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July 15, 2003

Anne Roland  
Registrar  
Supreme Court of Canada  
Supreme Court of Canada Building  
Kent & Wellington Streets  
Ottawa, Ontario  
K1A 0J1

Dear Madam Roland:

**Re: MALMO-LEVINE v. The Queen  
CAINE v. The Queen  
CLAY v. The Queen  
S.C.C. Nos. 28026, 28148, 28189  
Our File Nos. VROCRI 1-146349(A), 1-138449, 1-200306**

As you are aware, judgment was reserved on these appeals on May 6, 2003. One of the issues is whether the "harm principle" is a principle of fundamental justice under s. 7 of the *Charter*. The purpose of this letter is to draw to the Court's attention the recent decision in *R. v. Murdock*, [2003] O.J. No. 2470 (C.A.), which discusses this question. Ten copies of the case are enclosed. The Appellants have been provided with a draft of this letter, and have no objection to it, and the judgment in *Murdock*, being provided to the Court.

In *Murdock* the Court of Appeal dismissed a constitutional challenge to the offence of "offering to traffic" a controlled substance. Speaking for the Court, Doherty J.A. accepted much of the analysis of Braidwood J.A. in *Malmo-Levine; Caine* (B.C.C.A.): paras. 27-30. However, he disagreed with Braidwood J.A. that a further "balancing" is required once it has been determined that legislation does not violate the "harm principle": para. 35.

On behalf of the Respondent, I would particularly draw the Court's attention to paragraphs 31 - 33 of the judgment.

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Your assistance is appreciated.

Yours truly,

A handwritten signature in black ink, appearing to read "S. David Frankel". The signature is fluid and cursive, with the first name "S." and last name "Frankel" clearly distinguishable.

S. David Frankel, Q.C.  
Senior General Counsel  
British Columbia Regional Office

Enc.  
SDF/kc

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