Part I: STATEMENT OF FACTS

General Statement:

1. Before charged William Bruce Montague was a full-time licensed gunsmith servicing police and private firearms including fully automatic weapons. My client has been a vocal but peaceful opponent of Canadian firearms laws from 1995 to the present. His testimony to these facts was uncontradicted at trial. The appellants, William Bruce Montague and Donna Jean Montague, were both tried at the Superior Court of Ontario before Mr. Justice Wright and a jury at Kenora, Ontario. William Bruce Montague and his wife were charged on an indictment of 53 counts of firearms offences dated July 20, 2005, and signed by Peter Keen, assistant Crown attorney, North Region, Dryden. The accused were convicted of counts 1, 2, 5, 6, 10, 12, 13, 14, 17, 19, 20, 22, 24, 26, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 43 and 45 and acquitted of counts 3, 4, 7, 8, 9, 11, 15, 16, 18, 21, 23, 25, 27, 32, 39 and 40. William Bruce Montague received a sentence of 18 months imprisonment. Donna Jean Montague received probation.

Issue #1: (Constitutional)

2. William Bruce Montague brought a motion to challenge the constitutional validity of the various charges for reasons set out in a Notice of Constitutional Question, which was served on the Attorney General of Canada and the Attorney General of Ontario. (See Appeal Book, page 995.) This resulted in Reasons for Judgement by Mr. Justice Wright, the trial judge, on the constitutional issue on November 6, 2007. (Appeal Book pages 39 and following.)
3. On appeal the Montagues argued that sections 7 and 26 of the *Charter of Rights*, the English Bill of Rights of 1689 and the preamble to the *BNA Act* of 1867 gave the courts power to overrule infringements of Parliament upon the rights of individuals, subject to

section 1 of the *Charter*. The honourable appeal court, however, dismissed this argument on all grounds.

4. The appellant relied on the historical development of the rights of Englishmen, following the Glorious Revolution of 1688 and the *Bill of Rights of 1689*. The appellant argued before Mr. Justice Wright there was an entrenched, inherent right to keep firearms for defence. The Crown argued that the English *Bill of Rights* (hereinafter called EBOR) had no application and only express *Charter* rights applied.
5. The learned trial judge found, in Paragraph 16 of his Reasons of November 6, 2007, "The English *Bill of Rights* is indeed part of the rich constitutional heritage Canadians have received from the mother country."
6. The learned trial judge also found, in Paragraph 27 of his ruling, Appeal Book Page 39, that the Supreme Court reference of 2000 [2001 SCR 783] compelled him to hold that firearms registration regulations were within the competence of the federal government, and he also relied on the words "as allowed by law" in Paragraph 29 (of EBOR) to mean that anything Parliament legislated in respect to firearms is acceptable.
7. At the end of the constitutional argument and by his ruling of November 6, 2007, the learned trial judge dismissed the constitutional challenge of the appellants.
8. After hearing appeal arguments on February 18, 2010, the Ontario Court of Appeal in a ruling of February 25, 2010, dismissed this ground. In their reasons, the Learned justices of the Court of Appeal held that the English Bill of Rights had no application and relied upon the interpretation of the Bill of Rights, placed by the Supreme Court of Canada in the decision of "*New Brunswick Broadcasting Company v. Nova Scotia (Speaker of the House of Assembly)* [1993 1 SCR 391] at paragraph 54."

