

**IN THE SUPREME COURT OF CANADA**  
**(ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN)**

BETWEEN:

**SEAMUS JOHN NEARY**

**APPLICANT**  
(Respondent/Appellant)

-and-

**HER MAJESTY THE QUEEN**

**RESPONDENT**  
(Appellant/Respondent)

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

FILED BY THE APPLICANT

PURSUANT TO SECTION 40(1) OF THE *SUPREME COURT ACT*  
AND SECTION 691(1)(B) OF THE *CRIMINAL CODE*

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**TAKE NOTICE** that the Applicant applies for leave to appeal to the Court under section 40(1) of the *Supreme Court Act* and section 691(1)(b) of the *Criminal Code* from the judgment of the Court of Appeal for Saskatchewan made on April 25, 2017 in Dockets CACR2815 and CACR2828 (2017 SKCA 29), and for any further or other order that the Court may deem appropriate;

**AND FURTHER TAKE NOTICE** that this application for leave to appeal is made on the following grounds, THAT:

- (a) The Court of Appeal erred in law in dismissing the constitutional challenge of the *Safe Streets and Communities Act*, S.C. 2012, c.1, as it relates to the removal of a Conditional Sentence Order as a sentencing option where an offender has been convicted of an offence for marijuana in an amount in excess of 3 kg.
- (b) The Court of Appeal erred in law in dismissing the appellant's constitutional challenge to section 742.1 (b), 742.1(c), and if applicable, 742.1(e)(ii) on the grounds that those

provisions were “overbroad” and were therefore contrary to section 7 of the *Canadian Charter of Rights and Freedoms*;

- (c) The Court of Appeal erred in law dismissing the appellant's constitutional challenge to section 742.1 (b), 742.1(c), and if applicable, 742.1(e)(ii) on the grounds that those provisions were likely to result in “grossly disproportionate effects” and were therefore contrary to section 12 of the *Canadian Charter of Rights and Freedoms*;
- (d) The Court of Appeal erred in law in concluding that the Respondents’ steps through the Prime Minister instructing the Ministers of Justice, Health and Public safety as part of their mandate to “legalize” Cannabis Marihuana impacts the decibel level of the sentencing principles of “denunciation” and “deterrence” downwards within the existing sentencing principles and law by signaling that the substance and offenses in relation to it were now less serious than as determined in past sentencing jurisprudence; and
- (e) The Court of Appeal erred in law in imposing a sentence that was unfit in all of these circumstances.

Dated at Saskatoon, Saskatchewan this 23<sup>rd</sup> day of June, 2017.

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Co-counsel for the Applicant

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**NOTICE TO THE RESPONDENT OR INTERVENER:** A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.