COURT NO. 28026

IN THE SUPREME COURT OF CANADA
(Appeal from the Court of Appeal for the Province of British Columbia)

BETWEEN:

DAVID MALMO-LEVINE

APPLICANT
(Appellant)

AND:

HER MAJESTY THE QUEEN

FACTUM

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PART 1

STATEMENT OF FACTS

A. The Adjudicative Facts

The adjudicative facts were summarized by the Court below as follows:

> The appellant David Malmo-Levine described himself to the court as a "marijuana / freedom activist." Beginning in October 1996, he helped operate an organization in East Vancouver known as the "Harm Reduction Club" which was a co-operative, non-profit association of its members. The stated object of the club was to educate its users and the general public about marijuana and provide unadulterated marijuana to its users at club cost. The club had approximately 1800 members.
>
> The club educates it's members on a wide variety of "safe smoking habits" to minimize any harm from the use of marijuana. Members are required to sign a pledge not to operate motor vehicles or heavy equipment while under the influence of the substance.
>
> On 4 December 1996, police entered the premises of the Club and seized 316 grams of marijuana, much of it in the form of "joints". Mr. Malmo-Levine is charged with possession of marijuana for the purpose of trafficking contrary to section 4 of the NCA.
>
> **Reasons for Judgment below, Appellants Record in Malmo-Levine, Vol.II 243-244,para's 3- 5**

In addition, the Appellant would add the following:

> Cst. S. Dion, was tendered by the Crown as an expert on cannabis trafficking. He confirmed that, to some extent, the Club offered methods to reduce the harm from any marijuana use, and that the Club was a consumer-oriented venture, following a well-established cultural tradition allowing the use of marijuana. Further, testimony from the Applicant's mother, father and apartment manager demonstrated neighborhood, community and multi-generation support for the Club. Finally, it is very important to note that the Club's membership card specified that members pledged not to drive while "impaired", not merely while "under the influence". The distinction was made to address valid community concerns while avoiding possible discriminatory practices (like the harassment of non-impaired drivers who use cannabis).
>
> **Appellants Record Vol. I pp.19-20 (evidence of C.L.Malmo, February 9,1988); pp.27-28 and pp.33-35 (evidence of J.R.Woodfine February**

19th,1988) and pp.55-57 (evidence of Cst. S.Dionne March 12,1988) and see Ex.37 – the membership cards in Appellants Supplemental Record.

B. The Legislative Facts

2. The legislative facts are set out in detail in the "Joint Statement of Legislative Facts" submitted jointly by the appellants Caine, Malmo-Levine and Clay. In addition, where not inconsistent, this Appellant accepts the findings of fact in the Court below in Caine at trial and in the Court of Appeal below with respect to the legislative facts as follows:

a.	Legislative history:	- Trial -paras 31-35 - Appeal -paras 71-96
b.	Current rates of use of marihuana:	- Trial -paras 36-38 - Appeal -para. 17
c.	Health risks posed to the user of marihuana:	- Trial -paras 39-48 - Appeal -paras 18-25
d.	Risk of harm to others or to society as a whole:	- Trial -paras 49-53 - Appeal -paras 26,27&142
e.	Effect of prohibition on rates of use:	- Trial -paras 55-62 - Appeal -paras 91-96
f.	How the law prohibiting the possession of marihuana itself causes harm:	- Trial -paras 63 - Appeal -para. 28
g.	Summary of "harm":	- Appeal-para. 29

PART II

STATEMENT OF POINTS IN ISSUE

QUESTION 1: Does prohibiting possession of Cannabis (marihuana) for the purpose of trafficking under s. 4(2) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*, S.C. 1996, c. 19), infringe s. 7 of the *Canadian Charter of Rights and Freedoms*?

QUESTION 2: If the answer to Question 1 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?

QUESTION 3: Does prohibiting possession of Cannabis (marihuana) of the purpose of trafficking under s. 4(2) of the *Narcotic Control Act*, R.S.C. 1985, c. N-1, by reason of the inclusion of this substance in s. 3 of the Schedule to the Act (now s. 1, Schedule II, *Controlled Drugs and Substances Act*,

S.C. 1996, c. 19), infringe s. 15(1) of the *Charter* by discriminating against a certain group of persons on the basis of their substance orientation, occupation orientation, or both?

QUESTION 4: If the answer to Question 3 is in the affirmative, is the infringement justified under s. 1 of the *Charter*?

PART III

ARGUMENT

Introduction

1. This case raises an issue that our politicians have avoided dealing with since they shelved the LeDain Commission in 1973, an issue of national and global importance. The main issue is the constitutionality of the prohibition against the possession of cannabis (marijuana) for the purpose of trafficking, contained in the former Narcotic Control Act, and now in the Controlled Drugs and Substances Act, in light of a growing awareness of proper growing and smoking techniques, and in light of recent rulings regarding s.7 - "…you don't go to jail unless there is a potential your activities will cause harm to others" Braidwood, J.A., in **R. v. Malmo-Levine 2000, p. 29 para. 134** and s.15 - protection of "substance orientation" and "vocation orientation" arising from the protection of "sexual orientation" in **Vriend v. A.G. Alta – 1998**. para In other words, do we risk creating a police state and assure our own extinction by wiping out the most useful plant on earth - cannabis - along with some of the most intelligent, sensitive people on earth - cannabis smokers - because ignorant lawmakers in the Twenties didn't know what this herb could be used for or how to smoke it properly? Or is this all happening because humans still haven't learned enough about the reasons behind - and the dangers of – scapegoating?