9. The Appellant herein argued that the context of *New Brunswick Broadcasting* was specific and limited, and that the words "cannot be directly transported without specific reference," means the Bill of Rights of 1689, has application because the Bill of Rights of 1689 specifically refers to the right to keep firearms, sufficient for their defence.
10. It is further contended and was before the Court of Appeal, and with leave of this court, will be argued that the preamble of the constitution can be taken to refer to the specific article of the Constitution of the United Kingdom, if it relates to a fundamental right, which is inherent to all Englishmen.
11. The Appellant herein, if leave is granted, seeks to rely on the analysis of the Supreme Court of the United States (*District of Columbia et al v. Heller*, June 26, 2008), which upheld the analysis of Joyce Lee Malcolm in *To Keep and Bear Arms: The Origins of an Anglo-American Right* in regard to the origin of the Second Amendment. Tracing that lawful principle to the EBOR, is correct legal analysis, applicable in Canada due to the common constitutional heritage of both Canada and the United States vis-à-vis the origin of the rights pertaining to firearms, being EBOR.
12. The Appellant herein seeks leave to bring before the Supreme Court of Canada, a careful and clear analysis of *R. v. Simmerman, R v. Wiles, R v. Hasselwander,* and the *Reference of the Firearms Act (Canada) 2000,* all but Simmerman are referred to in the Court of Appeal reasons at paragraphs 16 – 19, to demonstrate that those cases did not specifically address the issue of the right to possess and use firearms for self-defence, relying on *EBOR, Blackstone,* and the *Charter*, section 26, therefore these are original arguments.
13. It is the intention of the Appellant herein, if leave is granted, to argue that the laws and regulations pertaining to firearms and the sections under which the Appellant was

charged and convicted, being *Criminal Code* sections 86(2), 91(1), 92(2), 95(1), 102(1) and 108(1)(b), are breaches of the constitutional principles asserted.

14. The foregoing sections are a contravention of fundamental justice under section 7 as qualified by section 26 of the *Charter* and the preamble of the Constitution of 1867, because they create, out of a regulatory scheme, strict liability offences, in some cases with reverse onus, and in other circumstances, penal sanctions which automatically require a minimum term of imprisonment, all of which it would be the intention of the Appellant herein to contend is contrary to section 7 for a variety of reasons. More specifically, the reason being that the regulation of firearms has been extended too far and into the realm of prohibition by regulation. The Appellant wishes to contend that if the right to keep firearms for defence can be traced to the English *Bill of Rights*, it is, like all rights, not absolute; but, like the right to free speech, limits to those rights should be subjected to a section 1 analysis where the Appellant will argue these sections of the *Criminal Code* do not pass.

Issue #2:

15. Regarding the second search warrant, the Appellant was denied the right to lead evidence challenging the issuance of this search warrant on the mistaken belief that the search warrant preceded the Appellant's disclosure of the secure storage vault and its whereabouts. The record shows that the second search was obtained after this disclosure of the secure storage vault and hence under the threat which the Appellant was never allowed to testify about the threat to bulldoze his home.
16. The appellant relies upon the fact that the validity of the second search warrant on his home was obtained while he was in custody and under duress by the threat his house

would be torn down if he didn't consent or identify the location of further firearms in a secure and sealed location, the accused will rely on evidence derived from the transcript of proceedings at the trial, which will be available for the hearing of this appeal. It will be alleged that the learned trial judge in the course of the pre-trial motion denied the right to challenge the second search warrant or the evidence derived from it. Large amounts of firearms and ammunition in the sealed and secure vault were available only after the accused gave information as to its location while he was in custody.

17. Therefore, the existence or absence of the search warrant prior to the agreement was a significant factor in the decision not to allow a challenge of the second search warrant. It was not until much later that Constable Belluz testified in Volume II, at page 496, line 30, that it was found quite clearly that the search warrant was only obtained on the 20th at 4:30 in the afternoon, which would clearly be after the court statements of Mr. Keen.
18. The evidence of Constable Belluz, Volume II, page 496, line 30:

> Q: Did you get the search warrant on the 20th at 4:30 in the afternoon?
>
> A: Yes, sir.

19. Therefore it is clear that the search warrant was obtained after the location of the hidden room was extorted from Mr. Montague by the assurance that he would be released if he revealed it.
20. At page 254, line 25, Mr. Keen made clear that he was saying that Mr. Montague was not detained until he revealed the whereabouts of the "secret" room.

