PART 1

STATEMENT OF FACTS

A. The Adjudicative Facts

1. The adjudicative facts were summarised by the Court below as follows:

> On June 13, 1993 at approximately 4:25 p.m., while patrolling a parking lot at the beach in White Rock, British Columbia, two R.C.M.P. officers observed the accused and another male passenger sitting in a Van owned by the accused. The officers observed the accused (the driver) start the Van and begin to back up. As one officer approached the Van, he smelled a strong odour of recently smoked cannabis (marihuana). The accused produced, for the officer, a partially smoked cigarette of cannabis (marihuana) from his right side. The cigarette subsequently weighed in at 0.5 of a gram. The accused possessed the partially smoked cigarette of cannabis (marihuana) for his own use and not for any other purpose.
>
> **Reasons for Judgment Below,** Appeal Book p. 515 at pp.519-520
> **See Exhibit 2 in the proceedings below,** Appeal Book**,** pp. 11-13.

B. The Legislative Facts

2. The Appellant accepts the findings of fact of the Court below with respect to:

a. Legislative history - pp. 516-518 and 525-527
b. Current rates of use of marihuana - pp.527-528
c. Health risks posed to the user of marihuana - pp. 528-533
d. Risk of harm to others or to society as a whole - pp. 533-534
e. Effect of prohibition on rates of use - pp. 534-536
f. How the law prohibiting the possession of marihuana itself causes harm - p. 537

PART 2

ERRORS IN JUDGMENT

A. THAT THE LEARNED TRIAL JUDGE ERRED IN LAW IN TREATING THE "FURTHER AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE" DATED SEPTEMBER 30TH, 1997, WHICH WAS FILED TO ENSURE THAT THE NEW LEGISLATION TO THE SAME EFFECT, NAMELY THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, WHICH CAME INTO FORCE ON MAY 14TH, 1997, WAS PUT IN ISSUE, AS AN APPLICATION TO FILE SUCH A NOTICE AND THAT THE COURT HAD JURISDICTION TO DENY IT OR DISMISS IT.

B. THAT THE LEARNED TRIAL JUDGE ERRED IN LAW IN FAILING TO DECLARE THAT THE INCLUSION OF CANNABIS SATIVA, ITS PREPARATIONS, DERIVATIVES AND SIMILAR SYNTHETIC PREPARATIONS, INCLUDING ALL OF THOSE SUBSTANCES SET OUT IN THE SCHEDULE UNDER S.3(1) TO (6) TO THE ***NARCOTIC CONTROL ACT***, R.S.C. 1985, CHAP.N-1 AS AMENDED TO DATE, AND/OR THE ANALOGOUS PROVISIONS OF THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, INSOFAR AS THEY RELATE TO THE PERSONAL POSSESSION AND USE CONTRARY TO SS.3(1) AND (2) OF THE ***NARCOTIC CONTROL ACT*** OR S. 4 OF THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, WAS IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO LIBERTY AND THE SECURITY OF HIS PERSON AND THE RIGHT NOT TO BE DEPRIVED THEREOF, EXCEPT IN ACCORDANCE WITH THE PRINCIPLES OF FUNDAMENTAL JUSTICE AS SET OUT IN S.7 OF THE ***CANADIAN CHARTER OF RIGHTS AND FREEDOMS*.**

PART 3

ARGUMENT

A. THAT THE LEARNED TRIAL JUDGE ERRED IN LAW IN TREATING THE "FURTHER AMENDED NOTICE OF CONSTITUTIONAL CHALLENGE" DATED SEPTEMBER 30TH, 1997, WHICH WAS FILED TO ENSURE THAT THE NEW LEGISLATION TO THE SAME EFFECT, NAMELY THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, WHICH CAME INTO FORCE ON MAY 14TH, 1997, WAS PUT IN ISSUE, AS AN APPLICATION TO FILE SUCH A NOTICE AND THAT THE COURT HAD JURISDICTION TO DENY IT OR DISMISS IT.

3. The Appellant was originally charged in 1993 with an offence pursuant to s.3(1) of the ***Narcotic Control Act***. An appropriate Notice of Constitutional Challenge was filed pursuant to the ***Constitutional Questions Act***, R.S.B.C. 1979, c.63. During the course of proceedings and before final submissions were made, Parliament chose to repeal the ***Narcotic Control Act*** and replace it with the ***Controlled Drugs and Substances Act*** which came into force on May 14th, 1997. The transitional provisions of the new Act provide that the trial of a person in the Appellant's position is to continue under the ***Narcotic Control Act***, but, if convicted, he must be sentenced in accordance with the provisions of the new Act. Consequently, on September 30th, 1997, more than 14 days before the point was to be argued, in accordance with s.8(5) of the ***Constitutional Questions Act***, the Appellant filed a Further Amended Notice of Constitutional Challenge, challenging the analogous provisions of the new ***Controlled Drugs and Substances Act***. This was done to ensure that both the old offence provision and the new offence provision, together with the sentencing provisions in relation to both, would be subject to this Constitutional challenge to ensure that the challenge would have some meaning and not simply be a continuing challenge with respect to repealed legislation, but would have some practical effect in the future. The provisions in both Acts are virtually identical and the evidence challenging the provisions would be the same relating to the same subject matter and the same offence and therefore it is submitted that there is no prejudice to the Respondent Crown. The Further Amended

Notice of Constitutional Challenge was simply filed in accordance with the requirements of the ***Constitutional Questions Act*** of British Columbia and at no time was any application made to file it, nor does the legislation provide any jurisdiction in the Court to admit or deny it. It is submitted that the Court should have ruled on the challenge at the end of the day as part and parcel of the overall decision.

