed his application to quash his CDSA charges. I would note first of all that the application was not timely, as an motion to quash under s. 601(1) of the *Code* must be brought prior to plea, unless with leave of the court, and I did not grant leave. Secondly, these are charges known to law, as it is an offence to traffic in or produce cannabis.

[9] In support of his applications, Mr. Patterson filed with the court a copy of an affidavit which was apparently sworn to by a Mr. Turmel in an unrelated proceeding in another province. This appears to be the same person who was the appellant in the Ontario Court of Appeal in *Turmel, supra*. This document seemed to have been proffered to me as some form of expert evidence on the benefits of cannabis and the injustice in charging criminally people for possessing it. Even if this document could be said to constitute evidence, I would not have relied on it. In *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, the Supreme Court of Canada set out binding guidance on the qualification of experts at trial. An expert must be relied upon to provide objective and impartial information to the court. The Turmel document which I was given to read by Mr. Patterson satisfies me that Mr. Turmel is a person who believes strongly in the legalisation of cannabis, and who happens to possess a scientific background in a field unrelated to pharmacology or toxicology. He is an advocate, not an expert. Mr. Turmel's manifesto makes out an interesting political case; but it has no place as pleadings.

[10] In dismissing Mr. Patterson's applications, I recognized that the appeal from *R. v. Smith* 2014 BCCA 322 remains on reserve in the Supreme Court of Canada. That case declared unconstitutional in the Province of British Columbia the

provisions of ss. 5 and 7 of the *CDSA* as they pertain to people who hold medical authorizations to possess dried marihuana, but who wind up going after other cannabis products as offering better therapeutics. *Smith* would apply as well to persons not holding such authorizations, but who limited their possession and dealings to the provisioning of valid medical users.

[11] There is no reason for me to suspend my judgment in this case. I have no idea when the Supreme Court of Canada will render its judgment in *Smith*; the case was argued in Ottawa only two months ago. If I were to hold off on making decisions in every case touching on issues on reserve or inscribed for hearing in the Supreme Court of Canada, I might as well shut things down. Furthermore, as in *Turner*, there is no evidence before me whatsoever from Mr. Patterson that he is medically authorized to possess cannabis or that he offers cannabis only to those who are so authorized. And so nothing in Mr. Patterson's case will turn on the judgment of the Supreme Court even if the majority opinion in the British Columbia Court of Appeal were to be affirmed.

[12] Parties coming before the court are entitled to be treated with respect and to have their arguable submissions treated seriously, even if the court might not side with them ultimately. The eminent legal ethicist David Luban described it as a serious obligation of the court not to silence or ignore a litigant who will have

inevitably serious interests at stake in the outcome of a trial: *Legal Ethics and Human Dignity* (Cambridge: Cambridge University Press, 2007) at 72. However, it is a misguided charity, in my view, to offer a forum for advancing applications which have no chance of success. The law is clear that such applications ought not be entertained: *see e.g., R. v. Elliott* (2003), 179 O.A.C. 219 at para. 166. Further, a judge has an ethical duty not to entertain applications that are clearly devoid of merit: see, e.g., *IN THE MATTER OF Section 65 of the Judges Act, R.S., 1985, c. J-1, and of the Inquiry Committee convened by the Canadian Judicial Council to review the conduct of the Honourable Paul Cosgrove of the Ontario Superior Court of Justice: REPORT OF THE CANADIAN JUDICIAL COUNCIL TO THE MINISTER OF JUSTICE* (Ottawa: Canadian Judicial Council, 2009). Finally, entertaining such applications will have the unfortunate result of setting up unrealistic expectations in the minds of litigants—expectations that are bound to being disappointed.

[13] Judgment accordingly.

J.P.C.

[Name]

, JPC