

SUPERIOR COURT OF JUSTICE

DAVID BRENNAN

APPLICANT

- and -

HER MAJESTY THE QUEEN

RESPONDENT

**ADDENDUM TO NOTICE OF CONSTITUTIONAL QUESTION
DATED AUGUST 8th, 2019**

A. Section 25

1. Section 25 of the Charter must be read in conjunction with Section 26.

Section 26 states:

“The guarantee in this charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.”

Section 25 speaks to “other rights or freedoms” and section 26 speaks to “the existence of any other rights or freedoms,” and when read together speak to the existence of “other rights.”

2. The concept of “other” first appears in the Papal Bull of 1537, *Sublimus Dei*, wherein the Pope identifies the Indians of the West (Hispanolia) and the South (Africa and

- India) and other People whom we have recent knowledge...” The “Other People” would be the indigenous of North and South America.
3. In the Treaty of Utrecht of 1713, dividing up territories among European royalty without the consent of indigenous peoples, we find “...the Other Nations Who Are Friendly to the French Crown.”
 4. The Treaty of Utrecht of 1713 also stated that “trade with the Far Indians (Amikwa) is not to be hindered in any way and is open to all nations.”
 5. In the Proclamation of 1763, we have an identification of “Indian tribes whom are connected and live under our protection...or any of them, as their Hunting Grounds.” Any of them would be the Amikwa Nation as they were not connected nor under the protection of the British.
 6. Members of the Amikwa are neither Indians nor Aboriginals, but rather fall under the definition of ‘other’. In the territory that these alleged offenses took place and which they still occupy, they have never ceded title to the land, nor have they entered into a treaty with the British/Canadian colonial governments.
 7. There does exist a Treaty of Friendship and Peace of 1701, where the French, the English, the Handensawnee and Anishinabe Peoples agreed to end hostilities and share

the land, however no progress has been made along those lines and the relationship has remained frozen in time since 1701.

8. The members of the Amikwa Anishinabe Nation have a right to recognition of their laws, practices, traditions and customs, through both the prism of domestic and international law.
9. By virtue of their identification as ‘other’ in the aforementioned instruments, previous colonial governments invoked the Rowan Proclamation of 1854, and the Indian protection act of 1850, designed to protect the ‘other’ from settlers and their encroachment.
10. The members of the Amikwa Anishinabe Nation who are advancing this constitutional challenge, invoke the right to have the rule of law applied in favour, which would deprive the government and its agents of the right to enter the territory as they have not acquired jurisdiction over the territory.

B. Section 35(1) and S.7 – Medicine Men and Traders

11. In a 1688 map made by Cornelli, the territories within which these offences are alleged to have taken place is identified as “Skekouen,” or “lands of the medicine,” and the people were known as “Skekouenini,” – “the people of the medicine.” Their

territory included the Ottawa River Valley through to Lake Nipissing, and all the way to Sault Ste. Marie. In a 1708 map by Guillaume Delisle, we have the same territory as above described as “le pays des Outouacs,” meaning “Land of the Traders” or “Government of the Traders.” Extended all the way to Lake Nipigon. This is the same territory as described in the Québec act of 1774.

12. The members of the Amikwa Anishinabe Nation were traders and medicine men. The evidence to be offered in this constitutional challenge will speak to the trading activity of the medicines, which would include cannabis and hemp as an active practice of the Amikwa Anishinabe Nation.

13. The French Explorer Jacques Cartier reported seeing wild hemp during each of his three journeys to Canada between 1534 and 1541. In his last report, he observed:

“The land groweth full of Hempe which growth of it selfe, which is as good as possibly may be seene and as strong.” Samuel de Champlain mentioned in 1605 that that natives used wild hemp “to tie their bone fishhooks.”

14. The members of the Amikwa Nation will offer evidence in this constitutional challenge to demonstrate an indigenous practice, pre-contact and beyond, which involved cultivation and trading of the medicine known as cannabis.

15. Further, they will argue that the United Nations Declaration on the Rights of Indigenous Peoples extends the right to carry out this traditional practice to their economic benefit, within their own traditional territory.
16. The members of the Amikwa Anishinabe Nation will also advance arguments which suggest that the relationship between them and the British/Canadian colonial governments is one informed by genocide and apartheid, and must be taken into account in the evaluation of their laws, practices, traditions and customs, which were destroyed by colonial policies designed to impoverish indigenous peoples and lead to their eventual elimination.

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File No.

DAVID BRENNAN

-and-

HER MAJESTY THE QUEEN

SUPERIOR COURT OF JUSTICE

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