> ***Constitutional Questions Act***, R.S.B.C. 1979, c.63
> **Reasons for Judgment below,** Appeal Book p.515 at pp. 516-519

B. THAT THE LEARNED TRIAL JUDGE ERRED IN LAW IN FAILING TO DECLARE THAT THE INCLUSION OF CANNABIS SATIVA, ITS PREPARATIONS, DERIVATIVES AND SIMILAR SYNTHETIC PREPARATIONS, INCLUDING ALL OF THOSE SUBSTANCES SET OUT IN THE SCHEDULE UNDER S.3(1) TO (6) TO THE ***NARCOTIC CONTROL ACT***, R.S.C. 1985, CHAP.N-1 AS AMENDED TO DATE, AND/OR THE ANALOGOUS PROVISIONS OF THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, INSOFAR AS THEY RELATE TO THE PERSONAL POSSESSION AND USE CONTRARY TO SS.3(1) AND (2) OF THE ***NARCOTIC CONTROL ACT*** OR S. 4 OF THE ***CONTROLLED DRUGS AND SUBSTANCES ACT***, WAS IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO LIBERTY AND THE SECURITY OF HIS PERSON AND THE RIGHT NOT TO BE DEPRIVED THEREOF, EXCEPT IN ACCORDANCE WITH THE PRINCIPLES OF FUNDAMENTAL JUSTICE AS SET OUT IN S.7 OF THE ***CANADIAN CHARTER OF RIGHTS AND FREEDOMS*.**

4. It is respectfully submitted that the Court below erred in law in failing to conclude that the prohibition against the simple possession of marihuana for one's own private use did not violate the rights of the Appellant pursuant to s.7 of the ***Canadian Charter of Rights and Freedoms***.

Liberty and the Security of the Person: Physical Liberty and the Threat of Imprisonment

5. It is respectfully submitted that the fact that simple possession of cannabis sativa is prohibited under threat of potential imprisonment is sufficient to raise a "liberty and security of the person" interest so as to engage s.7 of the ***Charter***. This point was conceded by the Respondent Crown below, and accepted by the Court, and is amply supported by authority.

> **Reasons for Judgment below,** Appeal Book p. 515 at pp. 549-550
> ***Reference re ss. 193 and 195.1(1)(c) of the Criminal Code*** (Man.) [1990] 1

S.C.R. 1123 (S.C.C.) per Dickson C.J. (LaForest and Sopinka J.J. concurring) at p. 1140. See also the judgment of Lamer J. at pp.1171-1178
Singh v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177 (S.C.C.) per Wilson, J. at p.207
R. v. Morgentaler, [1988] 1 S.C.R. 30 (S.C.C.) per Wilson, J. at pp. 164 and 166.
B.(R.) v. Children's Aid Society, [1995] 1 S.C.R. 315 (S.C.C.) per Lamer, C.J. at p.340 and Laforest, J. for the majority on this issue at pp.368-369.
R. v. Big M Drug Mart Ltd. [1985] 1 S.C.R. 295 (S.C.C.) per Dickson, J. (as he then was) at pp.336-7; 18 C.C.C. (3d) 385 at p. 418

6. Although this argument was before the Court in ***R. v. Malmo-Levine*** and ***Rowsell***, that Court did not deal with this point and in the result failed to go on and consider or assess the "principles of fundamental justice" applicable to the case.

R. Malmo-Levine and Rowsell (18 February 1998), No. CC970509, Vancouver Registry (B.C.S.C.)
Reasons for Judgment below, Appeal Book p.515 at pp.545, 548

Liberty and the Security of the Person: Human Dignity and Personal Autonomy

7. It is respectfully submitted that the concepts of "liberty and the security of the person" also include the right to human dignity and personal autonomy and the right of an individual to live his or her own life and to make decisions that are of fundamental personal importance without interference from the state. This includes the right to determine what shall be done with one's own body, even when the decision may be foolhardy and potentially harmful to one's self, absent some impact upon others or society as a whole as a result of that fundamental personal decision.

Reasons for Judgment below, Appeal Book p. 515 at pp.542-545
R. v. Morgentaler, (supra) per Wilson, J. at pp.164 and 166
B.(R.) v. Children's Aid Society, (supra) per Laforest, J. (speaking for the majority on this issue) at pp.368-369
Malette v. Shulman et al. (1990), 72 O.R. (2d) 417 at p. 429
Ciarariello v. Schacter, [1993] 2 S.C.R. 119 (S.C.C.) at p. 135
Fleming v. Reid (1991) 4 O.R. (3d) 74 at p. 88;
Rodriguez v. B.C. (A.G.), [1993] 3 S.C.R. 519 (S.C.C.) per Sopinka J. at p. 588
R. v. Morgentaler, [1988] 1 S.C.R. 30; 37 C.C.C. (3d) 449 (S.C.C.) at CCC p. 556

Reference re: ss.193 and 195.1(1)(c) of the Criminal Code [1990] 1 S.C.R. 1123 (S.C.C.)
R. v. Taylor (1992), 77 C.C.C. (3d) 551 (Ont. C.A.)

8. It is respectfully submitted that Curtis, J. in ***R. v. Malmo-Levine and Rowsell (supra)***, and consequently the Judge below in these proceedings, erred in law in their interpretation of the above-noted decisions of the Supreme Court of Canada. The apparent purpose of the law prohibiting possession of cannabis (marihuana) is supposedly to protect us from injuring our own health. The Appellant submits that he made a decision as an individual as to whether to consume a substance or not, knowing that it may or may not impact upon his health and that that was the "fundamental personal decision" or the "decision of fundamental personal importance" that he made that falls within the ambit of his right to "liberty and the security of the person" as defined by the authorities. The fundamental personal decision as to health, in this case, involved the consumption of cannabis (marihuana) but a similar fundamental personal decision could be made in relation to fatty foods, alcohol or tobacco or other substances which may be detrimental to one's health upon consumption.

R. v. Malmo-Levine and Rowsell, (supra) pp.4-6
Reasons for Judgment below, Appeal Book p. 515 at pp. 543-549
See also ***Wakeford v. Canada*** [Q.L. 1998 O.J. 3522] per Laforme, J. at p. 6, para. 29; p. 18, para. 90

9. It is respectfully submitted that for the same reason, the decision of the Ontario Court (General Division) in ***R. v. Clay*** and of the Ontario Court of Justice (Provincial Division) in ***R. v. Parker***, are in error, to this extent, as a result of having made the same erroneous interpretation as Mr. Justice Curtis in ***Malmo-Levine and Rowsell***.

