IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL FOR
THE PROVINCE OF ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

DAVID EDWIN OAKES

Respondent

FACTUM OF THE APPELLANT

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PART I

STATEMENT OF FACTS

1. The Respondent was charged in an information that he unlawfully did, on or about the 17th day of December, 1981, in the City of London, have in his possession a narcotic, to wit: cannabis resin, for the purpose of trafficking, contrary to section 4(2) of the Narcotic Control Act.

2. On April 14, 1982, he elected trial by Magistrate without a jury and entered a plea of not guilty.

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3. On June 16, 1982, the trial commenced before His Honour Provincial Judge Walker at London. The evidence led by the Crown on the first phase of the trial established the following facts:

> On December 17, 1981, at 8:45 p.m., Constable Hatfield of the London Police Department observed the Respondent seated in the driver's seat of a Toyota Celica motor vehicle parked on the east side of the Barn Tavern, at 1310 Huron Street in London, Ontario. Constable Hatfield investigated the Respondent. The Respondent was searched, and eight one-gram vials of cannabis resin in the form of hashish oil were found in his front left pants pocket. The Respondent was arrested and transported to the London Police Department.
>
> At the police station, upon a further search of the Respondent, $619.45 were located.
>
> The Respondent was advised that he was being charged with the offence of possession of a narcotic for the purpose of trafficking. He replied, "If that's the way it is, then that's what I'll have to face". The Respondent further stated that he had originally purchased ten vials of hashish oil on December 16 1981, for $150.00, and that the oil was for his own use. He explained that the money was from a Workman's Compensation cheque.

4. The Respondent called no evidence on this phase of the trial, and was found in possession by the learned trial Judge.

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5. Following this finding, counsel for the Respondent argued that section 8 of the Narcotic Control Act violates the right to be presumed innocent found in section 11(d) of the Canadian Charter of Rights and Freedoms.

6. The learned trial Judge ruled that section 8 of the Narcotic Control Act is rendered inoperative by section 11(d) of the Charter, except where the Crown first leads evidence "upon which it could be concluded beyond a reasonable doubt that the purpose of the possession was to traffic".

7. Following this ruling, the learned trial Judge gave the Crown the opportunity to call further evidence. Crown counsel elected to call no further evidence, and the Respondent again called no evidence.

8. The learned trial Judge then acquitted the Respondent of the offence with which he was charged, but convicted him of the offence of possession of the narcotic only, stating that he was not satisfied beyond a reasonable doubt that the Respondent was in possession of the narcotic for the purpose of trafficking.

Agreed Statement of Facts, Case on Appeal, pages, 21 - 24

Decision of Judge Walker, Case on Appeal, pages 25 - 48

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9. An appeal by the Attorney General of Canada from the acquittal of the Respondent was dismissed by a five member panel of the Court of Appeal for Ontario in an unanimous judgment on February 2, 1983, on the ground that section 8 of the Narcotic Control Act was constitutionally invalid.

10 Reasons of Court of Appeal, Case on Appeal, page 6

10. By order made the 11th day of April, 1983, pursuant to Rule 32 of the Rules of the Supreme Court of Canada, the Chief Justice of Canada stated the following constitutional issue for the consideration of the Court:

> Is section 8 of the Narcotic Control Act inconsistent with Section 11(d) of the Canadian Charter of Rights and Freedoms, and thus of no force or effect?
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> Case on Appeal, pages 14, 15

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PART II

POINTS IN ISSUE

11. Is section 8 of the Narcotic Control Act inconsistent with section 11(d) of the Canadian Charter of Rights and Freedoms, and thus of no force or effect?

12. Is section 8 of the Narcotic Control Act such a reasonable limit on the right guaranteed by section 11(d) of the Canadian Charter of Rights and Freedoms as can be demonstrably justified in a free and democratic society?

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PART III

ARGUMENT

A. IS SECTION 8 OF THE NARCOTIC CONTROL ACT INCONSISTENT WITH SECTION 11(d) OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS AND THUS OF NO FORCE AND EFFECT?

13. It is submitted that section 8 of the Narcotic Control Act is not inconsistent with section 11(d) of the Canadian Charter of Rights and Freedoms (the Charter) and that the Court of Appeal for Ontario erred in law in concluding that it was.

(i) Reasons of the Court of Appeal for Ontario

14. In declaring section 8 of the Narcotic Control Act constitutionally invalid, as being inconsistent with section 11(d) of the Charter, the Court of Appeal for Ontario rested its conclusion upon two grounds:

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(a) that, as a matter of construction, there was a lack of a rational connection between the proved fact (possession) and the presumed fact (an intention to traffic), and

(b) that the section imposes upon an accused a burden of disproving the very essence of the offence.

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Reasons of Court of Appeal,
Case on Appeal, pages 96, 97

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(ii) Reasons given by other Provincial Appellate Courts for declaring section 8 of the Narcotic Control Act constitutionally invalid.

15. Appellate Courts in six other Provinces have considered the relationship between section 8 of the Narcotic Control Act and Section 11(d) of the Charter. Five of them have declared section 8 constitutionally invalid. The sixth, the Court of Appeal for British Columbia, declined to decide the issue.

16. In Regina v. Carroll (1983) 32 C.R. (3d) 235, the Prince Edward Island Supreme Court, in banco, declared section 8 constitutionally invalid on the ground that the section imposed upon an accused a persuasive, as contrasted with an evidentiary burden; and the imposition of such a limit was not justifiable under section 1 of the Charter.

17. In Regina v. Anson, unreported, February 18, 1983, the Court of Appeal for British Columbia declined to decide the issue which was presented in the context of an appeal from the denial of an application for prerogative remedies.

18. In Cook v. The Queen, unreported, March 16, 1983, the Appeal Division of the Nova Scotia Supreme Court declared the section constitutionally invalid on the ground

that it relieved the Crown of its "normal" burden of proof or shifted "the persuasive burden" to the accused and was not justifiable under section 1 of the Charter.

19. In O'Day v. The Queen, unreported, filed April 28, 1983, the Court of Appeal for New Brunswick following the decisions in Oakes, Carroll and Cook, declared the section constitutionally invalid.

