

**SUPERIOR COURT OF JUSTICE  
(NORTH REGION)**

**BETWEEN**

**HER MAJESTY THE QUEEN**

**Respondent**

**and**

**WILLIAM BRUCE MONTAGUE  
DONNA MONTAGUE**

**Applicants**

**NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE**

**TAKE NOTICE that William Bruce Montague and Donna Montague will bring an application during the trial herein at the September sittings, Court House, 216 Water Street, Kenora, Ontario, P9N 1S4 for an order:**

- 1. Striking out Sections 86, 88, 91, 92, 95, 100, 102, 108, of the Criminal Code of Canada and their authorizing Sections in Bill C-68 and The Firearms Act.**
- 2. Dismissing the charges laid pursuant to the said sections.**
- 3. Striking out the Firearms Act and Bill C-68 as unconstitutional and contrary to the provisions of the Canadian Charter of Rights and Freedoms.**

**THE GROUNDS FOR THIS APPLICATION ARE:**

- 1. The said sections and their authorizing sections in Bill C-68 and The Firearms Act are contrary to the Canadian Charter of Rights and Freedoms.**
- 2. The Firearms Act and Bill C-68 are unconstitutional and contrary to the provisions of the Canadian Charter of Rights and Freedoms.**

**THE CONSTITUTIONAL PRINCIPLES TO BE ARGUED ARE:**

- 1. The said sections, Bill C-68, The Firearms Act, and the conduct of the police herein violate the provisions of the Preamble and Sections 1, 2 (b), 6, 7, 8, 9, 11, 12, 15, 24, 25, 26, and 27 of the Canadian Charter of Rights and Freedoms.**
- 2. In General, Bill C-68 and The Firearms Act violate the provisions of the Canadian Charter of Rights and Freedoms.**

**STATUTORY PROVISION OR RULES UPON WHICH THE APPLICANT PLACES RELIANCE ARE:**

- 1. The Canadian Charter of Rights and Freedoms.**
- 2. The Magna Carta (1215).**
- 3. The English Bill of Rights (1689).**
- 4. The British North America Act (1868).**
- 5. The Canadian Bill of Rights (1960).**

**IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:**

- 1. The evidence at the trial herein and such further and other evidence as may be proposed and allowed.**

**THE RELIEF SOUGHT IS:**

- 1. A dismissal of all charges laid pursuant to the said sections.**
- 2. A declaration that the said sections are unconstitutional.**
- 3. A declaration that Bill C-68 and The Firearms Act are unconstitutional.**

**Information No.**  
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**APPLICANTS' FACTUM**  
**CHARTER ISSUE**

**PART 1 - STATEMENT OF THE CASE**

- 1. The applicants have been charged, inter alia, with various firearms offences pursuant to sections 86, 88, 91, 92, 95, 100, 102, and 108 of the Criminal Code of Canada and their authorizing sections in Bill C-68 and The Firearms Act. See schedules herein for a list of the charges and a list of the charges by sections.**
- 2. The trial will be held at the September sittings, Court House, 216 Water Street, Kenora, Ontario, P9N 1S4.**

**PART II - SUMMARY OF THE FACTS**

- 3. As in Part I.**
- 4. Evidence to be developed in the trial herein.**

## **PART 111 - ISSUES AND THE LAW**

### **PREAMBLE**

- 5. The preamble of the Canadian Charter of Rights and Freedoms states that “Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:”<sup>1</sup>**

### **RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON (7)**

- 6. Section 7 of the Charter protects the essential rights of life, liberty and personal security, rights that are fundamental to all democratic societies.<sup>2</sup>**
- 7. C-68 violates the protective sphere of personal privacy. It forces Canadian Firearms owners to become licenced and to register their firearms simply in order to own them.<sup>3</sup> This is done in the absence of any evidence of harm to others or threat of such harm – the primary justifications in a liberal democracy for the state to interfere with the personal liberty of its citizens.<sup>4</sup>**
- 8. Firearms owners rights of privacy are violated by the form that applicants must fill out to obtain a firearms licence (POL or PAL). This form asks questions about such things as the applicant’s mental and emotional history, personal bankruptcy, job loss and relationship breakdowns.<sup>5</sup>**

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<sup>1</sup>Holy Bible Genesis 14:14; Exodus 22:3; Matthew 24:43; Luke 11:21; Luke 22:36; Proverbs 29:7; Proverbs 29:16

John Locke, Second Treatise on Government

<sup>2</sup>How the Firearms Act (Bill C-68) Violates the Charter of Rights and Freedoms