R. v. Clay (14 August 1997), No. 38887F, Ontario Court (General Division), per McCart, J. at pp.21-23
R. v. Parker (7 October 1997), Ontario Court of Justice (Provincial Division) per Sheppard, Prov. Div. J. at p. 18
Reasons for Judgment below, Appeal Book p. 515 at pp.547-548

10. Similarly, Dorgan, J. in ***R. v. Cholette*** while concluding somewhat similarly that the ambit of s.7 is not sufficiently broad to include a right to possess marihuana, although the Court arrived at that conclusion by different reasoning to the courts in ***Clay***, ***Parker***, ***Malmo-Levine and Rowsell*** and the Court below, nevertheless fails to further analyse the issue and apply the parameters of the ***Charter*** in accordance with the jurisprudence of the Supreme Court of Canada up to March 23rd, 1993 and thereafter. It is submitted that the decision of ***R. v. Cholette*** must be considered in the context of these subsequent decisions and is therefore of very limited or no longer of any precedential value.

> ***R. v. Cholette*** (23 March 1993), No. 64964, Victoria Registry (B.C.S.C.)
> ***Reference re: ss.193 and 195.1(1)(c) of the Criminal Code,*** *(supra)*
> **Reasons for Judgment below,** Appeal Book p. 515 at pp. 547-548
> ***Singh v. Minister of Employment and Immigration,*** *(supra)*
> ***R. v. Butler*** (1992) 70 C.C.C. (3) 129 (S.C.C.)
> ***RJR– MacDonald Inc. v. Canada (Attorney General)*** [1995] 3 S.C.R. 199 (S.C.C.)
> ***Rodriguez v. B.C.(A.G.),*** *(supra)*
> ***R. v. Heywood*** [1994] 3 S.C.R. 761 (S.C.C.)
> ***B.(R.) v. Children's Aid Society,*** *(supra)*
> ***R. v. O'Connor*** (1995), 103 C.C.C. (3d) 1 (S.C.C.)
> ***R. v. Bartle*** (1994), 92 C.C.C. (3d) 289 (S.C.C.)
> ***R. v. Hydro Quebec*** (18 September 1997), No. 24652, (S.C.C.)

Liberty and the Security of the Person: Privacy

11. The Appellant submits that the concepts of "liberty and the security of the person" also include a "right to privacy" as enunciated in ***R. v. O'Connor***. As the Court in that case noted "respect for individual privacy is an essential component of what it means to be free". It is respectfully submitted that this "right to privacy", being an aspect of "liberty", is not limited to the protection of conduct in private places, but extends to private conduct wherever it might take place that can be described as "private conduct" as opposed to "public conduct" in that it involves activities by an individual which does not

affect others or the public at large and over which the public has no legitimate interest or basis for interference, at least not by way of the most severe sanctions reserved for the criminal law.

> ***R. v. O'Connor*** (1995), 103 C.C.C. (3d) 1 (S.C.C.) at pp. 53-56
> See also ***Ravin v. State*** 537 P.2d 494 (1975) (Supreme Court of Alaska)
> See also ***R. v. Sharpe*** (13 January 1999), No. X050427, Vancouver Registry, (BCSC) per Shaw J. at paras 42-53

12. It is respectfully submitted that the decision of Dorgan J. in ***Cholette (supra)*** in relation to this right to "privacy" did not consider the ambit of this right arising under s.7 of the ***Charter***. The decision in ***Cholette (supra)*** was made prior to the development of this right by the Supreme Court of Canada and the various cases cited, including the most recent decision in ***R. v. O'Connor (supra)***. While the Court in ***Cholette*** declines to follow the U.S. authority in ***Ravin (supra)***, it does so because in ***Ravin*** there was a specific provision in the Constitution of Alaska providing for a right to privacy. A right to privacy has now been clearly recognized by the Supreme Court of Canada in our ***Constitution*** arising out of s.7 of the ***Charter***. It is therefore submitted that the decision of Dorgan, J. in ***Cholette*** is no longer good law in light of the subsequent decisions of the Supreme Court of Canada on this issue. It is submitted that this submission applies equally to the decision of the Quebec Court of Appeal in ***R. v. Hamon*** for the same reason, to the extent that it was decided prior to the recognition of this right in our ***Charter*** arising out of s.7.

> ***R. v. O'Connor,*** *(supra)* at pp. 53-56
> See also ***Ravin v. State,*** *(supra)*
> ***R. v. Cholette,*** *(supra)*
> ***R. v. Hamon,*** *(supra)*, p. 495.
> **Reasons for Judgment below,** Appeal Book p. 515 at p. 547

13. It is respectfully submitted that Mr. Justice McCart in ***Clay (supra)*** misconceives this "right to privacy" by misstating the principle arising out of ***B.(R.) v. Children's Aid (supra)*** in treating the issue as if it is asserted that the right to possess marihuana for

personal use is put forward as a fundamental right. As stated in ***B.(R.) v. Children's Aid (supra)***, it is the freedom of the individual to do what he or she wishes that must, in any organised society, be subjected to numerous constraints for the common good. The fundamental right or matter of fundamental importance is the right of the individual to a degree of autonomy and the right to be free from government interference absent some compelling reason. The "right to privacy" involves the right to be left alone and the right to be free from State interference with one's conduct, unless that conduct somehow impacts upon the rights of others in society or society as a whole - unless it becomes "public".

Liberty and the Security of the Person: Conclusions

14. It is respectfully submitted that this broad ambit of the concept of "liberty" is consistent with the earlier definitions of "liberty" pronounced by the Supreme Court of Canada as involving - the freedom to do what one wishes to do "...subject to such limitations as are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others..." It is submitted that all matters affecting the liberty of the subject in this broad sense and their potential deprivation involve matters of fundamental personal importance to the individual. Because of the fundamental nature of the right to liberty and the right to the security of one's person, such deprivations will only be in accordance with the principles of fundamental justice if the government has a compelling interest in curtailing these rights for the common good because it is necessary to "protect public safety, order, health or morals or the fundamental rights and freedoms of others".

Indeed, there is now some authority that personal health and medical care qualify as fundamental matters of personal choice in the context of possession of cannabis for medical purposes.

