Citation: *R. v. Smith*, 2021 YKTC 60

Date: 20211217
Docket: 20-04430
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

REMI SMITH

Appearances:
Julie DesBrisay — Counsel for the Territorial Crown
Remi Smith — Appearing on his own behalf

RULING ON APPLICATION

[1] Remi Smith has entered not guilty pleas to two counts under the Yukon *Environment Act*, RSY 2002, c. 76 (the "*Act*"), contravention of an environmental protection order on July 1, 2020, contrary to s. 172(c) and failure to mitigate a spill between July 4, 2019, and July 1, 2020, contrary to s. 172(f). Both offences are alleged to have occurred in Mr. Smith's home community of Keno City, Yukon. At the commencement of the trial on May 31, 2021, an Agreed Statement of Facts was filed as Exhibit 1, in which Mr. Smith admits the facts that make out both offences.

Facts

[2] In brief, the admitted facts are that Mr. Smith moved two underground fuel tanks from his property to Lot 25, a lot owned by the Commissioner of the Yukon, in June or July 2019. The tanks contained residual fuel. Holes in the tanks resulted in fuel spilling onto the ground. An environmental protection order under s. 136 of the *Act* was issued to Mr. Smith on August 23, 2019, requiring him to take steps to address the fuel spill. The required measures included investigating the spill, submitting a spill mitigation plan, restoring the affected area, and submitting a final report detailing his activities in relation to the spill. Each of the four required steps included its own deadline date. On March 4, 2020, a second environmental protection order was issued to Mr. Smith as he had not completed the measures set out in the original order. The second order included the same four requirements, but set out new deadline dates. Mr. Smith admits that he has not taken any steps to comply with the environmental protection orders or to remedy the fuel spill.

Case History

[3] Though he has admitted the facts, Mr. Smith takes the position that he ought not to be convicted of the offences. At Mr. Smith's request, the Crown agreed to produce various witnesses for Mr. Smith to cross-examine as part of advancing his defence. During his cross-examination of the first witness, Senior Natural Resources Officer Steve Therriault, Mr. Smith sought to put photos to the witness, depicting the state of various government-owned properties around Keno City in addition to Lot 25. Crown objected on the basis of relevance. In hearing from Mr. Smith on the objection, it

became clear that Mr. Smith's defence is rooted in what he sees as the failure of the Yukon Government ("YG") to meet its obligations to the people and community of Keno City. This raised a larger question of whether evidence of the type proposed by Mr. Smith could afford him a defence to the charges. The matter was adjourned for Mr. Smith to consider his position further.

[4] On July 30, 2021, Mr. Smith filed a Notice of Application and written argument seeking that a *voir dire* be held to determine the admissibility of the evidence that he would like to adduce. He bases his application on "[f]undamental rules of procedural fairness, natural justice and the rule of law", and frames his argument as the Court's duty to uphold the *Constitution*.

[5] Following a case management meeting, I determined that the matter should be set down for what is essentially a *Vukelich* hearing to determine whether Mr. Smith should be permitted to pursue this line of inquiry in defence of the charges.

[6] On September 29, 2021, the Crown filed a written argument and case law in support of their position that Mr. Smith's application should be summarily dismissed. Mr. Smith filed a written reply to the Crown's argument on October 29, 2021.

[7] Oral argument on the *Vukelich* hearing proceeded on November 5, 2021, and I committed to providing a written ruling by December 17, 2021. This is my ruling.

The Test

[8] The increasingly complex legal landscape of the justice system has resulted in much being written about a judge's responsibility to ensure the efficient use of valuable

court time and avoid unnecessary delay. In 2017, the Supreme Court of Canada confirmed the obligation in *R. v. Cody*, 2017 SCC 31, at para. 38:

> In addition, trial judges should use their case management powers to minimize delay. For example, before permitting an application to proceed, a trial judge should consider whether it has a reasonable prospect of success. This may entail asking defence counsel to summarize the evidence it anticipates eliciting in the *voir dire* and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily (*R. v. Kutynec* (1992), 7 O.R. (3d) 277 (C.A.), at pp. 287-89; *R. v. Vukelich* (1996), 108 C.C.C. (3d) 193 (B.C.C.A.)). And, even where an application is permitted to proceed, a trial judge's screening function subsists: trial judges should not hesitate to summarily dismiss "applications and requests the moment it becomes apparent they are frivolous" (*Jordan*, at para. 63). This screening function applies equally to Crown applications and requests. As a best practice, all counsel - Crown and defence [page676] - should take appropriate opportunities to ask trial judges to exercise such discretion.

