**IN THE SUPREME COURT OF CANADA**

(On Appeal from the Court of Appeal for Ontario)

BETWEEN:

THE WHOLESALE TRAVEL GROUP INC.

APPELLANT/RESPONDENT
(ACCUSED)

- and -

HER MAJESTY THE QUEEN

RESPONDENT/APPELLANT

- and -

COLIN CHEDORE

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# FACTUM OF THE ATTORNEY GENERAL OF SASKATCHEWAN INTERVENER

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## PART I

## STATEMENT OF FACTS

1. The Attorney General for Saskatchewan adopts the Statement of Facts set out in the Factum of the Appellant as clarified in the Factum of the Respondent.

## PART II

## POINTS IN ISSUE

2. Lamer C.J. stated three constitutional questions in this appeal and directed that notice of these questions be given to all provincial Attorneys General.

> Order of the Chief Justice of Canada, July 26, 1990, Case on Appeal pp. 37-40.

3. Pursuant to this Order of the Chief Justice of Canada, the Attorney General for Saskatchewan has chosen to intervene in the instant appeal.

4. The Attorney General for Saskatchewan limits his intervention to the issue of whether a law which requires an accused to establish the defence of due diligence on a balance of probabilities offends section 11(d) of the Canadian Charter of Rights and Freedoms (the "Charter") and, if so, whether such a law can be justified as a reasonable limit and thereby redeemed under section 1 of the Charter. As a consequence, the Attorney General for Saskatchewan will take no position on the constitutional propriety of subsections 36(1) and 37.3(2)(c) and (d) of the Competition Act, R.S.C. 1970, c. C-23 as amended.

## PART III

## POSITION OF THE ATTORNEY GENERAL FOR SASKATCHEWAN

5. The Attorney General for Saskatchewan submits that for certain regulatory offences requiring an accused to prove certain facts on a balance of probabilities is permissible under section 11(d). With respect to those regulatory offences where this persuasive burden violates section 11(d), then it is submitted that such a burden is a reasonable limit upon the presumption of innocence and, as a consequence, is constitutionally permissible.

6. The Attorney General for Saskatchewan further submits it is not possible to establish a bright-line rule that the application of the presumption of innocence varies depending upon whether the offence is a regulatory or public welfare offence or a true crime. The text of section 11(d) of the Charter and the interpretation given to that language in recent judgments of this Honourable Court do not accommodate it. Rather, the application of the presumption of innocence must be determined on a case by case basis in accordance with certain criteria which will be set out below.

## PART IV

## ARGUMENT

### A. Section 7

7. To address adequately the section 11(d) issue in this appeal, it is useful first to examine the relationship between sections 7 and 11(d) of the Charter. Certain of the principles established under section 7 are of assistance in understanding the operation of section 11(d).

8. A good starting point is this Honourable Court's ruling in Reference Re Section 94(2) of the Motor Vehicle Act, R.S.B.C. 1979, c. 288, [1985] 2 S.C.R. 486. Writing for the majority in this case, the present Chief Justice established the important interpretative principle that the various guarantees set out in sections 8 to 14 of the Charter are illustrative of and inform the meaning to be accorded to the "principles of fundamental justice" enshrined in section 7.

> Reference Re Section 94(2) of the Motor Vehicle Act, R.S.B.C., 1979, c. 288, [1985] 2 S.C.R. 486 at 512 per Lamer J.; at p. 530 per Wilson J. (expressing doubts on this point).

9. The foregoing principle is significant, it is submitted, in two ways. First, it indicates that those provisions of the Charter termed "Legal Rights" must be interpreted in a

consistent and coherent fashion.

R. v. Hufsky, [1988] 1 S.C.R. 621 at p. 632 per Le Dain J.

Knutson v. Saskatchewan Registered Nurses Association, not yet reported, December 9, 1990 (Sask. C.A.).

10. Moreover, not only do sections 8 to 14 of the Charter assist the interpretation of section 7; section 7 aids in understanding the parameters of the rights enshrined in sections 8 through 14. Indeed, with respect to the presumption of innocence enshrined in section 11(d), the jurisprudence of this Honourable Court interpreting section 7 is especially informative.