2. The Appellant respectfully submits that the Court of Appeal erred when they characterized the harms that may come with cannabis use as inherent, instead of a product of mis-cultivation, mis-distribution and mis-use. By focusing solely on cannabis use by itself, and by failing to differentiate between use and misuse, the Court estimated increased health costs based upon the present day

prohibition system of distribution, without factoring in the effects of legal harm-reduction cultivation and distribution techniques on the health of the legal user. In other words, cannabis harms were estimated based upon black-market risks, instead of evaluating it's level of risk in the more ideal framework that would be possible under a legal and regulated system;

3. The Appellant further submits that the Court of Appeal also failed to address the issue of whether or not the "harm principle" applies to growers and dealers of cannabis (such as the Appellant and others within the "Harm Reduction Club") who (by following a strategy of organics, quality control, consumer education and creating a "safe-point-of-sale") are harmless, and who play an essential role in cannabis harm reduction;

4. Another issue that was argued but not dealt with by the BC Court of Appeal pertains to section 15 of the Charter, in light of this courts recent ruling in **Vriend v. A.G. Alta. (1998)156 D.L.R.(4th)385**. Can it be said that a natural preference or orientation to herbs (a "taste") over other, more toxic stimulants, relaxants and anti-depressants (due to the apparent effectiveness of cannabis and appreciation of it's lack of risk compared to those of other drugs) result in the "substance orientation" of the individual being recognized as a personal characteristic not unlike an enumerated ground, such as "religion" - a "philosophical orientation", or, a recognized analogous ground, found to exist in Vriend, namely "sexual orientation"? Given the relative harmlessness of the "substance orientation" (within the context of a legal, regulated, "safer smoking" or "harm reduction" setting), why shouldn't this orientation receive the equal protection and the equal benefit of the law under section 15 of the Charter? Similarly, why shouldn't a person wishing to choose a vocation (a "pursuit") such as a cannabis farmer or breeder, or a cannabis café owner who wishes to compete on a fair playing field with other substance providers (such as the brewers of alcohol and spirits, tobacco farmers and distributors, and the

importers of coffee beans), also receive section 15 protection - the "vocation orientation"?

5. The Appellant respectfully submits that the Court of Appeal erred in not considering the principle of equality found in sec. 15 of the Charter as it applies to "substance orientation", following the principle underlying its decision in **Vriend v. Alberta (supra)**; and erred in not applying equality to every producer and distributor of stimulants and relaxants - bean, grape, herb or otherwise;

6. The appellant at the commencement of his trial, asked the court to declare a voir dire in order that the he could call evidence with respect to the use of marijuana in a harm reduction context (including protections and benefits for growers and dealers who practice harm reduction). The court invited the appellant to file, in writing, what he considered his best facts. Consequently, the Appellant tendered exhibits 1 through 5. Exhibit 3 is essentially a reprint of the brief submitted in R. v. Caine at trial, modified to apply to the appellant's case with some additions at the beginning and at its end. Exhibit 4 contains additional facts specific to cannabis harm reduction. The important fact arising out of that document that the appellant wishes to stress is:

> "5. There in fact are no harmful effects of marijuana on others or society that can't be reduced in some way through reasonable regulation (i.e. impairment testing)."

7. Curtis J., refused to hear this evidence, ruling that it was not relevant to the section 7 Charter analysis. The Court of Appeal restricted their consideration of the appellant's arguments to section 7, and did not deal with the other Charter arguments advanced in relation to section 15, nor did the court go on to consider the appellant's case involving a charge of "possession for the purpose of trafficking" in a "harm reduction" context. However, in upholding the prohibition against simple possession, the courts below, while finding no evidence of a risk of direct or indirect harm to another specifically, found a reasonable

apprehension of a risk of harm to the public generally, and in so doing, relied upon conduct involving unregulated distribution. Regulated distribution would eliminate those risks. Instead of avoiding consideration of the “trafficking argument” until the “simple possession” argument is dealt with, this court should view “harmless use” as more probable through proper "harm reduction" dealing, therefore, the trafficking argument must be dealt with at the same time as the simple possession argument. The Appellant submits that the learned trial judge erred in declining to declare a voir dire and to allow the appellant to call evidence in support of his constitutional challenge. The Court of Appeal erred in holding that the result would not have been different if the evidence had been admitted.

Appellant’s Record, Vol. I pp.58-193 Ex.1- 5.

8. Some of today’s legislators view non-necessity medicinal cannabis use (for stress, depression, fatigue, loss of appetite, lack of sleep/motivation/focus) not as an intelligent preference or choice, but as a sickness, and they are busy creating punishments other than jail and a criminal record (such as “diversion” through "drug courts" into state-run work camps, mandatory fines, urinalysis and group therapy) for “recreational” cannabis users. Viewing recreational cannabis use as inherently harmful will prevent healthy people from getting safe access, and perhaps even entrench forever these new humiliating and unnecessary “demand reduction” rituals. It may also prevent poor people from being included in the emerging herbal healthcare economy, soon to be monopolized only by university-educated and corporate-financed experts – all due to the strict distribution regulations justified by the supposed "inherent" harms of the substance. Will section 7 and 15 liberty and equality protection result in cannabis users, growers and dealers avoiding all unjust punishments (including over-regulation and monopoly), or will it mean they simply avoid jail?

9. Ending cannabis prohibition will have many wonderful, positive side effects that should not be ignored. Ending cannabis prohibition will: improve

human autonomy in the areas of health, lifestyle and vocation; encourage a return to organic farming and herbal medicine; increase awareness regarding the proper use and harm-reduction techniques of herbs and harder substances; help bring about an end to all scapegoating and concentration camps; defend the right of small farmers and independent café owners to participate in the emerging herbal healthcare system and soft drug-tourist industry; address the pressing economical and ecological need to eliminate miles of red tape that's killing the infant industrial hemp economy in the cradle; partly address the dangers of artificially concentrated wealth and power; initiate a new respect for the golden rule (the positive corollary of the "harm principle"); allow a vital occasion to question our entire approach to global drug prohibition – a civil war in every country - a therapeutic witch-hunt - the biggest and oldest war on earth. All of these issues are to be addressed by embracing an inclusive, broad and bold "liberty and equality" resolution to the cannabis prohibition issue.