[9] The hearing into whether a *Charter* application should be summarily dismissed is often referred to as a *Vukelich* hearing, so named for the 1996 decision of the B.C. Court Appeal of *R. v. Vukelich* (1996), 78 B.C.A.C. 113, in which the Court said at para. 26:

> Based on these authorities, it does not follow that an accused is always entitled as of right to a voir dire in the course of a criminal trial in order to challenge the constitutionality of a search. The trial judge must control the course of the proceedings, and he or she need not embark upon an enquiry that will not assist the proper trial of the real issues. …

[10] The B.C. Court of Appeal confirmed this position this year in *R. v. Orr*, 2021 BCCA 42, at para. 46 noting:

> Third, there is no automatic entitlement to an evidentiary *voir dire* in a *Charter* claim. As a result, where there is no reasonable likelihood that a *voir dire* can assist in determining the issues before the court, or no reasonable prospect of success in proving an infringement or obtaining

> the sought-after relief, a trial judge has clear jurisdiction to decline an evidentiary *voir dire* and to summarily consider and dismiss the application. …

[11] While Mr. Smith's application is not framed under the *Charter*, I am nonetheless satisfied that a similar approach must be taken in determining whether to order an evidentiary *voir dire* in this case. Firstly, as Mr. Smith has framed his argument under the *Constitution*, and secondly, as in *R. v. Pires*; *R. v. Lising*, 2005 SCC 66, the Supreme Court of Canada applied similar *Vukelich* reasoning in relation to non-*Charter* evidentiary hearings, in finding that there is no absolute right for an accused to cross-examine an affiant. At para. 35, the Court held:

> The concern over the constructive use of judicial resources is as equally, if not more, applicable today as it was 15 years ago when *Garofoli* was decided. For our justice system to operate, trial judges must have some ability to control the course of proceedings before them. One such mechanism is the power to decline to embark upon an evidentiary hearing at the request of one of the parties when that party is unable to show a reasonable likelihood that the hearing can assist in determining the issues before the court.

[12] The Court, at para. 37, went on to note that, notwithstanding the right to make full answer and defence, there are numerous instances in which a defendant must first satisfy the court on a threshold test before being able to elicit certain types of evidence:

> Finally, as aptly argued by the intervener the Attorney General of British Columbia, a requirement that the defence meet a threshold test of some sort before engaging in cross-examination, pursuing a specific line of inquiry, or eliciting evidence in support of a full answer and defence is not an anomaly within the criminal justice system. To state but a few examples: hearsay evidence, although sought to be elicited by the defence, must meet the requirements of necessity and reliability; proposed expert evidence must meet the criteria set out in *R. v. Mohan*, [1994] 2 S.C.R. 9; access to or cross-examination on matters protected by solicitor-client privilege must meet the requirements of the "innocence at stake"

> exception; cross-examination on a complainant's sexual history is prohibited unless it meets the test under s. 276(1) of the *Criminal Code*; third-party records in respect of certain offences listed under s. 278.2 must be [page366] shown to be likely relevant to an issue at trial or to the competence of a witness to testify before they will be produced; defences must have an "air of reality" to them before they are put to the jury. …

[13] In determining whether Mr. Smith's proposed evidence and argument have any reasonable prospect of success, I will follow the *Vukelich* procedure. In *R. v. Blanchard*, 2018 ABQB 43, the Alberta Court of Queen's Bench referenced the procedure for a *Vukelich* hearing at para. 17, paraphrasing from the decision of the B.C. Supreme Court in *R. v. Armstrong*, 2010 BCSC 1041, as follows:

> 1. the trial judge should assume the truth of the facts the applicant seeks to prove to establish his entitlement to a constitutional remedy;
>
> 2. the trial judge should consider whether those facts disclose a basis in law for the constitutional remedy on the grounds set out in the applicant's notice; and
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> 3. if the trial judge concludes that the applicant would not be entitled to a constitutional remedy on those grounds, even if he proved the facts he alleges, the trial judge can exercise his or her discretion and decline to embark on an evidentiary hearing.

The Proposed Evidence

[14] In his reply to the Crown's argument, Mr. Smith has provided a detailed overview of the evidence that he says warrants a *voir dire* with respect to admissibility. In accordance with the *Vukelich* procedure, at this stage, the Court presumes the facts Mr. Smith seeks to prove to be true.