11. In Reference Re B.C. Motor Vehicle Act, supra, for example, this Honourable Court scrutinized a provincial law which created the absolute liability offence of driving while suspended or prohibited from doing so. The impugned legislation went on to impose a minimal period of incarceration upon conviction. The Court declared section 94(2) of no force and effect as the combination of absolute liability and imprisonment proved to be constitutionally infirm. In so holding Lamer J. (as he then was) ruled that section 7 of the Charter prevents the liberty interest of a morally blameless individual from being placed in jeopardy.

Reference Re B.C. Motor Vehicle Act, supra, at p. 515.

12. Neither Lamer J. nor Wilson J. (concurring) held that absolute liability offences

per se were constitutionally infirm. Such offences offend section 7 of the Charter only "if as a result, anyone is deprived of his life, liberty or security of the person, irrespective of the requirement of public interest". Provided there is no possible exposure to penal liability, an absolute liability offence is not vulnerable to constitutional attack.

> Reference Re B.C. Motor Vehicle Act, supra, at p. 517 per Lamer J. and at p. 524 per Wilson J.

13. Of relevance to the discussion which follows, it is important to note that when Lamer J. spoke of a morally blameless individual, he meant "the innocent human person" (Reference Re B.C. Motor Vehicle Act, supra, at p. 518, emphasis in original). He expressly recognized that certain regulatory offences such as environmental pollution infractions were of such public importance and benefit that different considerations might apply if the named accused were a corporate entity.

> Reference Re B.C. Motor Vehicle Act, supra, at p. 518.

14. Subsequently, in R. v. Vaillancourt this Court revisited the B.C. Motor Vehicle Act Reference, supra, and highlighted its significance. Lamer J., clarified that for the purposes of section 7, the Reference constitutionalized, at least in part, the tripartite classification of offences set down by Dickson J., as he then was, in R. v. City of Sault Ste. Marie, [1979] 2 S.C.R. 1299, at pp. 1325-6. Lamer J. asserted:

> This Court's decision in Re B.C. Motor Vehicle Act stands for the proposition that absolute liability infringes the principles of fundamental justice, such that the combination of absolute liability and a deprivation of

> life, liberty or security of the person is a restriction on one's rights under s. 7 and is prima facie a violation thereof. In effect, Re B.C. Motor Vehicle Act acknowledges that, whenever the state resorts to the restriction of liberty, such as imprisonment, to assist in the enforcement of a law, even, as in Re B.C. Motor Vehicle Act, a mere provincial regulatory offence, there is, as a principle of fundamental justice, a minimum mental state which is an essential element of the offence. It thus elevated mens rea from a presumed element in Sault Ste. Marie, supra, to a constitutionally required element. Re B.C. Motor Vehicle Act did not decide what level of mens rea was constitutionally required for each type of offence, but inferentially decided that even for a mere provincial regulatory offence at least negligence was required, in that at least a defence of due diligence must always be open to an accused who risk imprisonment upon conviction.
>
> (emphasis in original)
>
> R. v. Vaillancourt, [1987] 2 S.C.R. 636 at p. 652.

15. The foregoing passage is significant, it is submitted, in two respects. First, it establishes that while section 7 requires a mental element for any offence involving an infringement of life, liberty or security of the person, the exact mental standard that is constitutionally demanded will vary with the offence. Offences found in contemporary statute books pertain to myriad subject matters and possess a wide array of prohibitions. The evils sought to be avoided and the punishments which may be imposed upon conviction vary tremendously. It is necessary to determine what mental standard is required on a case by case basis. For certain offences, evidence of negligence will satisfy the requisite mental element. Other more serious offences, however, will demand a higher degree of culpability. Indeed, Vaillancourt illustrates the ad hoc approach to this issue.

R. v. Vaillancourt, supra, at p. 653.

16. Second, it is submitted that the quoted passage ought not to be read as establishing a hierarchy of mental elements dependent upon whether the offence is federal or provincial. In fact, the division of legislative powers set out in sections 91 and 92 of the Constitution Act, 1867 can be deceptive when determining, for Charter purposes, the requisite mental standard of a particular offence. For example, many federal legislative regimes, administrative or regulatory in nature, contain offence provisions which can only be sustained by virtue of section 91(27) of the Constitution Act, 1867. The offence provisions of the Income Tax Act, S.C. 1970-71-72, c. 63, and the Competition Act, R.S.C. 1970, c. C-23, [now R.S.C. 1985, c. C-34] the legislation at issue in the instant appeal, are examples of such offences. Contrastingly, the Narcotic Control Act, R.S.C. 1985 is enacted under the general power to make laws for the peace, order and good government of Canada and not the criminal law power. It does not follow, however, that the characterization of a particular offence as criminal law compels a high degree of culpability for the purposes of section 7.

> Knox Contracting Ltd. v. Canada, [1990] 2 S.C.R. 338 at pp. 354-5, per Cory J.
>
> Thomson Newspapers Ltd. et al. v. Director of Investigation and Research, [1990] 1 S.C.R. 425 at p. 508ff, per La Forest J.
>
> R. v. Hauser, [1979] 1 S.C.R. 984 at p. 1000, per Pigeon J.

17. Conversely, certain provincial offences demand a subjective mental element. For example, The Wildlife Act, S.S. 1979, c. W-13.1 creates the offence of "Knowingly

possess[ing] any wildlife taken in contravention of the Act or the regulations". Yet such an offence must be characterized as a provincial regulatory offence.

The Wildlife Act, S.S. 1979, c. W-13.1, section 31.

18. Section 7 should be applied equally to all offences, federal and provincial, that infringe life, liberty and security of the person. Yet, the rigours demanded by section 7 ought to be determined by reference to the nature of the particular offence itself: the action prohibited, the consequence for breach of the offence, the sentence provided, the stigma associated with the conviction and other pertinent factors. Indeed, it is submitted that when such indicia are employed Criminal Code offences can be measured against a negligence/due diligence standard.

R. v. Hess; R. v. Nguyen (1990), 79 C.R. (3d) 332 (S.C.C.) at pp. 338-340 (former section 146).

R. v. Stevens, [1988] 1 S.C.R. 1153 at p. 1175-7, per Wilson J. (dissenting) (former section 146).

R. v. Finlay (1990), 55 C.C.C. (3d) 548 (Sask. Q.B.) (section 86(2)).

R. v. Jocelyn (1990), 9 W.C.B. (2d) 519 (Sask. Q.B.) (section 86(2)).

19. In Vaillancourt, Lamer J. also asserted in obiter dicta that for a "very few" offences the principles of fundamental justice demanded proof beyond a reasonable doubt of a minimum degree of mens rea in order for a conviction to stand. Murder was one of those

offences, theft another. He allowed that the "stigma" attached to these kind of offences as well as the penalties available upon conviction were the relevant indicia.

Vaillancourt, supra, at p. 653.

See further: R. v. Nelson (1990), 75 C.R. (3d) 70 (Ont. C.A.).

20. It is now apparent that stigma is the paramount factor to be taken into account when attempting to ascertain the degree of mental blameworthiness an accused person must possess in order to be convicted of a particular offence. Social disapprobation, including any attendant stigma, of particular conduct found to be criminal is arguably subsumed in the subsequent penalty which may be imposed. However, this Honourable Court has directed that the range of punishment is only of secondary importance. Rather, it is the lingering social stigma which is the "crucial consideration" in the inquiry.

R. v. Martineau (1990), 79 C.R. (3d) 129 (S.C.C.) at pp. 138-9, per Lamer C.J.

R. v. Logan (1990), 79 C.R. (3d) 169 (S.C.C.) at p. 178, per Lamer C.J.

**B. Section 11**

21. This part of the Factum of the Attorney General for Saskatchewan will explore section 11 of the Charter and, in particular, section 11(d). As well, reference will be

made to the relevant principles established with respect to section 7 of the Charter, enumerated above, where appropriate.

22. As a starting point, it is recognized that the presumption of innocence, a cornerstone of the penal law, is now constitutionalized as a principle of fundamental justice for the purpose of section 7. Accordingly, it is submitted the close relationship between sections 7 and 11(d) is clear.

R. v. Oakes, [1986] 1 S.C.R. 103 at p. 119.

23. While there is a close connection between these two sections, it emerges from the text that section 11 is a less flexible, more specific provision than section 7. This may not be immediately apparent from the language of these two sections. The protection of section 7 is accorded to "everyone" who faces a deprivation of their "right to life, liberty and security of the person". The legal rights enumerated in section 11 apply to "any person charged with an offence". In most instances both sections 7 and 11 will be engaged because an individual whose liberty interest is jeopardized is also charged with an offence. However, it is evident that an individual's personal security may be threatened by far more than criminal or penal accusation.

24. Furthermore, the expansive opening language of section 11 has been circumscribed by judicial decree. In R. v. Wigglesworth, [1987] 2 S.C.R. 541 at p. 554, Wilson J., writing

for this Court, restricted the application of the rights enumerated in section 11 to those "persons prosecuted by the State for public offences involving punitive sanctions i.e. criminal, quasi-criminal and regulatory offences, either federally or provincially enacted". A principal reason identified by Wilson J. for so limiting section 11 was a desire that the guarantees enshrined in that provision should evolve in a consistent and coherent fashion. She elaborated:

> Unless the section is restricted to criminal or penal matters there may be serious difficulty in giving the section a reasonably consistent application. The particular content of the various rights set out in s. 11 may well vary according to the type of proceeding if a broader definition is given to the opening words of the section.

R. v. Wigglesworth, supra, at p. 558.

R. v. Shubley, [1990] 1 S.C.R. 3 at pp. 17-18, per McLachlin J.

25. Wilson J. further establishes a two pronged test for ascertaining whether the offence was one which attracted the protections set out in section 11. First, it was necessary to ask whether the matter by its very nature was a criminal proceeding (the "by nature test"). This question is focussed not on the nature of the act giving rise to the proceeding but the nature of the proceeding themselves. Second, if the matter was not by nature a criminal or quasi-criminal matter, section 11 may nevertheless still apply if it involved the imposition of true penal consequences.

Wigglesworth, supra, at pp. 560-1.

Shubley, supra, at pp. 18-21.

26. It is submitted that the interpretation given by this Honourable Court to the opening language of section 11 militates against a different reading being accorded its various sub-paragraphs depending upon whether a regulatory offence or a true crime is involved. The fundamental question is, does the offence attract section 11 guarantees. In this important respect section 11 differs from section 8, for example, which has as its only qualifier the word "unreasonable". Not surprisingly, the scope of the protection against unreasonable search and seizure will vary according to whether it is to be applied in the criminal, regulatory, administrative or civil context.

> R. v. McKinlay Transport Ltd., [1990] 1 S.C.R. 627 at 640ff, per Wilson J.

(1) **Section 11(d)**

27. Of all the rights enshrined in section 11, the right of an accused person to be presumed innocent until proven guilty is perhaps the most hallowed. In recent months this Honourable Court has settled general principles governing its operation.

> R. v. Keegstra, not yet reported, December 13, 1990, Doc No. 21118.
>
> Chaulk and Morrissette v. R., not yet reported, December 20, 1990, Doc. Nos. 21012, 21035.

28. Prior to these rulings it was clear that section 11(d) demands the Crown to prove every element of an offence beyond a reasonable doubt.

R. v. Oakes, supra.

R. v. Vaillancourt, supra, at p. 655.

R. v. Schwartz, [1988] 2 S.C.R. 443 at pp. 484-5, per McIntyre J.

29. Disagreement amongst members of the Court emerged on the issue of whether an affirmative defence or an excuse could be demonstrated on a balance of probabilities. If it is an affirmative defence which may negate an element of the offence, then section 11(d) prohibits placing a persuasive burden on the accused to prove it.

R. v. Oakes, supra.

R. v. Whyte, [1988] 2 S.C.R. 3.

30. If, however, the statute afforded to an accused an excuse which could serve as an independent ground for acquittal, members of this Court, most notably McIntyre J., found no violation of section 11(d) if the statutory language required the accused to prove that excuse on a balance of probabilities.

R. v. Holmes, [1983] 1 S.C.R. 914.

31. This element/defence dichotomy resembled current American jurisprudence on the issue. The Due Process Clause of the Fourteenth Amendment to the American Constitution requires the government to bear the onus of proving each of the statutory elements of a particular offence beyond a reasonable doubt. However, the burden to

prove an affirmative defence by a preponderance of evidence could be shifted to the accused. The constitutionality of a statute allocating the burden of proof on an affirmative defence depends on how the legislature defines the elements of the crime.

> Martin v. Ohio, 480 U.S. 228 (1987).
>
> U.S. v. ex. rel. Hickey v. Jeffes, 571 F. 2d. 762, 764-5 (3rd. Cir., 1978).
>
> Nineteenth Annual Review of Criminal Procedure: 1988-89, 78 Geo. L.J. 1077 at p. 1215ff (1990).

32. In Canada, this dichotomy is no longer valid, if ever it was. It is now settled that in the main, the presumption of innocence guaranteed by section 11(d) is infringed whenever an accused is liable to be convicted despite the existence of a reasonable doubt as to guilt in the mind of the trier of fact.

> Keegstra, supra, at p. 97, per Dickson C.J.C.; at p. 62, per McLachlin J. (dissenting).
>
> Chaulk and Morrissette, supra, at pp. 22-3, per Lamer C.J.C.

33. It is submitted that there is at least one qualification to this general principle. If the conduct which is prohibited falls within a closely regulated activity or a licencing system, it is not a violation of section 11(d) to require an accused demonstrate authorization to perform that activity. For example, Schwartz involved a closely regulated permit scheme for the possession of firearms. All that the former section 106.7(1) of the

Criminal Code required of an accused was to produce that permit. It demanded proof of a very particular item and could be answered without the need of testifying.

Schwartz, supra, at p. 486.

Chaulk and Morrissette, supra, at pp. 6-7, per Wilson J.

Weiser, "The Presumption of Innocence in Section 11(d) of the Charter and Persuasive and Evidential Burdens", 31 C.L.Q. 318 at pp. 334-5.

34. Schwartz demonstrates that there is limited scope for a court to take into account certain considerations when determining whether or not a particular reverse onus clause offends section 11(d). The language of the section, however, is very specific. It requires an accused person "to be presumed innocent until proven guilty according to law". Therefore, it is submitted that this determination ought to be made on a case by case basis.

35. It is submitted that one relevant consideration is the status of a particular accused. The underlying societal goal achieved by the presumption of innocence is to ensure an accused is not branded "criminal" despite the existence of a reasonable doubt in the mind of the trier of fact as to his or her guilt.

36. The concepts of moral blameworthiness and individual fault are, however, unique to human persons. They are ill-suited to contemporary corporate entities. Since

corporations cannot be subject to imprisonment the worry of imprisoning morally innocent persons, the focus of concern in B.C. Motor Vehicle Act Reference, supra, is absent. Yet to ignore this practical reality would mean that a corporation could obtain relief pursuant to section 11(d) it would be precluded from obtaining under section 7.

> R. v. Burt, [1988] 1 W.W.R. 385 (Sask. C.A.) at p. 399, per Bayda C.J.S.
>
> Hanna, "Corporate Criminal Liability", 31 C.L.Q. 452 at p. 458.

37. Taking into account the status of a corporate accused, it is submitted, in no way erodes the principle laid down in R. v. Big M Drug Mart, [1985] 1 S.C.R. 295 that a corporation may challenge the constitutionality of a penal law. Rather, it acknowledges that with respect to corporate accused the rationale underlying the presumption of innocence is far less significant.

> See generally: R. v. Pinehouse Plaza Pharmacy, not yet reported, January 25, 1991 (Sask. C.A.).
>
> R. v. Quest Vitamin Supplies Ltd. (1990), 52 C.C.C. (3d) 332.

38. Second, the nature of the reverse onus is a relevant consideration. What is the statute asking an accused to demonstrate on a balance of probabilities? If it is proof of authorization to carry on the regulated activity, section 11(d) is not infringed. Illustrations of this include proof of firearms permit or a licence to engage in activity which has the potential to be environmentally hazardous.

Schwartz, supra.

B.C. Motor Vehicle Act Reference, supra, at p. 518.

39. When asking this question the overall statutory scheme ought to be reviewed. Is it part of a licensing scheme? Is it otherwise subject to extensive regulation such that anyone involved in this activity is aware that minimal standards of behaviour are required? Is the activity discrete and specific? Are the potential consequences of deviating from these minimal standards of behaviour especially egregious, for example serious personal injury or death? Questions of this nature, it is submitted, indicate that with respect to such closely regulated activity imposing upon an accused the burden of demonstrating due diligence, for example, does not offend the objective of section 11(d).

40. Finally, the issue of social stigmatization is also pertinent to section 11(d). To be sure, in the context of regulatory or public welfare offences the social disapprobation which attaches upon criminal conviction is largely absent. In addition the penal consequences for many regulatory offences are minimal indeed. Yet there may be certain regulatory offences where stigma plays some part simply because of the nature of the proscribed conduct.

See generally: Law Reform Commission of Saskatchewan, Proposals for Defences to Provincial Offences (1986), at pp. 11-13.

41. In conclusion, it is submitted that many reverse onus clauses will not survive scrutiny under section 11(d). It will be necessary to proceed to a section 1 analysis. While the tripartite classification of offences enunciated by Dickson J. in R. v. Sault Ste. Marie, supra, is constitutionalized for the purposes of section 7, requiring an accused to demonstrate due diligence on a balance of probabilities may still violate section 11(d). It is conceded that this is an unusual result particularly in light of the interpretative principle laid down by Lamer J. in B.C. Motor Vehicle Act Reference, supra. However, the very specific language of section 11(d) and the interpretation given to that language by this Honourable Court lends support to this conclusion.

(2) **Application of Principles**

42. The application of the foregoing principles will be limited to sections 36(1)(a) and 37.3(2)(a) and (b) of the Competition Act. The offence of false advertising is one of strict liability. The issue is whether requiring an accused to prove the defence of due diligence to avoid conviction offends section 11(d) of the Charter. The Attorney General for Saskatchewan submits that in the circumstances of the instant appeal it does.

> R. v. Consumers Distributing Co. Ltd. (1980), 57 C.C.C. (2d) 317 (Ont. C.A.).

43. While section 36(1) of the Competition Act is sustainable under the criminal law power, for the purposes of this appeal it will be assumed it is a regulatory offence. The

named accused is a corporation; as a consequence, it is immune from imprisonment. To be sure, even on summary conviction the maximum fine is $25,000. Although this is a substantial financial penalty, a large corporation may be able to satisfy it with little difficulty. It is submitted that these two factors indicate that the reverse onus impugned in these proceedings may be constitutionally permissible.

44. However, the offence created in section 36(1) covers a wide range of activities. It is not focused on a discrete and specific act. Furthermore, allegations of making false representations clearly connote dishonest practices and, if proved, could well affect a company's reputation amongst its business associates and in the community at large. In short, section 36(1)(a) of the Competition Act is one of those rare regulatory offences where stigma is a relevant factor.

45. On balance, it is submitted that the impugned sections 37.3(2)(a) and (b) of the Competition Act violate section 11(d) of the Charter.

C. Section 1 of the Charter

46. The Attorney General for Saskatchewan submits that even though sections 37.3(2)(a) and (b) of the Competition Act violate section 11(d) of the Charter, these

sections qualify as a reasonable limitation upon the presumption of innocence and as such are redeemed by section 1.

47. The analytical framework for section 1 of the Charter is well known. It is summarized in the Factum of the Attorney General of Ontario at p. 29, paragraph 77.

See further: R. v. Oakes, supra, at pp. 138-9.

R. v. Whyte, supra, at p. 20.

R. v. Chaulk and Morrissette, supra, at p. 29, per Lamer C.J.

48. While context is of only limited assistance when interpreting the guarantees enshrined in section 11, including the presumption of innocence, it is most relevant indeed for purposes of section 1. Therefore, it is of critical significance to reinforce the distinction between regulatory or public welfare offences and true crimes.

Edmonton Journal v. Alberta, [1989] 2 S.C.R. 1326 at p. 1356, per Wilson J.

Keegstra, supra, at p. 31, per Dickson C.J., at pp. 63-4, per McLachlin J. (dissenting).

R. v. Ellis Don Ltd., not yet reported, December 3, 1990 (Ont. C.A.) at p. 11, per Carthy J.A. dissenting.

49. As well, it is submitted that when balancing the various interests under section 1 it is important to recognize if the accused will be subjected to imprisonment upon conviction or bear the stigma of a criminal record. In the instant appeal the accused is

subject to neither of these adverse consequences.

Schwartz, supra, at p. 494, per Lamer J. (dissenting).

50. The Attorney General for Saskatchewan adopts the submissions of the Attorney General of Ontario found at paragraphs 78 to 99 of his factum.

## PART V

## NATURE OF RELIEF SOUGHT

51. The Attorney General for Saskatchewan submits that subsections 36(1) and 37.3(2)(a) and (b) violate section 11(d) of the Charter. However, it is submitted that the combination of these provisions is a reasonable limit upon the presumption of innocence and, therefore, justified under section 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Regina, Saskatchewan, this 12th day of February, 1991.

Graeme Mitchell

Graeme G. Mitchell

Counsel for the Attorney General for Saskatchewan

## LIST OF AUTHORITIES

**B. Statutes**

C. Academic Writings