

In the Provincial Court for Saskatchewan
before
The Honourable Judge J. A. Plemel
Humboldt, Saskatchewan

Information Number: 37607257

Date: set for 10 May 2010

Between:

Her Majesty The Queen
- and -
Edward Burke Hudson

The Right to Trial by our Peers

Brief of Reasons

Edward B. Hudson DVM, MS
402 Skeena Court
Saskatoon, Saskatchewan
S7K 4H2

Summary:

We hold that Canadian Criminal Code s. 117.03 is *ultra vires* the authority of Parliament.

Upholding this unjust law will allow the Government the power to seize and confiscate every unregistered firearm and all the firearms from every unlicensed owner in Canada without laying a single criminal charge.

This law allows the Government to obtain court-ordered involuntary forfeiture of an individual's legally acquired, responsibly owned and competently used private property without arrest, trial, or conviction.

We directly challenge the propositions of 'positive law theory' that purport to grant to Parliament the authority to call "law" whatever legislation they may choose to pass.

We base our position firmly on the *Magna Carta*, the Common Law, the *Petition of Rights*, 1628, the *English Declaration of Rights*, 1689, the *British North America Act*, 1867, the *Canadian Bill of Rights*, 1960, the *Canadian Charter of Rights and Freedoms*, 1982, the Rule of Law, the separation of powers, and, the Supremacy of God or Natural Law.

We assert that, before the enforcement of the involuntary forfeiture of the most vitally important piece of individual property a citizen can own, we have the Right to a trial by our peers.

Index

Paragraph

1. I. Introduction
1. Criminal Code s. 117.03
5. *R. v. Lemieux* and *R. v. Hudson*
7. *Criminal Code*, section 92(1):
9. II. Statement of Facts

9. *Reference re Firearms Act (Can.)*, 2000 SCC 31
12. CUFOA Demonstrations
15. Police consistently refused to charge us under CC s.92(1),
17. rural-area demonstrations
20. confiscation / no arrests
26. Humboldt confiscation
31. Craik confiscation
32. SKCA Chief Justice Klebuc

35. III. Points in Issue

36. IV. Argument

A. The Significance of Personal Property

36. Friedrich A. Hayek *The Constitution of Liberty*
38. the significance of property
39. William Blackstone, *Commentaries on the Laws of England*
40. Defence of Personal Property Criminal Code s. 38

41. B. Private Property - protected against Government abuse of Criminal Law

41. *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783
46. The *Magna Carta*, article 29
47. The Common Law / *Selected Writings of Sir Edward Coke*,
47. “unlesse it be by the lawfull judgement, that is, verdict of his equals”
48. Dr. Bonham's Case
49. The *Petition of Rights*, 1628
50. The *English Declaration of Rights*, 1689

51. The *Canadian Bill of Rights*, 1960, c. 44,
52. The *Canadian Charter of Rights and Freedoms*
56. *Charter* s. 7: “in accordance with the principles of fundamental justice”
58. - *without laying any charges, without any trial, without any conviction*
59. C. Our Private Property is protected by The Rule of Law
60. The Doctrine of Parliamentary Supremacy
61. The *Constitutions Act*, 1982
62. the Charter: the Rule of Law
63. *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721, 1985
64. Definitions of the Rule of Law
65. “Whatever parliament as the supreme lawgiver makes it.”
66. “the state must not limit its own power”
67. Hans Kelsen: “the despotically governed state also represents some order”
68. “right is what the majority makes it to be”
70. Pericles, 431 B.C
71. Laws of the Twelve Tables
72. Middle Ages: “The state cannot itself create or make law”
73. Rule of Law before the Glorious Revolution
74. Rule of Law when the Glorious Revolution proclaimed
75. Rule of Law in 1762
77. Lord Acton: “the true law of the formation of free states”
78. A.V. Dicey, *Introduction to the Study of the Law of the Constitution*
79. Sir William Searle Holdsworth: “the independence of the court”
80. *The Safeguards of Individual Liberty*, Friedrich A. Hayek

81. “the trappings of judicial form ... destroy the respect of them”
82. US Supreme Court, 1884: “It is not every act, legislative in form, that is law”
83. Webster: due process is: “a law which hears before it condemns”
85. *The Act of Athens*: “resist any encroachments by governments”
87. D. Separation of Powers – An Independent Judiciary
88. *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 3
90. “judicial independence is at root an unwritten constitutional principle”
91. the Act of Settlement of 1701
92. “not an exhaustive written code for the protection of judicial independence”
93. “unwritten constitutional principles are exterior to the Constitution”
94. Importance of the Preamble
95. “the rule of law was a fundamental principle of the Canadian Constitution”
98. E. the Supremacy of God - Natural Law
99. “God” - an integral part of our British constitutional heritage
102. the “Ruling Theory of Law”
103. Jeremy Bentham: “nonsense upon stilts”
104. H.L.A. Hart: “no rights anterior to law”
105. Nürnberg Tribunal: “the validity of laws does not depend on their ‘positiveness’”
106. “The rejection of the defense of superior orders”
107. Chief Justice McLachlin: “Unwritten Constitutional Principles”
108. M.D. Walters: “an assertion of the supremacy of natural law
109. A.P. d’Entrevès says, “The undying spirit of Natural Law can never be extinguished”

110. Chief Justice McLachlin: “judges have a duty to insist”
112. F. Other Rights – Charter s. 26
113. The Quebec *Charter of human rights and freedoms*
114. *Leiriao v. Val-Bélair* (Town), [1991] 3 S.C.R
115. “Anglo- Canadian jurisprudence ... save by due process of law”.
116. Saskatchewan Party Policy: Protection of Property
117. *Canadian Bill of Rights*: “except by due process of law”.
119. Conclusion
119. an individual’s Liberties being protected by
120. declare *Criminal Code* section 117.03 *ultra vires*

Appendix A: 2003 CUFOA Demonstrations

Appendix B: Arrests or Confiscations while Demonstrating

Appendix C: First Letter to Humboldt RCMP

Appendix D: Second Letter to Humboldt RCMP

List of Authorities

Before the Involuntary Forfeiture of Confiscated Property,
The Right to Trial by our Peers

I. Introduction:

1. We are in Court to challenge the constitutional validity of *Criminal Code* section 117.03:

SEIZURE ON FAILURE TO PRODUCE AUTHORIZATION /

Return of seized thing on production of authorization

Forfeiture of seized thing

117.03

(1) Notwithstanding section 117.02. a peace officer who finds

(a) a person in possession of a firearm who fails, on demand, to produce, for inspection by the peace officer, an authorization or a licence under which the person may lawfully possess the firearm and a registration certificate for the firearm, or

(b) a person in possession of a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition who fails, on demand, to produce, for inspection by the peace officer, an authorization or a licence under which the person may lawfully possess it,

may seize the firearm, prohibited weapon, restricted weapon, prohibited device or prohibited ammunition unless its possession by the person in the circumstances in which it is found is authorized by any provision of this Part, or the person is under the direct and immediate supervision of another person who may lawfully possess it.

(2) Where a person from whom any thing is seized pursuant to subsection (1) claims the thing within fourteen days after the seizure and produces for inspection by the peace officer by whom it was seized, or any other peace officer having custody of it,

(a) an authorization or a licence under which the person may lawfully possess it, and

(b) in the case of a firearm, a registration certificate for the firearm,
the thing shall be forthwith returned to that person.

(3) Where any thing seized pursuant to subsection (1) is not claimed and returned as when provided by subsection (2), a peace officer shall forthwith take the thing before a provincial court judge, who may, after affording the person from whom

it was seized or its owner, if known, an opportunity to establish that the person is lawfully entitled to possess it, declare it to be forfeited to Her Majesty, to be disposed of or otherwise dealt with as the Attorney General directs. 1995, c.39, s. 139.

2. Parliament introduced section 117.03 into the *Criminal Code* as a direct adjunct to the federal *Firearms Act*, c. 39, 1995.

3. Our complaint with s. 117.03 is that Parliament has allowed the Government - without any restriction whatsoever – to use this section to seize and confiscate our legally acquired and peacefully and responsibly used personal property without charging us under either the *Firearms Act* or the appropriate section of the *Criminal Code*.

4. Even more egregiously, with s. 117.03 Parliament allows the Government to obtain an order to destroy our legally acquired and peacefully and responsibly owned and competently used personal property without a conviction at trial.

5. As noted in two Saskatchewan cases - *R. v. Lemieux* and *R. v. Hudson* - the effect of this unjust law will allow the Government to seize and confiscate every unregistered firearm in Canada and all firearms from every unlicensed owner without laying a single criminal charge. (Book of Authorities, Tab 1 and Tab 2)

6. We ask the Court to declare s. 117.03 *ultra vires* Parliament, null and void, and of no force or effect in Canada.

7. Such a declaration would not endanger the safety of Canadians in any manner as the Court could quite easily order the Humboldt RCMP to charge us properly under the correct sanction of the *Criminal Code*, section 92(1):

Possession of a Firearm Knowing Its Possession is Unauthorized

... every person commits an offense who possesses a firearm knowing the person is not the holder of

(a) a licence under which the person may possess it;

8. Herein we submit reasons to show that s. 117.03 is an abuse of the power of Parliament, violates the *Canadian Charter of Rights and Freedoms*, is inconsistent with the principles of the *British North America Act, 1982*, the *English Declaration of Rights, 1689*, the *Petition of Rights*, the *Magna Carta*, and the Common Law.