Dr. F.L. (Ted) Morton March 25, 2003 p2

R. v. Morgentaler [1988] 1 S.C.R. 30

Godbout v. Longueuil (City, [1997] 3 S.C.R. 844

<sup>3</sup>The Firearms Act sections 5 to 16 and 54 to 73

<sup>4</sup>Morton p2

Reference re Firearms Act (Can) [1098] A.J. 1028 Conrad JA pp 132 - 182 paras 425 to 621

More Guns, Less Crime, Understanding Crime and Gun Control Laws - John R. Lott

Gun Control is Not Crime Control - Gary Mauser

More Guns, Less Crime? - Gary Mauser

<sup>5</sup>Morton p14

R v Dyment [1988] 2 S.C.R. 417

Thompson Newspapers Ltd. v Canada [1990] 1 S.C.R. 425

Firearms Licence Application Form, Questions 19(d), (e), and (f)

9. With respect to personal autonomy, C-68 and The Firearms Act create victimless crimes which are violations of the Charter. It undermines the dignity and individual control of thousands of law-abiding hunters and farmers who have not harmed anyone.<sup>6</sup>
10. The Firearms Act also limits the Section 7 right to security of the person. In the normal course of events, it is the function of the criminal law and the police to protect the lives and properties of the citizenry against the domestic criminal elements of society. But the police have never been given a monopoly in this effort. The common law has always recognised that citizens themselves enjoy a right of self-defence against attacks on either their person and/or possessions. This includes the right to own and to use arms for the purposes of defending one's home and family.<sup>7</sup>
11. Section 7 includes a right to be free from unwarranted government-induced emotional and psychological stress.<sup>8</sup>
12. By imposing criminal sanctions for victimless violations of the Act and its regulations, the Firearms Act has potential to bring thousands of otherwise law-abiding farmers, hunters, target-shooters and collectors into contact with the criminal law where the penalty for violations include jail sentences.
13. Sections 91, 92 and 95 of the Criminal Code of Canada create absolute liability offences.
14. Imprisonment is a possible penalty.

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<sup>6</sup>Morton p3

**Rodrigues v. British Columbia (Attorney General) [1993] 3 S.C.R. 519 at para 200**

<sup>7</sup>R. v. Gardner 93 E.R. 1056

**Wingfield v. Stratford and Asman 96 E.R. 787**

**The Magna Carta**

**The English Bill of Rights (1689)**

**More Guns, Less Crime, Understanding Crime and Gun Control Laws - John R.**

**Lott**

**Gun Control is Not Crime Control - Gary Mauser**

**More Guns, Less Crime? - Gary Mauser**

**Morton p3**

<sup>8</sup>Rodriguez v. British Columbia (Attorney General) [1993] 3 S.C.R. 519

**R. v. Oakes [1986] 1 S.C.R 103**

**Morton p4**

15. Where a law creates an absolute liability offence where imprisonment is a possible penalty, the law is contrary to Section 7 of the Canadian Charter of Rights and Freedoms and should be struck out.<sup>9</sup>
16. The manner in which Bill C-68 is being administered and enforced violate the rules of procedural fairness mandated by the Section 7 guarantee of the principles of fundamental justice. There are backlogs of registration applications that have not been processed leaving thousands of applicants liable to criminal prosecution.<sup>10</sup>
17. Bill C-68 and the Firearms Act create defenses to criminal charges that are illusory or so difficult to obtain as to be practically illusory.
18. A right to self protection by being allowed the right to possess a handgun on the person is practically impossible to obtain and is thus illusory and discriminatory.<sup>11</sup>
19. Bill C-68 and the Firearms Act are not being evenly applied throughout the country.<sup>12</sup>
20. There is excessive discretion exercised by the chief firearms officer in each province<sup>13</sup> and by Bill C-68 and the Firearms Act in their use of regulations and orders in council not debated and passed in Parliament.<sup>14</sup>
21. The government's attempt to pay for the firearms registry by imposing registration fees on firearms owners is unprecedented in Canadian Criminal Law.<sup>15</sup>

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<sup>9</sup>R. v. B.C. Motor Vehicle Act [1985] 2 S.C.R. 486  
R. v. City of Sault Ste. Marie [1978] 2 S.C.R. 1299  
R. v. Hess (1990) 2 S.C.R. 906  
R. v Wholesale Travel Group Inc. [1991] 3 S.C.R. 154  
R. v Vaillancourt [1987] 2 S.C.R. 636  
R. v Creighton [1993] 3 S.C.R. 3  
R. v Gosset [1993] 3 S.C.R. 76  
R. v Finlay [1993] 3 S.C.R. 103  
Schwartz v The Queen 45 C.C.C. (3d) 97  
R. v. 1260448 Ontario Inc. [2003] O.J. No. 4306Page 6