[15] Mr. Smith advises that Keno City is an unincorporated entity with no legal status which developed as a mining community in the 1920s. While he has spent time in Keno

City over the years, Mr. Smith became a permanent resident in 2018. He estimates Keno City to have 23 permanent, predominantly older, residents, though the population in and around Keno City increases over the summer months due to mining activity.

[16] Mr. Smith has volunteered his time with two groups, the Keno City Community Club ("KCC") and the Keno City Resident Electors' Council ("KCRC") in their efforts to address community concerns that the "systemic failure of governance by YG is increasingly putting residents, their health, capacity to maintain themselves in Keno City and their property at risk and causing actual damage." Mr. Smith indicates that the KCC's and KCRC's efforts have been largely unsuccessful in addressing community concerns with YG.

[17] It is the evidence of what Mr. Smith calls the actions and non-actions of YG in relation to Keno City, which he seeks to have admitted as part of his defence. He has provided a detailed overview of the proposed evidence in his reply to the Crown's argument. To summarize briefly, the proposed evidence includes the following:

1. Alexco application for mining authorization and the YESAB review of the Elsa Reclamation proposal regarding the clean up of United Keno Hills Mine properties: Mr. Smith says Keno City residents were not given a voice in the Alexco application, which resulted in the construction of a mill and tailing storage facilities close to Keno City. He further notes the reclamation proposal did not include addressing pollution on any properties in Keno City itself. Mr. Smith says the YESAB hearings involved material, including technical studies, in

relation to the environmental situation in Keno City and its impact on the health of the residents, but that the YG has not acted on any of the studies.

2. Lot 25 situation: The lot, an abandoned gas station and garage, has been used as a dump site for vehicles and equipment over an extended period of time. The KCC negotiated the transfer of three lots from the YG, including Lot 25, but ultimately delayed on Lot 25 due to YG's longstanding failure to address the required cleanup of the lot.

3. The well: Mr. Smith believes that YG failed to conduct mandatory tests on the water in the well-house for over a year. Once tested, a contaminant was discovered. Keno City has lost its primary source of potable water, and the residents have concerns about how long they may have been consuming polluted water before the discovery of the contaminant. Mr. Smith says this is demonstrative of YG's lack of concern for the environmental situation in Keno City.

4. Fire Protection support: Mr. Smith says that YG unilaterally decided to remove all fire protection equipment and support from Keno City as the community was no longer maintaining a volunteer fire department. Two buildings were subsequently lost to fire.

5. Road allowances, encroachments, and drainage: Mr. Smith notes that YG has failed to implement and enforce a proper system of roads in Keno City. The lack of proper drainage ditches has resulted in flooding

and property damage. Furthermore, some Keno City residents have encroached on roadways with impunity creating a safety hazard and resulting in significant conflict between community members.

Mr. Smith would like to rely on satellite images to show the scale and impact of the road situation in Keno City. As a subset of this section of evidence, Mr. Smith also wishes to call evidence in relation to another Keno City resident who, in addition to encroaching on roadways for personal gain, is known to commit numerous and frequent environmental abuses that go unchecked, including improper storage and transport of hazardous materials. Complaints have been made to YG regarding this person, but Mr. Smith indicates that the community has seen little action to date. Mr. Smith further suggests that there was collusion between the unnamed resident and Mr. Therriault, who are known to be friends, as Mr. Smith observed the two talking and pointing to Mr. Smith's property, then walking off in the direction of Lot 25. Mr. Smith contends that Mr. Therriault exaggerated the gravity of the spill in this case after conversing with the unnamed resident. He notes the lack of any disclosure in relation to the conversation he observed between Mr. Therriault and the unnamed resident.

6. The transfer station: Mr. Smith notes YG's decision to close the Keno City transfer station without any consultation with Keno City residents.

Argument on the Proposed Evidence

[18] To satisfy me that a *voir dire* should be ordered regarding the admissibility of the proposed evidence, Mr. Smith must first satisfy me that there is a reasonable prospect of success, meaning that, if admissible and if proven, the evidence could afford him a defence to the charges.

[19] Mr. Smith takes the position that the Court should consider the proposed evidence of government action and inaction in relation to Keno City on the basis of the Court's general duty to uphold the *Constitution* and the rule of law, as articulated by the Supreme Court of Canada in the *Reference re Manitoba Language Rights (Man.)*, [1985] 1 S.C.R. 721, which he says makes it clear that the actions of government are subject to judicial scrutiny.