II. Statement of Facts

9. As noted in *Reference re Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 S.C.R. 783:

In 1995, Parliament amended the Criminal Code, R.S.C., 1985, c. C-46, by enacting the *Firearms Act*, S.C. 1995, c. 39, commonly referred to as the gun control law, to require the holders of all firearms to obtain licences and register their guns. (Book of Authorities, Tab 3)

10. We are members of the Canadian Unlicensed Firearms Owners Association (CUFOA), a national organization dedicated to protecting our Canadian Right to have 'Armes for their Defense' by using both political involvement and peaceful, non-violent, non-compliance to accomplish the repeal of the *Firearms Act*.

11. As part of CUFOA's national campaign of totally open, peaceful, non-violent non-compliance to the licensing mandate of the federal *Firearms Act*, we have directly challenged the Government to charge us for our willful refusal to surrender our means of self-protection to the Government.

12. Beginning on New Year's Day 2003 on Parliament Hill in Ottawa, we have organized and led over twenty-five peaceful, non-violent demonstrations of open, honest, willful non-compliance to the licensing mandate of the *Firearms Act* – see Appendix A.

13. During these demonstrations we employed either just the non-functional receiver portion of a firearm, signed affidavits declaring that we possessed firearms without a licence, or when in rural areas of the provinces, we employed an entire, functional, non-restricted firearm.

14. The Prime Minister, the Attorney General of Canada, and the Attorneys-General of all ten provinces ignored our affidavits even when we personally delivered the affidavits directly to their offices in Parliament and the Legislative Buildings of their respective provinces.

15. The police authorities of the National Capitol RCMP, the Ottawa City Police, and the Saskatoon City Police all consistently refused to charge us under CC s.92(1), however the police and RCMP disingenuously used other criminal charges to break up our demonstrations – see Appendix B.

16. Having failed in our attempts to be properly charged in the cities, we directed our activity to the open, rural countryside of Saskatchewan – see Appendix A.

17. In each of these rural-area demonstrations we notified the local RCMP detachment beforehand of our intention to be in willful violation of the *Firearms Act* mandate to have a licence to possess our hunting shotguns. We also provided the RCMP with our exact location, and the date and time we would be at that location.

18. On 13 September 2003, the Biggar detachment of the RCMP attended to our location and seized and confiscated a hunting shotgun from my associate, Jack Wilson. The attending RCMP sergeant issued Mr. Wilson a Promise to Appear Notice, but when Mr. Wilson subsequently appeared in Provincial Court, the RCMP dropped all criminal action.

19. To our knowledge, the Biggar RCMP detachment still holds Mr. Wilson's shotgun as evidence.

20. On 24 September 2003, the Wilkie RCMP detachment attended to our location, detained Mr. Wilson for some twenty to thirty minutes and then, without laying any criminal charges, seized and confiscated his hunting shotgun using the authority of s. 117.03.

21. To our knowledge, the Wilkie RCMP detachment still holds Mr. Wilson's shotgun.
22. On Monday, 29 September 2003, we notified the Humboldt detachment of the RCMP where and when we would be in their area with a firearm for which we did not have a licence to possess – see Appendix C.
23. On 30 September 2003, the Humboldt detachment of the RCMP attended to our location near Carmel and, without laying any criminal charges, seized and confiscated my hunting shotgun using the authority of s. 117.03.
24. Two or three days later the Humboldt detachment of the RCMP called and asked me to come in and pick-up my shotgun because the firing pin was broken.
25. Therefore on Monday, 06 October 2003, we again advised the Humboldt detachment of the RCMP where and when we would be in their area with a firearm for which we did not have a licence to possess – see Appendix D.
26. On Tuesday, 07 October 2003, Jack Wilson & I returned once again to hunt migratory game birds in the same location in a farmer's canola stubble field near Carmel. We again set up our blind on the trailer mounted with the black casket with dead flowers, camo nets, decoys, and the red and white CUFOA "Protecting Our Liberty" banner. Cassie, my Labrador Retriever, was again on hand to retrieve whatever we shot. This time we had a fully functional Ithaca, Model 3, 12-gauge pump shotgun which a Saskatoon gunsmith had examined and test fired for us the previous day.
27. At approximately 10:45 a.m. two RCMP vehicles passed our location, stopped hurriedly, reversed directions, and drove onto the approach to the canola field.
28. The two RCMP constables politely introduced themselves, we shook hands, and then they asked who owned the shotgun, and if one of us had a possession license for the "weapon". When I answered that I owned the shotgun, and that all we needed to hunt were our Saskatchewan hunting licenses, they quickly informed me that since neither of

us had either a POL or a PAL that they were going to “seize” my shotgun, which they promptly did.

29. As noted in the affidavit of B.W. Batrum, for the next forty-five minutes Mr. Wilson and I were “invited” to sit “voluntarily” in the front seat of the two RCMP vehicles to “answer a few questions”. Half way through my interview, which was being both video taped and audio recorded, RCMP Constable Stephens issued me a “warning” that I “might be charged with a crime”, and inquired if I understood the situation and asked if I wanted to contact a lawyer. (Book of Authorities, Tab 4)

30. By noon Jack & I were left defenseless, with only an RCMP Form F-112 receipt for my shotgun, and reduced to hunting ducks with only dirt clods as ammunition.

31. On 10 October 2003 at a rural location north of Davidson, Mr. Wilson and I tried yet again to be charged. A corporal from the RCMP detachment in Craik attended, to our location, and again without lay any criminal charges, used s. 117.03 to seize and confiscate my hunting shotgun.

32. We subsequently unsuccessfully protested the seizure and confiscation of that firearm through the Saskatchewan court system to the Saskatchewan Court of Appeal where the Honourable Chief Justice Klebuc declared:

[22] None of the aforesaid factors was adequately addressed by Dr. Hudson before this Court or the Chambers judge. This deficiency is due, in part, to his claim having been brought before the courts by way of a Chambers application, rather than a trial where expert witnesses could articulate the nature and applicability of a particular fundamental right and related historical values to a specific circumstance and comment on relevant material jurisprudential writings. In these circumstances, I will go no further than to dismiss Dr. Hudson's argument on the second question, on the basis that the limited evidence and jurisprudence placed before the Chambers judge and this Court do not establish the broad inalienable right to possess an unlicensed firearm for self-defence he advanced. (Book of Authorities, Tab 5)

33. In July 2004 the Humboldt RCMP detachment filed an application for a forfeiture order of my shotgun with the Provincial Court in Humboldt.

34. Firmly believing that all of the *Firearms Act* is an abomination, we therefore raise the following challenges to Parliament's pretended authority to authorize the seizure, confiscation, and involuntary forfeiture of our legally acquired and peacefully and responsibly used personal property without charging us under either the *Firearms Act* or the appropriate section of the *Criminal Code*.

III. Points in Issue

35. We submit that *Criminal Code* section 117.03 is *ultra vires* Parliament in that s. 117.03 violates:

- a) the Magna Carta, 1215, 1297
- b) the Common Law,
- c) The *Petition of Rights*, 1628
- d) the *English Declaration of Rights*, 1689,
- e) the *British North America Act*, 1867
- f) the Canadian Bill of Rights, 1960, c. 44
- g) the *Canadian Charter of Rights and Freedoms*, 1982
- h) the Rule of Law
- i) the separation of powers, and,
- j) the Supremacy of God or Natural Law

IV. Argument

A. The Significance of Personal Property

36. Austrian-born Nobel laureate economist and philosopher Friedrich A. Hayek has demonstrated in *The Constitution of Liberty*, the ownership of private property forms the basis of western democracies.

Friedrich A. Hayek, *The Constitution of Liberty*, University of Chicago Press, Chicago, 1960

37. As Hayek notes, when a slave was freed in ancient Greece the manumission decree protected the

- 1) legal status as a protected member of the community,
- 2) immunity from arbitrary arrest,
- 3) the right to work at whatever he desires to do, and
- 4) the right to move according to his choices.

38. As Hayek observes the significance of property:

This (emancipation) list contains most of what in the 18th & 19th centuries were regarded as the essential conditions of freedom. It omits the right to property only because even the slave could do so.

With the condition of this right (property) it contains all the elements required to protect an individual against coercion. Hayek, *supra*, at pp. 19 & 20

39. And William Blackstone noted in *Commentaries on the Laws of England* in 1765 about our English Rights and Freedoms:

Thus much for the declaration of our rights and liberties.

And these may be reduced to three principal or primary articles;

- the right of personal security,
- the right of personal liberty;
- and the right of private property:

Because as there is no other known method of compulsion, or of abridging man's natural free will, but by an infringement or diminution of one or other of these important rights, the preservation of these, inviolate, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense. . (Book of Authorities, Tab 6)

40. Thus protection of personal property is recognized in the Criminal Code:

DEFENCE OF PERSONAL PROPERTY

... / Assault by trespasser.

38. (1) Every one who is in peaceable possession of a personal property, and every one lawfully assisting him, is justified

(a) in preventing a trespasser from taking it, or

(b) in taking it from a trespasser who has taken it,

if he does not strike or cause bodily harm to the trespasser.

(2) Where a person who is in peaceable possession of personal property lays hands on it, a trespasser who persists in attempting to keep it or take it from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation. [R.S. c.C-34, s.38.]

DEFENCE WITH CLAIM OF RIGHT

... / Defence without claim of right.

39. (1) Every one who is in peaceable possession of a personal property under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending that possession, even against a person entitled by law to possession of it, if he uses no more force than is necessary.