> ***R. v. Big M Drug Mart Ltd., (supra)*** per Dickson, J. (as he then was) at pp.336-7; 18 C.C.C. (3d) 385 at p. 418

***Labatt Breweries of Canada Ltd. v. Attorney General of Canada et al.*,** [1980] 1 S.C.R. 914 at p.932-3; 52 CCC (2d) 433 at p. 456-7
See also ***Wakeford v. Canada*** [Q.L. 1998 O.J. 3522] per Laforme, J. at p. 6, para. 29

15. Whereas this threat to "liberty and the security of the person" was accepted by the Court in ***Clay (supra)*** and ***Parker (supra)*** as engaging s.7 and requiring therefore an assessment of the "principles of fundamental justice that might be applicable", the courts in ***Hamon (supra), Hunter (infra)*** and ***Cholette (supra)***, either assumed or did not resolve the question or simply failed to address it and went on to analyse the situation with respect to the applicability of the "principles of fundamental justice" in any event.

R. v. Clay *(supra**)***
R. v. Parker *(supra**)***
R. v. Cholette *(supra**)***
R. v. Hamon *(supra)*
R. v. Hunter (14 April 1997), No. 88807, Victoria Registry (B.C.S.C)
Reasons for Judgment below, Appeal Book p.515 at pp.547-549

THE PRINCIPLES OF FUNDAMENTAL JUSTICE

16. It is well settled that the principles of fundamental justice are to be found "in the basic tenets and principles, not only of our judicial process, but also of the other components of our legal system"; that they are not limited to procedural guarantees, but include substantive matters; that their limits are for the Courts to develop within the acceptable sphere of judicial activity; and that these principles must be "legal principles" which are well established, precise and articulable concepts.

Reference re s. 94(2) of the Motor Vehicle Act [1985] 2 S.C.R. 486 (S.C.C.) per Lamer, J. at pp 503 and 512-513
Rodriguez v. B.C. (A.G.), (supra) per Sopinka, J. at pp 590-591
Reasons for Judgment below, Appeal Book p.515 at p. 551

17. It is also accepted that in determining what are the applicable principles of fundamental

justice to the matter in issue, the Court must have regard to the interests of the individual and the interests of others or society as a whole, such as are engaged by the legislation in issue. In some cases this is called a "balancing process", the object of which is to determine where the balance should lie between the interests of the individuals and the interests of society in the circumstances. This process involves a consideration of the scope of the legislation and its rationale, the nature of the societal or government interests advanced on the one hand and the interests of the accused in the matter or conduct in issue, including the consequences to the individual by way of loss of liberty and the security of the person, on the other hand. In addition, the Court will have regard to applicable principles and policies that have animated legislative and judicial practice in the field.

Rodriguez v. B.C. (A.G.) *(supra)*
R. v. Heywood *(supra)*
R. v. Lyons [1987] 2 S.C.R. 309 (S.C.C.)
Re Kindler and Minister of Justice (1992) 67 C.C.C. (3d) 1 (S.C.C.)
Chiarelli v. Canada (Minister of Employment Immigration) (1992), 72 C.C.C. (3) 214 (S.C.C.)
Singh v. Minister of Employment and Immigration *(supra)*
Reasons for Judgment below, Appeal Book, p.515 at pp. 550-551

The Individual Interest

18. The nature of **the individual interest** in issue is broadly that of "liberty and the security of the person". This includes not only freedom from physical restraint or the threat thereof by the State, but also the right, in a free and democratic society, to have room for personal autonomy to live one's own life and to make decisions affecting one's own life without interference from the State. This includes the right to make decisions that are of fundamental personal importance, including the right to make decisions pertinent to one's own health, and to determine what one can and cannot do to one's own body, notwithstanding that such decisions may be foolhardy and potentially harmful to one's self. In this case it also includes a desire on the part of the individual to possess solely

for one's own consumption by eating or smoking a naturally growing plant, cannabis marihuana, as opposed to any manufactured product. It is intended that the conduct be engaged in on a private basis involving no impact on others or society as a whole and that the person engaging in the conduct is a healthy adult.

The Government Interest

19. The Appellant respectfully submits that so long as this conduct is engaged in by a healthy adult on a private basis and not by an immature youth, mentally ill person, or pregnant woman and further that the healthy adult does not drive, fly or operate complex machinery or engage in any other conduct presenting a significant risk to others or society as a whole, that there is no State or government interest. In the Court below, the Court identified the State interest as prohibiting its use "for the purpose of solving the health problems, if any, associated with its use." In other words, to protect us from injuring our own health.

Reasons for Judgment below, Appeal Book p.515 at p. 553

The Harm Principle

20. The Court below, in rejecting the "harm principle" as a principle of fundamental justice, came to the conclusion that the appropriate test to be applied in the circumstances was "is there a reasonable basis [for Parliament concluding] that harm will result or that there is a risk of harm to the health of the user, or a risk of harm to society as a whole [if Parliament does not prohibit use of the drug]". In arriving at this conclusion the Court relied primarily on ***R. v. Butler***, as well as ***R. v. Hinchey, Labatt Breweries of Canada v. A.G. Canada*** and ***RJR MacDonald v. Canada***.

Reasons for Judgment below, Appeal Book p.515 at pp. 555-556
R. v. Butler (supra) at p. 165
RJR– MacDonald Inc. v. Canada (Attorney General) (supra) at p.473
Labatt Breweries of Canada Ltd. v. Attorney General of Canada et al (supra) at p. 457
R. v. Hinchey (1997), 111 C.C.C. (3d) 353 (S.C.C.) at pp. 369-70

21. In ***Butler (supra)***, the law in question there related to possession of obscene materials for the purpose of distribution, not simple possession of obscene materials. In fact, the Court found that the minimum impairment test arising under s.1 of the ***Charter*** had been met because the law did not extend to private possession and use or viewing of obscene materials. Consequently, it is submitted that the test applied in ***Butler (supra)*** did not involve a consideration of harm to an individual possessor of obscene material, but on the contrary involved a test of the "degree of harm or definite risk thereof to others or society as a whole" from distribution of such materials. Further, in ***Butler*** the Court found a Constitutional violation and then found the legislation to be saved under s.1 of the ***Charter*** applying the "reasonable limits" test. In addition, the test was applied in circumstances where there was "inconclusive social science evidence", unlike the case at bar.

> ***R. v. Butler (supra)*** at pp. 147, 156, 159-160
> See also in ***Reference re: ss.193 195.1(1)(c) of the Criminal Code (supra)*** with respect to soliciting for the purposes of prostitution
> See also ***R. v. Sharpe*** (13 January 1999), No. X050427, Vancouver Registry, (BCSC) per Shaw J. at para 47

22. ***R. v. Hinchey (supra)*** was not a ***Charter*** case. The individual accused was a public official. It was his conduct in his public capacity that caused harm to the public. He was still involved in public harm or public evil. He was involved in conduct which was a mischief that caused harm to society. Consequently, both definitions of crimes, whether "result" or "conduct" crimes, support the existence of the principle of fundamental justice that requires harm to others or to society as a whole or some public evil or public harm before it can be criminalized.