20. In Regina v. Stanger et al, unreported, July 5, 1983, the Court of Appeal for Alberta, by a 2:1 majority, declared the section constitutionally invalid because it contains a presumption which is arbitrary and imposes a legal as contrasted with an evidentiary burden upon an accused. In a dissenting opinion, McClung J.A. concluded that section 8 was constitutionally valid.

21. In Landry v. The Queen, unreported, August 4, 1983, the Court of Appeal for Quebec, by a 2:1 majority, declared the section constitutionally invalid, following Oakes.

(iii) Decisions of Other Courts on the Relationship between Section 8 of the Narcotic Control Act and Section 11(d) of the Charter

22. In addition to the decisions mentioned in paragraphs 16 to 21 supra, the validity of section 8 of Narcotic Control Act has been considered in a number of cases since the proclamation of the Charter. These cases may conveniently be divided as follows:

(a) Cases where section 8 has been upheld:

(i) on the basis that R. v. Shelley and R. v. Appleby still apply:

R. v. Tardiff (unreported, Que. S.C., October 14, 1982)

R. v. Anson (1982), 68 C.C.C. (2d) 350 (B.C.Co.Ct.), [prerogative remedies denied, (1982), 1 C.C.C. (3d) 279 (B.C.S.C.)] aff'd by B.C.C.A. (unreported, February 18, 1983)

R. v. Green (unreported, B.C. Co. Ct., April 27, 1982)

R. v. Kinley (unreported, Man. Prov. Ct., September 10, 1982)

R. v. Gee and Bramwell (unreported, Alta. Q.B. May 20, 1982), rev'd. by Alta. C.A. (unreported July 5, 1983)

R. v. Terlecki (unreported, Man. Prov. Ct., October 22, 1982)

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R. v. Smith (unreported, N.B.Q.B. October 14, 1982)

(ii) on the basis of section 1 of the Charter:

R. v. Kehayes (unreported, N.S. Co. Ct., December 2, 1982)

R. v. Cranston (unreported, N.S.S.C., January 10, 1983) rev'd. June 7, 1983 (N.S.C.A.)

(iii) on the basis that section 8 merely places an evidentiary burden on the accused:

R. v. Therrien (1982), 67 C.C.C. (2d) 31 (Ont. Co. Ct.)

R. v. Fraser (1982), 68 C.C.C. (2d) 433 (Sask. Q.B.)

R. v. Kupczyniski (unreported, Ont. Co. Ct., June 23, 1982)

(b) Cases where section 8 has been upheld subject to a requirement that the Crown must first adduce some evidence of "trafficking":

R. v. Stanger (1982), 70 C.C.C. (2d) 247 (Alta. Q.B.), rev'd. Alta. C.A. (unreported July 5, 1983)

R. v. Buss (unreported, Ont. Co. Ct., October 6, 1982)

R. v. Smith (unreported, Nfld. Dist. Ct., December 23, 1982)

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(c) Cases where section 8 has been held to be in conflict with section 11(d) of the Charter:

R. v. Minardi 39 O.R. (2d) 464 (Ont. Co. Ct.)

R. v. Monette (unreported, Ont. Co. Ct., October 8, 1982)

R. v. Hay (No.1) (1982), 38 O.R. (2d) 4 (Ont. Dist. Ct.)

R. v. Mann (1982), 29 C.R. (3d) 264 (Man. Co. Ct.)

R. v. Carroll (1982), 70 C.C.C. (2d) 561 (P.E.I. Prov. Ct.), aff'd. (1983), 32 C.R. (3d) 235 (P.E.I. S.C. in banco)

R. v. Kevany (unreported, Ont. Co. Ct., September 30, 1982)

R. v. Mudford and Schott (1982), 40 O.R. (2d) 626 (Ont. Co. Ct.)

R. v. Lindsay (unreported, N.S.S.C., November 22, 1982)

R. v. McKenzie (unreported, N.B.Q.B., January 11, 1983)

23. It is submitted that the cases listed in paragraphs 22(b) and (c) were wrongly decided.

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(iv) Judicial Interpretaion of Section 8 of the Narcotic Control Act.

24. Section 8 of the Narcotic Control Act reads:

> In any prosecution for a violation of subsection 4(2), if the accused does not plead guilty, the trial shall proceed as if it were a prosecution for an offence under section 3, and after the close of the case for the prosecution and after the accused has had an opportunity to make full answer and defence, the court shall make a finding as to whether or not the accused was in possession of a narcotic contrary to section 3; if the court finds that the accused was not in possession of the narcotic contrary to section 3, he shall be acquitted but if the court finds that the accused was in possession of the narcotic contrary to section 3, he shall be given an opportunity of establishing that he was not in possession of the narcotic for the purpose of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to establish that the accused was in possession of the narcotic for the purpose of trafficking; if the accused establishes that he was not in possession of the narcotic for the purpose of trafficking, he shall be acquitted of the offence as charged but he shall be convicted of an offence under section 3 and sentenced accordingly; and if the accused fails to establish that he was not in possession of the narcotic for the purpose of trafficking, he shall be convicted of the offence as charged and sentenced accordingly.
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> Narcotic Control Act, R.S.C. 1970, C.N-1, s.8

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25. Enacted in 1961 by Statutes of Canada, 1960-61, C-35, Section 8 of the Narcotic Control Act is successor to section 3(4) of the Opium and Narcotic Drug Act, Statutes of Canada, 1953-4, c.38, which reads:

> (4) In any prosecution for an offence under paragraph (b) of subsection (3), the court shall, unless the accused pleads guilty to the charge, first make a finding as to whether or not the accused was in possession of the drug; if the court finds that he was not in possession of the drug, the court shall acquit him; if the court finds that the accused was in possession of the drug, the court shall give the accused an opportunity of establishing that he was not in possession of the drug for the purpose of trafficking, and if the accused establishes that he was not in possession of the drug for the purpose of trafficking, he shall be acquitted of the offence as charged but shall, if the court finds that the accused was guilty of an offence under subsection (1), be convicted under that subsection and sentenced accordingly; and if the accused fails to establish that he was not in possession of the drug for the purpose of trafficking he shall be convicted of the offence as charged and sentenced accordingly."
>
> Opium and Narcotic Drug Act,
> S.C. 1953-4, c.38, s.3

26. The procedure established by section 8, the nature of the onus which it imposes upon, and the rights which it gives to, an accused have been explained in a number of judicial decisions.