<sup>10</sup>Morton p5  
Lorne Gunter. "End the billion-dollar gun registry boondoggle," Sept. 20, 2002

<sup>11</sup>The Firearms Act Sections 17, 18, 19, 20  
Morgentaler v. The Queen, 1988 1 S.C.R. 3

<sup>12</sup>Morton p6, 7  
John Locke, Second Treatise on Government

<sup>13</sup>Morton p7

<sup>14</sup>Morton p7

<sup>15</sup>Morton p8

**22. Bill C-68 violates the right of property protected by Section 7 in placing conditions on the use, ownership and possession of firearms.<sup>16</sup>**

#### **UNREASONABLE SEARCH OR SEIZURE (7 & 8)**

**23. Sections 102 to 105 of the Firearms Act also violate section 7 (and 8) of the Charter<sup>17</sup> in that they allow inspections and warrants to search without any evidence that a crime has been or is about to be committed.**

**24. A person cannot be coerced into providing police with self incriminating evidence.<sup>18</sup>**

**25. Bruce Montague was detained in jail until he revealed the whereabouts of the storage room in his house.**

**26. The Firearms Act is exclusively a matter of criminal law.<sup>19</sup>**

#### **ARBITRARY DETENTION OR IMPRISONMENT (9)**

**27. Keeping a person in jail until he reveals the location of firearms violates Section 9 of the Charter.<sup>20</sup>**

#### **BRINGING THE ADMINISTRATION OF JUSTICE INTO DISREPUTE (24)**

**28. Keeping a person in jail until he reveals the location of firearms violates Section 24 of the Charter.**

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<sup>16</sup>Morton p9

**Rodriguez v. British Columbia (Attorney General) [1993] 3 S.C.R. 519  
Reference re Firearms Act (Can) [1998] A.J.1028 Conrad JA pages 132 - 182  
paras 425 - 621**

<sup>17</sup>Morton p4

<sup>18</sup>Morton p4

<sup>19</sup>Morton p5

<sup>20</sup>The Firearms Act, Section 105

## **MULTICULTURAL HERITAGE (27)**

**29. C-68 and the Firearms Act do not recognize the tradition of owning and using firearms by the early pioneers and settlers of Canada.**

## **MOBILITY RIGHTS (6)**

**30. Citizens with firearms cannot move themselves with their firearms without permission.<sup>21</sup>**

## **PRESUMPTION OF INNOCENCE (11(d))**

**31. Sections 112.4 and 107 of the Firearms Act by requiring an accused person to prove his innocence violate Section 11 (d) of the Charter.<sup>22</sup>**

## **FREEDOM OF THOUGHT, BELIEF, OPINIONS AND EXPRESSION (2(b))**

**32. Section 2(b) of the Charter protects freedom of expression. The ownership, keeping and displaying of firearms is a form of expression violated by C-68 and the Firearms Act.<sup>23</sup>**

## **OTHER RIGHTS OR FREEDOMS THAT EXIST IN CANADA (26)**

**33. Section 26 of the Charter protects rights and freedoms that exist in Canada not found in the Charter such as the right to own, keep and use firearms, the right to keep a firearm for self defense and the right to own property. The Firearms Act sharply restricts and in many cases arbitrarily denies these ancient rights.<sup>24</sup>**

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<sup>21</sup>The Firearms Act Sections 17, 18, 19, 20

<sup>22</sup>Morton p14,15

<sup>23</sup>Morton p 18

**R. v. Sharpe [1999] B.C.J. No. 54**

**Canada (Human Rights Commission) v. Taylor [1990] 3 S.C.R. 892**

**R. v. Keegstra [1990] 3 S.C.R. 697**

<sup>24</sup>Morton p19, 20

**To Keep and Bear Arms: The Origins of an Anglo-American Right - Joyce Lee Malcolm**

**R. v Gardner 93 E.R. 1056**

**Wingfield v Stratford and Osman 96 E.R. 787**

**The Magna Carta**

**The English Bill of Rights (1689)**

**Commentaries on the Laws of England - Sir William Blackstone**

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

## **EQUAL PROTECTION AND EQUAL BENEFIT WITHOUT DISCRIMINATION (15(1))**

**34. While Section 15 of the Charter protects against discrimination, Bill C-68 discriminates against rural Canadians, non-aboriginals who depend upon firearms for their livelihood and couples who choose to own their firearms in joint tenancy. Bill C-68 also has the effect of stigmatizing rural Canadians as somehow responsible for the increase in the illegal use of firearms.<sup>25</sup>**