> ***R. v. Hinchey (supra)***

23. Similarly, in ***Labatt Breweries of Canada (supra)***, the Court, prior to the ***Charter***, makes it clear that Parliament has a broad scope of authority to "criminalise" conduct in

order to address public issues and that there must be some evil or injurious or undesirable effect upon the public against which the law is directed. This is apparent from the full quotation arising from that case which appears at the references set out below.

> ***Labatt Breweries of Canada Ltd. v. Attorney General of Canada et al. (supra)*** at p.932-3 (C.C.C. at p. 456-7)

24. In the context of the ***Charter*** and the relationship between s. 7 and s. 1 thereof, this test appears to have been continued. In this regard, see the words of Dickson J. (as he then was) in ***R. v. Big M Drug Mart Ltd.*** (1985), 18 C.C.C. (3d) 385 at pp. 417-418.

25. Further, the decision of the Supreme Court of Canada in ***RJR MacDonald (supra)*** not only supports the Appellant's position with respect to the harm principle, but is instructive as to the analysis that the Court must engage in in determining the "reasonableness" of Parliament's conduct in legislating in the area. It must be remembered that in ***RJR MacDonald***, there was overwhelming evidence, not only of harm to the individual users, but also that such use would impact significantly upon others, not only by way of "second hand smoke", but particularly on society as a whole by virtue of its extensive use in society and by way of impact on health care costs and other social costs. The same evidence simply does not exist with respect to marihuana use and is not likely to exist in the future, even if rates of use increase somewhat from current levels, so long as its promotion and distribution and sale continue to be curtailed. Like ***Butler (supra)***, the comments of the Court with respect to the "reasonableness" test occurred in the context of a s.1 analysis. In this regard see the comments McLachlin J at pp. 126-129:

> ***RJR MacDonald Inc. (supra)***, paras. 126-129
> See also the Judgment of Laforest, J. in dissent on this issue at pp.240-258, 261-267 (p. 471-485 in CCC)

26. It is respectfully submitted that the common thread that runs through the above analysis, starting with the definitions of "liberty" and "security of the person" and examining the various tests and principles applied by the Supreme Court of Canada and other courts in analysing the validity of legislation and in particular criminal law legislation, is the

distinction that is made in the balancing that goes on between private conduct and public conduct in the context of whether or not the conduct is harmful to others or to society as a whole or causes some sort of evil or problem in a public sense. It is respectfully submitted that it is clear from the above analysis and discussion, or at least it is implicit, that throughout the analysis, there arises a fundamental principle that the State has no business or interest or authority to proscribe private conduct that does not involve harm or a definite risk of harm to another individual or other individuals or to society as a whole. This principle has animated legislative and judicial practice in the field over many years and is at the base of the balancing process between State and individual interests. It is respectfully submitted that this principle has its origins or basis in the philosophical writings of John Stuart Mill (1806-1873) who, inspired by the happenings in America, wrote one of the most eloquent and persuasive essays ever about social and political freedoms entitled **"On Liberty"**.

> **"On Liberty"** by John Stuart Mill, John W. Parker and Son, West Strand, London, 1859., p. 21 of the Introduction
> See also the majority decision in: LeDain, G**.** ***Cannabis: A Report of the Commission of Inquiry into the Non-Medical Use of Drugs*****, 1972** at pp. 275-282
> **Reasons for Judgment below,** Appeal Book p.515, pp. 553-554
> See ***R. v. Cuerrier*** (3 September 1998), No. 25728, Vancouver Registry (BCCA) per McLachlin, J. at paras.47, 48, 50, 53, 69, 70 and per Cory, J. for the majority at paras. 95, 128, 129, 133 and 135, 137-139.
> See also ***Reference re: Firearms (Canada)*** (1998) 128 CCC (3d) 225 (Alta C.A)

27. Reference to John Stuart Mill and his writings was made by Wilson, J. in dissent in ***R. v. Jones,*** [1986] 2 S.C.R. 284 at pp. 318-319 and her reference was in turn quoted with approval by La Forest, J. writing for the majority in ***B(R) v. Children's Aid Society of Metropolitan Toronto, (supra)*** at pp. 364-365, as well as by Cory, Iacobucci and Major, JJ, dissenting in part at pp. 430-431. Reference is also made to John Stuart Mill by Lamer, J. (as he then was) in ***Reference ss.193 and 195.1(1)(c) of the Criminal Code (supra)*** at pp. 1162-63.

B.(R.) v. Children's Aid Society (supra), pp. 364-365
R. v. Jones [1986] 2 S.C.R. 284 (S.C.C.) at pp. 318-319; (1936), 67 C.C.C. 228 at 238-239
Reference ss.193 and 195.1(1)(c) of the Criminal Code (supra) at pp. 1162-63

The Principle of Restraint - a Corollary to the Harm Principle

28. In addition to the principles emanating from the ***Motor Vehicle Reference***, the ***Rodriguez*** case and the other cases outlined above, it is submitted that it is now a well-settled "principle of fundamental justice", a corollary principle to the harm principle, that the criminal law must be used with restraint and should only be employed to protect against "seriously harmful" conduct or conduct which is "substantially harmful to society". This is known as the "principle of restraint".

Report of the Canadian Committee on Corrections **(Ouimet Report), 1969 at p. 12.**
Law Reform Commission of Canada, ***Our Criminal Law,*** **1976 at pp. 19-20;**
Government of Canada, ***The Criminal Law in Canadian Society,*** **1982 at p. 45**
R. v. Tremblay (1993), 84 C.C.C.(3d) 97 (S.C.C.) at pp. 116-117, 119-120, 123-125
Reasons for Judgment below, Appeal Book p. 515 at pp. 554-555
R. v. Cuerrier, *(supra)*
Reference re: Firearms Act*, (supra)* per Fraser C.J.A. at paras 104-115, 157, 215-249, 259, 268-283, 288, 302, 315, 330, 332 and per Conrad, J.A. (dissent) paras. 433, 438, 477, 534, 536.

29. It is respectfully submitted that the general harm principle and its corollary are consistent with the Canadian context in which they arise, namely, a federal system of government with a division of powers between the Federal government and the Provinces. "Health" has traditionally been under Provincial jurisdiction as a matter of local or private nature in the Province under s.92(16) of the ***Constitution Act***, 1867. Federal jurisdiction over "health" only arises under the "peace, order and good government" power or under its "criminal law" power under s.91, as an aspect of either of these powers when the health problem has reached such a dimension that it warrants federal government

intervention under either of these powers. The more "substantial" or "significant" or "serious" the health problem and the greater the impact on Canada as a whole, the more likely the matter will come under federal jurisdiction. It is respectfully submitted that the evidence before the Court demonstrates no significant health problem in the Province, let alone nationally from the use of cannabis (marihuana). This supports the submission that the prohibition against the simple possession of marihuana for one's personal use is *ultra vires* the federal government under both its peace, order and good government and criminal law powers and is within the jurisdiction of the Provinces as a matter of a local or private nature in the Province, namely health.

> ***R. v. Hauser*** [1979] 1 S.C.R. 984 (S.C.C.) per Pigeon, J. at p. 998; 46 C.C.C. (2d) 481 at p. 496
> ***Schneider v. The Queen*****,** [1982] 2 S.C.R. 112 at 130-32, 68 C.C.C. (2d) 449 at 453-4 (Laskin CJC) 465-7 (Dickson J.)
> ***Labatt Breweries of Canada Ltd. v. Attorney General of Canada et al., (supra)*** at pp.465-466 (in CCC site)
> **Evidence of Dr. H. Kalant,** Transcript pp. 861, 892, 907, 1003, 1010-1012, 1024-1025, 1057, 1078, 1080, 1089, 1093, 1097, 2100, 2102, 2103, 2104
> **Evidence of Dr. Sean Peck,** Transcript pp. 155 at pp. 155-158, 167, 168, 177, 180, 182, 191, 227, 230
> **Reasons for Judgment below,** Appeal Book p. 515 at p. 533
> ***RJR MacDonald Inc. (supra)*** per Laforest J. at p.487 and per Major J. at p. 559
> ***R. v. Big M Drug Mart Ltd. (supra)***
> ***The Reference as to the Validity of Section 5(a) of Dairy Industry Act (Margarine Reference),*** [1949] S.C.R. 1 at p. 50; affd [1951] A.C. 179
> ***R. v. Varley*** (1935), 65 C.C.C. 192 (Ont.Co.Crt.) at 199-200
> ***R. v. Clay (supra),*** per McCart, J. at pp.8-12
> ***R. v. Jones (supra)*** at pp. 238-239 (C.C.C. cite)
> ***R. v. Shopper's Bazar Ltd.*** (1974), 15 C.C.C. (2d) 497 (Prov. Crt. Crim. Div. Judicial Dist. of York)
> **Zimmer and Morgan, *Marihuana Myths, Marihuana Facts, a Review of the Scientific Evidence,*** Lindesmith Centre, New York and San Francisco (1997), pre-p.1, p. 150, **Appeal Book, p.368**.
> ***Reference re: Firearms Act****, (supra)*

Irrationality and Arbitrariness

30. It is further respectfully submitted that, bearing in mind the division of powers context

and the general harm principle and its corollary, and bearing in mind the evidence in this case and the findings of fact below, that the continued prohibition of simple possession for one's own use is irrational and arbitrary and that this amounts to a further violation of principles of fundamental justice. It is submitted that the rule of law, which is the animating principle of the ***Charter*** and a constituent element of the preamble of the ***Charter*** is essentially a protection against irrational and arbitrary State conduct. The prohibition against this type of conduct is aptly summarised by Madam Justice Corbett in her invalidation of the anal intercourse prohibition contained in the ***Criminal Code.***

R. v. M. (C.) (1992), 75 C.C.C. (3d) 556 at p. 560 (Ont. Ct. Gen. Div.)

31. With respect to the prohibition on anal intercourse, the Ontario Court of Appeal upheld the decision of Madame Justice Corbett; however, the appellate court declared the provision unconstitutional on the basis of a violation of s.15 of the ***Charte****r.* Nonetheless, the following comments of Abella J.A. are equally applicable to the issue in the case at bar with respect to the irrational and arbitrary nature of the continued approach by Parliament and the Federal Cabinet to the prohibition against simple possession of *cannabis sativa* for one's own use.

R v. M. (C.) (1995), 30 C.R.R. (2d) 112 at 121-123 (Ont. C.A.)

32. In reviewing the constitutionality of the classification scheme for distinguishing first degree murder from second degree murder, the Supreme Court of Canada asked the question whether or not the dividing line was arbitrary and irrational. Ultimately the court concluded that the scheme was not in violation of s.7 of the ***Charter*** because s.231(5) was neither "arbitrary nor irrational".

R. v. Arkell (1990), 59 C.C.C. (3d) 65 at 72 (S.C.C.)

33. In 1993, the Quebec Court of Appeal in ***Hamon (supra)*** concluded that the prohibition on *cannabis sativa* was not "arbitrary, irrational, xenophobic and racist". The Court

reached this conclusion stating that “the testimony and texts which were adduced before us show that Parliament did not act in an arbitrary and irrational manner at the time that the offences were committed in continuing to prohibit cultivation and possession of marijuana”. It is submitted that this decision should not be followed for the simple reason that the evidentiary record presented by the accused in that case was much different than the evidentiary record submitted to this Honourable Court. Indeed, the Court appeared to limit its judgment to the evidence available “*at the time that the offences were committed*...” Nevertheless, the Quebec Court of Appeal applied an irrationality and arbitrariness standard of review. It is submitted that on the evidence before this Court, bearing in mind the current state of scientific knowledge and the absence of harm to others or to society as a whole, the continued prohibition against simple possession of marihuana for personal use is arbitrary and irrational.