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27. In Regina v. Babcock and Auld [1967] 2 C.C.C 235, Branca J.A. for the British Columbia Court of Appeal, explained the procedure as follows, at pages 246-248:

> Procedurally several steps are contemplated by s.8 as follows:
>
> (a) the accused is charged with possession of a forbidden drug for the purpose of trafficking;
>
> (b) the trial of the accused on this charge then proceeds as if it was a prosecution against the accused on a simple charge of possession of a forbidden drug; (this part of s.8 is new)
>
> (c) when the Crown has adduced its evidence on the basis that the charge was a prosecution for simple possession, the accused is then given the statutory right or opportunity of making a full answer and defence to the charge of simple possession; (new)
>
> (d) when this has been done the Court must make a finding as to whether the accused was in possession of narcotics contrary to s.3 of the new Act; (unlawful possession of a forbidden narcotic drug)
>
> (e) assuming that the Court so finds, it is then that an onus is placed upon the accused in the sense that an opportunity must be given to the accused of establishing that he was not in possession of a narcotic for the purpose of trafficking;

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(f) when the accused has been given this opportunity the prosecutor may then establish that the possession of the accused was for the purpose of trafficking; (new)

(g) it is then that the Court must find whether or not the accused has discharged the onus placed upon him under and by the said section;

(h) if the Court so finds, the accused must be acquitted of the offence as charged, namely, possession for the purpose of trafficking, but in that event the accused must be convicted of the simple charge of unlawful possession of a forbidden narcotic;

(i) if the accused does not so establish he must then be convicted of the full offence as charged.

It is quite clear to me that under s.8 of the new Act the trial must be divided into two phases. In the first phase the sole issue to be determined is whether or not the accused is guilty of simple possession of a narcotic. This issue is to be determined upon evidence relevant only to the issue of possession. In the second phase the question to be resolved is whether or not the possession charged is for the purpose of trafficking.

28. This Court has held that the procedure is mandatory and non-compliance fatal to a conviction unless waived by the accused.

Korponay v. Attorney General of Canada, [1982] 1 S.C.R. 41 at 57

29. The jurisprudence concerning the nature and operation of the onus, as developed in the case law, is summarized below:

(a) the onus upon an accused is to establish on a balance of probabilities that he was not in possession for the purpose of trafficking;

Regina v. Beaulne (1979), 50 C.C.C (2d) 524 (Ont.C.A.)

(b) An accused may discharge the onus by relying upon any evidence given during the course of the trial, including the testimony of Crown witnesses. He need not testify at any stage of the trial.

Regina v. Hartley and McCallum (No.1) (1968) 2 C.C.C. 183 (B.C.C.A.)

Regina v. Vincent (1975), 26 C.C.C. (2d) 236 (N.S.S.C. App.Div.)

Regina v. Barron [1977] 4 W.W.R. 331 (Alta.C.A.)

(c) an accused may, on the second phase of the trial, deny possession notwithstanding that a finding of possession has been made at the conclusion of the first phase in which he called no evidence.

Regina v. Beckner (1979), 43 C.C.C. (2d) 356 (Ont.C.A.)

(d) an accused may call evidence in reply to the Crown's evidence on the second phase, provided that in doing so he does not split his case.

Regina v. Rankin (1971), 3 C.C.C. (2d)501 (B.C.C.A.)

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30. In Korponay v. Attorney General of Canada, supra, this Court held, at page 56, that section 8 gives an accused the following four rights:

(i) a trial conducted during the first phase as if the charge were under section 3;

(ii) a full answer and defence to the issue of possession before being put in actual jeopardy of conviction of an offence under section 4(2);

(iii) a finding on possession before deciding on a defence and revealing its nature as regards the purpose of that possession in the event that finding be affirmative;

(iv) an opportunity of presenting that defence.

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(v) Relationship between Section 8 of the Narcotic Control Act and Section 2(f) the Canadian Bill of Rights

31. The relevant parts of section 2(f) of the Canadian Bill of Rights (the Bill of Rights) read:

> 2. Every law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to ....
>
> (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, ...
>
> Canadian Bill of Rights, R.S.C. 1970, Appendix III

32. On May 29, 1961, Bill C-99, to amend the Food and Drugs Act was introduced in the House of Commons. Its purpose was to provide a system to control the distribution of barbiturates. On May 30, 1961, Bill C-100 to provide for the control of narcotic drugs was also introduced in the House of Commons. Bill C-99 was subsequently enacted as an

Act to amend the Food and Drugs Act, Statutes of Canada, 1960-61, C-37. Bill C-100 was enacted as the Narcotic Control Act, Statutes of Canada, 1960-61, C.35. Bill C-99 contained what is now section 33 of the Food and Drugs Act and Bill C-100 contained what is now section 8 of the Narcotic Control Act. Both Bills received Second Reading at about the same time. They received Royal Assent on the same date.

33. Section 33, as enacted, reads:

> 33.(1) In any prosecution for a violation of subsection (2) of section 32, if the accused does not plead guilty, the trial shall proceed as if the issue to be tried is whether the accused was in possesion of a controlled drug.
>
> (2) If, pursuant to subsection (1), the court finds that the accused was not in possession of a controlled drug, he shall be acquitted, but, if the court finds that the accused was in possession of a controlled drug, he shall be given an opportunity of establishing
>
> (a) that he acquired the controlled drug from a person authorized under the regulations to sell or deal with controlled drugs; or
>
> (b) that he was not in possession of the controlled drug for the purposes of trafficking, and thereafter the prosecutor shall be given an opportunity of adducing evidence to the contrary.
>
> (3) If the accused establishes the facts set forth in paragraph (a) or (b) of subsection (2) he shall be acquitted of the offence as charged; and if the accused fails to so establish he shall be convicted of the offence as charged and sentenced accordingly.

An Act to Amend the Food and Drugs Act, Statutes of Canada, 1960-61, C-37, s.1

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34. During second reading of that Bill, it was suggested that this section was inconsistent with the presumption of innocence protected by section 2(f) of the Bill of Rights. The Minister of Justice stated that in drafting section 33 he had given careful consideration to the question whether the section was offensive to the presumption of innocence protected by section 2(f) of the Bill of Rights and he concluded that it was not.

