

TURMEL: #2 Nielsen No-Resurrection Motion Transcripts

Source: <http://sci.tech-archive.net/Archive/sci.econ/2004-09/0227.html>

From: John Turmel (bc726_at_FreeNet.Carleton.CA)

Date: 09/05/04

Date: 5 Sep 2004 21:00:13 GMT

JCT: Now the transcript of the July 22 2004 hearing reported at: <http://health.groups.yahoo.com/group/medpot/message/1311>

ONTARIO COURT OF JUSTICE
HER MAJESTY THE QUEEN

v.

DANIELLE NIELSEN, DOUGLAS NIELSEN, LAUREL NIELSEN

MOTION

BEFORE THE HONOURABLE MR. JUSTICE G. B. EDWARD

on July 22, 2004, at BRANTFORD, Ontario

CHARGE: s.4(1) C.D.S.A. – Possession of controlled substance

s.5(2) C.D.S.A. – Possession for trafficking

APPEARANCES:

Mr.G. Smith Counsel for the Federal Crown

Danielle Nielsen On own behalf

Mr.Douglas Nielsen On own behalf

Laurel Nielsen On own behalf

R. v. Danielle Nielsen, Douglas Nielsen, Laurel Nielsen

THURSDAY. JULY 22. 2004

THE COURT: All right. On that basis, then, I think we can deal with the Nielsen matter. All right. Good afternoon, folks. Just have a seat at counsel table. I just need to make some notes here before we start. Douglas Nielsen, you're before the court, obviously.

MR. NIELSEN: Yes. THE COURT: And you're representing yourself, are you, sir?

MR. NIELSEN: Yes.

THE COURT: Laurel Nielsen?

MRS. NIELSEN: Yes.

THE COURT: Yes? You're before the court representing yourself, are you?

MRS. NIELSEN: Yes, I am.

THE COURT: And Danielle Nielsen?

MS. NIELSEN: Mm–hmm.

THE COURT: And you're representing yourself, as well?

MS. NIELSEN: I am.

MR. SMITH: Your Honour, just for the record, there seems to be a tape recorder on top of the desk.

MR. NIELSEN: Yes, Your Honour. I'd like to ask that under Section 136 of the Justice Courts Act(sic)...

MRS. NIELSEN: Courts of Justice Act.

MR. NIELSEN: ...that I tape the proceedings for personal information.

THE COURT: We have an official court reporter. Okay. It's the courts discretion. I'm not going to permit you tape anything.

MR. NIELSEN: Okay.

THE COURT: So, I'll ask that you turn it off and put it under the table. If you want a transcript, you can order a transcript through the official court reporter.

MRS. NIELSEN: We've been having a hard time getting them.

JCT: That's really sad. The Niensens had to wait for 6 weeks for this 1 hour transcript and it cost them \$160. And it took that long for the transcript to be posted. The Criminal Code makes provisions for the taping of notes for personal representatives and those must be the reasons. It's expensive and fraught with delay. I'll get them to point out how it cost them time and money and see if Judge Edward will let them tape their notes for the final parts. Especially when it's pointed out that all the proceedings in the Big Five appeals were taped.

THE COURT: All right. In the same order that I took note of who was before me, I'm going to ask that you each make your presentation to the court. It's now quarter after 12. I'd like to have your submissions completed, if possible, by ten to one. So, that's going to give you about ten minutes each. If you need more time, that's fine. I've reviewed your application. In essence, you're asking the court to declare that the charges that have been laid against you be dismissed as unknown to law, and specifically –Madam Clerk, if I could have the informations, please? All three of the applicants have been charged with same offences, the first count being the offence contrary to Section 4(1), being possession, and then an offence on the same date, contrary to Section 5(2) being in possession for the purpose of

trafficking. So, 4(1) and 5(2), the applicants are asking on offences unknown to law. Alright Mr. Nielsen, I'll give you the first opportunity to make representation to the court, and I'd ask that you stand, sir.

SUBMISSIONS BY MR. & MRS. NIELSEN:

MR. NIELSEN: Well, I guess what I'm asking, Your Honour, is that our charges be squashed on the fact that the Parker decision killed the law, basically.

THE COURT: And you're referring to which Parker decision, Parker one or Parker two?

JCT: What's Parker two? Hitzig?

MRS. NIELSEN: That would be... now, Parker has been...

THE COURT: I suspect you're referring to Parker

MRS. NIELSEN: One, yes...