> ***R. v. Hamon (supra)***
> See also **evidence of Dr. H.Kalant** who testified in *Hamon* and in *Clay* and in this case as to the different evidentiary record, **Transcript,** pp. 850-851

34. Bearing in mind that the evidence supports that there is no significant risk to the health of healthy adults who smoke marihuana on a low, moderate or occasional basis, but only to that small group who are chronic, heavy users, and bearing in mind further, that the threat to the health of the chronic user is from the process of smoking, which it has in common with the smoking of tobacco and has nothing to do with the active ingredient in either marihuana, such as THC or nicotine in tobacco, it is submitted that it is irrational to adopt a non-criminal approach to tobacco smoking leaving it to local, regional and provincial authorities to regulate its impact on others and society as a whole when its harmful impact is substantially documented and to treat the smoking of marihuana in the presence of evidence of no significant impact to others or society as a whole, by using the criminal law with all its weight and penalties for the same smoking process. It is submitted that such distinctions are arbitrary and irrational and engender feelings of fundamental injustice on the part of those aggrieved.

RJR-MacDonald Inc. v. Canada (Attorney General) (supra)
Evidence of Dr. Kalant, Transcript, pp. 1078, 1080, 1089, 1090, 1093, 1099, 1100, 1192-1104;
Miscellaneous statutes pertaining to the Regulation of Tobacco and Hazardous Products

Overbreadth

35. The failure to draw a meaningful and operative distinction between private acts and the business of encouraging, promoting and profiting from an activity for commercial purposes, is inconsistent with the modern legislative approach to consensual crime and does not serve a valid legislative objective. By widening the net this broadly to prohibit the simple possession of cannabis (marihuana) for personal use, the legislation goes well beyond the stated governmental objective of combating the social evils of the black market drug trade and serves to promote a form of "legal moralism" which has been frowned upon by the Supreme Court of Canada in the ***Butler*** decision.

R. v. Butler (supra) at pp. 147, 156, 159-160
See also in ***Reference re: ss.193 195.1(1)(c) of the Criminal Code (supra)*** with respect to soliciting for the purposes of prostitution
Schneider v. The Queen [1982] 2 S.C.R. 112; 68 C.C.C. (2d) 449 (S.C.C.)

36. It is further submitted that bearing in mind the division of powers context, the general harm principle and its corollary and other principles, as well as the evidence and findings of facts below, that the continued prohibition against the possession of cannabis sativa for personal and private use as distinct from conduct involving distribution or acts forming part of the illicit drug trade, is an example of Parliament acting in an overbroad manner.

37. In ***R. v. Nova Scotia Pharmaceutical Society***, the Supreme Court of Canada firmly established that overbreadth within a statutory regime violates fundamental principles of justice. Two years later, the Court applied this principle and invalidated s.179(1)(b) of the ***Criminal Code*** (i.e. sex offender loitering in the vicinity of playground etc.).

R. v. Heywood (supra) at pp. 514-517 and 523
R. v. Nova Scotia Pharmaceutical Society**,** [1992] S.C.R. 606 (S.C.C.) at pp. 629-631

38. Mr. Caine is charged with simple possession of cannabis (marihuana) for his own use and there is no suggestion of any other purpose and in particular any purpose involving the illegal trade in cannabis (marihuana). Specifically, he is not charged with possession of cannabis (marihuana) for the purposes of trafficking contrary to s.4(2) of the ***Narcotic Control Act*** or now under s.5(2) of the ***Controlled Drugs and Substances Act***. That offence is prosecutable by indictment and carries a maximum sentence of life imprisonment. Consequently, it is submitted that the applicant's conduct falls more appropriately within Provincial jurisdiction as relating to the health of the user or addict and his or her treatment, whether as a matter of "property and civil rights" pursuant to s.92(13), or as a matter of a "merely local or private nature" in the Province, which historically has included health concerns, pursuant to s.92(16) of the *British North America Act*.

39. It is submitted that this view is consistent with the approach that Parliament has taken to all other consensual or "victimless" crimes where it has drawn a clear distinction between participating in an undesirable activity on the one hand and participating in the business of facilitating that activity on the other hand. For example, the obscenity provisions (s.163) do not apply to possession of, or "consuming", obscene materials. It is the act of making, printing, publishing, distributing or circulating or possession of such material for such purposes that are proscribed. Similarly, acts of prostitution are not themselves prohibited, but only the acts of solicitation by communicating in a public place or impeding traffic in pursuit of customers that are prescribed by s.213 of the ***Criminal Code***. Also, one cannot be convicted of being a keeper of a bawdy house or gaming house unless the location has been used on a frequent or habitual basis from which the inference can be drawn that the keeper is in the business of providing the service. (See ss.197-210 of the ***Criminal Code***). Also, gaming activity is not prohibited if one is wagering or taking bets on a personal level and is not "in the business of betting". (See s.204(1)(a) and (b) of the ***Criminal Code***).

40. In addition, it is submitted that if it is asserted that it is necessary to have an offence of "simple possession" in order to curtail distribution or commercial activity in relation to cannabis (marihuana), that then the legislation prohibiting "simple possession" if in existence for that purpose, is overbroad in that it fails to make any meaningful distinction between personal and private acts of consumption and public acts of distribution which form part and parcel of the illicit drug trade. This expansive approach overshoots the mark insofar as the criminalizing of such conduct is unnecessary for the achievement of the stated purpose of curbing and combating the illicit drug trade. Possession for such purposes is already clearly proscribed by a separate Section – s.4(2).

R. v. Nova Scotia Pharmaceutical Society**,** [1992] S.C.R. 606
R. v. Heywood, (supra) at p. 516-7 (C.C.C.)

Conclusion

41. In view of all of the foregoing, the question remains – where is the public wrong in a healthy adult possessing for his or her own use a substance that will not harm him or her, unless it is used regularly and for a long time, and when even then, the harms are well within our degrees of tolerance in society and do not significantly impact upon others or society as a whole? Where is the public evil in all of this? What harm is there to the rights of others? Where is the State's interest apart from precluding driving while one's ability to do so is impaired and protecting vulnerable groups? It is respectfully submitted that the matter is clearly one of health falling within provincial jurisdiction and that as currently framed there is a violation of s.7 of the ***Canadian Charter of Rights and Freedoms*** - the Appellant's liberty and the security of his person are clearly affected otherwise than in accordance with the principles of fundamental justice applicable, namely the harm principle, the principle of restraint, the principle of rationality and the principle of overbreadth.