Martin's Annual Criminal Code 2003, Student Edition, Canada Law Book, Aurora, 2003, pp. 95 & 96

B. Private Property is protected against Government abuse of Criminal Law

41. In *Reference re Firearms Act* (Can.), 2000 SCC 31, [2000] 1 S.C.R. 783 the Supreme Court approved the intrusion of the Federal Government into provincial jurisdiction by declaring:

(a) The *Firearms Act* constitutes a valid exercise of Parliament's jurisdiction over criminal law.

(b) The *Firearms Act* possesses all three criteria required for a criminal law.

(c) The offences are clearly defined in the *Act*.

42. Furthermore in that *Reference* the Supreme Court concluded:

the gun control law comes within Parliament's jurisdiction over criminal law.

The law in "pith and substance" is directed to enhancing public safety by controlling access to firearms through prohibitions and penalties. This brings it under the federal criminal law power. (Book of Authorities, Tab 3)

43. The "incident" that occurred near Carmel on Tuesday, 07 October 2003, was a criminal activity. We were there specifically for the purpose of violating the *Firearms Act* and *Criminal Code* section 92(1)(a) in that we planned beforehand not have a licence to possess my shotgun. (Book of Authorities, Tab 7)

44. The two Humboldt RCMP constables who responded to our faxed message that announced our intention to be in their area with a firearm without a licence to possess the firearm quickly determined that we did not have a licence to possess my shotgun.

45. For those occasions when a Canadian citizens encounters the authorities charged with enforcing the criminal law of the land, the constitution provides safeguards to ensure that the authorities do not unjustly oppress the citizen.

46. The *Magna Carta*, article 29 states,

No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny of delay right or

justice. (Book of Authorities, Tab 8)

47. The Common Law as Sir Edward Coke declared in 1606:

1. That no man be taken or imprisoned, but per legem terrae,³ that is, by the Common Law, Statute Law, or Custome of England;⁴ for these words, Per legem terrae, being towards the end of this Chapter, doe referre to all the precedent matters in this Chapter, and this hath the first place, because the liberty of a mans person is more precious to him, then all the rest that follow, and therefore it is great reason, that he should by Law be relieved therein, if he be wronged, as hereafter shall be shewed.

2. No man shall be disseised, that is, put out of seison, or dispossessed of his freehold (that is) lands, or livelihood, or of his liberties, or free customes, that is, of such franchises, and freedomes, and free customes, as belong to him by his free birth-right, unlesse it be by the lawfull judgement, that is, verdict of his equals (that is, of men of his own condition) or by the Law of the Land (that is, to speak it once for all) by the due course, and processe of Law.

Sir Edward Coke, *Selected Writings of Sir Edward Coke*, vol. II [1606], ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). Vol. 2., Chapter 29 (Book of Authorities, Tab 9)

48. And again in 1610 in *Dr. Bonham's Case*, 8 Co. Rep. 107a, 114a C.P. 1610:

4. ... And it appears in our books, that in many cases, the common law will control acts of parliament, and sometimes adjudge them to be utterly void: for when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void;

Sir Edward Coke , 8 Co. Rep. 107a, 114a C.P. 1610 (Book of Authorities, Tab 10)

49. The *Petition of Rights*, 1628, affirms:

III. And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned

or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law. (Book of Authorities, Tab 11)

50. The *English Declaration of Rights*, 1689 declares: –

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;

That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void; (Book of Authorities, Tab 12)

51. The *Canadian Bill of Rights*, 1960, c. 44, proclaims:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; (Book of Authorities, Tab 13)

52. The *Canadian Charter of Rights and Freedoms* specifically enumerates five fundamental “legal Rights”:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of

fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right;

and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

...

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(Book of Authorities, Tab 14)

53. On Tuesday, 07 October 2003, I was stopped from pursuing a lawful hunting

activity. I was detained while I was questioned. I was searched. The police seized and confiscated my private property. Yet the police did not charge me with any crime.

54. For the *Firearms Act* to be justified as being criminal law, then criminal sanctions must follow its violation.

55. More specifically, before the Government can order the forfeiture of my legally acquired and peacefully and responsibly used personal property I must be found guilty of a crime.

56. As *Charter* s. 7 states, “in accordance with the principles of fundamental justice”, I should be charged and placed on trial.

57. If this search and seizure option of s.117.03 is available to the police - independent of any criminal charges - then Parliament has completely circumvented all of the protection of an individual’s property afforded to honest, responsible citizens by our British heritage.

58. If the police can obtain a court destruction order for our legally acquired and peacefully and responsibly used personal property that they have seized and confiscated - without laying any charges, without any trial, without any conviction - then Parliament has made a mockery of the *Canadian Charter of Rights and Freedoms* – all without even mentioning the “notwithstanding” clause of s. 33.

C. Our Private Property is protected by The Rule of Law

59. Paying no regard to our Rights and Freedoms, Parliament claims the pretended power of possessing the authority to pass any criminal law Parliament so chooses.

60. However, The Doctrine of Parliamentary Supremacy is not without limits.

61. The *Constitutions Act*, 1982, explicitly states the Constitution is supreme:

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

62. The *Canadian Charter of Rights and Freedoms* recognizes two further supreme principles:

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

63. The importance of the Rule of law is clearly demonstrated in *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721, 1985 CanLII 33 (S.C.C.):

(59) The rule of law, a fundamental principle of our Constitution, ... mean(s)... the law is supreme over officials of the government as well as private individuals,

(60) ... "the rule of law is a philosophical view of society which in the Western tradition is linked with basic democratic notions".

(62) ... As we stated in the *Patriation Reference*, *supra*, at pp. 805-06: The "rule of law" is a highly textured expression ... conveying, for example, a sense of orderliness, of subjection to known legal rules and of executive accountability to legal authority.

(63) The constitutional status of the rule of law is beyond question. The preamble to the *Constitution Act, 1982* states:

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law.

This is explicit recognition that "the rule of law [is] a fundamental postulate of our constitutional structure" ...

The rule of law has always been understood as the very basis of the English Constitution characterising the political institutions of England from the time of

the Norman Conquest (A.V. Dicey, *The Law of the Constitution* (10th ed. 1959), at p. 183).

It becomes a postulate of our own constitutional order by way of the preamble to the *Constitution Act, 1982*, and (the Rule of Law) is implicit inclusion in the preamble to the *Constitution Act, 1867* by virtue of the words "with a Constitution similar in principle to that of the United Kingdom".

(64) Additional to the inclusion of the rule of law in the preambles of the *Constitution Acts* of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. ...

the principle of the rule of law is clearly a principle of our Constitution.

(65) This Court cannot take a narrow and literal approach to constitutional interpretation. The jurisprudence of the Court evidences a willingness to supplement textual analysis with historical, contextual and purposive interpretation in order to ascertain the intent of the makers of our Constitution. (Book of Authorities, Tab 15)

64. While the importance of the Rule of Law is obviously very well accepted in Canadian law, the definition of the Rule of Law seems to be subject to a fairly wide variety of opinion.

65. Wolfgang Friedmann, author of *The Planned State and the Rule of Law* suggests that the Rule of Law is "Whatever parliament as the supreme lawgiver makes it."

Wolfgang Friedmann, the *Planned State and the Rule of Law*, Melbourne, Australia, 1948, reprinted in *Law and Social Change in Contemporary Britain*, (London, 1951) Quoted by Hayek, *supra*, at pp. 243 – 244 & FN 63 @ p. 497

66. Rudolf von Ihering, in *Law as a means to an End*, postulates:

We derive from this the maxim that the state must not limit its own power of spontaneous self-activity by law any more than is absolutely necessary – rather

too little in this direction than to much. It is a wrong belief that the interest or the security of right and of political freedom requires the strange [!] notion that force is an evil which must be combated to the utmost. But in reality it is a good, in which, however, as in every good, it is necessary, in order to make possible its wholesome use, to take the possibility of its abuse into the bargain.

Rudolf von Ihering, *Law as a means to an End*, trans. I Husik (Boston, 1913), p.315 Quoted by Hayek, *supra*, at pp. 495 FN 25

67. Hans Kelsen, author of *Pure Theory of Law* claims that:

A wrong of the state must under all circumstances be a contradiction in terms.

Entirely meaningless is the assertion that under a despotism there exists no order of law ... the despotically governed state also represents some order of human behavior. This order is the order of law. To deny to it the name of an order of law is nothing but naiveté and presumption deriving from natural-law thinking ...

What is interpreted as arbitrary will is merely the legal possibility of the autocrat's taking on himself every decision, determining unconditionally the activities of subordinate organs and rescinding or altering at any time norms once announced, either generally or for a particular case. Such a condition is a condition of law

Hans Kelsen, *Allgemeine Staatslehre* (Vienna, 1923) pp. 249 & 335

Quoted by Hayek, *supra*, at pp. 494 FN 15 & 16

68. Herman Finer, in *The Road to Reaction*, opines

(The majority might be unwise, and the majority might be wicked, but the Rule of Law would prevail. For in a democracy right is what the majority makes it to be.

Herman Finer, *The Road to Reaction* (Boston, 1945), p. 60

Quoted by Hayek, *supra*, at pp. 243 – 244 & FN 65 @ p. 497

69. In contrast to those collectivist's views, there is, however, a long and honourable British heritage of the Rule of Law protecting individual Liberties.

70. The 'unwritten principle' of the Rule of Law protecting individual Rights was first recognized and taught by the ancient Greeks:

(a) Pericles, 431 B.C.