[20] He argues that s. 91 of the *Constitution* legally binds governments to make laws, and to implement and enforce laws, with a view to ensuring peace, order, and good government. He says that the failure of YG to provide an appropriate or even basic level of services to the residents of Keno City constitute breaches of natural justice and procedural fairness, and that YG has, consequently, failed in its obligation to provide good government to Keno City. Mr. Smith says that should the Court refuse to consider YG's treatment of Keno City and its residents, it will undermine respect for the courts.

[21] Additional components of Mr. Smith's argument include his assertion that pursuant s. 4 of the *Act*, YG is bound by the *Act*, but has itself failed to comply with the provisions of the *Environment Act* in failing to address the environmental situation in Keno City, including its failure to clean up Lot 25.

[22] Finally, he argues that there is a material difference in the manner in which he and his spill have been treated versus the treatment of others in Keno City who are known to violate legal requirements seemingly without consequences. Mr. Smith believes he has been targeted because of his outspoken criticism of YG, and suggests that the proposed evidence indicates bias and an improper political purpose which call into question the fairness of this prosecution.

Analysis

[23] As a starting point, in considering whether Mr. Smith's proposed evidence could amount to a defence to the charges, it must be remembered that Mr. Smith is facing strict liability offences. Pursuant to the Supreme Court of Canada decision in *R. v. Sault Ste Marie (City)*, [1978] 2 S.C.R. 1299, once the *actus reus* of a strict liability offence is established, the only defence available to an accused, absent a *Charter* application, is that of due diligence. I should note that the Supreme Court of Canada has affirmed the law on available defences on more than one occasion. In the 2013 decision in *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, 2013 SCC 63, the Supreme Court noted:

> 55 As I mentioned above, the offence provided for in s. 482 of the *ADFPS* is one of strict liability. Once the *actus reus* has been proved beyond a reasonable doubt, the defendant can avoid liability **only by showing that it acted with due diligence**. It must therefore be asked whether the due diligence defence was available and, if so, whether the appellant discharged its burden of proof in this regard.
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> D. *Due Diligence Defence*
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> 56 The due diligence defence is available if the defendant reasonably believed in a mistaken set of facts that, if true, would have rendered his or her act or omission innocent. A defendant can also avoid liability by

> showing that he or she took all reasonable steps to avoid the particular event (*Sault Ste. Marie*, at p. 1326). The defence of due diligence is based on an objective standard: it requires consideration of what a reasonable person would have done in similar circumstances.
>
> 57 However, this defence will not be available if the defendant relies solely on a mistake of law to explain the commission of the offence. Under Canadian law, a mistake of law can ground a valid defence only if the mistake was an officially induced error and if the conditions laid down in *R. v. Jorgensen*, [1995] 4 S.C.R. 55, with respect to the application of such a defence are met. A defendant can therefore gain nothing by showing that it made a reasonable effort to know the law or that it acted in good faith in ignorance of the law, since such evidence cannot exempt it from liability.
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> [emphasis added]

[24] At this point, Mr. Smith is not asserting that the proposed evidence would make out a defence of due diligence. Nor has he filed a Notice of *Charter* Application seeking either a judicial stay or the exclusion of evidence on the basis of any alleged breaches of his rights under the *Charter*.

[25] As is not surprising, Mr. Smith indicated he could not find any cases, post 1978 when *Sault Ste Marie* was decided, which identified available defences to a strict liability offence beyond that of due diligence.

[26] Turning to Mr. Smith's primary argument that the Court should consider the proposed evidence based on the judiciary's general duty to uphold the *Constitution* and rule of law, while it is true that government action is subject to court scrutiny in appropriate cases where it is relevant to a decision a court needs to make, there is an onus on Mr. Smith to satisfy the Court that the proposed evidence relates not just generally to the governments constitutional obligations, but that it is relevant to the issues to be determined in this particular case.

[27] The sole case he has provided in support, the *Manitoba Language Reference*, does speak to general constitutional principles, but is otherwise entirely distinguishable. The case addresses constitutional requirements to enact legislation in both of Canada's official languages. It does not involve a regulatory prosecution nor articulate how evidence of government action or inaction can offer a defence to a regulatory prosecution. Mr. Smith was not able to offer any case law in which the approach he advocates was followed.

[28] Furthermore, much of the proposed evidence does not appear to be even tangentially related to the allegations let alone relevant to a decision the Court needs to make in this case. Included in this category would be the concerns raised about the Alexco application and YESAB process, the well situation, withdrawal of fire protection support, the improper management of the road system, and the closure of the transfer station.