10. This issue goes to the core of both Canadian and global politics. Realistic and practical solutions to problems resulting from the improper use of cannabis and other drugs continue to be raised by the young and the young at heart through music and film, comics and books, hemp stores, compassion clubs, cafés, demonstrations and rallies, radio programs and internet websites, political parties, the actions of the courts and governments of other countries, and in the case of the Harm Reduction Club (and several other groups), mass civil disobedience. Because Canada's politicians seem to have no spine, "cannabis harm reduction" is dismissed by our representatives as impossible, or at the very least, dangerously different than the USA's drug policies. And so, the botched raids, the overflowing jails, the broken families, the seized property and all the other black market harms continue, all due to our "representatives" being too scared to truly represent us. As with medical marijuana and industrial hemp, the right of poor people to grow and deal cannabis, and the right of healthy people to smoke it or any other herb, (and the ease at which they may do so safely and without harm to themselves or anyone else) are issues which continue to be

raised by regular people all over Canada and the rest of the world. These issues will continue to be raised until cannabis users enjoy all the same freedoms as the users of other herbs - or the users of sugar, caffeine and chocolate. The glaring hypocrisy of the war on "some" drugs, and the obvious effectiveness of cannabis will ensure users are never going to back down, and that we intend to out-grow the "low-functioning" stigma foisted upon us and assume our rightful place as the "mellow and imaginative" section of society. This constitutional challenge is an attempt to avoid the nightmare which would inevitably ensue should we persist with the impossible and irrational goal of creating a "drug free" (or at least a "soft-drug free") society.

11. In this case, the Appellant can demonstrate the change of heart which has resulted in the positive reaction of various communities to his actions, the use of “harm-reduction” strategies and their effect on providing growers, dealers and users with section 7 liberty protection, while explaining the section 15 equality protection rights that we should quickly extend to any persecuted, harmless group of people that is being discriminated against on an enumerated or analogous ground. The Appellant bases his appeal on the assertion that Canada is a country that constitutionally protects as many harmless human "tastes and pursuits" as possible, not as few as possible.

Question 1 – Section 7 - Harm Reduction: Education, Quality Control, Organics and Safe Point-Of-Sale

12. The notion of the "proper use" of things that can be abused has a place in the common law. In **Stockdale v. Hansard (1839)**, Lord Denman stated the principle that "Ab abusu ad usum non valet consequential” – which means “No valid conclusion as to the use of a thing can be drawn from it’s abuse.”

Stockdale v. Hansard (1839) 9 AD&E 1 at p.116.
Latin Words and Phrases for Lawyers (1980)Ed.R Vasan, Law and Business Publications(Canada)Inc p.18- Appellants Book of Authorities Tab 12

13. The notion of the "legitimate use" of a popular "drug of abuse" has a place

in legal history as well. In "**On Liberty**", John Stuart Mill wrote;

> ". . . the class of dealers in strong drinks, **though interested in their abuse, are indispensably required for the sake of their legitimate use**. The interest, however, of these dealers in prompting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty." (emphasis added)
>
> **"On Liberty", J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. 100 of the Cambridge, 1989 edition. Appellants Book of Authorities Tab 14**

14. Cannabis misuse can cause harm. This harm is avoidable. Different notions of the "proper" use of cannabis is imbedded into culture and ritual, but under cannabis prohibition, these rituals are harder to come by. In China, for example, cannabis continues to be listed in all official pharmacopoeia. The greatest of the Chinese herbalists, Li Shizhen, recommended it in his famous work, the Pen-ts'ao, back in 1578 for a host of ailments including "nervous feelings" and "senility", explaining that "hallucinations and an unsteady gait" come through" **immoderate** use". (emphasis added)

> **"Marijuana Medicine; A world tour of the healing and visionary powers of cannabis", Christian Ratsch, 2001, Healing Arts Press, p. 23 – Appellants Book of Authorities Tab 15**

14(a) Casanova once said "In wise hands, poison is medicine. In foolish hands, medicine is poison." This is true of cannabis as much as every other drug – except a little less, as cannabis is the only popular recreational drug – unlike opiates - with which "one cannot take an overdose that will cause death."

> **Dealing with Drugs: Consequences of government control, Pacific Institute for Public Policy (1987) R. Hamowy, Ed., Lexington Books. Appellants Book of Authorities Tab 16**
> **Exhibit 3 below - at trial - para. 14 – A. R., Vol. I, p.70 (see also para. 4 of the Joint Statement of Legislative Facts)**

14(b) Echoing these bits of wisdom, The **1997 World Health Organization**

Report on cannabis pointed to "dose" as the first of a long list of factors involved in the "effects". The report noted that;

> ...the behavioral effects of cannabis can be influenced by the social context of use . . . variability can be due to factors related to dose, mode of administration, physiological and pharmacological differences, complexity of performance tasks, situational demands during testing, and the prior drug experience of the subject
>
> **“Cannabis: a health perspective and research agenda" 1997 World Health Organization, pp.14 - 15 (exhibit 5 in Caine)**

15. In the companion appeal of Caine, Braidwood J.A. in the court below quotes from the trial judge, Howard P.C.J where she pointed out that it is the prohibition of marijuana that creates an artificial "lack of governmental control over the quality of the drug on the market”. The trial judge also wrote;

> "…naïve users should be careful and if they chose to smoke, should do so with experienced users and in an appropriate setting.”
>
> **Appellants Record Vol.II pp. 255-56 (para. 28,#6) and 253 (para. 21,#1)**

16. Braidwood J.A. also mentions the **"Ouimet Report" (1969),** and it's recommendations that "no conduct should be defined as criminal unless it represents a serious threat to society, and **unless the acts cannot be dealt with through other social or legal means**.” (emphasis added) Braidwood J.A. then quoted two other reports - the Law Reform Commission report (1976) and the Criminal Law in Canadian Society report (1982), which say more or less the same thing. Considering the example set by Holland over the last twenty-five years, it should be apparent to anyone that there are other, more effective social or legal means to deal with cannabis abuse than a jail cell or a mandatory abstinence treatment program.

> **Appellant’s Record, Vol. II, pp.303-307,Reasons for judgment below (paras.112-117) and Appellant Caine’s Book of Authorities Vol. 3 Tab 42**

17. As mentioned above (para. 6), Exhibit 4 at trial, presented the set of facts that Curtis J. determined "not relevant" to the constitutional question. Within these facts is found the following key statement at para. 5:

> There in fact are no harmful effects of marijuana on others or society that can't be reduced in some way through reasonable regulation (ie impairment testing). The harmful effects on the individual are minor, mitigatible, and only affect less than 1% of the population who are chronic users in any event.

