

**PAUL BURSTEIN**  
**& ASSOCIATE**  
*Barristers*

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July 17, 2003

**SENT VIA COURIER**

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

Dear Madam Roland:

RE: *Christopher James Clay v. The Queen*  
S.C.C. No. 28189

I am writing in response to the letter of Mr. Frankel, dated July 15, 2003, concerning his submission of *R. v. Murdock*, [2003] O.J. No. 2470 (C.A.) to the Court for its consideration with respect to the above-noted appeal and the two related appeals.

I take no objection to the Court having regard to the *Murdock* decision so long as the Court is also provided with a copy of the B.C. Court of Appeal's recent decision in *R. v. Schedel*, [2003] B.C.J. No. 1430, ten copies of which are enclosed. The Respondent was provided with a draft of this letter, and has no objection to it, and the judgment in *Schedel*, being provided to the Court.

In *Schedel*, the B.C. Court of Appeal considered the application of the three s. 24(2) factors governing exclusion/admission of unconstitutionally obtained evidence of a marijuana grow operation. In a concurring opinion, Southin J.A. wrote: "While at one time I accepted the received wisdom that marihuana offences were serious crimes, I now am of a different opinion, having been persuaded to the contrary by, among other writings, the judgment of my colleague, Prowse J.A. in *R. v. Malmo-Levine* [citation omitted]."  
Southin J.A. also expressed doubts as to whether the regulation of marihuana use is a subject matter that is within the legislative competence of Parliament. In particular, I would draw the Court's

attention to paragraphs 83, 84 and 87 to 97 of her judgment.

Should you have any questions or need further clarification, please feel free to contact me.

Yours truly,

A handwritten signature consisting of stylized initials "PB" followed by a surname.

Paul Burstein

Enclosure - 10 copies of *Schedel*

c.c. (letter only)

Mr. S.D. Frankel, Q.C.  
Mr. John Conroy  
Mr. David Malmo-Levine  
Mr. Milan Rupic  
Mr. Andrew K. Lokan  
Mr. Joseph J. Arvay  
Mr. Robert Frater