File Number:____

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN)

BETWEEN:

EDWARD BURKE HUDSON

APPLICANT

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

APPLICATION FOR LEAVE TO APPEAL

EDWARD BURKE HUDSON

APPLICANT

Supreme Court Act, R.S.C. 1985, c. S-26, ss. 35 and 40

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NOTICE OF APPLICATION FOR LEAVE TO APPEAL

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Supreme Court Act, R.S.C. 1985, c. S-26, ss. 35 and 40

Edward Burke Hudson
Appellant

The Attorney General of Canada
Respondent

TAKE NOTICE that Edward Burke Hudson hereby applies for leave to appeal to the Court, pursuant to Supreme Court Act, R.S.C. 1985, c. S-26, ss. 35 and 40 from the judgment of the Court of Appeal for Saskatchewan, 2009 SKCA 108 made 20090921. The Appellant ask that the judgment be set aside and for the Court to order the return of his property.

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

Ground 1:

That the Honourable Chief Justice Klebuc of the Court of Appeal for Saskatchewan erred in law in his decision of 21 September 2009 upholding the validity of the provision of the *Criminal Code* 117.03 by failing to recognize the vital, important constitutional status of the *English Declaration of Rights*, 1689.

Ground 2:

That the Honourable Chief Justice Klebuc of the Court of Appeal for Saskatchewan erred in law in his decision of 21 September 2009 by failing to recognize that armed self-defence is an inalienable “natural right” or a fundamental norm that Parliament cannot unreasonably limit.

Dated at Saskatoon, Saskatchewan, this *29th* day of October 2009.

SIGNED BY

____

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ORIGINAL TO: THE REGISTRAR

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NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.

PART I – STATEMENT OF FACTS

[1] In 1995 Parliament passed the *Firearms Act* that proclaimed therein at p. 54:

> 117. The Governor in Council may make regulations
> (a) regarding the issuance of licences, registration certificates and authorizations, including regulations respecting the purposes for which they may be issued ... and prescribing the circumstances in which persons are or are not eligible to hold licences; ...
> (c) prescribing the circumstances in which an individual does or does not need firearms
> (1) to protect the life of that individual, or of other individuals, ...

[2] When the Province of Alberta challenged the *Firearms Act* as an intrusion into provincial jurisdiction, in *Reference re Firearms Act (Can) [2000] 1 S.C.R.* this Honourable Court concluded:

> 4. ... that the gun control law comes within Parliament's jurisdiction over criminal law. ... The intrusion of the law into the provincial jurisdiction over property and civil rights is not so excessive as to upset the balance of federalism.

[3] However, this Honourable Court was emphatic in stating:

> 32. If the law violates a treaty or a provision of the Charter, those affected can bring their claims to Parliament or the courts in a separate case. The reference questions, and hence this judgment, are restricted to the issue of the division of powers.

[4] In order to bring a constitutional challenge before the Courts, the Canadian Unlicensed Firearms Owners Association (CUFOA) began on Parliament Hill on New Year's Day 2003 a concerted, nation-wide campaign of open, public, peaceful, non-violent civil non-compliance against the *Firearms Act*.

[5] On 10 October 2003 as part of CUFOA's continuing direct challenges to the licensing mandate of the *Firearms Act*, my associate Jack Wilson and I were out "hunting" in a rural area north of Davidson, Saskatchewan.

[6] The Province has specifically designated this area for hunting. Jack and I both carried our Saskatchewan Environment Wildlife Habitat Certificates, Saskatchewan Resident Game Bird Licences, and our Environment Canada Migratory Game Bird Permits. We had my Labrador Retriever dog and one of my shotguns with us.

[7] We informed the local detachment of the RCMP where we would be, when we would be there, and that we would *not* have a firearms licence to possess the firearm.

[8] Corporal Warren of the Craik RCMP detachment attended to our location. Corporal Warren asked if I had a firearms licence to possess my shotgun. I replied that I did not have a firearms licence.

[9] Corporal Warren informed me that he was going to seize my shotgun under authority of the *Criminal Code of Canada*, section 117.03:

> (1) … a peace officer who finds
> (a) a person in possession of a firearm who fails … to produce, for inspection … a licence under which the person may lawfully possess the firearm …
> may seize the firearm, …(2) Where a person from whom any thing is seized … claims the thing within fourteen days after the seizure and produces …,
> (a) … a licence … the thing shall be forthwith returned to that person.
> (3) Where any thing seized … is not claimed … a peace officer shall forthwith take the thing before a provincial court judge, who may … declare it to be forfeited … .