THE COURT: which is...

MRS. NIELSEN: ...I believe it was.

THE COURT: ...a decision of the Ontario Court of Appeal.

MR. NIELSEN: Mm–hmm.

THE COURT: That's been reported at 146 C.C.C. (3d) 193. It was a decision rendered by the Ontario Court of Appeal on July 31st, 2000.

MR. NIELSEN: That's correct.

THE COURT: Now, I take it, as a result of the court's request for additional cases from the federal prosecutor, you've had the opportunity of reading Parker two, if I can use that term, a decision of the Ontario Court of Appeal rendered by Justices Doherty, Goudge and Simmons, and that was a decision that was released by that court on October 7th, 2003. Have you had a chance to review that case? I believe that was a decision that was given to you by...

JCT: Okay. Parker Two is Hitzig. But why would Judge Edward know that the original style of cause was Parker et al and not Hitzig et al and only changed to Hitzig et al at the last minute? This is the first time anyone's ever called it Parker Two.

MRS. NIELSEN: Was that one of the ones by the Crown.

THE COURT: ...Mr. Smith.

MS. NIELSEN: Okay. That's why I haven't – I didn't get into that.

THE COURT: And I'm going to ask that you...

MR. NIELSEN: Yes, we have...

MRS. NIELSEN: I, I have read through it.

THE COURT: Once you find that decision, I'm going to ask that you turn to page three of that decision, and you'll see at page three there is a paragraph two, and I'm going to

read that paragraph to you.

MR. NIELSEN: Okay.

MRS. NIELSEN: Is it actually called page three, Your Honour?

THE COURT: I have page three...

MRS. NIELSEN: I don't...

THE COURT: ...at the top. Now, it's better that you just look at paragraph two.

MRS. NIELSEN: Is it, is it...

THE COURT: And what you'd see is that this was actually a collection of three cases that went to the Court of Appeal, and they were heard in July of 2003. There are multiple applicants. It starts with Warren Hitzig...

MS. NIELSEN: Right.

THE COURT: ...Alison Myrden...

MS. NIELSEN: Okay.

MR. NIELSEN: Right.

THE COURT: And in addition there's the Terrance Parker matter, and also a John C. Turmel and Marc J.J. Paquette.

MRS. NIELSEN: Okay. I do have that page here now.

THE COURT: All right. So, you've got paragraph two. I'm going to read what paragraph two says, and it was a decision that was released by the Court of Appeal on October of 2003, October 7th. Paragraph two reads:

"This case is not about the social or recreational use of marijuana, but it is about those with a medical need to use marijuana to treat symptoms of serious medical conditions. We have concluded that for those people, the M.M.A.R. as drafted by the government do not create a constitutionally acceptable medical exemption. Our reasons for so concluding differ somewhat from those of Lederman, J. So does the remedy we would impose, namely, to declare invalid only five specific sections of the M.M.A.R. This renders constitutional the medical exemption as described in the remaining provisions of the M.M.A.R., thereby rendering the possession prohibition in Section 4 of the Controlled Drugs and Substances Act constitutional."

JCT: It's just an opinion. They never put it into an Order.

And then R. v. Parker supra. All right. So, it's important that you understand that the Court of Appeal made that determination on October 7th, 2003. And the Court of Appeal, which is binding on this court then has said, and I repeat, thereby rendering the possession prohibition in Section 4 of the Controlled Drugs and Substances Act constitutional.

JCT: No one has yet pointed out POLCOA to him.

So, that's the first aspect that you have to be aware of. In addition, the three of you have been charged with an offence

under 5(2) of the Controlled Drugs and Substances Act, being possession for the purpose.

You need to realize as well that on that same date, October the 7th, the same panel of the Court of Appeal, again a court binding on this court, and that panel being Justices Doherty, Goudge and Simmons, in a case called Her Majesty the Queen v. John C. Turmel said at paragraph six, and I just ask that you get that decision before you. That was, again, in the package of material that was provided by Mr. Smith, and I'm going to be referring to paragraph six of the Turmel decision. All right. Do you...

JCT: And he hadn't yet heard the logic behind the Turmel Aitken appeal to learn why they're wrong again.

MR. NIELSEN: Yep.

THE COURT: ...see that?

MR. NIELSEN: Yes.

THE COURT: Paragraph six. I'm going to be starting at the third sentence in.