The freedom which we enjoy in our government extends also to our ordinary life [where], far from exercising a jealous surveillance over each other, we do not feel called upon to be angry with our neighbour for doing what he likes.

What was the road by which we reached our position, what the form of government under which our greatness grew, what the national habit out of which it sprang? ... If we are to look at laws, they afford equal justice to all in their private differences; ... The freedom which we enjoy in our government extends to our ordinary life ... But all this ease in our private relations does not make us lawless as citizens. Against this fear is our chief safeguard, teaching us to obey the magistrates and the laws, particularly such as the protection of the injured, whether they are actually on the statute books, or belong to that code which, although unwritten, yet cannot be broken without acknowledged disgrace.

Pericles, Pericles Funeral Oration as reported by Thucydides

The Peloponnesian War ii, 37-39, trans. Richard Crawley (Modern Library ed.), p. 104, quoted in Hayek, *supra*, at p. 164, fn#10, p. 459 & p. 1 fn* @ 419)

(b) Aristotle, (384 BC – 322 BC)

It is more proper that the law should govern than any of the citizens, (that the persons holding supreme power) should be appointed only guardians and servants of the law, (and that) he who would place supreme power in mind, would place it in God and the laws. (condemning the kind of government in which) the people govern and not the law (and in which) everything is determined by majority vote and not by law ... for, when government is not in the laws, then there is no free state, for the law ought to be supreme over all things.

(A government that) centers all power in the votes of the people cannot, properly speaking, be a democracy: for their decrees cannot be general in their extent.

Aristotle, *Politics*, 1287a & 1292a, trans W. Ellis, “Everyman” edition
Hayek, *supra*, at p. 165, fn#25-6, 461

71. The Romans adopted the Rule of Law from the Greeks:

(a) Laws of the Twelve Tables, c450 B.C.:

no privileges, or statutes shall be enacted in favour of private persons, to the injury of others contrary to the law common to all citizens, and which individuals, no matter of what rank, have a right to make use of.

The Civil Law, ed. S. P. Scott, Cincinnati, 1932, p. 73 Hayek, *supra*, at p. 166
fn#31 @ p. 462

(b) Cicero (106 - 43 B.C.)

[T]herefore, is a law, O judges, not written, but born with us,--which we have not learnt or received by tradition, or read, but which we have taken and sucked in and imbibed from nature herself; a law which we were not taught but to which we were made,--which we were not trained in, but which is ingrained in us,--namely, that if our life be in danger from plots, or from open violence, or from the weapons of robbers or enemies, every means of securing our safety is honourable. For laws are silent when arms are raised, and do not expect themselves to be waited for

“In Defense of Titus Annius Milo” (in *Selected Political Speeches of Cicero*, ed. and trans. Michael Grant, 222 [1969])

(c) Livy, 59 BC – AD 17

The authority and rule of laws, more powerful and mighty than those of men,
Titus Livius, *Ab Urbe Condita, Romane Historie*, trans Philemon Holland,
London, 1600, pp. 114, 134, 1016 Hayek, *supra*, at p. 164, & fn#14, & p. 166,
fn#33, p. 462

72. The Rule of Law was recognized in the early Middle Ages:

(T)he state cannot itself create or make law, and of course as little abolish or violate law, because this would mean to abolish justice itself, it would be absurd, a sin, a rebellion against God who alone creates law.

For centuries it was recognized doctrine that kings or any other human authority could only declare or find the existing law, or modify abuses that had crept in, and not create law. E. Jenks, *Law and Politics in the Middle Ages* (London, 1898), pp.24-25, Quoted by Hayek, *supra*, at 1960, p. 163

73. In England the Rule of Law was recognized and defended before the Glorious Revolution of 1689:

(a) The Petition of Grievances of 1610:

(among all the traditional rights of British subjects) there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of law, which giveth to the head and the members that which of right belongeth to them, and not by any uncertain and arbitrary form of government ... Out of this root has grown the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods, other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament”.

Great Britain, Public Record Office, Calendar of State papers, Domestic Series, 07 July 1610 Hayek, *supra*, at p. 168, fn#44, p. 463

(b) Sir Edward Coke, 1642:

If a grant be made to any man, to have the sole making of cards, or the sole dealing with any other trade, that grant is against the liberty and freedom of the subject, that before did, or lawfully might have used that trade, and consequently against this great charter; (but going beyond such opposition to the royal prerogative to warn Parliament itself) to leave all causes to be measured by the golden and straight mete-wand of the law, and not to the incertain and crooked cord of discretion.

Sir Edward Coke, *The Second Part of the Institutes of the Laws of England*, 1642. London, 1809, p. 47 Hayek, *supra*, at p. 168, fn#45 & 46, p. 463

(c) James Harrington, 1656:

the art whereby a civil society is instituted and preserved upon the foundations of common rights and interest . . . [is], to follow Aristotle and Livy, the empire of laws not of men.

James Harrington, *Oceana*, 1656 Hayek, *supra*, at p. 166, fn#30, p. 462

(d) "Declaration of Parliament Assembled at Westminster" January, 1660:

There being nothing more essential to the freedom of a state, than that the people should be governed by the laws, and that justice be administered by such only as are accountable for maladministration, it is hereby further declared that all proceedings touching the lives, liberties and estates of all the free people of this commonwealth, shall be according to the laws of the land, and that the Parliament will not meddle with ordinary administration, or the executive part of the law: it being the principle [sic] part of this, as it hath been of all former Parliaments, to provide for the freedom of the people against arbitrariness in government. Hayek, *supra*, at, p. 169.

(e) Matthew Hale, 1673:

To avoid that great uncertainty in the application of reason by particular person to particular instances; and so to the end that men might not be under the unknown arbitrary uncertain reason of particular person, has been the prime reason, that the wiser the sort of the world have in all ages agreed upon some certain laws and rules and methods of administration of common justice, and these to be as particular and certain as could well be thought of.

Sir Matthew Hale's Criticism of Hobbes Dialogue on the Common Laws

W.S. Holdsworth, *A History of the English Law*, London, 1924, V, p. 503 Hayek, *supra*, at fn#61, p. 465)

(f) Algernon Sydney, 1683:

That which is not just, is not Law; and that which is not Law, ought not to be obeyed. I:2:5

[T]hey could not . . . lay more approved foundations, than, that man is naturally free; that he cannot be justly deprived of that liberty without cause; and that he does not resign it, or any part of it, unless it be in consideration of a greater good, which he proposes to himself. I:2:5

The legislative power is always arbitrary, and not to be trusted in the hands of any who are not bound to obey the laws they make. III:45:455.

Algernon Sidney, *Discourses Concerning Government*, ed. Thomas West, Indianapolis, Ind.: Liberty Classics, 1990

74. The Rule of Law was well acknowledged when the Glorious Revolution proclaimed the *English Declaration of Rights*:

(a) Gilbert Burnet, 1688:

The degrees of all civil authority, are to be taken either from express laws, immemorial customs, or from particular oaths, ... ; this being still to be laid down as a principle, that, in all disputes between power and liberty, power must always be proved, but liberty proves itself; the one founded upon positive law, and the other upon the law of nature.

The chief design of our whole law, and the several rules of our constitution, is to secure and maintain our liberty.

Gilbert Burnet, *Inquiry into the Measures of Submission to the Supreme Authority* (1688) Quoted in *Harleian Miscellany*, London, 1808, I, p. 446-7
Hayek, *supra*, at fn#59, p. 464-5

(b) John Locke, 1690:

Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a

liberty to follow my own will in all things, where that rule prescribes not: and not to be subject to the inconstant, uncertain, arbitrary will of another man. (and not) irregular and uncertain exercise of the power ... whoever has the legislative or supreme power of any commonwealth is bound to govern by established standing laws promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by those laws; and to employ the forces of the community at home only in the execution of such laws. (Even the legislature has no) absolute arbitrary power, ... cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice, and decide the rights of the subject by promulgated standing laws, and known authorized judges, (while the) supreme executor of the law ... has no will, no power, but that of the law.

John Locke, *Second Treatise on Civil Government*, ed. J. W. Gough, Oxford, 1947, sec. 22, p. 13 ff Hayek, *supra*, at p. 170, fn#61-7, p. 465

75. And the Rule of Law was well understood at the time when England had well-established colonies in North America:

(a) David Hume, 1762 (regarding the abolition of the Star Chamber):

But the parliament justly thought, that the King was too eminent a magistrate to be trusted with discretionary power, which he might so easily turn to the destruction of liberty. And in the event it has been found, that, though some inconveniences arise from the maxim of adhering strictly to law, yet the advantages so much overbalance them, as should render the English forever grateful to the memory of their ancestors, who, after repeated contests, at last established that noble principle.

David Hume, *History of England*, V, London, 1762, p. 280 Hayek, *supra*, at fn# 83, p. 467

(b) Sir William Blackstone, 1765:

(Law is) a rule, not a transient sudden order from a superior or concerning a particular person; but something permanent, uniform and universal. ...

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the Crown, consists one main preservation of public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated from both the legislative and also form the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinion, and not by any fundamental principles of law; which though legislatures may depart from them, yet judges are bound to observe.