[29] In so concluding, I want to make it clear that I am not suggesting that the concerns raised are frivolous ones. It is evident that these issues are significant to the community and to Mr. Smith in relation to their quality of life in Keno City. Mr. Smith has been tireless in his efforts to address these issues and passionate in his advocacy on behalf of the residents of Keno City. Furthermore, these are issues which may well warrant court scrutiny in the appropriate forum. The question is whether this trial is the appropriate forum.

[30] Mr. Smith is basically arguing that any matter before a court opens the door for court scrutiny of government actions regardless of relevance to the particular

proceedings. He openly admits in his reply to the Crown's argument that he views his not guilty plea as a form of "civil disobedience", and sees his trial as a vehicle to put the issues he has identified regarding YG's failure to meet the needs of Keno City residents before an impartial decision-maker. This stated goal does not, however, mean that a regulatory trial is the appropriate forum to seek redress for the issues identified, primarily because that is not what this process is about.

[31] The B.C. Supreme Court decision in *Armstrong* addressed a defence appeal involving similar circumstances in which the defendants hoped to use the regulatory trial process to air their grievances about government enforcement under the *Fisheries Act,* R.S.C. 1985, c. F-14, and the *Pacific Fishery Regulations*, S.O.R./1993-54.

[32] The facts involved 45 defendant commercial fishers charged as a result of participating in a "protest fishery" in contravention of the *Pacific Fishery Regulations* and the *Fisheries Act*. At trial, the defendants sought to call evidence to establish that the federal government was failing to enforce the *Fisheries Act* and *Regulations* against Aboriginal fishers. Their application was summarily dismissed by the trial judge on the basis that even if the facts as alleged were proven, they would not entitle the defendants to a judicial stay of proceedings.

[33] On appeal, Gray J. upheld the trial judge's decision to summarily dismiss the application, and made the following comments equally applicable to the case at bar:

> 26 The appellants argued that they have been denied a fair hearing and that the trial judge made his decision in an "evidentiary vacuum". However, the appellants do not have a right to lead evidence which is of interest to them. They are only entitled to lead evidence which will assist the court in determining the issue or issues before it. The purpose of

> evidentiary hearings is to decide the issues before the court, not to provide an opportunity for defendants to investigate or publicize issues. In this case, the issue before the court was whether the appellants were guilty of the charges against them.

[34] For the proposed evidence to be appropriately considered in this forum, again, the proposed evidence must first meet the threshold of relevance to the decision the Court needs to make in this case. In my view, the only areas of the proposed evidence which are, at least on their face, potentially relevant to these proceedings are the allegations of unequal application of the law, the potential of bias or a political motive in laying the charges, and the condition of Lot 25.

[35] However, for the purposes of this application potential relevance alone is not enough. Per the test in *Vukelich*, to warrant ordering a *voir dire* into the question of admissibility, the Court must be satisfied that the proposed evidence discloses a basis in law for the remedy sought. For the outcome, Mr. Smith seeks, namely, an acquittal or dismissal of the charges, the only two possible remedies would be that the facts disclose a defence to the charges or they would warrant a judicial stay of proceedings.

[36] With respect to the allegation of unequal application of the law, there is ample authority to support the proposition that the fact legislation is not being consistently or equally enforced does not amount to a defence. Nor does the fact that a particular individual was equally guilty of having committed the same or a similar offence, but was not also charged, amount to a defence in law (see *R. v. Alexander* (1999), 171 Nfld. & P.E.I.R. 74 (Nfld. S.C. (C.A.)); *R. v. McGlone*, 1998 ABPC 113).

[37] Mr. Smith's contention that the facts disclose bias and raise a question about the fairness of the prosecution must be considered in terms of whether such evidence would support a finding that there is a reasonable prospect that an abuse of process argument would be successful, warranting a judicial stay of proceedings.