"The declaration does not extend to any other section of the C.D.S.A. In particular, it does not diminish the effect of the listing of marijuana in Schedule II for the purposes of Section 5(2) of the Controlled Drugs and Substances Act, As a result, the charge of possession of marijuana for the purposes of trafficking existed on May 26", 2:23." So, in essence, I just want to make it very clear to you that the Court of Appeal has said for 4(1), from October 7th, 2003, on, 4(1) exists as a valid charge, and 5(2) always existed as a valid charge. So, that's the hurdle that you folks have to overcome. All right?

JCT: Do they have the power to say marijuana is still on the schedule without amending the sections in the Code? The Crown again argues they did, and they wouldn't have if they couldn't have so they can.

MR. NIELSEN: Okay. Well, Your Honour, what I gather from all this is the fact that the Parker decision killed the law.

The Hitzig decision brought it back to life. The problem I have with that, and correct me if I'm wrong, but does a Provincial...

MRS. NIELSEN: A federal judge...

JCT: No, a provincial set of judges.

MR. NIELSEN: ...Court justice have the right to strike up a law for all of Canada under federal law?

JCT: That's a shot right to the heart that should have taken the judge by surprise. He hadn't thought of whether Ontario

judges are binding on other provinces in re-legislating nation-wide prohibitions that had been repealed.

Isn't parliament the only one that can pass a law through legislation that is constitutional and conforms with the Charter?

THE COURT: All right. So, that's the question that you're posing to the court. Unfortunately, the court poses a question to you, and I look to answers from you. But your position is, I don't think that the Ontario Court of Appeal could resurrect a law that they had earlier struck down?

JCT: Yes, that's exactly POLCOA.

MR. NIELSEN: And by pulling out, let's say the cancer of the law that made it to be struck down, to reapply that cancer into the law, doesn't that make the law still dead? And that was as of...

MRS. NIELSEN: December 2003.

MR. NIELSEN: ...December, 2003?

MRS. NIELSEN: The Health Canada was on that one.

THE COURT: All right. So, that's your first...

MRS. NIELSEN: Health Canada was...

THE COURT: ...point.

MRS. NIELSEN: ...involved with that one.

THE COURT: You don't believe that the Court of Appeal has the authority to resurrect a law that it had earlier deemed...

MRS. NIELSEN: Unconstitutional.

THE COURT: ...of no force and effect.

JCT: Tada.

MR. NIELSEN: I feel that they're micro managing the law.

THE COURT: All right.

JCT: But they're not supposed to micro-manage the law, they're supposed to strike it down and let Parliament micro-manage it.

MS. NIELSEN: Changing it.

THE COURT: Now, you'd have to acknowledge though, that given the Turmel case, that would only apply, at best, to 4(1) because, of course, the Court of Appeal never said that 5(2) was at any time an offence unknown to law, and I think it made itself clear on Turmel. At best, what you can do is use that argument for 4(1). Right?

JCT: It's true. The Parker Ace of Sheppard only applies to the possession charge. It's going to take the Turmel Ace of Aitken to beat the possess to traffic charge.

MRS. NIELSEN: May I speak, Your Honour?

THE COURT: All right. Well, do you have any to say on these points? Can I just engage in this discussion with you and then perhaps I'll allow Mrs. Laurel Nielsen to make some representation.

I think the frustration that you folks are expressing to the court is not a frustration that is unknown to a lot of people. We're going through, I think, a significant change in attitude and postures with respect to how we as a country are trying to deal with the issue of marijuana.

MR. NIELSEN: Mm-hmm.

THE COURT: But I think that what you folks need to understand is this, issues of any kind of broad sweeping change, quite frankly, shouldn't come through courts.

JCT: What does he call going from legal to illegal again through the courts?

Courts are there to apply the law, to interpret the law.

JCT: And this Court of Appeal unrepealed the law.

If there is some significant change in how we as a society deal with this whole issue of possession of marijuana, production of marijuana, we've just gone through a federal election. We've now got in excess of what, 300 members of parliament who are charged with the responsibility of creating laws that make sense.

JCT: They certainly reversed its illegality without being elected.

And I think, as I understand it, changes may be coming down to the Controlled Drugs and Substances Act with respect to how we as a society deal with simple possession, but to me, the appropriate forum for how we change our views or our punishments or our position on issues of possession, that's got to come from parliament. It has to come from elected representatives.

JCT: I'll have to use his own words.

MR. NIELSEN: I agree.