Debates of the House of Commons, Canada, Session 1960-61, Vol. VI, at 5942

35. The Minister explained the way in which the section was intended to operate in the following way:

> The crown, under section 33 of the new act, if this bill passes, will have to prove the facts upon which it relies to establish the guilt of the accused. It is not until the crown has proven its case that the accused is under any obligation to enter a defence. It is a well understood principle of criminal justice that criminal statutes themselves may provide that certain inferences will be drawn from certain facts; that is all that is being done here. In every one of these cases, just as here, the crown has to establish the facts from which the statute then says that the inferences may be drawn. This is particularly true in the case of dangerous substances such as explosives, for instance, and narcotics, and now we are adding goof balls or barbiturates and amphetamines. As I say, in the case of these dangerous substances, it is common to provide that possession, in the absence of a reasonable explanation, will raise these inferences or presumptions on the basis of which the guilt of the accused can then be assumed if the accused is not able to make a reasonable explanation of the origin and purpose of his possession of these dangerous substances. This is a well understood principle of criminal law.
>
> Debates of the House of Commons, Canada, supra, at 5940-41

36. He also explained that in giving consideration to the question whether the section violated section 2(f) of the Bill of Rights, he had consulted American "due process" jurisprudence, including the decision of the Supreme Court of the United States in Yee Hem v. United States, 268 U.S. 178 (1925) and the following statement from Corpus Juris:

> A statute providing that proof of one fact shall constitute prima facie evidence of the existence of another fact essential to the guilt of the accused is not void for want of due process of law, where there is some natural and rational relation or connection between the fact proved and the ultimate fact presumed and the accused is afforded a fair and reasonable opportunity to repel the presumption and submit all the facts being (sic) on the issue to the jury ...
>
> Debates of the House of Commons, Canada, supra, pp.5952-3

37. When section 8 subsequently came on for second reading a similar suggestion was made that it violated the protection of the presumption of innocence, in section 2(f) of the Bill of Rights. The Minister again assured the House that, in his judgment, section 8 did not violate that protection.

> Debates of the House of Commons, Canada, supra, pp.5988, 6218-19

38. After the enactment of the Bill of Rights, it was contended in two cases that section 8 of the Narcotic Control Act and its predecessor, section 3(4) of the Opium and Narcotic Control Act were offensive to section 2(f) thereof. In those cases, Regina v. Sharpe (1961) 131 C.C.C. 75 (Ont.C.A.) and Regina v. Christal (1977) 39 C.R.N.S. 245 (Sask.D.C.), it was held that those sections were not offensive to section 2(f). The decision in Sharpe was considered by this Court in The Queen v. Appleby [1972] S.C.R. 303 (in which it was decided that section 224A [now section 237] of the Criminal Code was not offensive to section 2(f) of the Bill of Rights) and in Korponay, supra, (which decided that the procedure specified in section 8 of the Narcotic Control Act was mandatory).

39. In Regina v. Silk [1970] 3 C.C.C. 1, the Court of Appeal for British Columbia held that section 33 of the Food and Drugs Act (in terms similar to section 8 of the Narcotic Control Act), was offensive to section 2(f) of the Bill of Rights, if, on a proper construction, that section placed an onus on an accused to prove by a balance of probabilities that he was not in possession of the drug for the purpose of trafficking. In The Queen v. Appleby, supra, this Court held that on this point Silk was wrongly decided. In Regina v. Erdman [1971] 24 C.R.N.S. 216, (in which section 8 of the Narcotic Control Act was in issue) the Court of Appeal for British Columbia held that the decision of this Court in Appleby had effectively overruled Silk. See also, to the same effect, Regina v. Ducharme, (B.C.C.A., unreported, April 25, 1972).

(vi) Relationship between section 2(f) of the Bill of Rights and section 11(d) of the Charter

40. Section 11(d) of the Charter reads:

> Any person charged with an offence has the right ....
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

41. As noted in paragraph 31, supra, the Bill of Rights enshrined the right in identical words.

Bill of Rights, supra, s.2(f)

42. The right enshrined in the Bill of Rights was also recognized by the common law.

See: Woolmington v. Director of Public Prosecutions [1935] A.C. 462 (H.L.)

The Queen v. Appleby, supra

43. At common law, the phrase "presumption of innocence" meant firstly, that it is for the prosecution to adduce evidence of guilt and secondly, that the evidence must prove guilt beyond a reasonable doubt.

Woolmington v. Director of Public Prosecutions, supra, at 481-2

The Queen v. Appleby, supra

Cross on Evidence (5th Ed.) at 122

Wigmore on Evidence (Chadbourn Rev.) Vol.9, paragraphs 2497, 2497a, 2511

Thayer, Preliminary Treatise on Evidence at the Common Law, Appendix 8, at 551 et seq.

McCormick on Evidence, (2nd Ed.) at 829-833

44. The duty, which the common law imposed upon the prosecution, to prove guilt beyond a reasonable doubt was subject to exceptions born of experience. Furthermore, in cases where the offence charged was created by statute, the statute itself might provide for the exception. In those cases, it was not considered offensive to public policy that the accused should be required to establish on a balance of probabilities the existence or non-existence of an essential factual ingredient of the offence charged.

Woolmington v. Director of Public Prosecutions, supra

Public Prosecutor v. Yuvaraj [1970] 2 W.L.R. 226 (P.C.) at 231-233

Yee Hem v. United States, supra

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45. This Court has held that the words "presumed innocent until proven guilty according to law", used in section 2(f) of the Bill of Rights, envisage the existence of statutory exceptions reversing the onus of proof with respect to one or more ingredients of an offence, once certain specific acts have been proved by the prosecution in relation to such ingredients.

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The Queen v. Appleby, supra, at 315-316

The Queen v. Shelley, [1981] 2 S.C.R. 196 at 200-203

46. This Court has also held that such a statutory exception is not offensive to section 2(f) of the Bill of Rights if it requires an accused to prove, upon a balance of probabilities, an essential fact which it is rationally open
20 to him to prove or disprove, it being one within his knowledge or one which he may reasonably be expected to know.