Issue #3:

21. The prosecutor made the following remarks to the jury in his address:

> Mr. Montague had gone beyond peaceful protest and he was preparing for an armed conflict. I felt at times when I'd come into this courtroom and hearing

> some of Mr. Montague's testimony, like *Alice in Wonderland*. I don't know if you know the story, but Alice get stuck down a rabbit hole and people doing all these crazy and bizarre things around her and acting like it's completely normal, and I felt like that when I was listening to Mr. Montague testify. [Vol. 5, page 1484, lines 25 – 32 and page 1485, lines 1-3, emphases added.]
>
> It's not normal to be building secret rooms. It's not normal to be building fully automatic weapons and hiding them in a secret room. It's not normal to be going and filing serial numbers off guns and burying them in the bush because you're worried somebody might dig them up from the middle of the bush and track them back to you. That mind set suggests that Mr. Montague has some fairly disturbed views of reality. [Vol. 5, page 1485, lines 4-13, emphasis added.]
>
> Canadians are entitled to own firearms for lawful or peaceful purposes, but we don't let citizens arm themselves for war … [Vol. 5, page 1485, lines 19-21].

Issue #4:

22. In Volume 4, Bruce Montague states:

    a. These firearms are my property. They were legally acquired with a FAC, they remain my property, and I still want 'em back.[Vol. 4, page 953, line 20].

    b. I purchased them under a FAC system, they are lawfully mine. I am entitled to possess them for the rest of my life. [Vol 4, page 954, line 16].

    c. They were locked securely in a secure vault which the police couldn't even find until I told them where they were. [Vol 4, page 954, line 26].

    d. They're my property. I'm legally entitled to them. I've done nothing to warrant the removal of my property from my possession. [Vol. 4 page 955, line 1].

23. Testimony of William Bruce Montague, Page 899, Line 8, "There were my property, and they still are. I still contend they're mine."

24. He testified about the significance of an FAC, "Under the FAC system, I can acquire and purchases as many firearms as I like, and I'm entitled to possess them for the rest of my life, without even needing an FAC. FAC is only required to acquire firearms, not to hold on to them." [See page 954, lines 16-19].

25. He never acquired any firearms after the date when an FAC was no longer effective. [Page 901, Line 19].

26. He was asked if he possessed a license to possess firearms. He said: "Yes. That was my FAC." [See page 956, lines 15-20].
27. The Appellant repeatedly claimed colour of right to seek protection of section 39 of the *Criminal Code*, saying, *inter alia*, that he never acquired any firearms after the date when a Firearms Acquisitions Certificate [FAC] was no longer effective [Page 901, Line 19].
28. All firearms of the appellant were lawfully acquired and until the law changed, completely legally owned. They were stored in a secure vault, so secure that they were not discoverable using the first search warrant and only discovered after the accused revealed the access to the secure room under threat of tearing his house down. The appellant argued at trial and the trial judge directed the jury to disregard reliance on section 39(1) of the *Criminal Code of Canada*. The Court of Appeal agreed in paragraph 41. The appellant relied on Section 39(1) of the *Criminal Code* as a colour of right defence to any denial of his proprietary rights in his lawful property. The appellant contended at trial that if the firearms were his property, the force used in preserving its possession was merely to hide it and this was permissible. The trial judge and Court of Appeal denied the applicability of this defence. The appellant wishes to pursue this argument.

Issue #5:

29. Mandatory minimum sentences for the offences in question apply under *Criminal Code* sections 95(1) and 102(1) of which the Appellant was convicted. The Appellant testified he merely wished to safely protest against all the *Criminal Code* firearms provisions which he felt unreasonably restrict his rights.

30. In the present case, regarding section 95(1), the storage of the handguns with the ammunition was in a locked and secured vault, to which the police required private information from the appellant to gain access. It was only by lapse of his license regarding section 102(1) that the appellant committed any offence regarding manufacture of automatic weapons. Therefore in both mandatory minimum sections, the appellant's offence is lapse of a license for actions for which he previously had a license.

Part II: QUESTIONS IN ISSUE

31. The appellant argues the following are issues for which an appeal should be heard:

Issue #1: Do *Criminal Code of Canada* sections 86(2), 91(1), 92(2), 95(1), 102(1) and 108(1)(b) offend against the preamble to the *BNA Act* 1867, the *Bill of Rights* 1689 and the inherent constitutional rights of citizens applying sections 7, 26 and 52 of the *Constitution Act* 1982, and if so, are these limits saved by section 1 thereof.