THE COURT: Lord knows, I've taken enough heat about making decisions that a lot of people think, who's he to make a decision. He's one person, we're 26 million. Why should a judge be empowered to make a decision that effectively affects all of us, and I think that's what you need to appreciate. I have a limited role in this whole process. What's the law? Apply the law.

JCT: Why did 3 judges do just that?

And as I say, looking at what the Court of Appeal has said on October the 7th, it seems to me you've got some difficulties.

JCT: Seems to me that them doing what he just condemned means the difficulties are his, not theirs.

If you folks feel, you know what? Quite frankly, the law just doesn't make a lot of sense, you may not be alone on that. I mean, one of the cases suggested, for example, that the black market for production of marijuana was able to service the needs of medical users. My own personal opinion is, I think that's an affront to human decency, that individuals dependent on marijuana, who have been given the opportunity to use marijuana as a result of debilitating medical issues, have to rely on a black market. I think that that is wrong.

JCT: He should like the Krieger decision.

MR. NIELSEN: Mm-hmm.

THE COURT: I just, from a personal point of view, think that if you're going to allow individuals to use it based on medical needs, then they shouldn't have to go down a dark alley to find it.

MR. NIELSEN: That's right.

MRS. NIELSEN: Yes.

THE COURT: But...

MR. NIELSEN: I agree.

THE COURT: . I'm not the law as far as the....

MR. NIELSEN: But therefore, it's irrational, Your Honour.

They're saying it's all right...

MRS. NIELSEN: They've already said it's irrational.

MR. NIELSEN: ...to smoke for a few and to grow for a few, but you can't obtain it. It's an irrational law.

THE COURT: And that's a law that should be changed by parliament, not by me.

JCT: Yes by him. Irrational laws should be struck down by judges.

MR. NIELSEN: That's right. So, what my argument is today, is can you show me where parliament passed legislation since 2002?

THE COURT: Probably not, and it's something...

MR. NIELSEN: So, how...

THE COURT: that they've been...

MR. NIELSEN: How am I as a personal individual supposed to...

MRS. NIELSEN To know there's a law....

MR. NIELSEN:...know that there's a law and that I'm breaking it? I've looked online, Your Honour, under the Criminal Code...

MRS. NIELSEN: Can't find it.

MR. NIELSEN: ...of Canada there is not even .,

MRS. NIELSEN: Can't find it.

MR. NIELSEN: ...anything suggesting marijuana laws for me to know, or the public to know that they're doing anything wrong.

MRS. NIELSEN: Yeah.

THE COURT: As citizens of Canada, we're all presumed to know the law, which in itself, can be a little difficult because, quite frankly, the law is ever changing. But as soon as the Ontario Court of Appeal came out on October the 7th with its decision, then we're all deemed to know it.

JCT: That judges can re–legislate criminal statutes? Why should we know that? It's not taught anywhere?

And it basically says 4(1) is an offence, 5(2) has always been an offence, and that's the bottom line, and as I say, changes need to be through the vehicle of parliament, not through courts.

MR. NIELSEN: Right. So, what you're saying is the Hitzig decision was okay?

THE COURT: I'm bound by it. Whether I think it's okay...

MR. NIELSEN: Even though the...

THE COURT: ...or not.

MR. NIELSEN: ...Provincial Court judge that ruled in favor of changing...

MRS. NIELSEN: In the beginning...

MR. NIELSEN: ...the laws for all of Canada?

MS. NIELSEN: In the beginning ...

THE COURT: But it was the Ontario Court of Appeal, which...

MRS. NIELSEN: It was the...

THE COURT: ...is binding on me...

MRS. NIELSEN: ...Court of Appeal.

MR. NIELSEN: But if you go to page 313 of the time line and read the bottom paragraph, bottom two.

THE COURT: Now, when you say 313, is that in your material?

MR. NIELSEN: Yes.

MRS. NIELSEN: Yes. Our, our time line.

THE COURT: All right. I have that.

MR. NIELSEN: Okay.

MRS. NIELSEN: The last two paragraphs from the bottom.

THE COURT: All right. Why don't you have a seat, Mr.

Nielsen, and I'll let Mrs. Nielsen take over.

MR. NIELSEN: Okay.

THE COURT: What would you like to tell the court, Mrs. Nielsen with respect to what's...

MRS. NIELSEN: I would just like...

THE COURT: ...on page 313?