Appellant's Record, Vol.I p.186, Exhibit 4, para. 5

The Harms and their reduction

18. All of the potential harms or the risk thereof that cannabis offers can be addressed by a greater awareness of proper cultivation and distribution techniques, proper dose levels and strain selection, while at the same time focusing on proper setting, mindset, mode of delivery and especially *quality* - as wisely suggested by the trial Judge in Caine. These techniques were outlined and presented to Mr. Justice Curtis in oral and written submissions and confirmed through the evidence of S. Dion. Each of the following "inherent harms" that the courts have used to justify cannabis prohibition is either non-existent, a manifestation of the black market, or - at worst - a harm that can be reduced to well below "properly-used caffeine" harm levels through harm reduction techniques. Using all of the concerns brought up in Canadian courts (so far) as examples, it is apparent that there is indeed no harm that may come from cannabis abuse that cannot be reduced and/or eliminated through proper use:

a) the "use or abuse of marijuana" "provokes erratic behavior in the user or abusive user." **R. v. Hamon (1993), 85 C.C.C. (3d) 490 (Que. C.A.) at pp 492-494- see Appellant Caine's Book of Authorities Tab 15**
It is submitted that prohibition removes awareness of dose levels, strain selection, mindset, proper setting, purity etc, etc, which then leads to

erratic behavior. Erratic behavior is not an inherent result of cannabis use. Erratic behavior is only a threat to others when impaired driving is involved - and there are already laws against such irresponsibility. Ten cups of coffee - or perhaps three cups on an empty stomach, would impair all but the most chronic caffeine users, yet no one calls for coffee prohibition as a result of this pharmacological fact.

The Encyclopedia of Psychoactive Drugs,Caffeine,The Most Popular Stimulant by R.J.Gilbert Ph.D, Burke Publishing Co. Limited(1988) Chapters (9-12)- Appellants Book of Authorities Tab 23.

b) "marijuana does cause harm" although "not as much harm as first believed". **R. v. Clay [1997] O.J. No. 3333 per McCart, J, at para. 21**
It is submitted that marijuana causes harm in the same way that caffeine causes harm – through misuse. Prohibition exacerbates misuse.

c) "accidents involving complex machinery" could occur. See R. v. Caine at trial, **Appellant's Record in Caine, Reasons for judgement of the trial judge Vol. VII, p.1163**.
It is submitted that prohibition removes awareness of dose levels, strain selection, mindset, setting, purity etc, etc, which then leads to accidents. Accidents are not an inherent result of cannabis use

See Joint Statement of Legislative facts, para. 51-52
See also Exhibit 37,The Harm Reduction Club membership card – Appellants Supplemental Record

d) A "vulnerable" person such as an adolescent, may become a chronic user and hurt themselves from the "process of smoking".
Appellants Record in Caine, Reasons for judgement of the trial judge supra Vol VII, p.1135.
It is submitted that both adolescent users and chronic users may hurt themselves from smoking excessive amounts of low-potency, chemically fertilized cannabis through an aluminum can pipe, but there is no evidence anywhere to suggest that organic, high-potency cannabis, smoked in moderation through a glass water-bong during high pleasure, low pressure

activities has harmed anyone – be they chronic, adolescent, pregnant or mentally ill. In fact, there is no evidence anywhere to suggest that Western Medicine has paid any attention at all to the dangers of chemical fertilizers when attempting to evaluate the dangers of smoked cannabis. It is submitted that this is indicative of researcher bias.

e) "There is a risk that, with legalization, user rates will increase and so will these costs". **Appellants Record in Caine, Reasons for judgement of the trial judge, Vol VII p.1164.**

It is submitted that there is evidence to suggest that re-regulating cannabis will increase use rates but decrease misuse rates, decrease health costs into the billions and law enforcement costs by billions. There is also good reason to believe that the effect on Canada's economy through a new tax base, increased tourism and eventually a healthy export market will be positive and substantial. The economy of cannabis breeding and production itself tends to favor small scale, local operations, as there are advantages that come with having a variety of strains grown under a variety of conditions that cannot be gained through growing one strain under one condition. As in Holland, the Canadian cannabis economy tends to be large, inclusive and difficult to monopolize - perhaps the real reason it's kept illegal.

Affidavit of Eric Single of March 25th, 1997 filed as part of the Application Record in R. v. Clay, supra. – also in Appellant's Supplemental Record
Consumer Union Report 1972 – Appellants Supplemental Record
Speech to the trial judge.

f) "schizophrenia" (it "may""trigger" it); **R. v. Clay [2000] O.J. No. 2788 (Ont. C.A.) at para. 10**

It is submitted that there is no evidence that cannabis**, properly used**, has any more negative impact on people with schizophrenia than those without it. Research which does not factor in "proper use" is of little value.

g) “Bronchial pulmonary damage” (with heavy use); **Clay, supra at para. 10**

It is submitted that evidence of cannabis related lung damage has yet to take into account the effects of chemical fertilizer (all of which is radioactive) as a factor. There is no evidence whatsoever to suggest that moderate amount of **organic** cannabis, smoked through a water filter, does any damage whatsoever – even when smoked “chronically” (two to three grams per day). There is evidence to suggest that most tobacco-related cancer is fertilizer-related. This fact continues to be uncontested but ignored, despite being voiced from the beginning of the formation of the club, and brought up again and again in the courts below and in the Safer, Smarter, Smoking Guide (Exhibit 29). If the appellant had been permitted to call evidence below he would have amplified this point by calling expert evidence on it, and if this matter is sent back for re-hearing, would also call additional evidence that has arisen since.