Issue #2: Was the second search warrant which the accused was not allowed to challenge at trial properly issued, and should he have been allowed to challenge it?

Issue #3: Were the prosecutor's inflammatory remarks permissible in a fair trial?

Issue #4: Should a colour of right defence under section 39(1) of the *Criminal Code* have been left to the jury for firearms owners in the Appellant's position?

Issue #5: Was the mandatory minimum sentence constitutionally valid in the circumstances?

Part III: ARGUMENT

Issue #1:

32. The expert testimony of Dr. Gary Mauser accepted at trial by Justice Wright showed that a large proportion of Canadians were non compliant with the licensing and registration

laws for firearms. In the 26 counts of the indictment of which the Appellant was convicted, only the following sections of the *Criminal Code* are offended, namely sections 86(2), 91(1), 92(2), 95(1), 102(1), 108(1)(b). The Appellant seeks to argue that each of these sections is a breach of his inherent fundamental rights under sections 7, 26 and 52 of the *Charter of Rights*, derived as common law rights from the *Bill of Rights* of 1689 and the Preamble to the *BNA Act* 1867, and furthermore, creates strict liability offences with reverse onus effects and mandatory periods of incarceration in an allegedly regulatory regime. (The sections are set out in Part VII.)

33. Specifically, the Appellant seeks to contend that section 86(2) of the *Criminal Code* creates an offence out of any breach of regulations respecting handling, storage, transportation, shipping, display, advertising and mail-order sales of firearms. This imports regulatory control of such an unreasonable, complex and restrictive nature as to render firearms ownership a dangerous and unattainable privilege, not a right. This section gives government the power to progressively and effectively ban firearms and render all lawful owners retroactively criminal by regulations which can be changed by government at will. This, the Appellant wishes to argue, renders criminal all those who cannot be regularly familiar and compliant with a constantly changing regulatory scheme. In the elimination of crime it is patently ineffectual. In the creation of criminals out of gun owners, however, it is extremely effective and impossible to avoid. In relation to the Oakes Test, it is disproportional, not rationally connected and limits the rights far more than is necessary. Therefore, it is unjustified and unreasonable in a free and democratic society. The legal effect of the word "possess" in this section renders criminal many innocent acquisitions of firearms where no rational danger exists, and imposes restrictions not proportional to any risk. To put it simply, the storage regulations make defence of person or property impossible when a gun is needed. When a gun is needed, it is needed immediately.

34. In regard to section 91(1) of the *Criminal Code* (see Part VII), it imposes a license condition for each owner and a registration requirement for possession of each firearm. In theory, this sounds reasonable. In practice, however, the licensing of each owner and the registration of each firearm creates numerous logistically impossible and unreasonable

restrictions. Licences can unknowingly lapse and create breaches. Widows can inherit firearms without licenses and unknowingly offend. All this creates liability to five year's imprisonment. In regard to rational connection to the permissible objective, proportionality and minimal limitation of rights, this section is unreasonable and does not meet the *Oakes* test for a limit on fundamental rights. The discretionary issuance of a license is restricting a right to an unattainable privilege because criminal sanctions unreasonably restrict the right where inadvertent breach is a real possibility. This section makes illogical the Crown's assertion, reiterated by the trial judge, to the effect that this case is not about registration. This section makes a criminal act of merely forgetting to renew a licence.

35. Section 92(2) (cited in Part VII) imports the term "knowingly," but a breach of 92(2) could happen by the widow who acquires her husband's property, previously licensed to him, and she does this at the moment of his death. Thus knowingly can be unavoidably. Thus this section renders the transmission to heirs a legal impossibility and breach upon death an inevitability. The effect of this section, intended or unintended thus fails to meet the *Oakes* test for a *Charter* breach. The effect of orders in council may very the classification of firearms for regulation purposes and criminalize those who forget to license in the required time, which is unspecified. This section causes numerous innocent people to be criminalized out of ignorance for doing non-violent things and has no rational connection to preventing crime.

36. Section 95(1) of the *Criminal Code* imposes a mandatory minimum jail term of one year for possessing a loaded restricted firearm in an unlicensed place. Every farmer with a loaded restricted shotgun in his bedroom to defend against predators of his livestock, or every woman who receives a death threat from her ex and wishes to have her revolver at the ready, or every person who in remote or urban locations arms themselves for protection against thieves, and every widow who knowingly acquires by lawful succession her late husband's safe containing a revolver together with its ammunition, becomes a criminal with no criminal intent and liable to a mandatory one year in jail. A mandatory minimum sentence for violent crime is debatable, but for an act devoid of violence, potentially reasonable, honest and safe, it is irrational, disproportionate, and

limits a right far more than necessary for any danger to which it might be rationally connected. This section fails the *Oakes* test and should be struck down or read down. Numerous scenarios can be demonstrated where breach can occur with no criminal intent. The Appellant's case demonstrates this quite effectively in the room so hidden that threats of imprisonment and even the demolition of his house were necessary to extort its disclosure. The mere forgetfulness of a licence for a widow creates liability for a mandatory minimum sentence. Even a bureaucratic confusion or change of address without notifying the registry can cause this offence.

37. Section 108(1)(b) of the *Criminal Code* (see Part VII) makes possession of a firearm knowing that the serial number has been defaced or mere defacing of a serial number, a crime. This criminalizes otherwise harmless activity which could happen through accident, like drilling a hole for repair, or through other accidental means. It is not an inherently dangerous activity and is a law designed solely to make easier crime detection where guns are used for criminal purposes. This law does not regulate or prevent use of the firearm for crime. Hence when it applies against all firearms owners, who have lawfully acquired the firearm or chosen to use it in a way which renders the serial number obscure but not with any criminal intent, it fails to meet the *Oakes* test and is an unreasonable limit on an inherent and constitutional right.

38. In conclusion on the constitutional issue, the Appellant wishes to argue that the sections involved are a thinly disguised system to prohibit or confiscate firearms and although in principle regulation of a right to reduce unreasonably out of existence is possible but section 1 of the *Charter* allows limitation of the right only to the extent consistent with the principles of the *Oakes* test, which these sections do not. Therefore, some or all of the sections involved should be struck down or read down. *R. v. Sparrow* [1990] 1 SCR 1075 holds that rights cannot be regulated out of existence.

39. If the law of Canada maintains the inherent God-given right of self-defence (as in sections 8(3), 25(1)(a), 25(2), 25(3), 26, 27, 28, 29(2), 30, 32(4), 34(1), 35, 37, 37, 38, 39, 40 and 41 of the *Criminal Code*) against criminal aggression seems to be the law, can it by regulation of firearms make that same self-defence impossible by rendering armed self-defence ineffectual? There are numerous cases in England, which in the 19th century

recognized the rights of Englishmen as set out in the *Bill of Rights—Rex v. Gardner, Mallock v. Eastley, Rex v. Hartley, Rex v. Thompson, The King v. George Dewhurst, Rex v. Hunt, Wingfield v. Stratford*. The *Universal Declaration of Human Rights* in its preamble states, "Whereas as it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." Article 3 of the *Declaration* goes on to state, "Everyone has the right to life, liberty and security of person." To render all these glorious phrases effective Parliament cannot regulate the power to realistically uphold them, out of existence. The court should recognize and declare illegal the effective destruction of an inherent right to self defence which existed before 1867, still exists in our law and should always exist in a free society if it is to remain free and not become a police state where only police and criminals have guns. Dialling 911 and waiting for the police to save you is not self defence. Although the Court of Appeal relied upon the words in the *Bill of Rights* of 1689 to quote the words "as allowed by law" to limit the right, and the court approved of Blackstone, the court failed to consider Blackstone's interpretation of these words:

> The fifth and last auxiliary right of the subject, that I shall at present mention, is that of having arms for their defence, suitable to their condition and degree, and such as are allowed by law. Which is also declared by the same statute I W. & M. st.2. c. 2. and is indeed a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression…
>
> And all these rights and liberties it is our birthright to enjoy entire; unless where the laws of our country have laid them under necessary restraints. Restraints in themselves so gentle and moderate, as will appear upon farther inquiry, that no man of sense or probity would wish to see them slackened. [William Blackstone, *Commentary on the Laws of England*, Book 1, Chapter 1. page 86.] [Emphasis added.]

The above quotations from Blackstone aptly describe a section 1 analysis to justify limiting the right.

40. The constitutional arguments are of national importance because the sections under attack threaten with criminalization with reverse onus in some cases, strict liability in others and mandatory minimum jail terms in some, a large segment of the population; firearms

owners whose only purpose is the preservation of their property or their lives and the lives of loved ones and who are normally careful, law abiding and responsible. These unreasonable and unjustifiable measures infringe an historic long-standing right of free men and women to responsibly own firearms in what purports to be a merely regulatory scheme. This scheme due to its cumbersome, formalistic rituals of registration and licensing has no effect on the criminals it is designed to inhibit. *Criminal Code* sections 86(2), 91(1), 92(2) and 95(1) would criminalize a homeowner or shop owner who defended their shop with a loaded firearm from an armed robber. This type of legislation causes law-abiding citizens to lose respect for the law. *The Revised Statutes of Ontario 1897*, and the cases of *O'Donohue* and *Authorson*, all indicate the applicability of the EBOR as part of our constitution.

41. The learned justices of the Court of Appeal erred in law in dismissing the Appellant's *Charter of Rights* challenge because they ignored the legal history of the *Bill of Rights*, restricting article 7 of the *Bill of Rights of 1689* by the words "as allowed by law"—which words Blackstone has explained do not limit the right. (See paragraph 14 of Reasons.) They further erred in applying *obiter* words from *Hasselwander* and *Wiles* which did not address the argument herein (see Reasons paragraphs 16 and 17). They erred in paragraph 19 in relying on *Reference in Firearms Act (Canada)* 2000 1 SCR 783 to conclude that case which was a dispute over jurisdiction to regulate necessarily justifies exempting specific regulations from *Charter* scrutiny. They erred in paragraph 15 in failing to appreciate that the right to videotape legislative proceedings of Parliament was not a right "specifically referenced" in the *Bill of Rights of 1689* because recording by video was not possible in 1689, or was it considered. But firearms rights were considered and received a "specific reference" for protection. The specific reference to a right to firearms as a common-law right of Englishmen is a matter of some concern to many freedom-loving and law-abiding citizens. The reasons of the Court of Appeal rely on *obiter* comments, jurisdictional disputes and irrelevant cases to summarily and erroneously dispose of the Appellant's argument. In the recent Supreme Court decision of *Chaoulli v. Quebec (Attorney General)*, a Quebec law was struck down that prohibited the purchase of private medical insurance. Three judges ruled that a rigid government monopoly violates the section 7 right to life, liberty and security of the person. This is

applicable reasoning to government regulations on firearms that affect our section 7 rights. Police have more of a monopoly on the use of effective tools for personal security under the *Firearms Act* than governments have over the tools of healthcare, and yet they have no obligation to protect every individual from violence.

Issue #2:

42. It is obvious from a reading of relevant transcript that the appellant was denied the right to challenge the second search warrant for no good reason since his counsel's earlier factum had disputed its validity and there were good grounds to dispute it on the basis of coercion and threats having induced the information on which it was obtained as it was obtained after the agreement to disclose the whereabouts of the secure vault room obtained by threats. To have denied the appellant the ability to challenge the second search warrant where he had by his counsel, Calvin Martin, indicated a desire to advance this issue in the direct violation of his home is a denial of the rights of a citizen so egregious as to justify a new trial with that issue open for consideration as to whether the search was a violation of the appellant's *Charter* rights under sections 8 and 24 (1).