Sir William Blackstone, *Commentaries on the Laws of England*, London, 1765, I p. 44 & p. 269 Hayek, *supra*, at p.173 & fn#85, p. 468

(c) Edmond Burke, 1766:

It would be hard to point to any error more truly subversive of all order and beauty, of all the peace and happiness, of human society, than the position, that any body of men have a right to make what laws they please; or that Laws can derive any authority from their institutions merely and independent of the subject matter. No arguments of policy, reason of State, or preservation of the Constitution, can be pleaded in favor of such a practice. ... All human Law are, properly speaking, only declamatory; they may alter the mode of application, but have no power over the substance of original justice.

Edmond Burke, *Tracks Relative to the Laws against Popery in Ireland*, Works, IX, p. 350 Hayek, *supra*, at fn#6, p. 458

(d) Letters of Junius (1772) Letter 47:

The government of England is a government of law. We betray ourselves, we contradict the spirit of our laws, and we shake the whole system of English jurisprudence, whenever we in trust a discretionary power over the life, liberty, of fortune of the subject, to any man, or set of men whatsoever upon the presumption that it will not be abused. Hayek, *supra*, at fn#84, p. 468

76. The rule of Law was recognized by the international legal expert J. S. de Lolme, in 1784:

The most characteristic circumstance of the English government, and the most pointed proof that can be given of the true freedom which is the consequence of its fame (that in England) all the individual's actions are suppose to be lawful, till that law is pointed out which makes them otherwise. ... That foundation of that law principle, or doctrine, which confines the exertion of the power of the government to such cases only as expressed by a law in being ... it has appeared by the event, that the very extraordinary restrictions upon government authority we are alluding to, and its execution, are no more than what the intrinsic situation of things, and the strength of the constitution, can bear.

J. S. de Lolme, *The English Constitution*, 1784, (new ed. London, 1800), pp. 436-441 Hayek, *supra*, at fn#84, p. 467

77. As acknowledged by Lord Acton by the time of Canadian Confederation the Rule of Law was firmly established in British constitutional law:

I should have wished, in order that my address might not break off without a meaning or a moral, to relate by whom, and in what connection the true law of the formation of free states was recognized, and how that discovery, closely akin to those which, under the names of development, evolution, and continuity have given a new and deeper method to other sciences, solved the ancient problem between stability and change, and determined the authority of tradition on the progress of thought; how that theory, which Sir James Mackintosh expressed by saying that Constitutions are not made, but grow, the theory that custom and the national qualities of the governed, and not the will of the government, are the makers of the law,

Lord John Emerich Edward Dalberg Acton, *The History of Freedom in Christianity*, An Address Delivered to the Members of the Bridgnorth Institute, 28 May 1877

78. Thus A.V. Dicey in *Introduction to the Study of the Law of the Constitution* could say this of the meaning of the 'Rule of Law' in 1915:

The supremacy of the rule of law (is) the security given under the English constitution to the rights of individuals (p. 180)

When we say that the supremacy of the rule of law is a characteristic of the English constitution , we generally include under one expression at least three distinct though kindred conceptions. (p. 183)

(1) The rule of law means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even wide discretionary power on the part of government. Englishmen are ruled by law, and by the law alone; a man may be punished for a breach of the law, but he can be punished for nothing else. (p. 198)

(2) In the second, it means equality before the law, or the equal subjugation of all classes to the ordinary laws of the land administered by the ordinary Law Courts; the “rule of law’ in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens (p. 198)

(3) the “rule of law” may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of the constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the Courts. (p. 198)

We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; (p. 191)

Parliamentary declarations of the law such as the Petition of Right and the Bill of Rights have a certain affinity to judicial decisions. (p.191 fn)

The constitution being based on the rule of law, the suspension of the constitution, as so far as such a thing could be conceived possible, would mean noting less than a revolution. (p. 197)

Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 8th edition, MacMillan & Co., London, 1915 (first published 1885)

79. As Sir William Searle Holdsworth has stated in *A History of English Law*, the importance purpose of the Rule of Law has now been recognized:

As the result of all these consequences of the independence of the court, the doctrine of the rule or supremacy of the law was established in its modern form, and became perhaps the most distinctive, and certainly the most salutary, of all the characteristics of English constitutional law.

W. S. Holdsworth *A History of English Law*, X, London, 1938 p. 647 (Hayek, *supra*, at fn#73, p. 466

80. In a chapter of *The Constitution of Liberty* dedicated to *The Safeguards of Individual Liberty*, Friedrich A. Hayek outlines the essential conditions of liberty under the law:

1. Because the rule of law means that government must never coerce an individual except in the enforcement of a known rule, the rule of law constitutes a limitation on the powers of government, including the powers of the legislature. ... The rule of law, of course, presuppose complete legality, but this is not enough: if a law gave the government unlimited power to act as it pleased, all its action would be legal, but it certainly not be under the rule of law. The rule of law, therefore, is also more than constitutionalism: it requires that all laws conform to certain principles. P. 205

From the fact that the rule of law is a limitation upon the legislature, it follows that it cannot be law in the same sense as the law passed by the legislator. ... The

rule of law is therefore not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine p.206

The rule of law restricts government only in its coercive activities.

The chief means of coercion at the disposal of government is punishment. Under the rule of law, government can infringe a person's protected sphere only as a punishment for breaking an announced general rule. The principle "nullum crimen, nulla poena sine lege" is therefore the most important consequence of the ideal. {*Nullum crimen, nulla poena sine praevia lege poenali* (Latin, *lit.* "No crime, no punishment without a previous penal law")}

2. The rule of law presupposes a very definite conception of what is meant by law and that not every enactment of the legislative authority is a law in this sense. ... What distinguishes a free from an unfree society is that in the former each individual has a recognized private sphere clearly distinct from the public sphere and the private individual cannot be ordered about but is expected to obey the rules which are equally applicable to all. P. 207/8

3. The second chief attribute which must be required of true law is that they be known and certain. P. 208

4. The third requirement of true law is equality. ...

It is often not recognized that general and equal laws provide the most effective protection against infringement of individual liberty, this is mainly due to the habit of tactically exempting the state and its agents from them and of assuming that the government has the power to grant exemptions to individuals. The ideal of the rule of law requires that the state either enforce the law upon others – and that be its only monopoly – or act under the same law and therefore be limited in the same manner as any private person. It is this fact that all rules apply equally to all, including those who govern, which makes it improbable that any oppressive rules will be adopted. P.210

5. ... The principle of the separation of powers must not be interpreted to mean that in its dealing with the private citizen the administration is not always subject to the rules laid down by the legislature and applied by independent courts. The assertion of such a power is the very antithesis of the rule of law. ...

“Administrative Power over Persons and Property” cannot be among them. The rule of law requires that the executive in its coercive action be bound by the rules which prescribe not only when and where it may be use coercion but also in what manner it can do so. The only way in which this can be ensured is to make all its action of this kind subject to judicial review. P.211

6. While in all civilized countries there exists some provision for an appeal to courts against administrative decisions, this often refers only to the question as to whether an authority had a right to do what it did. ... However, if the law said that every thing a certain authority did was legal, it could not be restrained by a court from doing anything. What is required under the rule of law is that a court should have the power to decide whether the law provided for a particular action than an authority had taken. In other words, in all instances where administrative action interferes with the private individual, the courts must have the power to decide not only whether a particular action as *intra vires* or *ultra vires* but whether the substance of the administrative decision was such as the law demanded. P. 214

8. ... If bills of rights are to remain in any way meaningful, it must be recognized early that their intention was certainly to protect the individual against all vital infringements of his liberty and that therefore they must be presumed to contain a general clause protecting against the government’s interference those immunities which individuals in fact have enjoyed in the past. p.216

10. We have concluded the enumeration of the essential factors which together make up the rule of law, without considering the procedural safeguards such as habeas corpus, trial by jury, and so on, which in the Anglo-Saxon countries appear to most people as the chief foundations of their liberty. It is not understood that they presuppose for their effectiveness the acceptance of the rule

of law as here defined and that, without it, all procedural safeguards would be valueless.

True, it is probably the reverence of these procedural safeguards that has enabled the English-speaking world to preserve the medieval conception of the rule of law over men. Yet this is no proof that liberty will be preserved if the basic belief in the abstract rules which bind all authority in their action is shaken.

Judicial forms are intended to insure that decisions will be made according to rules and not according to the desirability of particular ends or values.

They are designed to make the law prevail, but they are powerless to protect justice where the law deliberately leaves the decision to the discretion of authority. It is only where the law decides – and this means only where independent courts have the last word – that the procedural safeguards are safeguards of liberty.

81. In emphasizing the importance of the rule of law Hayek concludes:

To use the trappings of judicial form where the essential conditions for a judicial decision are absent, or to give judges power to decide issues which cannot be decided by the application of rules, can have no effect but to destroy the respect of them even where they deserve it. (p. 218 – 219) Hayek, *supra*

82. In 1884 regarding the rule of law in American legislation, the US Supreme Court said:

It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, 'the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial,' so 'that every citizen shall [110 U.S. 516, 536] hold his life, liberty, property, and immunities under the protection of the general rules which govern society,' and thus

excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial, and arbitrary exertions of power under the forms of legislation.

Arbitrary (sic) power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of the governments, both state and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions.

The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government.

