

Q.B. No. 1150 of 2010

In the Court of Queen's Bench for Saskatchewan

Judicial Center of Saskatoon

Between:

Edward Burke Hudson

Applicant

-and-

The Attorney General of Canada

Respondent

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Brief  
of  
Reasons

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

Brief of Law  
Court of Queen's Bench, Saskatoon

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## Civil Disobedience and the Right to Trial by Jury

### I. Introduction

1. The *Firearms Act* mandates that everyone - except the police and members of the Armed Forces – must have a federal firearms licence to possess any type of firearm.
2. My associates and I regard this claim of the federal Government to have the authority to tell us when - or if - we may have a firearm to defend ourselves, our families, and our property as patently absurd.
3. We hold that the Right of armed self-defense is an essential, vital precondition of citizenship that predates any democratic state.
4. We consider the licensing mandate of the *Firearms Act* an unconstitutional violation of the 1689 *English Declaration of Rights* that declares that responsible citizens may have ‘Armes for their Defense’.
5. For over fifteen years we have done everything we possibly could within the political arena to affect a change in the Government’s policy on licencing. We wrote letters to our Prime Ministers, ministers, government officials, and members of Parliament. We joined protest marches, attended rallies, contributed our time, energy, and financial resources in working on election campaigns, joined provincial and federal constituency associations, and served on electoral districts boards. All of our political efforts availed us nothing.
6. Since my associates and I have no intention of submitting to this unjust Act, we formed the Canadian Unlicensed Firearms Owners Association (CUFOA) as a further means to defend our Right to possess firearms for self-protection.
7. We based CUFOA upon the principles of peaceful, nonviolent civil disobedience of Henry David Thoreau, Mohandas Gandhi, and Martin Luther King, Jr. and founded CUFOA on the legal philosophy of John Rawls.

8. Through our acts of public, peaceful, nonviolent civil disobedience we seek a direct dialogue with our fellow citizens.

9. If our fellow citizens want to incarcerate us for our refusal to surrender our Right to armed self-defense, we will serve our time in prison.

10. However, either intentionally or inadvertently, the Government has effectively used *Criminal Code* section 117.03 to evade the law's requirement to bring us to trial for our intentional, peaceful - yet specifically illegal - public actions.

11. The Government has thus denied us our democratic Right of peaceful public dialogue; the Government has denied us Justice.

## II. Statement of Facts

12. As noted in our Brief of Reasons to Judge Plemel, my associates and I have been involved in over twenty-five peaceful, nonviolent demonstrations where the police should have charged us under *Criminal Code* section 92(1) for knowingly possessing a firearm without a licence.

13. My associates and I have endured seven arrests where the police have seized and confiscated our responsibly owned firearms from us, but the police never charged us with a violation of *Criminal Code* s. 92(1). Instead the police either charged us with other *Criminal Code* violations – which the Crown later dropped - and seized and confiscated our firearms under *Criminal Code* s. 117.03, or the police simply seized and confiscated our firearms under *Criminal Code* s. 117.03 without laying any charges at all.

## III. Points in Issue

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

- Lyndon B. Johnson

14. The police have misused or abused *Criminal Code* s. 117.03 by simply seizing and confiscating our responsibly owned firearms without laying appropriate criminal charges under *Criminal Code* section 92(1).

15. The Provincial Courts of Saskatchewan have misused or abused *Criminal Code* s. 117.03 by issuing destruction orders of our responsibly owned personal property without giving us the benefit of a trial by a jury of our peers.

16. We make no allegation whatever of a conspiracy on the part of the various police services or the Provincial Courts of Saskatchewan to deny our Right to a fair, public trial, but the cumulative effect of the actions of the police in using *Criminal Code* s. 117.03 without laying proper criminal charges and of the Provincial Courts of Saskatchewan in issuing destruction orders of our responsibly owned personal property without giving us the benefit of a trial by jury has totally negated our use of peaceful, nonviolent civil disobedience as a means to affect a change in an unjust law.

#### IV. Arguments at Law

The law is not so struthious as to compel a judge, in making factbound determinations ... to divorce himself or herself from common sense or to ignore what is perfectly obvious.

Honourable Bruce M. Selya, U.S. v. Sklur, U.S. Court of Appeals 1st Circuit, 1990

17. We present three reasons why this Honourable Court should declare *Criminal Code* s. 117.03 *ultra vires* Parliament.

##### A. Destruction of Personal Property without Trial

18. We submit that in the Court below, Judge Plemel dismissed our constitutional arguments with a decision based on a total misunderstanding of the case before him.

