

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

BETWEEN:

VICTOR EUGENE CAINE

APPLICANT
(Appellant)

AND:

HER MAJESTY THE QUEEN

RESPONDENT
(Respondent)

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the Applicant will apply for leave to this Court pursuant to section 40(1) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, as amended, for an order granting leave to appeal to the Supreme Court of Canada from the Judgment of the Court of Appeal of the Province of British Columbia pronounced June 2, 2000, or such further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that the following further documents will be referred to in support of such application for leave:

- (a) Reasons for Judgment in *R. v. Clay* [1997] O.J. No. 3333 (Ont. Gen. Div.)
- (b) Reasons for Judgment in *R. v. Clay* [2000] O.J. No. 2788 (Ont. C.A.)
- (c) Reasons for Judgment in *R. v. Parker* [1997] O.J. No. 4923 (Ont. Prov. Div.)
- (d) Reasons for Judgment in *R. v. Parker* [2000] O.J. No. 2787 (Ont. C.A.)
- (e) Reasons for Judgment in *R. v. Malmo-Levine* [1998] B.C.J. No. 1025 (B.C.S.C.)

- (f) Exhibit "3", Appeal Book, *R. v. Marmo-Levine*, Number CA024517, Vancouver Registry (B.C.C.A.)
- (g) Reasons for Judgment of Howard, P.C.J. in the Provincial Court of British Columbia, *R. v. Caine* [1998] B.C.J. N9. 885 (B.C. Prov. Ct.)
- (h) Order of Thackray, J. in *R. v. Caine*, Number CC980571, Vancouver Registry (B.C.S.C.)
- (i) Reasons for Judgment and Corrigendum of the Court of Appeal of British Columbia dated June 2, 2000 in *R. v. Marmo-Levine, R. v. Caine* (2000) 145 C.C.C. (3d) 225 (B.C.C.A.)
- (j) Order of the Court of Appeal of British Columbia dated June 2, 2000, *R. v. Marmo-Levine* and *R. v. Caine* (June 2, 2000) Nos. CA024517; CA02528, Vancouver Registry (B.C.C.A.)
- (k) Order of the Supreme Court of Canada dated October 6, 2000, *R. v. Caine*, No. 2814 extending the time to bring this application.

And such further or other material as counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said application for leave shall be made on the grounds that:

1. THAT the majority of the Court of Appeal for British Columbia erred in their formulation and their appreciation of the significance of the test laid down by the Supreme Court of Canada in *R. v. Butler* [1992] 1 S.C.R. 452 (S.C.C.) in the context of cannabis (marijuana) prohibition;
2. THAT, in the result, the majority of the Court of Appeal for the Province of British Columbia erred in their "balancing of the interests" under section 7 of the *Canadian Charter of Rights and Freedoms*, based on the findings of the trial judge;
3. THAT the majority of the Court of Appeal erred in failing to apply the limit to the "harm principle" that an act should not count as a crime unless it causes harm that is serious both in nature and degree;

4. THAT the Court of Appeal erred in determining that the onus of proof under section 7 of the *Canadian Charter of Rights and Freedoms* remained on the Applicant throughout the proceedings in which the Applicant asserted a breach of his rights under section 7 of the Charter. Once the Applicant established a prima facie violation of section 7, then the evidentiary onus of proof shifted to the Crown to positively demonstrate that there was a reasonable basis for the legislation because the possession of the prohibited substance was sufficiently harmful to others or to society as a whole or presented a reasoned apprehension of a significant risk of harm to others or to society as a whole, or alternatively the matter should have shifted to section 1 of the *Charter*.
5. THAT the Court of Appeal erred in failing to consider whether or not the conduct in question, the personal decision to choose to possess and consume cannabis sativa by taking it into one's body, was a "decision of fundamental personal importance" thereby informing and delineating the ambit and scope of the liberty interest threatened with penal consequences in the circumstances. The concepts of "liberty and the security of the person" 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. These include the right to determine what shall be done with one's own body, even when the decision may be foolhardy and potentially harmful to oneself, absent a significant impact or the threat thereof upon others or society as a whole as a result of that fundamental personal decision.
6. THAT the Court of Appeal erred in failing to identify and apply the additional principles of fundamental justice applicable to the circumstances of the case, namely the principle of restraint as a corollary to the harm principle, the principle precluding irrationality and

arbitrariness in the legislative scheme, and the principle of overbreadth within the statutory regime, as additional or alternative bases upon which to ground a violation of section 7 of the *Charter* in the circumstances.

DATED at the City of Abbotsford in the Province of British Columbia this 26th day of October, 2000.

Solicitor for the Applicant

John W. Conroy, Q.C.

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AND TO: The Attorney General of Canada
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