U.S. Supreme Court, HURTADO v. PEOPLE OF STATE OF CALIFORNIA, 110 U.S. 516, (1884) 110 U.S. 516 (Book of Authorities, Tab 16)

83. This universal principle of the rule of law protecting due process transferred directly to the Republic of the Philippines, where their Supreme Court in Manila, in *Azul vs. Castro*,⁹ said:

From the earliest inception of institutional government in our country, the concepts of notice and hearing have been fundamental. A fair and enlightened system of justice would be impossible without the right to notice and to be heard. The emphasis on substantive due process and other recent ramifications of the due process clause sometimes leads bench and bar to overlook or forget that due process was initially concerned with fair procedure. Every law student early learns in law school definition submitted by counsel Mr. Webster in *Trustees of Dartmouth College v. Woodward* (4 Wheat. 518) that due process is the equivalent of law of the land which means "The general law; a law which hears

before it condemns, which proceeding upon inquiry and renders judgment only after trial ... that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.

Republic of the Philippines Supreme Court Manila, SECOND DIVISION, G.R. No. L-33237 April 15, 1988, GREGORIO T. CRESPO, in His Capacity as Mayor of Cabiao, Nueva Ecija, petitioner, vs. PROVINCIAL BOARD OF NUEVA ECIJA and PEDRO T. WYCOCO, respondents. (Book of Authorities, Tab 17)

84. The 1955 *Act of Athens* emphasizes the international view of the Rule of Law as supporting an individual's Right to Liberty:

We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all,

85. Specifically, *the Act of Athens* specified:

3. Judges should be guided by the Rule of Law, protect and enforce it without fear or favour and resist any encroachments by governments or political parties on their independence as judges. (Book of Authorities, Tab 18)

86. Thus the Rule of Law would protect the individual's "true, ancient, and indubitable" Rights – the Right to a fair trial before a court may order the involuntarily forfeiture of an individual's most vital personal property.

D. Separation of Powers – An Independent Judiciary

87. Along with the Rule of Law, Dicey & Hayek consider the separation of powers with an independent judiciary as one of the mainstays of the protection of our basic liberties.

88. In *Reference re Remuneration of Judges of the Provincial Court (P.E.I.)*, [1997] 3 S.C.R. 3 the Supreme Court upheld and affirmed the importance and the necessity of an independent court system to review legislative laws – (Book of Authorities, Tab 19).

89. Discussing judicial independence former Chief Justice Lamer explained:

(7)... Litigation, and especially litigation before this Court, is a last resort for parties who cannot agree about their legal rights and responsibilities. It is a very serious business.

90. Interestingly, for such an “serious business”:

(83) ... judicial independence is at root an unwritten constitutional principle, in the sense that it is exterior to the particular sections of the Constitution Acts.

91. Germane to our discussion, the “root” of judicial independence relies on the existence of a principle:

whose origins can be traced to the Act of Settlement of 1701, (and) is recognized and affirmed by the preamble to the Constitution Act, 1867.

92. In defending the existence of “unwritten constitutional principles” the former Chief Justice showed that:

(109) ... the express provisions of the Constitution Act, 1867 and the Charter are not an exhaustive written code for the protection of judicial independence in Canada. Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the Constitution Act, 1867.

93. The former Chief Justice declared that “unwritten constitutional principles are exterior to the Constitution” noting that:

(a) reference must be made to a deeper set of unwritten understanding not in the Constitution (paragraph 89),

(b) unwritten principles can be “constitutionalized” (paragraph 90),

(c) the list of constitutional documents is “not exhaustive” (paragraph 91),

(d) the Canadian Constitution does not consist of a single set of documents (paragraph 92),

94. The former Chief Justice then demonstrated how many very important and vital aspects of our constitutional lives depend upon “Unwritten Principles” found in the preamble:

(a) the preamble explains the existence of the unwritten rules (paragraph 94),

(b) the preamble gives the underlying logic of the Constitution the force of law (paragraph 95),

(c) Canadian constitutional democracy should be true to its (British) heritage (paragraph 96),

(d) the Canadian doctrine of full faith and credit comes from the preamble (paragraph 97),

(e) the preamble explains the doctrine of paramountcy (paragraph 98),

(f) the preamble gives rise to elected assemblies (paragraph 100),

(g) the legislative privileges of the provinces and the Senate are protected by the preamble (paragraph 101), and

(h) freedom of political speech is protected by way of the preamble (paragraph 102).

(i) based upon the preamble, the Supreme Court fashioned “an implied bill of rights” (paragraph 103)

95. Significantly Lamer C.J. referred specifically to *Reference re Manitoba Language Rights*, 1985 CanLII 33 (S.C.C.), [1985] 1 S.C.R. 721, p. 749, *supra*, in this discussion of

the “Unwritten Basis of Judicial Independence” where at paragraph 99 he noted:

That order, as this Court held ... is "an actual order of positive laws", an idea that is embraced by the notion of the rule of law. In that case, the Court explicitly relied on the preamble to the Constitution Act, 1867, as one basis for holding that the rule of law was a fundamental principle of the Canadian Constitution.

96. The main point of the Chief Justice Lamer’s analysis of the importance of the preamble seems to be to show how the Supreme Court has used the preamble to introduce unwritten principles to defend some of Canadians most basic democratic values - values which are not protected by positive law.

97. We respectfully submit that “the castle” of our Canadian Constitution includes the *Magna Carta*, the Common Law, the *Petition of Rights*, and the *English Declaration of Rights*, 1689, and thus protects our personal property from involuntary forfeiture without trial and conviction.

E. the Supremacy of God - Natural Law

98. As noted supra, along with the supremacy of the Rule of Law, the Constitution recognizes the supremacy of God.

99. “God” is certainly an integral part of our British constitutional heritage, e.g.;

(a) Algernon Sydney, 1683:

[T]he principle of liberty in which God created us . . . includes the chief advantages of the life we enjoy, I:2:5

The Liberty of a people is the gift of God and nature. III:33:406.

Algernon Sidney, *Discourses Concerning Government*, ed. Thomas West, Indianapolis, Ind.: Liberty Classics, 1990

(b) John Locke, 1690:

Any single man must judge for himself whether circumstances warrant obedience or resistance to the commands of the civil magistrate; we are all qualified, entitled, and morally obliged to evaluate the conduct of our rulers. This political judgment, moreover, is not simply or primarily a right, but like self-preservation, a duty to God. As such it is a judgment that men cannot part with according to the God of Nature. It is the first and foremost of our inalienable rights without which we can preserve no other.

For the legislative acts against the trust reposed in them when they endeavour to invade the property of the subject, and to make themselves, or any part of the community, masters or arbitrary disposers of the lives, liberties, or fortunes of the people.

John Locke, *Two Treatises of Government*, (1680-1690)

http://www.cufoa.ca/articles/arnes/arnes_17_sept_2007.html

(c) William Blackstone, 1765:

The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature: being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endued him with the faculty of free will.

William Blackstone, *Commentaries on the Laws of England*, (1765 - 1769)

100. In Halsbury's *The Laws of England* helps to explain the significance of God in the British Constitution. The Holy Bible is mentioned as being:

presented [to the sovereign] as the most valuable thing on earth, and signifies wisdom, royal law, and the lively oracles of God;

And at the coronation the Sovereign is presented the orb which signifies: that the whole world is subject to the empire of Christ.

Thus the Constitution of the United Kingdom clearly recognizes the preeminence of God and the Holy Scripture.

The Laws of England, 3rd ed, Lord Simonds, ed, Vol. 7, Butterworth , London, 1954 p.204 (Book of Authorities, Tab 20)

101. Perhaps in our pluralistic Canadian society, “the supremacy of God” can best be understood as Natural Law.

102. Yet in *Taking Rights Seriously*, Ronald Dworkin refers to the theory of legal positivism as the “Ruling Theory of Law”, however, he notes that all the leading proponents of this theory - Jeremy Bentham, John Austin, and H.L.A. Hart - regard Natural Law as anathema.

Ronald Dworkin, *Taking Rights Seriously*, Harvard Univ. Press, Cambridge, Mass 1978

103. In *Essays on Bentham, Jurisprudence and Political Theory*, H.L.A. Hart notes that Jeremy Bentham refers to Natural Rights as “Bawling upon paper” and “nonsense upon stilts” and:

The notion of a right not created by law is a contradiction like a ‘round square;’, ‘a son that never had a father’, ‘a species of cold heat’, ‘a sort of dry moisture’, ‘a kind of resplendent darkness’.

fn #39 Anarchial Fallacies, in Works II 494, FN#2 Anarchial Fallacies, Works II 501 FN 18 Economic Writing I 334-5, quoted by H.L.A. Hart , *Essays on Bentham, Jurisprudence and Political Theory*, Clarendon Press, Oxford 1982 (reprinted 2001),

104. In a summary statement, H.L.A. Hart quotes Bentham as declaring:

Rights are the fruits of the law and of the law alone; there are no rights without law – no rights contrary to law - no rights anterior to law.’

Works III 221, Hart, supra, FN#16

105. In significant contrast to this negative view of Natural Rights, A.P. d'Entrevés in *Natural Law, An Introduction to Legal Philosophy*, regarding the provisions of the post-World War II Nürnberg Tribunal which sent many former German officials to the gallows, observes that their death sentences:

were based, or purported to be based, on existing or 'positive' international law. ... The rejection of the defense of superior orders ... is nothing less than the old doctrine that the validity of laws does not depend on their 'positiveness', and that it is the duty of the individual to pass judgment on laws before he obeys them.

A.P. d'Entrevés, *Natural Law, An Introduction to Legal Philosophy*, Transaction Publishers, London, 1951, pp. 106 – 107

106. In approval of the death sentences of these Nazi war criminals, the Report of the International Law Commission of the General Assembly noted:

The fact that a person acted pursuant to an order of his Government or a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, with commentaries, 1950 (Book of Authorities, Tab 21)

107. And much more recently Canadian Supreme Court Chief Justice McLachlin offered this observation of Natural Law in an address on "Unwritten Constitutional Principles":

Cast in the language of religion, early natural law theories saw the manifestation of the divine in something that became the foundation of the Western world's concept of itself: human rationality.