19. We have been in Saskatchewan Provincial Court twice challenging the constitutional validity of Criminal Code s. 117.03; first in Craik in 2005, then in Humboldt in May 2010, but we used two entirely different arguments.

20. In Craik before Judge Orr we argued (unsuccessfully) that the licencing requirement of s.117.03 violated our constitutionally Right to have firearms for self-protection.

21. In Humboldt before Judge Plemel we argued that s. 117.03 violated our constitutionally Right to a trial of our peers.

22. Judge Plemel seems to have been under the misapprehension that we were again debating the constitutional validity of licencing.

23. We did not challenged the legality of licencing in any of our presentations before Judge Plemel in Humboldt.

24. In my oral presentation before Judge Plemel I took pains to emphasize that we were not addressing licencing, specifically stating:

One of the problems I have with Mr. Spencer's material that he sent to you, he has indicated that I'm rearguing a pervious issue. I have not intention to argue the pervious issue that we argued in Craik. I'm arguing a very specific issue here, ...

I want to address early that whatever happened in Craik ... that has no bearing on the argument that I want to make today. – see Exhibit GG, Humboldt transcript, p. 7, lines 11 – 21.

25. I again attempted to clarify the issue, stating:

I just wanted to be sure that you and I and Mr. Spencer, that all three of us are understanding that this is a completely new argument and has nothing to do with what was decided in Craik. – see Humboldt transcript, p. 8, lines 19 – 22.

26. Yet in his verbal decision Judge Plemel declares:

I've considered the new arguments, including this due process argument, and it does not, in my opinion, change the law as stated by Judge Orr in the Davidson file, or by Justice Gabrielson in his decision in the Court of Queen's Bench ... that there is "no unfettered right to possess or use a firearms in Canada ... ." – see Exhibit GG, Humboldt transcript, p. 113, lines 10 – 20.

27. As we maintained in the Provincial Court of Saskatchewan before Judge Plemel, we submit that before the Court can order the destruction of our responsibly owned personal property we are constitutionally entitled to a trial of our peers.

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

29. In violation of the *Charter* protections against self-incrimination, under Criminal Code s. 117.03 the police can require a person facing a severe criminal violation to admit to a criminal act.

30. In violation of the *Charter* protections of the presumption of innocence, the so-called hearing of s. 117.03 employs reverse onus for a responsible citizen to prove their innocence.

31. In violation of the *Canadian Bill of Rights* guarantee of due process the Courts of Saskatchewan have ordered the destruction of our private property.

32. In violation of all the historical constitutional protections of personal legal Rights and protection of private property, s. 117.03 allows a judge to order the forfeiture and destruction of our most vital piece of private property without a trial by jury.

33. Thus we submit that *Criminal Code* s. 117.03 is *ultra vires* Parliament.

B. Illegal Acts Requiring a Trial by Jury

34. By publically declaring we possess our hunting shotguns without a federal possession licence we have openly engaged in a specific illegal act in direct defiance of the *Firearms Act*, and we have intentionally, purposefully contravened *Criminal Code* section 92(1).

35. *Criminal Code*, section 92(1) directs that anyone who possesses a firearm “knowing that the person is not the holder of a licence” is guilty of an indictable offence and is liable “to imprisonment for a term not exceeding the years”.

36. An indictable offence with an imprisonment sentence requires a trial by jury.

37. We very clearly *know* that we are “not the holder of a licence” to possess our firearms.

38. For his participation in a very similar public act of peaceful, nonviolent civil disobedience in Edmonton, Alberta, Oscar Lacombe was arrested, charged, tried, convicted, and sentenced for possession of a firearm without a licence.

39. For his participation in a very similar public act of peaceful, nonviolent civil disobedience in Dryden, Ontario, Bruce Montague was arrested, charged, tried, convicted, and sentenced for possession of a firearm without a licence.

40. The Provincial Courts of Saskatchewan have not afforded us this *Charter* benefit of Canadian citizenship.

C. Freedom of Expression and Peaceful, Nonviolent Civil Disobedience

*Canadian Charter of Rights And Freedoms*

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;



- (c) freedom of peaceful assembly; and
- (d) freedom of association.

41. Through peaceful acts of public, peaceful, nonviolent civil disobedience we have attempted to bring our grievance with the licencing mandate of the *Firearms Act* into public debate through the court system of Canada.