## **MANDATORY MINIMUM SENTENCES (1) (7) (9) (12)**

**35. Bruce Montague is charged, inter alia, pursuant to sections 95, 100, and 102 of the Criminal Code which provide for mandatory minimum sentences upon conviction.**

**36. Section 7 gives everyone the right to life, liberty, and security of the person.**

**37. Section 9 gives everyone the the right not to be arbitrarily detained or imprisoned.**

**38. Section 12 gives everyone the right not to be subjected to any cruel and unusual treatment or punishment.**

**39. Mandatory minimum sentencing does not allow a court to take specific circumstances into account and is therefore unconstitutional.<sup>26</sup>**

## **REASONABLE LIMITS (1)**

**40. Section 1 of the Charter states that “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”<sup>27</sup>**

**41. Under Section 1 of the Charter, if a law is found to violate a charter right the government must prove that the law is rationally connected to its purpose; that it impairs the right as little as possible; and that there is a proportionality between the harm done and the good achieved. Bill C-68 and The firearms Act do not satisfy these criteria.<sup>28</sup>**

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<sup>25</sup>Morton p25, 26, 27

**Corbiere v. Canada (Minister of Indian and Northern Affairs) [1999] 2 S.C.R. 203**  
**Vriend v Alberta [1998] 1 S.C.R. 493**

<sup>26</sup>R. v. Smith (Edward Dewey), [1987] 1 S.C.R. 1045

<sup>27</sup>R. v. Oakes [1986] 1 S.C.R. 103  
**Morton p24**

<sup>28</sup>Morton p28, 29, 30, 31, 32

**42. The purpose of Bill C-68 and The Firearms Act is to reduce the use of firearms in violent crime. There is no credible evidence that the licensing or registration requirements will have any effect on the criminal use of firearms.**

#### **PART IV - ORDER REQUESTED**

**43. Striking out sections 86, 88, 91, 92, 95, 100, 102, and 108 of the Criminal Code of Canada and their authorizing sections in Bill C-68 and The Firearms Act.**

**44. Striking out the Firearms Act and Bill C-68 as unconstitutional and contrary to the provisions of the Canadian Charter of Rights and Freedoms.**

**45. Dismissing the charges against the applicants.**

#### **AUTHORITIES TO BE CITED**

- **Bill C-68**
- **The Firearms Act**
- **The Criminal Code of Canada**
- **Holy Bible Genesis 14:14; Exodus 22:3; Matthew 24:43; Luke 11:21; Luke 22:36; Proverbs 29:7; Proverbs 29:16**
- **John Locke, Second Treatise on Government**
- **How the Firearms Act (Bill C-68) Violates the Charter of Rights and Freedoms - Morton**
- **R. v. Morgentaler [1988] 1 S.C.R. 30**
- **Godbout v. Longueuil (City, [1997] 3 S.C.R. 844**
- **Reference re Firearms Act (Can) [1998] A.J. 1028**
- **More Guns, Less Crime, Understanding Crime and Gun Control Laws - John R. Lott**
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- **R v Dymnt [1988] 2 S.C.R. 417**
- **Thompson Newspapers Ltd. v Canada [1990] 1 S.C.R. 425**
- **Firearms Licence Application Form, Questions 19(d), (e), and (f)**
- **Rodrigues v. British Columbia (Attorney General) [1993] 3 S.C.R. 519 at para 200**
- **R. v. Gardner 93 E.R. 1056**
- **Wingfield v. Stratford and Asman 96 E.R. 787**
- **R. v. Oakes [1986] 1 S.C.R. 103**
- **R. v. B.C. Motor Vehicle Act [1985] 2 S.C.R. 486**
- **R. v. City of Sault Ste. Marie [1978] 2 S.C.R. 1299**
- **R. v. Hess (1990) 2 S.C.R. 906**
- **R. v Wholesale Travel Group Inc. [1991] 3 S.C.R. 154**
- **R. v Vaillancourt [1987] 2 S.C.R. 636**
- **R. v Creighton [1993] 3 S.C.R. 3**
- **R. v Gosset [1993] 3 S.C.R. 76**
- **R. v Finlay [1993] 3 S.C.R. 103**
- **Schwartz v The Queen 45 C.C.C. (3d) 97**

- **R. v. 1260448 Ontario Inc. [2003] O.J. No. 4306**
- **Lorne Gunter. “End the billion-dollar gun registry boondoggle,” Sept. 20, 2002**
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- **Vriend v Alberta [1998] 1 S.C.R. 493**
- **R. V. