

April 30, 2025

No. 8829116, 8829126,  
8829128, 8829130

Provincial Court of Nova Scotia

Between:

**HIS MAJESTY THE KING**

and

**CONNOR PAUL and SCOTT PAUL**

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**NOTICE OF CONSTITUTIONAL QUESTION**

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**TO:**

1. Attorney General of Nova Scotia, The Honourable Becky Druhan, 1690 Hollis Street, Halifax, Nova Scotia, B3J 1V7 via email [JUSTMIN@novascotia.ca](mailto:JUSTMIN@novascotia.ca)
2. Attorney General of Canada The Honourable Arif Virani, 284 Wellington Street, Ottawa, Ontario, K1A 0H8 via email [mcu@justice.gc.ca](mailto:mcu@justice.gc.ca)
3. Crown Prosecutor Len MacKay: 10th Floor, Duke Tower 5251 Duke Street, Halifax, Nova Scotia B3J 1P3 via email <[Leonard.Mackay@ppsc-sppc.gc.ca](mailto:Leonard.Mackay@ppsc-sppc.gc.ca)>

**TAKE NOTICE** that the defendants intend to question the constitutional validity and applicability of section 802.1 of the *Criminal Code*, R.S.C., 1985, c. C-46, as it applies to Mi'kmaq defendants who assert Aboriginal and treaty rights under section 35 of the *Constitution Act*, 1982.

**Date of Hearing:** To be scheduled on May 6th, 2025

**Place of Hearing:** Amherst Nova Scotia

**Relief Sought:** The Defendants seek the following declarations and remedies:

1. A declaration that s. 802.1 of the *Criminal Code* is of no force or effect pursuant to s. 52(1) of the *Constitution Act*, 1982, insofar as it would prohibit Mi'kmaq defendants, as beneficiaries of the 1752 Treaty and holders of s.35 Aboriginal and treaty rights, from being represented in court by their traditional Elders or leaders.
2. In the alternative, an order reading down s. 802.1 to recognize an exemption for Mi'kmaq defendants asserting a constitutional right to be represented by an Elder or traditional representative.
3. In the further alternative, a stay of proceedings under s.24(1) of the Charter where such representation is denied, as continuation would amount to a breach of constitutional rights.

4. Such further and other relief as this Honourable Court may deem just.

**Constitutional Questions to be Determined:**

- (a) Does the application of s.802.1 of the Criminal Code to prohibit representation by an Elder or traditional leader violate the Aboriginal and treaty rights of the defendants protected by s.35 of the *Constitution Act, 1982*?
- (b) If so, is such a violation justified under the constitutional framework, including the *Sparrow* test?
- (c) What remedies are appropriate to uphold the defendants' constitutional rights?

**Summary of Grounds:**

1. The Defendants are Mi'kmaq individuals asserting Aboriginal and treaty rights protected by s.35 of the Constitution Act, 1982, and beneficiaries of the 1752 Treaty between the Mi'kmaq Nation and the British Crown.
2. The Defendants are Mi'kmaq individuals and members of the Micmac Rights Association (MRA), an Indigenous Governing Body representing Mi'kmaq treaty-rights holders.
3. Pursuant to Mi'kmaq legal traditions and the Covenant Chain of Peace and Friendship Treaties, including the 1752 Treaty, Mi'kmaq law and custom provide that knowledgeable elders and community leaders represent individuals in legal

disputes, consistent with traditional Indigenous governance and the practices recognized in the Peace and Friendship Treaties.

4. Article 8 of the 1752 Treaty guarantees Mi'kmaq individuals "the same benefit, Advantages and Privileges" in His Majesty's courts as British subjects, which must be interpreted broadly and purposively, including the right to representation by trusted elders.
5. Section 802.1 of the *Criminal Code*, if applied to prohibit Elder representation, infringes:
  - (a) The Defendants' Aboriginal rights to customary legal representation;
  - (b) Their treaty right to "the same benefit, Advantages and Privileges" in court as other British subjects, under Article 8 of the Treaty of 1752;
  - (c) The constitutional principle of reconciliation and the honour of the Crown.
6. The infringement is not justified under the *Sparrow* test, as it is neither necessary nor minimally impairing, and fails to accommodate Indigenous legal traditions and treaty rights.
7. The Defendants seek a declaration that s.802.1 is of no force or effect insofar as it bars Mi'kmaq defendants from being represented by an Elder; or, in the alternative, a reading down to exempt Indigenous Elder representation; or further, a stay of proceedings pursuant to s.24(1) of the Charter.

### **Statutory Provisions and Constitutional Instruments Relied Upon:**

- *Constitution Act, 1982*, ss. 35, 52(1)
- *Criminal Code, R.S.C. 1985*, c. C-46, s. 802.1
- *United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021*, c.14
- Treaty of 1752
- Supreme Court decisions: *R. v. Sparrow*, *R. v. Simon*, *R. v. Marshall, Ontario (Attorney General) v. Restoule*.
- *Department of Justice Principles Respecting the Government of Canada's Relationship with Indigenous Peoples (2018)*

**Dated:** April 30, 2024

Respectfully submitted,

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