Beverley McLachlin, CJ, Supreme Court of Canada, "Unwritten Constitutional Principles; What is Going On?", Given at the 2005 Lord Cooke Lecture, Wellington, New Zealand, 01 December 2005 (Book of Authorities, Tab 22)

108. In her address Chief Justice McLachlin approvingly quoted M.D. Walters:

Unwritten fundamental laws is regarded as an assertion of the supremacy of natural law, right reason or universal principles of political morality and human

rights over legislation, it is part of a rich intellectual heritage that had informed common law thinking from medieval times through the English and American revolutionary ages, and into the high Victorian era of empire out of which Canada's written constitution emerged.

M.D. Walters "*The Common Law Constitution in Canada*" (2004), 51 U.T.L.J. 91 at 136 quoted by McLachlin, CJ

109. Significantly, A.P. d'Entrevés says, "The undying spirit of Natural Law can never be extinguished":

If it is denied entry into the body of positive law, it flutters around the room like a ghost and threatens to turn into a vampire which sucks the blood from the body of the law.

Otto Friedrich von Gierke, *Natural Law and the Theory of Society*, I, p. 226

Quoted by A.P. d'Entrevés, *supra* p. 108

110. As Chief Justice McLachlin declared:

judges have a duty to insist that the legislative and executive branches of government conform to certain established and fundamental norms

McLachlin *supra*

111. Therefore, we believe this Honourable Court has a duty to recognize our Natural Law Right to a trial of our peers before the Court may order the involuntary forfeiture of our most vital individual private property.

F. Other Rights – Charter s. 26

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. (Book of Authorities, Tab 14)

112. Property is not mentioned in the *Canadian Charter of Rights and Freedoms*, *supra*, however the existence of "other rights" is very clearly acknowledged.

113. The Quebec *Charter of human rights and freedoms* recognizes the individual's right to private property:

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law. 1975, c. 6, s. 6.

7. A person's home is inviolable. 1975, c. 6, s. 7.

8. No one may enter upon the property of another or take anything therefrom without his express or implied consent. (Book of Authorities, Tab 23)

114. As noted in *Leiriao v. Val-Bélaire* (Town), [1991] 3 S.C.R. 349, property rights are recognized in Canadian constitutional law:

In Quebec, no one can be deprived of property unless it is in the public interest and for just compensation, according to arts. 406 and 407 of the *Civil Code of Lower Canada*:

(406) Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations.

(407) No one can be compelled to give up his property, except for public utility and in consideration of a just indemnity previously paid.

These provisions are buttressed by s. 6 of the Quebec *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12:

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

It is significant that the right to peaceable enjoyment of property is declared not only in the *Civil Code*, but also in the Quebec *Charter*. Both the legislator and society as a whole recognise the truth of Edward Coke's adage that "a man's house is his castle, *et domus sua cuique tutissimum refugium* [and one's home is the safest refuge to everyone]" (3 Inst., at p. 161). (Book of Authorities, Tab 24)

115. Furthermore in *Leiriao* the Court also noted:

In *The Interpretation of Legislation in Canada* (2nd ed 1991), P. - A. Côté writes at pp. 401-2:

“Anglo- Canadian jurisprudence has traditionally recognized, as a fundamental freedom, the right of the individual to the enjoyment of property and the right not to be deprived thereof, or any interest therein, save by due process of law". To this right corresponds a principle of interpretation: encroachments on the enjoyment of property should be interpreted rigorously and strictly.

116. Significantly, on 06 March 2010, the Saskatchewan Party Convention adopted a Protection of Property Resolution as Saskatchewan Party Policy:

THEREFORE BE IT RESOLVED THAT the Government of Saskatchewan shall amend the current *Saskatchewan Human Rights Code* to enshrine the individual’s Right to own property. (Book of Authorities, Tab 25)

117. Also, the existence of other Rights are recognized by *Charter* s. 26. As noted in the *Canadian Bill of Rights, supra*, an individual may not be deprived of individual Rights “except by due process of law”.

118. Thus these legal protections of property and “due process of law” should negate *Criminal Code* section 117.03.

Conclusion

You do not examine legislation in light of the benefits it will convey if properly administered, but in light of the wrongs it would do and the harms it would cause if improperly administered.

- Lyndon B. Johnson

119. Base upon an individual's Liberties being protected by:

- a) the *Magna Carta*,
- b) the Common Law,
- c) the *Petition of Rights*, 1628,
- d) the *English Declaration of Rights*, 1689,
- e) the *British North America Act*, 1867,
- f) the *Canadian Bill of Rights*, 1960,
- g) the *Canadian Charter of Rights and Freedoms*, 1982,
- h) the Rule of Law,
- i) the separation of powers, and,
- j) the Supremacy of God or Natural Law,

I hereby respectfully submit that before this Honourable Court may issue of an order for the involuntary forfeiture of my individual property, I should have the Right to a trial by a jury of my peers.

120. I respectfully request that this Honourable Court:

- 1. declare *Criminal Code* section 117.03 *ultra vires* Parliament and of no force and effect in Canada, and
- 2. order the RCMP to return my shotgun.

Respectfully submitted to the Provincial Court of Saskatchewan in Humboldt,
Saskatchewan, 20 March 2010,

(signed)

Edward B. Hudson DVM, MS
402 Skeena Court
Saskatoon, Saskatchewan S7K 4H2
(306) 242-2379

Appendix A

2003 CUFOA Demonstrations

1. Ottawa, New Year's Day 2003 Parliament Hill*
2. Montreal, 03 January 2003
3. Saskatoon, 21 January 2003, Saskatoon Police Headquarters*
4. Ottawa International Airport, 29 January 2003*
5. Trois-Rivières, Quebec, Courthouse 03 March 2003
6. Shawinigan, Quebec, Prime Minister's Constituency Office, 03 March 2003
7. Edmonton, 28 August 2003, Chiefs of Police Association
8. Sea-to-Sea Freedom Rally: 30 June to 02 August 2003:
Members hand-delivered affidavits declaring possession of firearms
without a licence to each provincial Attorney General
Victoria, Edmonton, Regina, Winnipeg, Toronto, Quebec City,
Fredericton, Charlottetown, St. John's, Halifax.
Also demonstrated in Hunter River, P.E.I.,
Miramichi, New Brunswick, and Ottawa.
9. Demonstrations in Rural Areas of Saskatchewan –
Biggar 13 September 2003*
Wilkie, 16 September 2003
Wilkie, 24 September 2003*
Carmel, 30 September 2003*
Carmel, 07 October 2003*
Davidson, 10 October 2003*

* *equals* arrest while demonstrating or confiscations of firearms –see Appendix B

Appendix B

Arrests or Confiscations while Demonstrating

Ottawa, New Year's Day 2003 Parliament Hill:

RCMP arrest Jim Trunbull and Edward Hudson; seize and confiscate firearm receiver, hold each two hours in jail,
charge with CC s. 89. (1)

Every person commits an offence who, without lawful excuse, carries a weapon, a prohibited device or any ammunition or prohibited ammunition while the person is attending or is on the way to attend a public meeting.

A year later prosecutor stay charges; RCMP still hold firearm receiver.

Saskatoon, 21 January 2003, Saskatoon Police Headquarters:

City Police arrest Joe Gingrich and Edward Hudson; seize and confiscate firearm receiver, hold each an hour in jail,
charge with CC s. 129.

Every one who

(a) resists or willfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

A year later prosecutor stay charges; Saskatoon City Police still hold firearm receiver.

Ottawa International Airport, 29 January 2003:

Ottawa City Police arrest Edward Hudson; seize and confiscate two firearms and an airgun, hold him overnight in jail,
charge with CC s. 129.

Every one who

(a) resists or willfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

A year later prosecutor stay the charges; Ottawa City Police still hold firearms.

Biggar, Saskatchewan, 13 September 2003:

RCMP seize and confiscate Jack Wilson's firearm, issue Notice to Appear, charges dropped, RCMP still hold firearm.

Wilkie, Saskatchewan, 24 September 2003:

RCMP seize and confiscate Jack Wilson's firearm; RCMP still hold firearm.

Carmel, Saskatchewan, 30 September 2003:

RCMP seize and confiscate Edward Hudson's firearm; RCMP return firearm.

Carmel, Saskatchewan, 07 October 2003:

RCMP seize and confiscate Edward Hudson's firearm; RCMP still hold firearm.

Davidson, Saskatchewan, 10 October 2003:

RCMP seize and confiscate Edward Hudson's firearm; RCMP requests destruction order from Provincial Court firearm; Edward Hudson contests destruction order in Provincial Court, Court of Queen's Bench, and Saskatchewan Court of Appeal, application for Leave to Appeal to Supreme Court of Canada denied.

Appendix C

Canadian Unlicensed Firearms Owners Association
402 Skeena Crt Saskatoon, Saskatchewan S7K 4H2
1-306-242-2379 1-306-249-2359 fax
edwardhudson@shaw.ca www.cufoa.ca

The Honourable Wayne Easter, P.C., MP
Solicitor General of Canada
House of Commons, Parliament Buildings
Ottawa, Ontario K1A 0A6
Easter.W@parl.gc.ca

Monday, 29 September 2003

Dear Mr Easter,

Re: Formal Notice: Hunting with an unregistered firearm and without a firearms possession license

We hereby officially inform you that members of CUFOA will again be in the field hunting migratory game birds with an unregistered firearm and without a firearms possession license this Tuesday, 30 September 2003.