PART 4

NATURE OF ORDER SOUGHT

42. The relief sought is that the appeal be allowed, the conviction set aside and that the appropriate declaration be made pursuant to s.24(1) and s.52 of the ***Canadian Charter of Rights and Freedoms*** declaring that the inclusion of cannabis sativa, its preparations, derivatives and similar synthetic preparations, including all of those substances set out in the Schedule under s.3(1) to (6) to the ***Narcotic Control Act***, R.S.C. 1985, Chap.N-1 as amended to date, and/or the analogous provisions of the ***Controlled Drugs and Substances Act*** insofar as they relate to the personal possession and use contrary to ss.3(1) and (2) of the ***Narcotic Control Act*** or s. 4 of the ***Controlled Drugs and Substances Act*** are in violation of the appellant's constitutional right to liberty and the security of his person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice as set out in s.7 of the ***Canadian Charter of Rights and Freedoms*.**

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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COUNSEL FOR APPELLANT

LIST OF AUTHORITIES

Statutes:

Canadian Charter of Rights and Freedoms
Canada Act 1982 (U.K) c.11

Controlled Drugs and Substances Act
1996, Chap.19, ss.1 to 63

Criminal Code of Canada
R.S.C. 1985, Chap. C-46

Narcotic Control Act and ***Regulations***
R.S.C. 1985, Chap. N-1

Miscellaneous Statutes Pertaining to the Regulation of Tobacco and Hazardous Products

Cases:

***B.(R.) v. Children's Aid* Society**
[1995] 1 S.C.R. 315 (S.C.C.)

Chiarelli v. Canada (Minister of Employment and Immigration)
(1992) 72 C.C.C. (3d) 214 (S.C.C.)

Ciarariello v. Schacter
[1993] 2 S.C.R. 119 (S.C.C.)

Fleming v. Reid
(1991) 4 O.R. (3d) 74 (Ont. C.A.)

Labatt Breweries of Canada Ltd. v. Attorney General of Canada et al.
[1980] 1 S.C.R. 914
(1980) 52 C.C.C. (2d) 433 (S.C.C.)

Malette v. Shulman et al.
(1990), 72 O.R. (2d) 417 (Ont. C.A.)

R. v. Arkell
(1990), 59 C.C.C. (3d) 65 (S.C.C.)

R. v. Bartle
(1994), 92 C.C.C. (3d) 289 (S.C.C.)

R. v. Big M Drug Mart Ltd.
[1985] 1 S.C.R. 295
(1985), 18 C.C.C. (3d) 385 (S.C.C.)

R. v. Butler
[1992] 1 S.C.R. 452
(1992), 70 C.C.C. (3d) 129 (S.C.C.)

R. v. Cholette
(23 March 1993), No. 64964 (B.C.S.C.)

R. v. Clay
(14 August 1997), No. 3887F, Ontario Court
(General Division)

R. v. Cuerrier
(3 September 1998), No. 25728, (B.C.C.A.)

R. v. Hamon
(1993), 85 C.C.C. (3d) 490 (Que. C. A.)

R. v. Hauser
[1979] 1 S.C.R. 984
(1979), 46 C.C.C. (2d) 481 (S.C.C.)

R. v. Heywood
[1994] 3 S.C.R. 761 (S.C.C.)
R. v. Hinchey
(1997), 111 C.C.C. (3d) 353 (S.C.C.)

R. v. Hunter
(14 April 1997) No. 88807, Victoria Registry (B.C.S.C)

R. v. Hydro Quebec
(18 September 1997), No. 24652, (S.C.C.)

R. v. Jones
[1986] 2 S.C.R. 284
(1936), 67 C.C.C. 228 (S.C.C.)

R. v. Lyons
[1987] 2 S.C.R. 309 (S.C.C.)
R. v. Malmo-Levine and Rowsell
(18 February 1998), No. CC970509,

Vancouver Registry (B.C.S.C.)

R. v. M. (C.)
(1992), 75 C.C.C. (3d) 556 (Ont. Ct. Gen. Div.)

R. v. M. (C.)
(1995), 30 C.R.R. (2d) 112 (Ont. C.A.)

R. v. Morgentaler
[1988] 1 S.C.R. 30
(1988) 37 C.C.C. (3d) 449 (S.C.C.)

R. v. Nova Scotia Pharmaceutical Society
[1992] 2 S.C.R. 606 (S.C.C.)

R. v. O'Connor
(1995), 103 C.C.C. (3d) 1 (S.C.C.)

R. v. Parker
(7 October 1997), Ontario Court of Justice (Prov. Div.)
Toronto Region, Sheppard, Prov. Div. J.

R. v. Sharpe
(13 January 1999), No. X050427,
Vancouver Registry (BCSC)

R v. Shopper's Bazar Ltd.
(1974), 15 C.C.C. (2d) 497 (Prov. Crt. Crim.
Div. Jud. Dist. of York)

R. v. Taylor
(1992), 77 C.C.C. (3d) 551 (Ont. C.A.)

R. v. Tremblay
(1993), 84 C.C.C.(3d) 97 (S.C.C.)
R. v. Varley
(1935), 65 C.C.C. 192 (Ont.Co.Crt.)

Ravin v. State
537 P.2d 494 (1975)

Re Kindler and Minister of Justice
(1992), 67 C.C.C. (3d) 1 (S.C.C.)

Reference re: Firearms (Canada)
(1998) 128 CCC (3d) 225 (Alta C.A)

Reference re: ss. 193 and 195.1(1)(c) of the Criminal Code
[1990] 1 S.C.R. 1123 (S.C.C.)

Reference re s. 94(2) of the Motor Vehicle Act
[1985] 2 S.C.R. 486 (S.C.C.)

Rodriguez v. B.C.(A.G.)
[1993] 3 S.C.R. 519 (S.C.C.)

RJR – MacDonald Inc. v. Canada (Attorney General)
[1995] 3 S.C.R. 199 (S.C.C.)

Schneider v. The Queen
[1982] 2 S.C.R. 112
(1982), 68 C.C.C. (2d) 449 (S.C.C.)

Singh v. Minister of Employment and Immigration
[1985] 1 S.C.R. 177 (S.C.C.)

***Report of the Canadian Committee on Corrections* (Ouimet Report), 1969**

Law Reform Commission of Canada, *Our Criminal Law,* 1976

Government of Canada, *The Criminal Law in Canadian Society,* 1982