[38] In the *Armstrong* decision, Gray J. provided a helpful summary of the law of abuse of process:

> 35 The standard formulation of the test for abuse of process was articulated by the Supreme Court of Canada in *R. v. Jewitt*, [1985] 2 S.C.R. 128, at pp. 136-37, as follows:
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> > I would adopt the conclusion of the Ontario Court of Appeal in *R. v. Young* [(1984), 40 C.R. (3d) 289], and affirm that "there is a residual discretion in a trial court judge to stay proceedings 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 and to prevent the abuse of a court's process through oppressive or vexatious proceedings". I would also adopt the caveat added by the Court in Young that this is a power which can be exercised only in the "clearest of cases".
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> 36 The doctrine of abuse of process is generally considered to arise in two different contexts. The first is where trial fairness is adversely affected by the abusive conduct. The second is where the abusive conduct could threaten the integrity of the justice system. This second context is often referred to as the "residual category". It addresses a variety of circumstances in which a prosecution is so tainted that it reaches a threshold of unfairness or vexatiousness that demands judicial intervention.
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> 37 The appellants' arguments engage the second or "residual" category of abuse. The appellants essentially allege that the prosecution of charges against them, in the context of the treatment of aboriginal fishers, would tarnish the integrity of the justice system.
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> 38 The second or "residual" category was described by L'Heureux-Dubé J. in *R. v. O'Connor*, [1995] 4 S.C.R. 411 at para. 73 as follows:

> This residual category does not relate to conduct affecting the fairness of the trial or impairing other procedural rights enumerated in the *Charter*, but instead addresses the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process.
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> 39 The residual category is a small one, and with the "vast majority of cases, the concern will be about the fairness of the trial": *Canada (Minister of Citizenship and Immigration) v. Tobiass,* [1997] 3 S.C.R. 391 at para. 89.

[39] As with the *Armstrong* decision, Mr. Smith's potential abuse of process argument does not speak to the fairness of the trial process, but rather would fall into the residual category. In Mr. Smith's case, he made it clear in his submissions that he is not suggesting the Crown has conducted this prosecution in a manner which would constitute an abuse of process. Rather, the evidence he wants to rely on that may relate to an abuse of process argument are, firstly, that the charges against him, when others have not been charged, is evidence of the fact that YG has chosen to selectively charge people like Mr. Smith who have been publicly critical of YG; and, secondly, that the charges are a result of collusion between Mr. Therriault and the unnamed resident.

[40] For two reasons, I am of the view that this subset of the proposed evidence falls short of persuading me that there is a reasonable prospect that an abuse of process argument would be successful. The first reason is that the conclusions Mr. Smith would like the Court to draw based on the evidence are largely speculative. His conclusion that political motives lead to him being selectively charged is not clearly supported on the evidence he has set out. Similarly, his observation of the conversation between Mr. Therriault and the unnamed resident, while suspicious, falls short of establishing,

even on a balance of probabilities, that the conversation even related to Mr. Smith being charged.

[41] Secondly, even if the evidence did establish that the unnamed resident made the initial report to a person in authority who is also a friend, and that he had ulterior motives for so doing, such evidence falls well short of the standard required to support a finding that the circumstances leading to the initiation of the investigation were so egregious that they taint the investigation and prosecution to the extent that it would "shock the conscience of the community" and amount to the "clearest of cases" justifying a judicial stay.

[42] The final piece of the proposed evidence to be addressed is the state of Lot 25. As noted, Mr. Smith says that the Lot has long been a dumping ground for old equipment and vehicles. Mr. Smith suggests that YG has taken no steps to prosecute others in relation to dumping items on Lot 25, nor has YG taken any steps to clean up Lot 25 in compliance with the provisions of the *Act*.

[43] In my view, this evidence is clearly relevant to these proceedings, but the question remains how is it relevant? As I indicated to Mr. Smith during submissions on the initial objection, I can clearly see how such evidence would be relevant at the sentencing stage of these proceedings should there be a conviction. Indeed, Crown indicated that she would take no issue with Mr. Smith advancing this evidence as part of sentencing submissions, and she would not hold him to the strict proof thereof.

[44] However, for the purposes of this decision, the issue is whether evidence relating to the condition of Lot 25 would afford Mr. Smith a defence to the charges.

The only argument made by Mr. Smith in this regard is his argument about the Court's obligations to uphold the *Constitution* and the rule of law. It is an argument that does not clearly articulate a legal basis upon which evidence of the condition of Lot 25 would establish a defence to the charges. Accordingly, Mr. Smith has failed to satisfy me that the admission of evidence regarding the condition of Lot 25 would support the legal remedy he seeks.

[45] In the result, I am not satisfied that the application as framed by Mr. Smith has any reasonable prospect of success, and should therefore be summarily dismissed. Accordingly, I would decline to order a *voir dire* with respect to admissibility of the proposed evidence. While Mr. Smith has very ably and sympathetically articulated the situation in Keno City, ultimately those circumstances do not support the outcome he seeks in these proceedings.

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RUDDY T.C.J.