MRS. NIELSEN: ...to add that in the Hitzig case, it points out right on page 47, that they want to substitute two paragraphs of the original decision and change it. To me that, that seems very irrational because it, it does explain in here that you cannot change a law to – you'd have to strike down or read in, and by doing either of those, you're changing it immensely. That's the page my husband was talking about in our time line.

And in the Clay v. The Queen, it, it states on page four, down at the very bottom paragraph that, that the task of the court in relation to Section 7 of the Charter is not to micro manage parliament's re–creation with continuance of prohibitions by, by penalty. Isn't that what they did with the Hitzig case, Your Honour? They micro, they actually macro managed it. They changed the whole thing back again. I feel it should have been struck down totally. Gone, and a whole new one resurrected just on these grounds alone. As well, Health Canada brought, there was a complaint that they had made about only one person being able to grow for one other person. The Health Canada suggesting on December of this, 2003, and they struck it back up that it was okay that someone else grow for them. So, that's now in contradiction again. So, there, there's, there can't possibly be a law in force under such a...

MR. NIELSEN: Contradictions?

MRS. NIELSEN: ...contradictions. There, there's just major contradictions all through these whole cases. It's been struck down. It's been shown that it, that it's been struck down, yet it was read, resurrected by taking two paragraphs out of another judge's decision. I would, correct me if I'm wrong, but I believe that's not legal.

THE COURT: All right. Anything else you wish to say?

MRS. NIELSEN: I think, I think that's about it. I could make, maybe take five seconds and speak with my coach if I've forgotten, and I'll let you know.

THE COURT: All right.

MRS. NIELSEN: would that be all right?

THE COURT: Yeah.

MS. NIELSEN: Thank you.

MR. SMITH: Excuse me, Your Honour, may I just...

THE COURT: Don't interrupt.

MRS. NIELSEN: Okay. They did, they did realize that the law was unconstitutional. They struck it down. They reinstated it, but they said they had changed the M.M.A.R. since then, put things back in that shouldn't, shouldn't have been in there to start with. That, it's the answers that they've taken out, they put it right back in. Therefore, the

law, it's not constitutional again. It's been struck down.
The law that they, they made again was the original law we had, which had been struck down.

THE COURT: All right. Thank you.

MRS. NIELSEN: So that...

THE COURT: All right. Danielle Nielsen, is there anything you wish to say, Danielle, in addition to what, I take it this is your mother and father?

MS. NIELSEN: Yes.

THE COURT: In addition to what your mother and father have said today?

MS. NIELSEN: I think they pretty much covered that. I'm not familiar with really any of the material that they talked about.

THE COURT: All right. Just give me a second.

MS. NIELSEN: All right.

THE COURT: Mr. Smith, I wish to give you three questions to mull over the luncheon recess in addition to any other representations that you'd like to make and so, I'm going to now recite these three questions and allow you to consider them over the luncheon recess and I'll adjourn until two fifteen.

The first one is this issue about how can the Ontario Court of Appeal overrule itself when they made a finding in respect of Parker one and then came back in Parker two, three years later, and essentially said 4(1) is now valid legislation. That's the first question.

Two is, does the federal prosecutor accept that the current law on marijuana possession under 4(1) is in a confusing state, and as such, an inappropriate piece of legislation to prosecute under?

MR. SMITH: Your Honour, with the greatest of respect, I don't know how I'm going to answer those questions. I, that, that's for the legislature. I, I can't...

MRS. NIELSEN: Exactly.

THE COURT: I'm asking, you can make...

MR. SMITH: Okay.

THE COURT: ...your submissions.

MR. SMITH: Okay.

THE COURT: Three, can a court resurrect a legislative provision that has been otherwise struck down as offending the provisions of the Charter?

MR. SMITH: Sorry, the last one again, please?

THE COURT: Can a court resurrect a legislative provision that has been otherwise struck down as offending the provisions of the Charter?

All right, Mr. Smith. I'll let you consider that over the luncheon recess. I'll hear your submissions on those points as well as any others that you wish to raise, and I'll adjourn court until two fifteen.

MR. SMITH: Thank you, sir.

RECESS

--

Abolitionist Slave Leader John C. "The Banking Systems Engineer" Turmel
for UNILETS interest-free time-based currency in U.N. resolution C6
to Governments in the <http://www.un.org/millennium/declaration.htm>
<http://www.cyberclass.net/turmel> 519-753-0645 USENET: can.politics