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March 31, 2020

Mr. Roger Bilodeau, Q.C.
Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Dear Mr. Bilodeau:

Re: Randy Desmond Riley v. HMQ - SCC Case No. 39006 – Application for Leave to Appeal

Please accept this letter as the Respondent Crown's response to the Appellant/Applicant's Application for Leave to Appeal and Motion to Adduce Fresh Evidence.

The Respondent has had the opportunity to review the Application for Leave to Appeal on a new matter related to the As of Right appeal in the above case. Because the Application for Leave to Appeal involves a motion to adduce fresh evidence alleging a recantation by a critical Crown witness, Paul Smith, the Respondent says:

- (i) The Respondent agrees that the As of Right appeal should proceed first. The Application for Leave with a motion to adduce fresh evidence will require a significant amount of time to investigate and respond. Should the As of Right appeal succeed, however, the Application for Leave (or alternate mode of dealing with the purported fresh evidence) will be moot.
- (ii) In the event the As of Right appeal is dismissed, the Applicant proposes an alternate, but equally desirable¹, method of evaluating the purported fresh evidence: a remand to the Nova Scotia Court of Appeal (NSCA), per s.43(1.1) of the *Supreme Court Act*. Indeed, the Applicant has sought the Respondent's consent to this alternate method through direct correspondence.
- (iii) Should the As of Right appeal be dismissed, this purported recantation cannot be ignored as a matter of policy and fairness to the Applicant. The Respondent, therefore, agrees that the matter should be remanded to the NSCA if the As of Right appeal is dismissed.

¹ Application for Leave to Appeal materials, pp. 54 (para. 7), 65-67 (paras. 44-49).

- (iv) A remand to the NSCA is preferable because:
- a. The purported fresh evidence raises an important issue regarding a potential miscarriage of justice, but the issue is based on settled law and is peculiar to this case;
 - b. The matter will require significant investigation that may need to be conducted by an outside police agency;
 - c. The time it may take to properly investigate and respond to the Applicant's disclosure request may be prolonged due to the countrywide COVID-19 prevention measures;
 - d. The majority of parties involved are located in Nova Scotia;
 - e. The NSCA is best placed (particularly given the current COVID-19 climate) to set a timetable for responding to, and deciding on, the new evidence. Further, the NSCA has a great deal of experience in hearing evidence and cross-examination on such motions (Nova Scotia practice does not involve commissioned evidence).

The Respondent, therefore, does not oppose the motion to extend time to file the Application for Leave to Appeal².

All of which is respectfully submitted, at Halifax, Nova Scotia, this 31st day of March, 2020.

Sincerely yours,



Mark A. Scott, Q.C.
Chief Crown Attorney (Appeals and Special Prosecutions)

Cc: Counsel for the Applicant/Appellant

² By not opposing the motion to extend time, the Respondent does not concede that the diligence prong of the *Palmer* test is made out; and, the Respondent reserves the right to argue that it has not been met, following a thorough review of the evidence and (possible) cross-examination.



CERTIFICATE (RESPONDENT)

File Number: 39006

Abbreviated Style of Cause:

Randy Desmond Riley

Name of Party Filing:

Respondent

Form Version: Original

Does this certificate or any order attached to the certificate contain or reveal information that is subject to a sealing or confidentiality order from a lower court or the Court or that is classified as confidential under legislation? If you answered "yes," it shall be sealed in an envelope and accompanied by a redacted version. Yes No

- 1. Is there a sealing or confidentiality order from a lower court or the Court in effect in the file? Yes No
- 2. Is there a ban on the publication of evidence or the names or identity of a party or witness under an order in effect in the file or under legislation? Yes No
- 3. Is there information in the file that is classified as confidential under legislation? Yes No
- 4. Is there a restriction on public access to information in the file in a lower court? Yes No
- 5. May the full names of individuals named in the style of cause be published? Yes No

I, Mark Scott, Counsel

for the Respondent _____ certify that the information above is complete and accurate.

Dated at Halifax, Nova Scotia

Date: March 31, 2020

Signature: 

ORIGINAL TO: THE REGISTRAR

COPIES MUST BE SERVED ON ALL OTHER PARTIES.