Speech to the Trial Judge, Speech to the British Columbia Court of Appeal, Safer Smarter Smoking Guide, Appellants Supplemental Record.
Article entitled “Evidence of radioactive chemical fertilizers as the primary threat to the health of tobacco and cannabis smokers- Appellants Book of Authorities tab 20

h) “probably harmful effect of cannabis on the maturing process in adolescence”; **Clay, supra at para. 10**

The Appellant submits that any such harmful effects can be mitigated by learning to a) focus, b) titrate, c) select a particular strain of marijuana for it’s probable consequential effect, d) select for potency and organics, e) smoke using hemp-paper and glass bongs, and f) keep to high-pleasure and or low pressure activities. These skills are not hard to teach any youth, and may in fact assist in the maturing process in adolescence, in that learning the proper use of “soft” stimulants, relaxants and euphoriants leads to greater autonomy of the will and enhanced performance in many vocations and activities. It is submitted that the true agents of “harm” in

“the maturing process in adolescence” are the denial of the development of autonomy, and the discouragement of communication regarding drug use between parents and children.

i) “the implications for safe driving arising from impairment of cognitive functions and psycho motor abilities”; Clay, supra at para. 10
It is submitted, once again, (see paragraph c) above) that impairment is a circumstance of familiarity, dose level, strain, diet, other drugs, amount of sleep and other factors, and not an inherent result of using the drug. In this regard see the **Joint Statement of legislative facts at paragraphs 51 and 52 and the “Harm reduction Club” membership card.**

j) “from the additive interaction of cannabis and alcohol”; **Clay, supra at para. 10**
This Appellant agrees that alcohol is a very dangerous and toxic drug and should not be mixed with any other drugs.
See the “ Guide to Safer, Smarter, Smoking “ Exhibit 29 page 7 Table 1, Appellants Supplemental Record

k) “from the difficulties of recognizing or detecting cannabis intoxication”; **Clay, supra at para. 10**
It is submitted that his is only a problem if one wishes to identify non-impaired cannabis users – there is no legitimate reason to do so, only scapegoating reasons. If a person’s ability to drive is impaired, that fact should be readily capable of being detected by a police officer trained to apply traditional roadside impairment testing.

l) “the possibility, suggested by reports in other countries and clinical observations on this continent, that the long-term, heavy use of cannabis may result in a significant amount of mental deterioration and disorder”; **Clay, supra at para. 10**

It is submitted that the existence of a mere possibility is not sufficient to override a Charter right, particularly the right to liberty and the security of the person. Determining if this possiblity is a result of “heavy use”, “heavy mis-use”, poverty, poor diet or some other factor or combination of factors may prove difficult or impossible. There are even more “reports and observations” that cannabis is a euphoriant and performance enhancer.

A brief history of the anti-depressant uses of cannabis – Appellants Book of Authorities – Tab 19
Quotes about the phenomena of “time-slow” assembled by the Appellant –Appellants Book Of Authorities Tab 22

m) “the role played by cannabis in the development and spread of multi-drug use by stimulating a desire for drug experience and lowering inhibitions about drug experimentation.” Clay, supra at para. 10

It is submitted that the desire to use other drugs properly is not a harmful desire. When we as a society come to understand that there are no bad drugs, just bad relationships with drugs, we will all be a lot better off. It is not up to society to ban or discourage all drug use, but rather to educate against drug mis-use and regulate points of sale to address safety and health concerns. All drugs may be misused, and all may be used properly and to the user’s advantage.

n) “It is almost certainly harmful to some extent in high doses”. Clay, supra at para. 10

It is submitted that the same can be said of caffeine, Aspirin, vitamins, and raw potatoes. The threshold for prohibiting an entire culture cannot be so low.

Appellant’s Record, Vol. 1, p.56- Evidence of S.Dion
Appellants Supplemental Record - Speech to the trial judge.

The Harm Principle

19. The shift away from force and towards education is a key component of the harm principle. In “On Liberty”, Mill points out that activities harmful to oneself do not warrant force as a solution. Instead, Mill suggests “remonstration":

> “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, both physical and moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. . . In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.
>
> **“On Liberty”, J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. 13 of the Cambridge, 1989 edition. Appellants Book of Authorities Tab 14.**

20. In “On Liberty”, Mill specifically explains what “liberty” rights must be protected. He firsts lists the “obvious” rights – our political rights – a list of freedoms which reappears in s.2 of our Constitution almost word-for-word. He then immediately lists the “less obvious” rights:

> “Secondly, the principle requires liberty of **tastes and pursuits**; of framing the plan of our lives to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse or wrong. Thirdly, from this liberty of each individual follows the liberty, **within the same limits, of combination among individuals**. No society in which these liberties are not, on the whole, respected, is free, whatever may be it’s form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not try and deprive others of theirs, or impede their efforts to obtain it. **Each is the proper guardian of his own health, whether bodily, or mental and spiritual**.” (emphasis added)

“On Liberty”, J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. 15 of the Cambridge, 1989 edition, **supra.**

21. The first line of the above quote points out that a “fundamental principle” can apply to trivial "tastes and pursuits". The second line of this quote is an argument that cultivators and distributors of cannabis can benefit from the harm principle as much as users can. The Crown, in its factum below argued that;

> “If the liberty contemplated in s.7 is to have any meaning as a constitutionally protected value, then it cannot be interpreted to protect every aspect of individual behavior simply because the person asserting the right claims that behavior is an aspect of “character”, “mannerisms” or “tastes”. Such an approach would trivialize the protections afforded by the Charter”. (at p.6 para. 14)

22. But this is exactly contrary to what John Stuart Mill asserted – protected “tastes” – so long as these tastes do not harm others. Mill goes on to point out a good reason to value freedom – it encourages independent thought and an intelligent citizenry. Mill states that “Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.” (p. 15-16), that “The mental and the moral, like the muscular powers, are improved only by being used.” (p. 59) and that;

> “If there was nothing new to be done, would human intellect cease to be necessary? Would it be a reason why those who do the old things should forget why they are done, and do them like cattle, not like human beings? . . .If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in himself, but because it is his own mode. Human beings are not like sheep; and even sheep are not indistinguishably alike.”
>
> **“On Liberty”, J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p.65 and 67 of the Cambridge, 1989 edition,supra.**

23. The reason why the freedom to make mistakes over our own lives and to hurt ourselves is twofold. The first reason - outlined in the above quotations - is that the freedom to make mistakes and take risks concerning our own lives helps us become smarter – and less like livestock.

