

# THE DAILY OBSERVER

APRIL 16, 2008

## Park moose killing trial has been delayed

The re-trial of four aboriginals charged with killing a moose in Algonquin Park has been delayed until the Crown cross-examines one of the defendants, a judge ruled this week.

Justice Lloyd Brennan adjourned the case after Crown counsel Brian Wilkie stated he only just received an affidavit sworn out by Robert Lavalley. The cross examination will be held May 6 at superior court in Pembroke.

Thomas Kohoko, Daniel Sarazin, Mervin Sarazin and Bruce Meness, all members of the Pikwakanagan First Nation at Golden Lake, had been charged with unlawfully hunting and killing a moose in September 2001. They told conservation officers they were exercising their aboriginal hunting rights as recognized by the Supreme Court of Canada.

They were acquitted in June 2006, but the Ministry of Natural Resources won an appeal. Last March, Justice Robert Selkirk ordered a new trial. Subsequently, three other people, Mr. Lavalley, Joseph Chartrand and Vincent Lavallee, have also been arraigned on similar charges.

Representing the accused, lawyer Michael Swinwood has made a series of applications in superior court in an attempt to prohibit the charges from going ahead.

Before any arguments or evidence was to have been presented, Mr. Swinwood argued that Justice of the Peace Clayton McKechnie, who previously heard the case, exhibited a bias against the defence.

Mr. Swinwood said that the justice's statements and observations gave him the impression they could not receive a fair hearing. He argued the justice rejected the concept that the accused had a constitutional argument and had robbed the tribunal of its objectivity with his comments.

Mr. Swinwood gave some insight into the argument he will put forward once the trial begins.

He said the case centres on the relationship between the province and its aboriginal people. He accused the province of violating Section 109 of the British North America

Act of 1867 and the 1763 Royal Proclamation which gives overreaching hunting and fishing rights to Canada's native people.

"We're talking about the Ministry of Natural Resources ignoring provisions of Section 109 and leaving the Algonquin Nation in this discriminatory situation," he told the court.

The Crown had initially asked the case's first judge, Justice of the Peace Ray Switzer, to recuse himself.

Defending Justice Mckechnie, Mr. Wilkie said the justice felt the proceedings on Dec. 4, 2007 and Jan. 28, 2008 were getting off track when Mr. Swinwood alleged the Algonquin Nation had suffered genocide when it was forced to move from Algonquin Park decades ago.

"He does not pronounce on the issue," Mr. Wilkie said referring to the transcript from those two dates. "His mind is open to whatever is coming."

The crown has taken the position that the accused were hunting in an unsafe manner because they were operating firearms out of season when other land users were in the park.

"The rights of aboriginal people cannot be exercised in an unsafe manner," Mr. Wilkie said. "Aboriginal rights and treaty rights have to be exercised with others' rights in mind."

Mr. Swinwood reiterated that when the Algonquin Nation lost ownership of Algonquin Park through deception, it was, by the United Nations definition, an act of genocide. He added there is no treaty in place for the Algonquins to abide by.

"We have unsundered, unceded territory that has not been dealt with. There's been no discussion about that territory because there is no treaty. It makes it very difficult for the province to render justification," said Mr. Swinwood. "Rather than the province engaging in consulting and accommodating, they're prosecuting."

The trial resumes June 24.

[schase~thedailyobserver.ca](http://schase~thedailyobserver.ca)