The Queen v. Shelley, supra, at 200-203

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47. In The Queen v. Appleby, supra, Laskin J. (as he then was) formulated the following test to determine whether the statutory provision was offensive to s.2(f):

> In my opinion, the test for the invocation of s.2(f) is whether the enactment against which it is measured calls for a finding of guilt of the accused when, at the conclusion of the case, and upon the evidence, there is adduced by Crown and by accused, who have also satisfied any intermediate burden of adducing evidence, there is reasonable doubt of culpability. Section 224A (1)(a) is not of this character.
>
> The Queen v. Appleby, supra at 318

48. It has been well established since Appleby, supra, that the right protected by section 2(f) of the Bill of Rights is the same right that was given and protected by the common law. It is submitted, therefore, that in construing the language used in section 11(d) of the Charter the reasonable conclusion is that it bears the same meaning as the language used in section 2(f) of the Bill of Rights, since identical language is used in each.

See: Minister of Home Affairs v. Fisher [1980] A.C. 319 (P.C.)

Re Potma and The Queen (1983), 41 O.R. (2d) 43 (C.A.)

Regina v. Holmes (1983), 41 O.R. (2d) 250 (C.A.)

Regina v. Currie (1983), 19 M.V.R. 14 (N.S.C.A.)

The Queen v. Appleby, supra at 318

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49. It is submitted that the words used in section 11(d) of the Charter cannot justifiably be assigned a different meaning from the identical words in section 2(f) of the Bill of Rights by reason only of the constitutional status of the former, since it is clear that, on occasion, this Court has been prepared to give section 2(f) and other sections of the Bill of Rights overriding effect over other enactments of Parliament.

See: Constitution Act, 1982, section 52
The Queen v. Drybones [1970] S.C.R. 282
The Queen v. Shelley, supra, at 202

50. It is submitted that the effect of section 11(d) of the Charter is to entrench the right, subject to sections 1 and 33 of the Charter and to section 38 of the Constitution Act, 1982.

51. It is submitted further that the test for the validity of statutory reverse onus provisions mentioned in paragraph 47, supra, continues to apply with equal validity notwithstanding the coming into force of the Charter.

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52. It is submitted also that such a test is reasonable, fairly balancing as it does the interest of the state in effective law enforcement and the interest of the individual not to be burdened in a criminal prosecution with a presumption which he may lack the means to rebut.

Ong Ah Chuan et al v. Public Prosecutor
[1981] A.C. 648 (P.C.)

Casey v. The United States, 48 S. Ct. 373 (1928)

53. The Court of Appeal for Ontario, in its reasons, written by Martin J.A., sought to distinguish Appleby, supra, by restating the issue as follows:

> The issue before the Supreme Court of Canada in R. v. Appleby, supra, was whether a reverse onus clause of the kind before the Court in that case conflicted with the presumption of innocence because it required the accused, on proof of certain facts by the Crown, to discharge the onus placed upon him to prove an essential fact by the balance of probabilities. It was not whether a reverse onus clause such as that contained in s.8 of the Narcotic Control Act may be constitutionally invalid on the ground that it is unreasonable or arbitrary.
>
> Reasons of Court of Appeal,
> Case on Appeal, page 69

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54. It is submitted that the issue before this Court in Appleby was whether section 224A (now section 237) of the Criminal Code was offensive to section 2(f) of the Bill of Rights. This included the aspect whether the impugned section of the Code was offensive because it contained a reverse onus provision that was unreasonable or arbitrary. It is submitted that it was this aspect of the issue that Laskin, J. (as he then was) addressed in the following passage of his separate concurring reasons:

> It was not contended that there was any problem with respect to the "due process of law" provision of s.1(a) of the Canadian Bill of Rights. Certainly, it cannot be said that no rational connection exists between the fact to be deemed and the fact required to be proved: see Regina v. Sharpe.
>
> The Queen v. Appleby, supra, at 365

55. It is submitted, therefore, that the Ontario Court of Appeal erred in law in interpreting Appleby as it did, since it is clear from the passage quoted that the reverse onus provision in issue there had satisfied the rational connection test, that being but another way of saying that the provision was neither arbitrar nor unreasonable.

56. The Court of Appeal for Ontario also laid down a two pronged test for determining whether a reverse onus clause is constitutionally valid:

> (a) that the connection between the proved fact and the presumed fact must, at least, be such that the proved fact rationally tends to prove that the presumed fact also exists, and
>
> (b) that the presumed fact must be one which it is rationally open to the accused to prove or disprove.
>
> Reasons of Court of Appeal, Case on Appeal, page 73

57. It is submitted that this test is erroneous in law, because it is at variance with the test laid down by this Court in Appleby, supra and Shelley, supra.

58. In delivering the reasons for judgment of this Court in Shelley, supra, the Chief Justice laid down the test for determining whether the reverse onus provision in section 248(1) of the Customs Act was offensive to section 2(f) of the Bill of Rights in the following passage:

> It is evident to me in this case that there is on the record no rational or necessary connection between the fact proved, i.e. possession of goods of foreign origin, and the conclusion of unlawful importation which the accused under s.248(1) must, to avoid conviction, disprove. At what remove the particular goods were imported is unknown. If the Crown is to have the benefit of the reverse onus provisions of s.248(1) it must at least, in addition to proving foreign origin and possession of the goods, show some knowledge or means of knowledge of the circumstances of importation on the part of the accused which would enable him to show, if that be the fact, that they were lawfully imported. To require less could leave the accused with an impossible burden of proof and would amount to an irrebuttable presumption of guilt against him, depriving him of the right to be presumed innocent under s.2(f) of the Canadian Bill of Rights.
>
> The Queen v. Shelley, supra, at 202-203

59. It is submitted that if this Court, in Shelley, supra, had applied the test laid down by the Court of Appeal for Ontario, as described in paragraph 56, supra, the correction by the Crown of the deficiency in its proof, referred to in the passage quoted in paragraph 58, would not have given it the benefit of the reverse onus provision in section 243(1) since the facts proved would still not rationally tend to prove that the presumed fact also exists.

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(vii) Relationship between Sections 1 and 11(d) of the Charter

60. In determining the meaning to be given to the phrase "to be presumed innocent until proven guilty according to law" in section 11(d) of the Charter, the Court of Appeal for Ontario stated that section 1 of the Charter limits Parliament's power to create statutory exceptions to the general rule that an accused has the right to be presumed innocent.