24. The other reason why freedom is important is because, when it is protected, it prevents tyrants from preying on weak scapegoats. In the words of US Justice Harlan F. Stone;

> " History teaches us that there have been few infringements of personal liberty by the state which have not been justified, . . . in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities.
>
> **Minersville School Dist. V. Gobitis, 310 U.S. 586, 604 (1940) & Quote It – Memorable Legal Quotations, E. C. Gerhart (1969) p.412-413. Appellants Book of Authorities Tab 9**

25. The argument that "marijuana is inherently harmful-to-others" respects the harm principle, and can be attempted by prohibitionists. If they possess evidence of such things, let us evaluate this evidence, and determine if it is 1) cross-referenced, and 2) an actual inherent harm and not a result of a biased experiment. So far, they have produced no compelling evidence of inherent cannabis harm. The argument that "cannabis is too unimportant to protect" must be dropped, as, according to (an apparent historical source for the liberties cited in the Canadian Constitution) J.S. Mill, all harmless-to-others "tastes and pursuits", each attempt at "pursuing our own good in our own way" is to be allowed – absolutely and "unqualified" - apart from the harm principle.

> **"On Liberty", J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. 15 of the Cambridge, 1989 edition,supra.**

26. A popular myth that has yet to really be challenged is that the state can somehow deal with drug abuse by abandoning a regulatory framework and demand total abstinence of a popular pastime. The failures of Canadian and American alcohol prohibition should not be overlooked at this point. They mimic the failure of cannabis prohibition, a failure first outlined by the trial judge below , and repeated by the Court of Appeal.

[1] countless Canadians, mostly adolescents and young adults, are being prosecuted in the "criminal" courts, subjected to the threat of (if not actual)imprisonment, and branded with criminal records for engaging [in] an activity that is remarkably benign (estimates suggest that over 600,000 Canadians now have criminal records for cannabis related offences); meanwhile others are free to consume society's drugs of choice, alcohol and tobacco, even though these drugs are known killers;

[2] disrespect for the law by upwards of one million persons who are prepared to engage in this activity, notwithstanding the legal prohibition;

[3] distrust, by users, of health and educational authorities who, in the past, have promoted false and exaggerated allegations about marihuana; the risk is that marihuana users, especially the young, will no longer listen, even to the truth;

[4] lack of open communication between young persons and their elders about their use of the drug or any problems they are experiencing with it, given that it is illegal;

[5] the risk that our young people will be associating with actual criminals and hard drug users who are the primary suppliers of the drug;

[6] the lack of governmental control over the quality of the drug on the market, given that it is available only on the black market;

[7] the creation of a lawless sub-culture whose only reason for being is to grow, import and distribute a drug which is not available through lawful means;

[8] the enormous financial costs associated with enforcement of the law; and

[9] the inability to engage in meaningful research into the properties, effects and dangers of the drug because possession of the drug is unlawful.

Appellants Record in Caine Vol. VII p. 1135-1136
Appellants Record Vol.II pp. 255-256

27. The same could be said of alcohol prohibition, coca prohibition, heroin prohibition, and most assuredly, if we were foolish enough to legislate against them, tobacco, caffeine and chocolate prohibition as well.

28. Is there a limit to the government's ability to interfere with the individual? Drug war researcher and author Ethan Nadelmann says;

> "…if you believe the ultimate objective of the government is to maximize your life-span to the ultimate, then our public policy objective should be to make sure that the average life-span of the average Canadian or American is one hundred years, then there in fact is no reasonable limit … it's the public health system taken to it's totalitarian extreme. If you see no natural limits based upon individual autonomy or civil liberties or privacy or whatever words you want to use there – there is no limit on how far we can go. I think we need to draw the line."

"Rethinking the Global War on Drugs" (video), University of British Columbia, Faculty of Law, April 22, 1994

29. The Appellant agrees that there is a need to draw the line. It is submitted that the line that should be drawn is: only such acts or omissions that present a reasoned apprehension of a risk of harm to others or society as a whole may be subject to regulation. Those posing a greater risk – a serious, substantial or significant risk – may be subject to prohibition via the criminal law or peace, order and good government (POGG) powers. If the potential harm is actually a risk – something mitigatable – a risk to the risk taker only, then society's role is that of educator and regulator, not prohibitor.

QUESTION 2: S.1 OF THE CHARTER

30. This Appellant adopts the submissions of counsel for the Appellant Caine in the companion appeal, as set out at paragraphs 39 through 45 of his factum in this court, in relation to the general principles and tests to be applied and met under section 1, in relation to simple possession of cannabis and section 7 of the Charter.

31. This Appellant respectfully submits that because the possession of cannabis for the purpose of distribution in a harm reduction mode and subject to harm reduction regulations does not pose a significant, serious, substantial or even large risk of harm to the public, or the customers prohibition is not a reasonable limit that is demonstrably justifiable under section 1 of the Charter.

32. It is respectfully submitted that to try and prevent abuse is a valid public objective but to attempt to do so by prohibiting simple possession and use is too broad and cannot pass the minimal impairment test. It is submitted that it is also too broad to attempt to achieve this valid objective against abuse by attempting to prevent promotion of use by distribution and sale. Again prohibition goes too far. Reasonable regulations can address the valid concerns associated with abuse without prohibiting reasonably regulated use, sale and distribution.