We take this action deliberately. We are intentionally contravening the Firearms Act of 1995, purposefully being in open, public noncompliance.

The Firearms Act destroys our Canadian heritage and culture. This unjust law violates the Canadian Charter of Rights and Freedoms, specifically our rights to privacy, security of person, presumption of innocence, association, representation, mobility, and freedom from unreasonable search and seizure.

We will never submit to this unjust law. We will never surrender our Liberty to a law which is based upon a lie; a law which can never deliver the false promise of increased security. We demand the opportunity to have this unjust law declared unconstitutional in court; to have a full public discussion of all the relevant issues.

We will be hunting on privately owned farm land located near Carmel, Saskatchewan, six kilometers south of Highway #5 on the east side of the grid road in a canola stubble field near the old renovated church which is now the North Star Pottery. We will hunt on this site from 10 a.m. until noon. We will fax a copy of this notice of our plans to the RCMP Detachment in Humboldt.

We will be hunting with an unregistered doubled barrel, 12 gauge shotgun, no serial number. While my old FAC may still technically be on record at the CFC, I possess no license as I destroyed the last remnant of my FAC on Parliament Hill on New Year's Day at the CUFOA Liberty Demonstration. I have never registered any of my firearms with the Canadian Firearms Center.

As we have consistently demonstrated in our previous twenty public non-compliance actions all across Canada, everything we do will be peaceful and non-violent.

Mr Easter, your government has wasted enough time and money on this futile exercise. Demonstrate your common sense. Protect our Canadian heritage of responsible firearms ownership and use.

Repeal this useless, unjust, unconstitutional law.

Sincerely,

Edward B. Hudson DVM, MS
Secretary, CUFOA

CC: Prime Minister Jean Chrétien
RCMP Detachment, Humboldt, SK

Garry Breitkreuz, MP

Appendix D

Canadian Unlicensed Firearms Owners Association
402 Skeena Crt Saskatoon, Saskatchewan S7K 4H2
1-306-242-2379 1-306-249-2359 fax
edwardhudson@shaw.ca www.cufoa.ca

The Honourable Wayne Easter, P.C., MP
Solicitor General of Canada
House of Commons, Parliament Buildings
Ottawa, Ontario K1A 0A6
Easter.W@parl.gc.ca

Monday, 06 October 2003

Dear Mr Easter,

Formal Notice: Hunting with an unregistered firearm and without a firearms possession license

We hereby officially inform you that members of CUFOA will again be in the field hunting migratory game birds with an unregistered firearm and without a firearms possession license this Tuesday, 07 October 2003.

We take this action deliberately. We are intentionally contravening the Firearms Act of 1995, purposefully being in open, public noncompliance.

The Firearms Act destroys our Canadian heritage and culture. This unjust law violates the Canadian Charter of Rights and Freedoms, specifically our rights to privacy, security of person, presumption of innocence, association, representation, mobility, and freedom from unreasonable search and seizure.

We will never submit to this unjust law. We will never surrender our Liberty to a law which is based upon a lie; a law which can never deliver the false promise of increased security. We demand the opportunity to have this unjust law declared unconstitutional in court; to have a full public discussion of all the relevant issues.

We will once again be hunting on privately owned farm land located near Carmel, Saskatchewan, six kilometers south of Highway #5 on the east side of the grid road in a canola stubble field near the old renovated church which is now the North Star Pottery. We will hunt on this site from 10 a.m. until noon. We will fax a copy of this notice of our plans to the RCMP Detachment in Humboldt.

We will be hunting with an unregistered Ithaca 12 gauge pump shotgun, no serial number. While my old FAC may still technically be on record at the CFC, I possess no license as I destroyed the last remnant of my FAC on Parliament Hill on New Year's Day at the CUFOA Liberty Demonstration. I have never registered any of my firearms with the Canadian Firearms Center.

As we have consistently demonstrated in our previous twenty-one public non-compliance actions all across Canada, everything we do will be peaceful and non-violent.

Mr Easter, your government has wasted enough time and money on this futile exercise. Demonstrate your common sense. Protect our Canadian heritage of responsible firearms ownership and use.

Repeal this useless, unjust, unconstitutional law.

Sincerely,

Edward B. Hudson DVM, MS
Secretary, CUFOA

CC: Prime Minister Jean Chrétien
RCMP Detachment, Humboldt, SK

Garry Breitkreuz, MP

List of Authorities

Affidavits

Affidavit of B.W. Batrum

Authors

Acton, Lord John Emerich Edward Dalberg, *The History of Freedom in Christianity*, An Address Delivered to the Members of the Bridgnorth Institute, 28 May 1877
<http://www.mondopolitico.com/library/lordacton/freedominchristianity/freedominchristianity.htm>

Blackstone, William, *Commentaries on the Laws of England*, 1765
<http://www.lonang.com/exlibris/blackstone/>

Coke, Sir Edward, *Selected Writings of Sir Edward Coke*, vol. II [1606], ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). Vol. 2., Chapter 29
Criminal Code section 92(1)(a)
http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=912&chapter=61105&layout=html&Itemid=27

Coke, Sir Edward, 8 Co. Rep. 107a, 114a C.P. 1610
http://press-pubs.uchicago.edu/founders/documents/amendV_due_process1.html

d'Entreves, A.P., *Natural Law, An Introduction to Legal Philosophy*, Transaction Publishers, London, 1951

Dicey, Albert Venn, *Introduction to the Study of the Law of the Constitution*, 8th edition, MacMillan & Co., London, 1915 (first published 1885)

Dworkin, Ronald, *Taking Rights Seriously*, Harvard Univ. Press, Cambridge, Mass 1978

Halsbury's *The Laws of England*, 3rd ed, Lord Simonds, ed Vol. 7, Butterworth , London

Hayek, Friedrich A., *The Constitution of Liberty*, University of Chicago Press, Chicago, 1960

Locke, John, *Second Treatise on Civil Government*, ed. J. W. Gough, Oxford, 1947,
<http://www.constitution.org/jl/2ndtr18.htm>

Beverley McLachlin, CJ, Supreme Court of Canada, "Unwritten Constitutional Principles; What is Going On?", Given at the 2005 Lord Cooke Lecture, Wellington, New Zealand, 01 December 2005
<http://www.scc-csc.gc.ca/court-cour/ju/spe-dis/bm05-12-01-eng.asp>

Cases

Crespo vs. Provincial Board of Nueva Ecija, Republic of the Philippines Supreme Court Manila, SECOND DIVISION, G.R. No. L-33237 April 15, 1988,
http://www.lawphil.net/judjuris/juri1988/apr1988/gr_1_33237_1988.html

Hurtado v. People of the State of California, U.S. Supreme Court, 110 U.S. 516, (1884) 110 U.S. 516
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=110&invol=516>

Leiriao v. Val-Bélair (Town), [1991] 3 S.C.R. 349
<http://www.canlii.org/en/ca/scc/doc/1991/1991canlii46/1991canlii46.html>

R. v. Hudson, 2007 SKCA 82 20070605
<http://www.canlii.org/en/sk/skca/doc/2007/2007skca82/2007skca82.html>

R. v. Hudson, 2009 SKCA, 20090921 Decision of Chief Justice Klebuc
<http://www.canlii.org/en/sk/skca/doc/2009/2009skca108/2009skca108.html>
<http://www.canlii.org/en/sk/skca/doc/2009/2009skca108/2009skca108.pdf>

R. v. Lemieux, 2006 SKQB 239
<http://www.canlii.org/en/sk/skqb/doc/2006/2006skqb239/2006skqb239.html>

R. v. Lemieux, 2006 SKCA 119
<http://www.canlii.org/en/sk/skqb/doc/2006/2006skqb239/2006skqb239.html>

Reference re Firearms Act (Can.), 2000 SCC 31, [2000] 1 S.C.R. 783
<http://www.canlii.org/en/ca/scc/doc/2000/2000scc31/2000scc31.html>

Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3
<http://csc.lexum.umontreal.ca/en/1997/1997scr3-3/1997scr3-3.html>

Re Manitoba Language Rights, [1985] 1 S.C.R. 721, 1985
<http://www.canlii.org/ca/cas/scc/1985/1985scc32.html>

Constitutional Documents

The *Canadian Bill of Rights*, 1960, c. 44
<http://laws.justice.gc.ca/en/C-12.3/>

The *Canadian Charter of Rights and Freedoms*
http://laws.justice.gc.ca/en/const/9.html#anchors:7-bo-ga:l_I

The *Magna Carta*
2007 http://www.archives.gov/exhibits/featured_documents/magna_carta/translation.html

The *English Declaration of Rights*, 1689
http://avalon.law.yale.edu/17th_century/england.asp

The *Petition of Rights*, 1628
<http://www.constitution.org/eng/petright.htm>

The Quebec *Charter of human rights and freedoms*
<http://www.canlii.org/qc/laws/sta/c-12/20050513/whole.html>

Saskatchewan Party Policy
<http://www.saskparty.com/assets/pdf/2010%20Convention%20Passed%20Resolutions.pdf>

International Documents

the Act of Athens 1955

Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal, with commentaries, 1950
http://untreaty.un.org/ilc/texts/instruments/english/commentaries/7_1_1950.pdf