Reasons of Court of Appeal,
Case on Appeal, page 70.

61. It is submitted that the Court of Appeal for Ontario erred in law in resorting to section 1 of the Charter for that purpose.

62. It is submitted, on the authority of Appleby, supra, that there is built in to section 11(d) provision for enactments reversing "the ordinary onus of proof with respect to facts forming one or more ingredients of a criminal offence", and that there is no need to resort to section 1 of the Charter to determine its meaning.

The Queen v. Appleby, supra, at 315-316.

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63. It is submitted that if resort to section 1 of the Charter is necessary to determine the meaning of the phrase, then the test which this Court laid down in Appleby, supra, and Shelley, supra, for determining whether reverse onus provisions violate the presumption of innocence protection in section 2(f) of the Bill of Rights would require alteration, since such a test would permit reverse onus provisions to stand which do not amount to reasonable limits prescribed by law in a free and democratic society.

(viii) Validity of the Woolmington definition of the presumption of innocence in interpreting Section 11(d)

64. The Court of Appeal for Ontario rejected the Woolmington definition of the presumption of innocence on the ground, advanced by counsel for the Intervenant, Canadian Civil Liberties Association, that that definition was developed and continues to be applied in a legal system in which Parliament is supreme.

Reasons of Court of Appeal, Case on Appeal, pp.64-66, 71-73

65. It is well established that, since the United Kingdom became a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Parliament and Courts in that country are required to take the Convention into account in enacting and in interpreting domestic statutes so as not to deny the rights and freedoms therein described.

Waddington v. Miah [1974] 2 All E.R. 377 (H.L.) at 379

R. v. Secretary of State for Home Affairs ex parte Bajan Singh [1975] 2 All E.R. 1081 (C.A.) at 1083

R. v. Secretary of State for the Home Department, ex parte Phansopkar [1975] 3 All E.R. 497 (C.A.) per Scarman L.J. at 510-511.

66. The Convention provides in Article 6, paragraph 2:

> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> Convention for the Protection of Human Rights and Fundamental Freedoms, 1966, Article 6(2).

67. Although they are bound to interpret statutes in light of this provision of the Convention, Courts in the United Kingdom have continued nevertheless to consider the Woolmington definition of the presumption of innocence applicable in the trial of offences created by a statute which imposes an onus of proof on accused persons.

See: R. v. Edwards [1974] 2 All E.R. 1085 (C.A.)

68. It is submitted, therefore, that, in rejecting the Woolmington definition as inapplicable in Canada after the Charter, the Court of Appeal for Ontario erred in failing to recognize the fetter which the Convention imposes on the Parliament and Courts of the United Kingdom.

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(ix) American Cases

69. In the United States, the due process provision in the Bill of Rights has been interpreted as protecting an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. This protection, however, has not been interpreted as necessarily invalidating a statutory provision which places on an accused a burden of production of evidence although the more recent jurisprudence would invalidate such a provision where it places on an accused a burden of persuasion in respect of an element of an offence.

Yee Hem v. United States, supra

In Re Winship, 397 U.S. 358 (1970)

County Court of Ulster County, N.Y. v. Allen, 99 S.Ct. 2213 (1979)

Sandstrom v. Montana, 99 S.Ct. 2450 (1979)

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70. Courts in the United States have devised various rules to determine whether a particular presumption comports with due process, such as,

(i) whether it would be more convenient for the government or the accused to adduce direct evidence of the presumed fact (i.e. is the fact peculiarly within the knowledge of the accused);

Casey v. United States, 48 S.Ct. 373 (1928)

Jeffreys and Stephan, Defences, Presumptions and Burden of Proof in the Criminal Law 88 Yale L.J. 1325, 1336-1337

(ii) whether the legislators could have based liability merely on the facts that had to be proved to trigger the presumption (the "greater includes the lesser rule");

Defences, Presumptions and Burden of Proof in the Criminal Law, supra

(iii) whether there is some rational connection between the proved and presumed facts (i.e. is the inference reasonable, or purely arbitrary);

Yee Hem v. United States, supra

Tot v. United States, 219 U.S. 463 (1943)

Defences, Presumptions and Burden of Proof in the Criminal Law, supra

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(iv) as a recent gloss, whether it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend.

Leary v. United States, 89 S.Ct. 1532 (1969)

Turner v. United States, 90 S.Ct. 642 (1970)

United States v. Gonzalez 442 F (2d) 698 (C.A. 2nd Cir. 1971)

See also: McCormick on Evidence, supra at 811-835

71. It is respectfully submitted, however, that the validity of reverse onus clauses in Canada is best determined in the context of Canadian experience and values, without undue reliance on American jurisprudence. This is particularly so since the leading American cases such as Tot v. United States, supra, and Leary v. United States, supra, were well known to this Court when Appleby, supra and Shelley, supra, were being decided.

Regina v. Carter (unreported, Ont. C.A., November 16, 1982)

The Queen v. Shelley, supra

The Queen v. Appleby, supra

Regina v. Sharpe, supra

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(x) Relationship between section 8 of the Narcotic Control Act and section 11(d) of the Charter

72. In its reasons for judgment the Court of Appeal for Ontario concluded, in the following passage, that section 8 of the Narcotic Control Act was constitutionally invalid:

> I have reached the conclusion that s.8 of the Narcotic Control Act is constitutionally invalid because of the lack of a rational connection between the proved fact (possession) and the presumed fact (an intention to traffic). In my opinion, R. v. Sharpe, supra, was wrongly decided if it held the contrary. Mere possession of a small quantity of a narcotic drug does not support an inference of possession for the purpose of trafficking or even tend to prove an intent to traffic. Moreover, upon proof of possession, s.8 casts upon the accused the burden of disproving not some formal element of the offence but the burden of disproving the very essence of the offence.
>
> Reasons of Court of Appeal, Case on Appeal, pages 96, 97

73. It is submitted that a statutory provision which places a burden on an accused does not necessarily violate section 2(f) of the Canadian Bill of Rights or section 11(d) of the Charter.