QUESTION 3: S.15 OF THE CHARTER

Equality

33. In R. v. M. (C.), involving consensual anal sex between young people, the Ontario Court of Appeal struck down the offence as contrary to the Charter. While it is true that both cannabis use and anal sex may be “moderately risky”, they are also both “acceptably risky” and, if done properly, harmless. The connection between both groups of harmless hedonistic deviants is made clear

when the ruling is read out loud – it could very well be about young people using cannabis;

> " It strikes me as decidedly inappropriate to deal with health risks at any age by using the punitive force of the Criminal Code, but especially so for young people…**health risks ought to be dealt with by the health care system**…It is not enough for a government to assert an objective for limiting guaranteed rights **under s. 1; there must, in my view, also be an underlying evidentiary basis to support the assertion."** (emphasis added)
>
> **R. v. M. (C.) (1995) 30 C.R.R. (2d) 112 at 121-123 (Ont. C. A.) Appellants Book of Authorities Tab 8**

34. Contrast this decision with the obscenity decision in R. v. Butler – a case regarding the constitutionality of the distribution of explicit materials - as a reason why evidence of harm is not necessary to make some act illegal;

> "... The impugned provision is designed to catch material that creates a risk of harm to society. It might be suggested that proof of actual harm should be required. It is apparent from what I have said above that it is sufficient in this regard for Parliament to have a reasonable basis for concluding that harm will result and this requirement does not demand actual proof of harm."
>
> **R. v. Butler [1992], 1 S.C.R. 452 per Sopinka, J. at p. 505appellants Book of Authorities Tab 5**

35. The obvious question is, would factors like AIDS and STD's allow a court to conclude "a reasonable basis for concluding that harm will result" from homosexuality to be sufficient for a return to the "anti-sodomy" laws (assuming that it is "up to Parliament" do decide what level of harm can be criminalized in the first place)? The answer has to be no, if we are to count our society as civil. The Respondent's latest factum compares cannabis users and dealers to child pornographers and those who have "the inclination or desire to commit incest". It is submitted that the difference between child pornographers and those who practice incest on the one hand, and homosexuals and cannabis users/growers/dealers on the other, is that the child pornographer is a tiny fraction of the population, who's violation of privacy are identifiable, inherently harmful in every case, and of the "harm-to-others" type of harms; those who

practice incest are also a tiny fraction of the population, and while the harms in question may not be as inherent as violations of privacy in every case, such activities can still cause some identifiable harms, while cannabis using and homosexuality are popular deviations from current social norms who indulge in pleasurable risks for a variety of reasons, risks that, quite frankly, can be managed quite easily, and, with the exception of some minor social costs and possible impaired use of heavy machinery (which can be legislated against separately), not of the “harmful to others” types of harm. If we are serious about the prevention of future cultural genocide, it is the criteria found in R. v. M.(C), not that found in R. v. Butler, which must be used in any case where any **group** of people have been accused of presenting a risk of or causing harm to the public.

Excerpts from Crown Respondent’s factum below, para. 20, 27- Appellants Book of Authorities Tab 17

36. The harm principle manifests itself in Section 7, implicitly as a "principle of fundamental justice", and also in Section 15, implicitly as a main characteristic of groups which may claim protection from discrimination. Equality rights for cannabis users have been won in Germany. In 1994 harm-principle and equality arguments were used successfully in the defense of cannabis possession. Thankfully, and perhaps understandably, Germany's constitution strongly protects against scapegoating.

Appellants Supplemental Record - Appellant’s Speech to the Court of Appeal, para. 46
Judgement of the German Constitutional Court on Cannabis, March 9, 1994, Appellant Caine’s Book of Authorities Tab 46

37. The common thread between the characteristics of humanity set out in section 15 of the Charter is that they are all characteristics of people who a) have experienced persecution at some time in the past, and b) are not, as in the case of pirates, for instance, inherently harmful to society. It is submitted that cannabis users, growers and dealers all qualify. The case law to suggest cannabis use is

analogous to these other characteristics is **Vriend v. A.G. Alta (1998),** where Iacobucci J. and Cory J. outline the criteria for inclusion in section 15 protection;

> ". . . the omission of sexual orientation from the IRPA was deliberate and not the result of an oversight. The reasons given for declining to take this action include the assertions that sexual orientation is a **margina**l ground..
> ……
> …the IRPA, in its underinclusive state creates a distinction which results in the denial of the equal benefit and protection of the law on the basis of sexual orientation, **a personal characteristic which is analogous to those enumerated in s. 15(1).**This, in itself, is sufficient to conclude that discrimination is present and that there is a violation of s. 15." (emphasis added)
>
> **Vriend v. Alberta, (1998) 156 D.L.R. (4th) 385 at 395 and 429-430 (S.C.C.) Appellants Book of Authorities Tab 13.**

38. It is submitted that "marginal" is to the homophobe what "trivial" is to the euphoriphobe. It is submitted that "orientation" is just a four-syllable word for "taste". Can it be said that cannabis users really have an "orientation" to cannabis? In 1991, THC receptors were located in the brain - in the hippocampus (memory), cerebral cortex (higher thought processes) and basal ganglion (movement). In 1993, the body's natural THC, anandamide, (ananda is Sanskrit for internal bliss) was discovered.

> **Exhibit 3 – at trial – Defendant's Submission in Support of Voir Dire, para. 13.Appellants Record Vol. I p. 70**

39. This means that the body produces it's own "cannabinoid-like" triggers, ostensibly for providing its own naturally occurring moments of time-slow, euphoria, relaxation and stimulation. Humans are naturally oriented towards exerting control over our own bodies ability to perform these functions – controlling our bodies in this way is part of controlling our lives and deciding for ourselves what state of mind is best for this or that occasion. But whether it is natural, or just desirable to be a cannabis user is as immaterial to whether or not to grant them constitutional protection as is the question of whether it is natural or

just desirable to be a homosexual. It is submitted that the only genuine criteria for groups to be included in s.15 protection is *persecution* and *harmlessness*.

Monopoly – Dealers and grower's right to protection under sect. 7 and 15

40. John Stuart Mill said that civilized society should guarantee the "freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived." (p.16) He also said;

> ". . . the class of dealers in strong drinks, though interested in their abuse, are indispensably required for the sake of their legitimate use. The interest, however, of these dealers in prompting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty."

"On Liberty", J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from pp. 16, 100 of the Cambridge, 1989 edition, **supra**

41. It is submitted that a restriction on false advertising, perhaps by surtax on promotion equal to the cost of production that would go to directly to consumer advocate groups to ensure accuracy, would be a way to mitigate the problems with over-promotion or sub-quality production of substances such as alcohol, tobacco, caffeine, and within any future cannabis market. If tobacco was organic, and if alcohol wasn't sold as an aphrodisiac, perhaps other, more serious harms could be reduced as well.