42. In his seminal text, *A Theory of Justice*, John Rawls considers peaceful, nonviolent civil disobedience a suitable means of public discourse noting that:

- Civil disobedience (is) a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. p. 364
- By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of societal cooperation among free and equal men are not being respected. p. 364
- Civil disobedience is a political act not only in the sense that is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulates the constitution and social institutions generally. P. 365
- In ... civil disobedience ... one invokes the commonly shared conception of justice that underlies the political order. P. 365
- By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority. p. 366
- Civil disobedience is a public act. Not only is it addressed to public principles, it is done in public. It is engaged in openly with fair notice; it is not covert or

secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum. p. 366

- Civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat. p. 366

43. Rawls considers peaceful civil disobedience a “part of the theory of a free government”, noting that:

- The persistent and deliberate violation of the basic principles of this conception over any extended period of time, especially the infringement of the fundamental equal liberties, invites either submission or resistance. pp. 365/6
- Civil disobedience expresses disobedience to the law within the limits of fidelity to law, although it is at the outer edge thereof. The law is broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one’s conduct. This fidelity to law helps to establish to the majority that the act is indeed politically conscientious and sincere. To be completely open and nonviolent is to give bond to one’s sincerely. pp. 366/7
- We must (be willing) to pay a certain price to convince others that our actions have, in our carefully considered view, a sufficient moral basis in the political convictions of the community. p. 367

44. Although civil disobedience “is strictly speaking contrary to law”, Rawls states that:

- Civil disobedience (is) a way of setting up, within the limits of fidelity to law, a final device to maintain the stability of a just constitution. p. 384
- Being an appeal to the moral basis of civic life, civil disobedience is a political and not a religious act. It relies upon common sense principles of

justice that man can require one another to follow ... it is ... the principles of justice, the fundamental terms of social cooperation between free and equal persons, that underlie the constitution. Civil disobedience ... is derived from the public conception of justice that characterizes a democratic society. p. 385

45. At great expense, effort, and investment of time we have been engaged in active, open, honest, peaceful, nonviolent civil disobedience to the licencing mandate of the *Firearms Act*.

46. In direct contravention of *Criminal Code* s. 92(1) we have intentionally possessed firearms knowing that we were “not the holder of a licence”.

47. Yet the police and the Provincial Court of Saskatchewan have ignored our attempts at peaceful political dialogue.

48. As Rawls advises:

Civil disobedience is a crucial test for any theory of the moral basis of democracy.

And he further warns:

To deny justice to another is either to refuse to recognize him as an equal ... or to manifest a willingness to exploit the contingences of natural fortune and happenstance ... deliberate injustice invites submission or resistance. Submission arouses the contempt of those who perpetuate injustice and confirms their intention ... . p. 384

49. Furthermore Rawls admonishes:

If justified civil disobedience seems to threatened civic concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist. pp. 390/1

50. Either inadvertently or intentionally, the police and the Provincial Courts of Saskatchewan have misused or abused *Criminal Code* s. 117.03 and have ignored our several honest pleas to be properly charged and tried before a jury of our peers.

51. We have done everything we reasonably can do, in an open honest, peaceful, nonviolent manner, to have ourselves charged and taken before a jury of our peers for the so-called illegal possession of our firearms.

52. We would remind this Honourable Court of Rawls conclusion:

The final court of appeal is not the court, nor the executive, not the legislature, but the electorate as a whole. The civilly disobedient appeal in a special way to this body. There is no danger of anarchy so long as there is a sufficient working agreement in citizens' conception of justice and the conditions for resorting to civil disobedience are respected. p. 390

53. We wish to appeal to the electorate of Saskatchewan in a trial before a jury of our peers.

## V. Conclusion

54. We are committed to defending our Right to have 'Armes for their Defense' and have affirmed that, in fidelity to the Rule of Law, we will adhere to the Gandhian principles of peaceful, nonviolent civil disobedience in all of our actions.

55. We have openly invited the Government of Saskatchewan to charge us properly for our activity and to bring us to trial before a jury of our peers.

56. We consider the seizure, confiscation, and issuance of destruction orders of our legally acquired, responsibly owned, and properly used firearms a violation of everything that evolves from our Canadian heritage, culture, and the *Constitution of Canada*.

57. Therefore we call upon this Honourable Court to acknowledge and respect our efforts to have a sincere, honest political dialogue regarding the unjust licencing mandate of the *Firearms Act* with our peers in court.

58. Therefore we respectfully request that this Honourable Court either:

1. declare *Criminal Code* section 117.03 *ultra vires* Parliament and of no force and effect in Canada and order the RCMP to return my shotgun,
- or,
2. order the Humboldt RCMP to charge me properly with violating Criminal Code s. 92(1) and bring me to a trial before my peers.

Respectfully submitted to the Court of Queen's Bench, Saskatoon, Saskatchewan,  
06 August 2010.

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