The Queen v. Appleby, supra

The Queen v. Shelly, supra

Ong Ah Chuang et al v. Public Prosecutors, supra

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74. It is submitted further that the burden which section 8 places upon an accused of establishing that his possession of a narcotic was not for the purpose of trafficking does not violate section 11(d) of the Charter, because:

(i) in every case, before the reverse onus applies, the Crown must establish beyond a reasonable doubt that the accused was in possession of the narcotic; this implies that the trier of fact has found that the accused,

(a) knew of the presence of the narcotic,

(b) knew that it was a narcotic, and

(c) had some measure of control over it.

(ii) the accused is only required to establish the converse of the presumed fact on a balance of probabilities;

The Queen v. Appleby, supra
The Queen v. Shelley, supra

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(iii) the presumed fact is one which is rationally open to the accused to disprove, being one within his knowledge.

R. v. Shelley, supra

See also: Regina v. Sharpe, supra

But see: Regina v. Whalen (1974) 17 C.C.C. (2d) 162 (Nfld. C.A.)

R. v. Vrany, Zikan and Dvorak (1979), 46 C.C.C. (2d) 14 (Ont. C.A.)

Jayasena v. The Queen [1970] A.C. 618 at 623-624.

R. v. Boyle (unreported, Ont. C.A., June 14, 1983)

Cross on Evidence, pp. 85-90 and 95.

75. It is submitted that the Court of Appeal for Ontario erred in law in concluding that, in the circumstances of this case, section 8 of the Narcotic Control Act was inconsistent with section 11(d) of the Charter.

B. IS SECTION 8 OF THE NARCOTIC CONTROL ACT SUCH A REASONABLE LIMIT ON THE RIGHT GUARANTEED BY SECTION 11(d) OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS AS CAN BE DEMONSTRABLY JUSTIFIED IN A FREE AND DEMOCRATIC SOCIETY?

76. If section 8 of the Narcotic Control Act is held to be inconsistent with section 11(d) of the Charter, then, it is submitted, in the alternative, that it is such a limit as can be demonstrably justified in a free and democratic society within the meaning of section 1 of the Charter.

77. The Court of Appeal for Ontario concluded that section 8 of the Narcotic Control Act is not such a reasonable limit on the right guaranteed by section 11(d) of the Charter as can be demonstrably justified in a free and democratic society within the meaning of section 1 of the Charter, because the reverse onus provision contained in section 8 is arbitrary and irrational.

Reasons of the Court of Appeal, Case on Appeal, pages 93, 96

78. It is submitted that the Court of Appeal for Ontario erred in law reaching that conclusion.

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1. Section 1 of the Charter

(a) The Federal Government's View

79. The Government of Canada's view of the purpose of section 1 of the Charter was explained by the Deputy Minister of Justice in the following passage of the minutes of the proceedings of the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada as follows:

> .... What the Section is meant to do is to bring that concept not only to the legislatures but also to the judges because in effect the judges when they are faced with cases where government action or parliamentary action, legislative action is being tested and being challenged, in effect they have to decide whether limits, restrictions, that may have been imposed, because again these rights are not absolute, are reasonable ones. That is only what Section 1 is intended to do, that in effect the judges, when there are challenges brought before them, where in effect people would claim that their rights have been unfairly and unreasonably restricted that in coming to a conclusion when they are so challenged that in effect the courts will have to take for granted that there are some limitations that may well be reasonable and legitimate in the kind of society in which we live.
>
> Minutes of Proceedings of the Special Joint Committee of the Senate and House of Commons of Canada, 1980-81, 32 Parliament, Session 1, at 3:15 (12-11-1980).
>
> See also the testimony of the Minister of Justice and other officials of the Government of Canada at pages 3:27, 3:28, 3:29, 3:14, 3:15 (12-11-1980) and 3:43, 3:44 and 3:45 (15-1-81)

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(b) The Jurisprudence

80. It is submitted that in determining whether a law falls within section 1 of the Charter a court must examine it in relation to the following:

(a) whether the law is a reasonable limit,

(b) whether the limit is prescribed by law, and

(c) whether the limit is such as can be demonstrably justified in a free and democratic society.

Quebec Association of Protestant School Boards et al v. A.G. Quebec et al (No. 2) (1982), 140 D.L.R. (3d) 33 (Que.S.C.) at 66

(i) Reasonable limits

81. In Federal Republic of Germany v. Rauca, (1982), 38 O.R. (2d) 705 (H.C.J.) aff'd. sub nom. Rauca v. The Queen (1983), 41 O.R. (2d) 225 (C.A.), Evans, C.J.H.C. gave the following meaning to the phrase "reasonable limits" in section 1 of the Charter, at page 715:

> The phrase "reasonable limits" in s.1 imports an objective test of validity. It is the judge who must determine whether a "limit" as found in legislation is reasonable or unreasonable. The question is not whether the judge agrees with the limitation but whether he considers that there is a rational basis for it -- a basis that would be regarded as being within the bounds of reason by fair-minded people accustomed to the norms of a free and democratic society. That is the crucible in which the concept of reasonableness must be tested.

82. In Quebec Association of Protestant School Boards et al v. A.G. Quebec et al, supra, Deschenes C.J. listed three factors which a Court should consider in determining whether a limit is reasonable. He stated at page 77:

> (i) a limit is reasonable if it is a proportionate means for achieving the objective envisaged by the statute;
>
> (ii) proof of the contrary implies proof not only of an error, but of an error that offends common sense;
>
> (iii) the Court must not give in lightly to the temptation to substitute their opinion for that of the legislature.

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83. It is submitted that in examining section 8 of the Narcotic Control Act to determine whether it is a "reasonable limit" due regard must be had to its history and purpose.

84. In the 1950s, as the problem of drug trafficking increased in seriousness both on the international and domestic levels, some states, including Canada, sought to contain it by becoming parties to international treaties and by enacting legislation designed to deal with the new problems that had been identified.

85. Section 3(4) of the Opium and Narcotic Drug Act, was enacted in response to social problems associated with drug trafficking which were identified in the 1950s both at the international and the national level.

See: Debates of the House of Commons, Canada, session 1954-55, Vol. V, pages 5304-5324

An Act to Amend the Opium and Narcotic Drug Act, supra

86. The social control measures taken at the international level are contained in the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, and Production of, International and Wholesale Trade in and use of opium, which was done at New York on June 23, 1953. Canada was a party to that treaty.