42. The law that supports the "right to deal" is not large, but it does exist. Bouvier's law dictionary includes "the prohibition of unfair monopolies" within its definition of liberty. In case law, there is "The Margarine Reference", which protects business from legislation that is unrelated to "Public peace, order, security, health, or morality" and to protect against "trade protection" or monopoly.

The Reference as to the Validity of Section 5(a) of the Dairy Industry Act, [1949] S.C.R. 1, aff'd [1951] A.C. 179 - Appellant's Book of Authorities 10
Exhibit 3 – Defendant's Submission in support of Voir Dire, para. 137-138 Appellants Record Vol.I p.124 and 154-5
Bouvier's Law Dictionary,Vol.2 3rdRevision,8th Ed. by Rawle p.1966.Appellants Book of Authorities.Tab 21

43. There is the principle, found in the **Universal Declaration of Human Rights (1948)** promises "free choice of employment" and states;

> "Every one has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability widowhood, old age, or other lack of livelihood in circumstances beyond his control."
>
> **Universal Declaration of Human Rights, 1948, Article 23 - 25 Appellants Book of Authorities Tab 4**

44. In **Singh, et al. v. Minister of Employment and Immigration (1985),** the Court said;

> "The right to security of the person means not only protection of one's physical integrity, but the provisions of necessaries for its support."
>
> **Singh et al. v. Minister of Employment and Immigration; [1985] 1 S.C.R. 177 per Wilson J at 206-207 (SCC)Appellants Book of Authorities Tab 11**

45. In **R. v. Morgentaler, Wilson J**. wrote that:

> "…the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life".

The experiments in Holland (and now some places in Germany and Denmark) with the open sales of cannabis demonstrate what is "possible". These other countries have proven that one can reduce the crime rate, the drug abuse rate, the unemployment rate and increase tourism allowing these jobs to exist, available to anyone who can adhere to reasonable regulation. It is worth noting that the Dutch have signed every international drug control treaty that Cannabis has, and has made full use of the "Sovereignty" clause in the agreements, calling

their system of regulated cannabis sales "expedient" and therefore legal under the treaties.

R. v. Morgentaler, [1988], 1 S.C.R. 30 per Wilson, J. at p. 166, (S.C.C.)
Appellant Caine's Book of Authorities Tab 27.
Exhibit 3 – Defendant's Submission in Support of Voir Dire, para. 27, Appellants Record Vol.I p.85-88.para's 31- 39.

QUESTION 4: S.1 OF THE CHARTER

46. The Appellant adopts and repeats his submission under Question 2 above in relation to section 7 and section 1 and says that those submissions are just as applicable to the question of reasonable limits to a violation of section 15 rights. Prohibition goes too far and overreaches the valid objective of reducing abuse. Use and distribution can be reasonably regulated so as to impair the rights minimally in achieving the objective without resorting to prohibition. J.S. Mill's harm principle;

> "…places the onus of producing evidence of 'harm' on the proposers of interference, and, even more important, it rules out intervention on any other basis."

"On Liberty", J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. xvii of the introduction to the Cambridge, 1989 edition.supra

CONCLUSION

48. To conclude, if it is true that harmless people should not be harmed, and if it is true that harmless people are protected by sections 7 and 15 of the Charter, and if it is true that the proper use, cultivation and distribution of cannabis are harmless activities, then it must be concluded that the proper use, cultivation distribution of cannabis are protected activities and the laws against such activities are unconstitutional. The issues of "cannabis harm reduction", "proper use, cultivation and distribution", "equality for the users and producers of all substances", should now be addressed by this court and our country should set a new course for greater freedom and tolerance – with other countries soon

following suit. We should take steps to avoid becoming one big prison, like the United States has become. We should set another good example for the US, as we have on the issues of slavery, women's right to vote, alcohol prohibition, Cuba, Vietnam, and the death penalty.

49. It is conceded, there may be a downside to cannabis re-legalization. Red eyes, sore throats, lost car keys - all possible results of increased mis-use before "harm reduction" education takes hold and everyone has learned to water-filter, titrate and focus with some clean, potent, organic herb of the right strain and in the proper setting and with the proper mind-set. Regarding the “indirect costs”, we give the last word to Mill;

> “But with regard to the merely contingent, or, as it may be called, constructive injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself; the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom.”
>
> **“On Liberty”, J.S. Mill, John W. Parker and Son, West Strand, London, 1859, from p. 82 of the Cambridge, 1989 edition.supra**

PART IV

NATURE OF ORDER SOUGHT

50. 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 possession of cannabis for the purposes of trafficking contrary to s.4(2) of the ***Narcotic Control Act*** or s. 5(2) 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*** and in violation of his right to equality before and under the law and the equal protection and equal benefit of the law without discrimination, and in particular without discrimination on the basis "substance and/or vocation orientation.", contrary to section 15 of the **Canadian Charter of Rights and Freedoms**.

51. The Appellant seeks an order reading down the Act by deleting Cannabis from the schedules pursuant to the Act or striking down all sections of the law dealing with cannabis.

52. In the alternative, the Appellant seeks an order that this case be remitted back to the lower court to hear evidence regarding the question of whether the harms that may come with cannabis misuse are inherent or mitigatable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

_____

DAVID MALMO-LEVINE
APPELLANT appearing in person with
John W. Conroy, Q.C. as co-counsel

NOTICE TO THE RESPONDENT: Pursuant to subsection 44(1) of the rules of the Supreme Court of Canada, this appeal will be inscribed by the Registrar for hearing after the respondent's factum has been filed or on the expiration of the time period set out in paragraph 38(3)(b) of the said Rules, s the case may be
PART IV

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26.	**Potshots #15 - The Constitutional Challenge (1999 version) Radioactive tobacco info: 48-56, J.S. Mill: 28**

27. Potshots #16 - The “what is medicine” issue
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28. Potshots #17 - The ancient history issue.