Issue #3:

43. The prosecutor engaged in *ad hominem* personal attacks on the accused's sanity and this was used to discredit his evidence. It should be in the national interest to prevent such vilification of accused persons by *ad hominem* attacks to juries in view of the power prosecutors have.

Issue #4:

44. The effects of section 39(1) are not limited to the circumstances cited by the Court of Appeal but are broad enough to protect from seizure the property of the lawful owner, even from the state, where the force used is merely to hide the property. The cases of

Howson and *Lei*, cited in authorities (Part VI), clearly show the defence applies even to someone lawfully entitled to it by operation of law. The application of section 39(1) has no limits to its application where ownership is in dispute and possession is an element in chattel ownership. The appellant's guns are chattel and personal property, previously lawfully owned by him. The learned trial judge was wrong in law and the learned justices of appeal equally wrong to regard this defence as being unavailable to the appellant. The simple facts are the guns had been lawfully acquired, as was the ammunition. Their use was never dangerous to anyone. They were kept safely and securely on private property of a gunsmith and previously licensed manufacturer of automatic firearms. They were never out of his possession or used in any crime after he lawfully and with an FAC, acquired them. Then a colour of right defence under section 39(1) should have been available even against someone lawfully claiming to take away possession, namely the state. Although property rights may not be in the *Constitution*, section 39(1) of the *Criminal Code*, is. Its legal limits have never been defined and it is in the national interest that its effects be clarified.

Issue #5:

45. The mandatory minimum sentence applicable under sections 102(1) and 95(1) of the *Criminal Code* is wrong in principle because they are regulatory of licensing and storage. If the license for a prohibited weapon, i.e. a handgun with a barrel 4 inches or 105 mm or less, is stored with readily available ammunition, an offence occurred if the license has lapsed. If the license hasn't lapsed, no offence has occurred. This means a widow who inherits a safe with a handgun and ammunition stored together therein, with a lapsed license, has committed an offence with a one year minimum sentence. In the case of

manufacturing an automatic weapon, which the appellant was licensed to do at one time, the lapse of the license makes his previous manufacturing even prior to the lapse an offence with the mandatory minimum of one year. That happened in this case.

46. Therefore both sections 102(1) and 95(1) were license lapses, non-violent, technical offences for which a constitutional exemption should exist because otherwise, they are cruel and unusual punishment and for a regulatory offence. In *B.C. Motor Vehicles Act* [1985] 2 SCR 486 in the Supreme Court of Canada, which has spoken on mandatory minimum sentences for regulatory offences. This case provides good grounds for a constitutional exemption for this accused, or relief from a mandatory minimum in all cases. As a gunsmith my client received several guns for service each year that fire in "full-auto" mode because of wear, poor servicing by amateurs, or even just improper reassembly. This section makes law-abiding gun owners with no criminal intent into instant criminals with a 1 year minimum sentence for a simple reassembly mistake after cleaning. The way this section was applied to my client rules out the opportunity for gunsmiths to be properly trained in servicing police or grandfathered owners of full-auto guns.

Part IV: SUBMISSIONS ON COSTS

47. It is respectfully submitted that the constitutional arguments contained herein are original arguments, never before specifically addressed. They attack onerous criminal sections which severely limit and regulate in some cases with strict liability, sometimes with mandatory minimum imprisonment, sometimes with reverse onus, in an obscure regulatory regime, where Orders in Council can re-designate what was previously lawful

and make possession of it unlawful, with little real notice. In an allegedly regulatory scheme, otherwise law-abiding people must render firearms for defence useless or risk criminality. This is a matter affecting a large segment of lawful firearms owners and their respect for law and the safety of our society as a whole. It deserves leave to advance these arguments more fully for consideration and is a matter of national importance.

Part V: ORDER SOUGHT ON COSTS

48. Wherefore the appellant seeks (1) an order granting leave on all the issues and for the reasons advanced herein, and (2) because of the heavy burden of researching and advancing a complex constitutional argument that is of national importance, upon a private citizen, the appellant prays for an order for costs or funding to maintain the appeal.

All of which is respectfully submitted:

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Douglas H. Christie
Counsel for the Appellant
April 23, 2010