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87. At the national level, in addition to amending the Opium and Narcotic Control Act, Parliament appointed a Special Committee to investigate and to make recommendations for changes in the law to deal more effectively with the traffic in narcotics and the problems related thereto.

88. The Committee held hearings throughout the country and submitted a report which contained a number of recommendations. It stated, inter alia,

> A solution to the narcotic drug problem involves the elimination of drug addiction, and suppression of the drug traffic and prevention of an increase in the drug addict population.
>
> Report of Special Committee on Traffic in Narcotic Drugs, Appendix to Debates of the Senate, Canada, Session 1955, at 695.

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89. The Committee, after noting the difficulties which the stratagems of the trafficker posed for law enforcement, stated as follows:

> The apprehension and conviction of the street peddlar is one of difficulty. Enforcement has taught the peddler to be wary of strangers. ... The Committee therefore suggests that special attention be given by the authoriities to the possibility of the facilitation of proof of trafficking at all levels, having regard to the cunning displayed by distributors, illustrations of which were given by the enforcement authorities.
>
> It is considered by the Committee that the evil of trafficking to be eliminated requires the most effective sanctions as can be devised and the provisions of such facilities in the matter of proof of trafficking as are necessary to combat traffic. [Emphasis added]
>
> Report of the Special Committee, supra, at 699

90. Subsequently, in the 1960s, further defensive measures were taken at the international and national levels to deal with the problem as it increased in seriousness.

91. At the international level the Single Convention on Narcotic Drugs, 1961, was done at New York on March 30, 1961. Canada was a signatory to that treaty and ratified it on October 11, 1961.

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92. At the national level, Parliament enacted the Narcotic Control Act in fulfilment of its obligations under the Convention.

Single Convention on Narcotic Drugs, 1961

Narcotic Control Act, S.C. 1960-61, C.35

Hauser v. The Queen [1979] S.C.R. 984 at 998 - 1,000

93. It is submitted that, in enacting section 8 of the Narcotic Control Act, Parliament was seeking to combat problems, created by drug trafficking at the domestic level, which had been recognized by the Special Senate Committee.

Debates of the House of Commons, Canada, supra, at pp. 5940-1, 5952-3, 5980, 5988, 6218-19

Report of the Special Committee, supra

94. It is submitted that in enacting section 8 in its present form Parliament was mindful of the need to safeguard the presumption of innocence enshrined in the Bill of Rights. On the other hand, it also recognized that the effective control of the distribution of narcotics required

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the imposition of a limit on that principle. In section 8, therefore, it sought to balance the individual interest in the protection afforded by the presumption of innocence and the social interest in freedom from the evils of the traffic in narcotics.

Debates of the House of Commons, supra, at pages 5940-41, 5952-3, 5988, 6218-19

95. It is submitted that Parliament accomplished this balance by confining the reversal of the onus to those cases where law enforcement authorities have reasonable and probable grounds to believe that the circumstances of possession could fairly be said to give rise to an inference of trafficking, as defined in the Narcotic Control Act, and by requiring prior proof of possession beyond a reasonable doubt as a condition precedent to the application of the limit.

Narcotic Control Act, supra, ss.4(2), 8, Criminal Code, section 455-455.4

96. It is submitted that such a limit, balancing as it does the individual and the social interests is proportionate to the statutory objective and does not offend

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common sense, especially because the prosecution is required to prove beyond a reasonable doubt that the accused has knowledge of the nature of the narcotic and of its presence and that he has some measure of control over it as a condition precedent to its applicability. It is submitted that in those circumstances, it is not offensive to social policy to call upon the accused to explain the purpose of his possession, since it is peculiarly within his knowledge.

See: Quebec Association of Protestant School Boards et al v. A.G. Quebec et al, supra

Ong A Chuan et al v. Public Prosecutor, supra

Ibrahim v. A.G. Canada, (1982) 1 C.R.R. 244 (Que.S.C.)

Jamieson v. A.G. Quebec et al (1982), 142 D.L.R. (3d) 54 (Que.S.C.)

Bray v. The Queen (1983), 2 C.C.C. (3d) 325 (Ont.C.A.)

Carson v. The Queen (Ont. C.A., April 19, 1983)

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(ii) Prescribed by Law

97. It is submitted that section 8 of the Narcotic Control Act satisfies the second consideration, it being a law duly enacted by a Parliament competent to do so.

Federal Republic of Germany v. Rauca, supra, at 716.

(iii) Demonstrably Justified in a Free and Democratic Society

98. It is submitted further that the limit which section 8 placed on the presumption of innocence guaranteed by section 11(d) of the Charter is one that can be demonstrably justified in a free and democratic society since, as will be shown below, it is a law, the enactment of which was made necessary by the emergence of a serious social problem which is continuing and which other free and democratic societies have enacted.

See: Rauca v. The Queen et al supra

Ontario Film and Video Appreciation Society v. Ontario Board of Censors, (Ont. Div. Ct., March 25, 1983)

Quebec Association of Protestant School Boards et al v. A.G. Quebec et al, supra

Drugs, Poisons and Controlled Substances Act, 1981, (Victoria) s.77

Misuse of Drugs Act, 1975 (New Zealand), Section 30

Misuse of Drugs Amendment Act, 1978 (New Zealand)

Misuse of Drugs Act, 1981 (Western Australia, Section 11

Narcotic and Psychotropic Drugs Act, 1973-74 (South Australia) Section 5(4), 5(5)

Comprehensive Drug Abuse Prevention and Control Act of 1970, Vol.84 United States Statutes at Large, Public Law 91-513, Section 515

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2. Conclusion

99. It is submitted, therefore, that section 8 of the Narcotic Control Act is such a reasonable limit on the right to be presumed innocent guaranteed by section 11(d) of the Charter as can be demonstrably justified in a free and democratic society.

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PART IV

NATURE OF ORDER DESIRED

100. It is submitted that the question stated by the Chief Justice of this Court in his Order made the 11th day of April, 1983 be answered in the negative, this appeal be allowed, the order of the Court of Appeal for Ontario and the judgment of acquittal be set aside and a new trial ordered.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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PART V

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