I then peacefully surrendered my shotgun to Corporal Warren, and Corporal Warren issued me a receipt for my shotgun.

[10] Corporal Warren informed me that I could claim my shotgun from the RCMP detachment in Craik within 30 days if I produced a firearms licence.

[11] Since I had previously burned my Firearms Acquisition Certificate in protest of the *Firearms Act*, I did not claim my shotgun.

[12] Corporal Warren subsequently took my shotgun before a provincial court judge, and under authority of s. 117.03(3) asked the judge for a destruction order.

[13] I challenged the constitutional validity of *Criminal Code* s.117.03; first in Saskatchewan provincial court, then in Court of Queen's Bench, and ultimately in the Court of Appeal for Saskatchewan. The Chief Justice dismissed our appeal but left unanswered the question of the Right to have firearms for self-protection.

[14] I now seek leave to appeal to this Honourable Court to declare unconstitutional

section 117.03 of the *Criminal Code* and the enabling regulations of the *Firearms Act* and order the return of my shotgun.

Part II STATEMENT OF THE QUESTION IN ISSUE

The Issue:

[15] Parliament claims to have the authority to invade and violate our most vital individual Right – the Right to decide when and how we will protect our life and the lives of our family in our homes when we are attacked.

[16] We most vigorously dispute, deny, and reject Parliament's specious claim.

[17] This appeal thus raises three fundamental questions regarding the foundation of our individual, personal Rights held against illegitimate action by the State:

(a) Do the protections and safeguards enumerated in the *English Declaration of Rights* only apply to Parliament and the Courts, or do the Rights declared by the *English Declaration of Rights* also protect our individual, personal Rights?

(b) Does the "Rule of Law" only grant power to Parliament and the Courts, or does the Rule of Law protect our individual, personal Rights?

(c) Does the supremacy of God – Natural Law – protect our individual, personal Rights against abuse by the State?

Part III -- STATEMENT OT THE ARGUMENT

Introduction

[18] In *Authorson v. Canada (Attorney General)*, 2003 SCC 39, this Honourable Court seemed to adhere to the British model of absolute parliamentary sovereignty by quoting a one hundred year old lower court decision to justify an act of Parliament that denied disabled World War II veterans their rightful benefits:

> 53 This right has long been recognized. At the turn of the century, Riddell J. of the Ontario High Court recognized the Crown's right to take property without compensation. ... Riddell J. wrote:

> In short, the Legislature within its jurisdiction can do everything that is not naturally impossible, and is restrained by no rule human or divine … The prohibition, "Thou shalt not steal," has no legal force upon the sovereign body. ….(See Florence Mining Co. v. Cobalt Lake Mining Co. (1909), 18 O.L.R. 275, at p. 279.)

[19] However, in *Godbout v. Longueuil (City), [1997] 3 S.C.R. 844*, this Honourable Court recognized individual, personal protections and safeguards against action by the State, stating:

> The right to liberty in (Charter) s. 7 goes beyond the notion of mere freedom from physical constraint and protects within its scope a narrow sphere of personal autonomy wherein individuals may make inherently private choices free from state interference.

[20] It is this very “narrow sphere of personal autonomy” that we are fighting to protect.

[21] We recognize and acknowledge that since the Statute of Northampton of 1328 that Parliament has properly exercised the authority to define and restrict the misuse of arms and that responsible citizens shall “bring no force in affray of the peace”.

[22] We recognize and accept the many restrictions placed upon the possession of many types of firearms.

[23] However, based solidly upon our British heritage and Canadian culture we firmly declare that we do have the Right - albeit a very restricted, highly circumscribed Right - to have ‘Armes for their Defense’ to defend ourselves, our families, and our property. Licensing violates this Right.

[24] We base our claim upon both the written principles of positive law and the unwritten principles found within Canada’s constitutional documents.

A. Written Constitutional Principals: A Right Based Positive Law

> *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;*

Lord Coke, Dr. Bonham's Case, 8 Co. Rep. 107a, 114a C.P. 1610

[25] In 1689 in Great Britain, at a time of great turmoil when the king had fled the country, the citizens called a Convention Parliament and after serious debate and discussion proclaimed the *English Declaration of Rights*. This Convention Parliament then presented the *English Declaration of Rights* to William of Orange, Stadtholder of the Dutch Republic and his wife Mary, asking them to accept the declaration and to become King and Queen of Great Britain.

[26] Over the ensuing years English court cases subsequent to the *English Declaration of Rights* affirmed the Right of responsible citizens to have arms to defend one's home– see Appendix A: English Common Law.

"a Constitution similar in Principle to that of the United Kingdom"

[27] In the provincial courts below, we have demonstrated how the Rights enumerated in the *English Declaration of Rights* immigrated to North America and became part of Canada's culture and heritage, e.g.,

(1) The Royal Charters to the British North American colonies,

(2) The *Royal Proclamation*, 1763,

(3) The *British North America Act*, 1867,

(4) The *Canadian Charter of Rights and Freedoms*, 1982.

[28] This Honourable Court has on numerous occasions made reference to the importance of the preamble to the *British North America Act* to our Constitution and the operation in Canada of the Rights enumerated by the *English Declaration of Rights* – see Appendix B: a Constitution "Similar in Principle".

[29] In *Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3* former Chief Justice Lamer enumerated how the preamble has given force to many important constitutional principles and stated that "*unwritten principles can be 'constitutionalized'*" - see Appendix C: Unwritten Constitutional Principles.

[30] Yet while readily acknowledging that the Supreme Court accepts great portions of the *English Declaration of Rights,* the courts below have disingenuously excluded

“armes for their Defence” of Article 7 of the *English Declaration of Rights* as being part of our Canadian history, heritage, and Constitution.

[31] How are we to avail ourselves to our *Charter* s. 7 guarantee of “the right to life, liberty and security of the person” if the State denies us the very means necessary to defend themselves?

[32] Addressing the issue of the principles of fundamental justice in *R. v. Morgentaler, [1988] 1 S.C.R. 30, 1988*, Wilson, J. stated,

> The right to "liberty" contained in s. 7 guarantees to every individual a degree of personal autonomy over important decisions intimately affecting his or her private life. Liberty in a free and democratic society does not require the state to approve such decisions but it does require the state to respect them.

[33] Accordingly s. 26 of the *Canadian Charter of Rights and Freedoms* clearly states that the Charter “shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.”

[34] Thus the conclusion must be drawn that the “true, ancient, and indubitable” Right enumerated by Article Seven of the *English Declaration of Rights* for responsible citizens to have ‘Armes for their Defense’ to protect themselves, their family, and their property within their own homes must also be operative in Canada.

[35] If Article Seven of the *English Declaration of Rights* is <u>not</u> also “*constitutionalized*” as part of Canada’s founding principles, then how can we claim, e.g.,:

> that election of members of Parliament ought to be free, or,
>
> that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament;?

[36] To arrive at a conclusion that excludes Article 7, one would have to throw out many vitally important legal concepts, e.g.,

(a) the “Rule of Law”,

(b) the prohibition of “cruel and unusual punishment”, and

(c) the succession of the Crown.

[37] To the people of Canada, which is more important; the Right of Self-protection or the Right to Vote in legislative assemblies?

[38] William Blackstone answered this question in his 1765 "Commentaries" where he underscored the most compelling reason for the Right of individual ownership of firearms:

> But in vain would these rights be declared, ascertained, and protected by the dead letter of the laws, if the constitution had provided no other method to secure their actual enjoyment … 'auxiliary rights meant to protect all others' is that of having arms for their defense … the natural right of resistance and self preservation, when the sanctions of society and the laws are found insufficient to restrain the violence of oppression.

[39] The Right to have arms exists for the protection of all of our civil liberties.

[40] We assert that the stated, recorded British and Canadian documents recognized by legal positivism acknowledge that responsible Canadian citizens indeed have the Right of "having arms for their defense" to protect themselves. Any other conclusion defies logic.

B. Unwritten Constitutional Principles

1. The Rule of Law

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

[41] The theory of the 'Rule of Law' is well established in Canada by *Reference re Manitoba Language Rights*, 1985 CanLII 33 (S.C.C.), [1985] 1 S.C.R. 721:

> 59 … The rule of law, a fundamental principle of our Constitution, must mean at least two things. First, that the law is supreme over officials of the government … Indeed, it is because of the supremacy of law over the government, … that this Court must find the unconstitutional laws of Manitoba to be invalid and of no force and effect.
>
> 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" (*per* Rand J., *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 142). The rule of law has always been understood as the very basis of the English Constitution characterizing 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 its 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 Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by rule of law. While this is not set out in a specific provision, the principle of the rule of law is clearly a principle of our Constitution.

[42] The theory of the Rule of Law - that ‘unwritten principle’ - serves a dual purpose. The Rule of Law not only defines limits, but more importantly, the Rule of Law protects individual freedom.

[43] As acknowledged in 1877 by Lord Acton in The History of Freedom in Christianity:

> I should have wished ... to relate by whom, and in what connection the true law of the formation of free states was recognized, and how that discovery ... solved the ancient problem between stability and change, and determined the authority of tradition on the progress of thought; ... the theory that custom and the national qualities of the governed, and not the will of the government, are the makers of the law, ...

[44] Thus A.V. Dicey could state in *Introduction to the Study of the Law of the Constitution*:

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

[45] The Rule of Law therefore protects the individual's "true, ancient, and indubitable" Right of '*Armes for their Defense*'.

2. <u>Does the individual have a God-given or a Natural Law Right to possess firearms?</u>

> *It is odd, when one thinks of it, that there are people in the world who, having renounced all the laws of God and nature, have themselves made laws which they rigorously obey … .* Blaise Pascal

[46] The concept of legal positivism that asserts that Parliament "is restrained by no rule human or divine" certainly has severe deficiencies.

[47] Even legal positivism's most notable proponent H.L.A. Hart struggled with the separation of law and morals when confronted with the human rights abuses of the Nazi laws of Germany, declared "that laws may be law but too evil to be obeyed".

[48] Thus it is the height of arrogance for any body of men and women – duly elected or not - to claim the authority to "do everything that is not naturally impossible" against other people.

[49] Surely such a "legal" system that allows Parliament to claim the authority to tell responsible citizens how they can defend themselves in their own homes displays both "the law's delay, the insolence of office", and is terribly broken.

[50] As John Rawls asserts:

> A theory however elegant and economical must be rejected or revised if untrue; likewise laws and institutions no matter how efficient and well arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.

[51] However we would not need to reject or abolish this malfunctioning system if the courts would simply enforce the constitutional safeguards we already have in place.

The Sovereignty of Parliament versus the Supremacy of God

[52] While Parliament claims to be sovereign, the Constitution clearly recognizes "the supremacy of God". These are clearly contradictory, mutually exclusive assertions.

[53] As note above, the preamble to the *British North America Act* is an extremely important part of Canada's constitutions. The preamble of the *Canadian Charter of Rights & Freedoms*, 1982, is likewise exceedingly significant.

> *"Canada is founded upon principles that recognize*
> *the supremacy of God and the Rule of Law*

[54] While the phrase "Rule of Law", like the words "supremacy of God", is only explicitly written in the *Charter*, the "Rule of Law" enjoys almost scriptural reverence among judges (supra).

[55] If the "Rule of Law" is so highly praised as to be foundational to Canada's system of law and justice, then the "supremacy of God" has to occupy at least as an esteemed place in our parliamentary and judicial systems.

[56] If Canada's foundational principles truly recognize the "supremacy of God", then Parliament cannot at the same time be "sovereign"; or at least Parliament cannot be "sovereign" in ***all*** jurisdictions.

[57] God's mandates to defend oneself, family, and property are clear. Clearly self-protection is an area of personal "jurisdiction" – see Appendix D: Biblical Imperatives.

[58] In *R. v. Kerr, 2004 SCC 44* this Honourable Court recognized the need of incarcerated inmates in a maximum security institution have arms for self-defence.

[59] Yet in spite of God's clear scriptural commands, Parliament pretends to have the sovereignty to make regulations:

> prescribing the circumstances in which an individual does or does not need firearms to protect the life of that individual, or of other individuals, ...

In regard to this specific "command" to submit to Parliament and ask for permission for our means of defence, we cannot be true to God and obey Parliament.

[60] Surely Parliament has dangerously stepped outside its constitutional "jurisdiction" and has grievously intruded upon our individual "narrow sphere of personal autonomy" by proclaiming a law "prescribing" the means we may use in individual self-protection and the protection of our family within our own homes.

[61] Therefore the licensing mandate must be invalid.

Natural Rights versus Positive Law

Some common law Rights presumably lie so deep that even Parliament could not override them.

[62] But even if God were dead - or even if God were proved never to have existed - we believe we have a Natural Law moral imperative to have arms to protect ourselves.

[63] The Right of Self-protection has been recognized by Natural Law throughout human history – see Appendix E: the Admonitions of the Philosophers.

[64] As Alexander Passerin d'Entreves notes, even though that the theory of Natural Law was "declared to be dead, never to return from its ashes … natural law still calls for discussion."*

[65] The pernicious demands of the *Firearms Act* force us to examine how Natural Law protects us.

[66] Among modern jurists there seems to be three prominent views of Natural Law:

(a) New Zealand's Lord Cooke's view of Natural Rights is provocative:

> Some common law Rights presumably lie so deep that even Parliament could not override them.

(b) Australian Justice Kirby's view is dismissive:

> Such extra-constitutional notions must be viewed with reservation not only because they lack the legitimacy that attaches to the enactments ultimately sanctioned by the people. But also because, once allowed, there is no logical limit to their ambit. They may thereby undermine a rule of law and invite the only effective substitute, viz. the rule of power.

(c) The Chief Justice Beverley McLachlin's Canadian view seems to be supportive:

> Clearly something is going on; something that cannot be dismissed with a wave of a judicial hand. I will suggest that actually quite a lot is going on, and that it is important. What is going on is the idea that there exists fundamental norms of justice so basic that they form part of the legal structure of governance and must be upheld by the courts, whether or not they find expression in constitutional texts.

[67] Armed self-defense is a Natural Right, a moral imperative that predates any law code, e.g.,

(a) Cicero (106 - 43 B.C.) observed:

> [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 ... .

(b) Hugo Grotius, the "Father of International Law" stated:

> [W]hen our lives are threatened with immediate danger, it is lawful to kill the aggressor, if the danger cannot be otherwise avoided .... [T]his kind of defense derives its origin from the principle of self-preservation, which nature has given every living creature ... . For I am not bound to submit to the danger or mischief intended, any more than to expose myself to the attack of a wild beast.

[68] Even in today's 'modern' world armed self-defense is still an individual necessity and personal responsibility. From a practical standpoint, dialing '9-1-1' is what a person does when they *see* an attack, not when they are *experiencing* one.

[69] Citizens need arms to defend themselves not only against criminals but also against governments. Through the ages philosophers and statesmen have warned of the dangers of government abuse of power. The admonitions of the philosophers were recorded for our enlightenment and protection.

[70] In *Democide and Disarmament* legal scholar Dr. Don B. Kates makes a

sobering statement:

> More people have been murdered by their government than by criminals.

[71] Government-sponsored genocide is not a once-in-a-millennium aberration that disappeared with the defeat of the German Nazi war machine in May 1945. State genocide continues unabated throughout the world.

[72] In *Shake Hands with the Devil* retired Canadian General Roméo Dallaire shares his personal experience with civilian disarmament:

> Almost fifty years to the day that my father and father-in-law helped to liberate Europe -- when the extermination camps were uncovered and when, in one voice, humanity said, 'Never again,' -- we once again sat back and permitted this unspeakable horror to occur.
> In 100 days ... an estimated 800,000 men, women and children were brutally killed ... The victims - many horrifically hacked to death ... the machete-wielding government-sponsored forces... a damning indictment of world leaders and UN bureaucrats who failed to stop the genocide.

[73] As Dr. Kates and other authors about genocide demonstrate, insidious, false propaganda fallaciously proclaims that firearms are inherently dangerous, while the reality is that governments' civilian disarmament policies are the real problem.

[74] Professor Joyce Lee Malcolm traces how Great Britain, starting with it's own *Firearms Act* of 1920, relentlessly used that law to disarm the population of the United Kingdom with disastrous result.*

[75] The Canadian *Firearms Act* contains all the elements needed for civilian disarmament.

[76] The greatest folly which could befall the citizens of Canada would be to follow the example of the United Kingdom until, as Judge Orr disparagingly said, "some awful and hopefully never-to-be future" has arrived and then responsible citizens vainly have to petition the courts for the means to protect themselves.

[77] Cicero stated, "True Law is right reason in agreement with nature; it is of universal application, unchanging and everlasting;"

[78] Current world events clearly show that the *Firearm Acts* is not "right reason" nor is the *Firearms Act* "in agreement with Nature."

[79] This Honourable Court has previously found unwritten principles to support the Right of women to the privacy of their bodies against State interference and the Right of individuals to choose where to establish one's home.

[80] Thus we submit that the Rule of Law, the supremacy of God, and Natural Law firmly establish our individual Right to have the means of self-protection and annul and negate any claim of Parliament to the authority to make any law that gives the government a monopoly on the access to firearms.

<u>Conclusion</u>:

[81] Armed self-protection is hardwired into human physiology whether by God or Darwinian evolution.

[82] Our Right to armed self-protection is firmly founded upon:

(a) our British constitutional documents,
(b) our Canadian heritage and culture.
(c) the Rule of Law
(d) the supremacy of God, and
(e) Natural Law.

[83] The courts have the authority and the responsibility to require Parliament to adhere to its constitutional limitations before God, before the natural principles of the universe.

[84] I respectfully ask this Honourable Court to declare *Criminal Code* section 117.03 *ultra vires* Parliament and to order the return of my shotgun.

Part IV SUBMISSIONS IN SUPPORT OF ORDER SOUGHT CONCERING COST

[85] I respectfully submit that my family and I have personally borne over ninety-five percent of the costs involved in the court actions beginning with the Provincial

Court of Saskatchewan, the Court of Queen's Bench, Saskatchewan, and the Court of Appeal for Saskatchewan, and that I will be self-represented before this Honourable Court. I warrant that I have received no support from any government department or any agency of Saskatchewan or the federal government of Canada.

[86] As the Chief Justice said in Saskatoon on 12 May 2007 in discussing the heavy financial burden that is causing more Canadians to represent themselves:

> It's increasingly difficult for middle class people to afford litigation, to afford to take their problems to court, ...
> People here, as is the case around the country, are looking for solutions to this problem.

[87] I have already paid a high financial price. Requiring me to pay costs to oppose the Crown's unjust action is doubly unjust.

Part V ORDER or ORDERS SOUGHT

[88] I am seeking Orders:

(1) declaring *Criminal Code* section 117.03 ultra vires Parliament and of no force and effect in Canada,

(2) directing the Court of Appeal for Saskatchewan to order the RCMP Craik Detachment to return my shotgun, and,

(3) voiding the lower court orders for costs.

Edward Burke Hudson

Appendix A

English Common Law

[A1] 1739 Rex v. Gardner, Michaelmas Term, 12 Geo. 2:

> The defense objected "that a gun is not mentioned is the statue of [the Game Act, 1706], and though there may be many things for the bare keeping of which a man may be convicted, yet they are only such as can used for the destruction of the game, whereas a guns necessary for defense of a house, or for a farmer to shoot crows." The court agreed with the defense and concluded: "We are of the opinion, that a gun differs from nets and dogs, which can only be kept for an ill purpose, and therefore the conviction should be quashed."

[A2] 1752 Wingfield vers. Stratford & Osman, Hilary Term, 25 Geo.II:

Plaintiff appealed his conviction and the confiscation of a gun and a dog, the dog being a "setting dog" and the gun "an engine" for killing game. The conviction was overturned. The court explained: "It is not to be imagined, that it was the Intention of the Legislature, ... to disarm all the People of England. ... a gun may be kept for the Defense of a Man's House, and for divers other lawful Purposes, ...

[A3] 1819 King against George Dewhurst & Others:

A man has a clear right to arms to protect himself in his house. A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purposes of business.

Appendix B
A Constitution "Similar in Principle"

[B1] Judicial independence, *Reference: re Remuneration Judges Prov Court P.E.I., [1997] 3 S.C.R.* ,p. 5, Per C.J. Lamer:

Judicial independence is an unwritten norm, recognized and affirmed by the preamble to the *Constitution Act*, 1867 -- in particular reference to "a Constitution similar in principle the that of the United Kingdom" ... The preamble ... invites the courts to turn those principles into the premise of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text ... .

[B2] Parliamentary privilege; *Canada (House of Commons) v. Vaid, [2005] SCC* 30; p. 8, para 21 &34

Parliamentary privilege, therefore, is one of the ways in which the fundamental constitutional separation of powers is respected. In Canada, the principle has its roots in the preamble to our *Constitution Act*, 1867 which calls for "a Constitution similar in Principle to that of the United Kingdom" ... Parliamentary privilege was partially codified in art. 9 of the U.K. Bill of Rights of 1689, 1 Will. & Mar., sess. 2, c. 2, ...

34 Historically, the legislative source of some privileges (e.g., art. 9 of the Bill of Rights of 1689) did not diminish the jurisdictional immunity they attracted. ... .

The doctrine of privilege attaching to a constitution "similar in Principle to that of the United Kingdom" under the preamble to the *Constitution Act*, 1867 is not displaced by the wording of s. 32(1) of the Charter. As was pointed out in *New Brunswick Broadcasting*, parliamentary privilege enjoys the same constitutional weight and status as the Charter itself.

[B3] Democratic principles, *Reference: re Secession of Quebec, [1998] 2 S.C.R.*:

Our Constitution is primarily a written one, the product of 131 years of evolution. Behind the written word is an historical linage stretching back

through the ages which aids in the consideration of the underlying constitutional principles ... they are vital unstated assumptions upon which the text is based {paragraph 49} ...
Canadians have long recognized the existence and importance of unwritten constitutional principles in our system of government {paragraph 52} ...
Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have "full legal force and effect," as we described in the Partition Reference ... .{paragraph 54} ...
The evolution of our democratic principles can be traced back to the Magna Carta (1215) and... in the English Bill of Rights of 1689 ... and eventually, the achievement of the Constitution itself in 1867. {paragraph 63}

[B4] Parliament's "inherent" self-regulating authority, *Reference: Resolution to Amend Constitution [1981] 1 S.C.R.*; p. 785:

It is unnecessary here to embark on any historical review of the "court" aspect of Parliament and the immunity of its procedures from judicial review... It would be incompatible with the self-regulating -- "inherent" is as apt a word-- authority of Houses of Parliament to deny their capacity to pass any kind of resolution. Reference may appropriately be made to art. 9 of the [English] Bill of Rights of 1689, undoubtedly in force as part of the law of Canada ... .

[B5] Nor cruel and unusual Punishments, *R. v. Smith (Edward Dewey), [1987] 1 S.C.R. 1045; p. 15, pra 24*:

We in Canada adopted through the preamble of our constitution the legislative restraint set out in s. 10 of the English Bill of Rights of 1688 (sic 1689), I Wm. & M. sess. 2, c. 2, which states:

10. That excessive bail ought not be required, nor excessive fines imposed; nor cruel and unusual Punishments inflicted.

[B6] Presumption of innocence, *R. v. Demers, [2004] 2 S.C.R. 489, p. 21, para 82*:

[I]n importing certain principles found in the United Kingdom, the *Constitution Act*, 1867 incorporated principles of civil liberties and human rights embedded in English constitutional history ... "residing in the theory of government these documents proclaim." These documents ... were the *Magna Carta* and the [English] *Bill of Rights of 1689 ... .*

Appendix C

Unwritten Constitutional Principles

[C1] In *Reference re Remuneration of Judges of the Provincial Court (P.E.I.), [1997] 3 S.C.R. 3,* Lamer, C.J demonstrated that*:*

(*a*) although unwritten constitutional principles are exterior to the Constitution, the preamble can recognize and affirm their existence,

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

(c) unwritten principles can be "constitutionalized" and preclude application of the Charter,

(d) the list of constitutional documents is "not exhaustive"; the Canadian Constitution does not consist of a single set of documents,

(e) the preamble explains the existence of the unwritten rules,

(f) the preamble gives the underlying logic of the Constitution the force of law,

(g) the preamble explains the doctrine of paramountcy,

(h) the preamble gives rise to elected assemblies and the legislative privileges of the provinces and the Senate are protected by the preamble,

(i) freedom of political speech is protected by way of the preamble,

(j) based upon the preamble, the Supreme Court fashioned "an implied bill of rights"

(k) the preamble "invites the courts" to fill "the gaps" in the constitutional texts,

(l) implication and "implied" limitation have played a large part of Supreme Court decisions.

[C2]Significantly Lamer C.J. referred specifically to *Reference re Manitoba Language Rights, 1985 CanLII 33 (S.C.C.), [1985] 1 S.C.R. 721,*:

> 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.

Appendix D
Self-defense: A Biblical Imperative

[D1] Abraham defending Lot (Genesis 14.13-20):

> When Abram heard that his kinsman had been taken captive, he led forth his trained men, ... went in pursuit ... and routed them ... After his return from the [victory], Melchizedek ... priest of the God Most High ... blessed him ... .

[D2] Moses against Pharaoh (Exodus 13.18 - 15.3), Torah v. 13.18b

> and the children of Israel went up armed out of the land of Egypt.

[D3] Deborah against the Canaanites (Judges 4.6 - 8):

Now Deborah, a prophetess, ... said to [Barak], “The Lord God of Israel commands you, ‘Go, gather your men ... I will draw ... the general ... with his chariots and his troops; and I will give him into your hand.’ ”

[D4] David against Goliath (I Samuel 17. 12 - 53), vv. 37 – 46:

And David said, “The Lord who delivered me from the paw of the lion and from the paw of the bear, will deliver me from the hand of this Philistine ... then .... he chose five smooth stones from the brook ... with his sling ... Then David said to the Philistine, “You come to me with a sword and a spear and with a javelin; but I come to you in the name of the Lord of hosts ... This day the Lord will deliver you into my hand, and I will strike you down, and cut off your head ... that all earth may know that there is a God in Israel ... .

[D5] Nehemiah in Jerusalem (Nehemiah 4.16 - 20). vv. 11 – 15:

And our enemies said, “They ... kill [us] and stop the work.” ... So ... I stationed the people ... with their swords, their spears, and their bows. ... and said ... “Do not be afraid of them. Remember the Lord, who is great and terrible, and fight for your brethren, your sons, your daughters, your wives, and your homes.”

Harper Study Bible Harold Lindsell, Zondervan Bible Publishers, Grand Rapids, Michigan, 1978; The Torah, Henry Holt & Company, New York, 1996

Appendix E
The Admonitions of the Philosophers

[E1] John Locke, Two Treatises of Government, (1680-1690):

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.

[E2] Algernon Sydney, Discourses Concerning Government:

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

[E3] Andrew Fletcher, A Discourse of Government With Relation to Militias, (1698):

The possession of arms is the distinction between a freeman and a slave. He

who has nothing, … needs no arms: but he who thinks he is his own master, .., ought to have arms to defend himself … or else he lives precariously and at discretion. And though for a while those who have the sword in their power abstain from doing him injury; yet, by degrees, he will be awed into submission to every arbitrary command. Our ancestors, by being always armed, … defended themselves against the Romans, Danes and English; and maintained their liberty against encroachments of their own princes.

[E4] J.L. DeLolme, The Constitution of England; or an Account of the English Government, (New York, 1792), p. 164, Swiss author's observation of the English government in 1755:

[It is] absolutely necessary, for securing the Constitution of a State, to restrain the Executive power … it is still more necessary to restrain the legislative. What the former can do only by successive steps (I mean subvert the laws) …, the latter does in a moment. As its bare will can give being to the laws; so its bare will can also annihilate them: … the Legislative power can change the Constitution as God created the light.

[E5] Alexis de Tocqueville, Democracy in America, Vol. I 1835 & Vol. II, 1840:

When I refuse to obey an unjust law, I do not contest the right of the majority to command, but I simply appeal from the sovereignty of the people to the sovereignty of mankind. Some have not feared to assert that a people can never outstep the boundaries of justice and reason …; and that consequently full power may be given to the majority … But this is the language of a slave.

[E6] Thomas Macaulay, Critical and Historical Essays, Contributed to Edinburgh Review, vol I (Leipzig, 1860):

The Englishman's ultimate security depended not upon the Magna Carta or parliament but upon 'the power of the sword' … the legal check was secondary and auxiliary to that which the nation held in its own hands … the security without which every other is insufficient.

[E7] James Burgh, Political Disquisitions: Or, an Enquiry into Public Errors, Defects, and Abuses, London, 1774-1775:

When we elect persons to represent us in parliament … We make a lodgment, not a gift; we entrust, but part with nothing. (If) they should attempt to destroy that constitution … they can no more be held in the rank of representatives than a factor, turned pirate, can continue to be called the factor of those merchants whose goods he had plundered, and whose confidence he had betrayed. … .

All history shows the necessity, in order to the preservation of liberty, of every subjects having a watchful eye on the conduct of Kings, Ministers, and Parliament, … alarming his fellows of every attempt upon public liberty.

[E8] James Otis, Against Writs of Assistance, February 1761:

Now, one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well

guarded as a prince in his castle.

[E9] William Pitt, “the Younger” Speech in the House of Commons, 18 Nov. 1783:
Necessity is the plea for every infringement of human liberty; it is the arguments of tyrants; it is the creed of slaves.

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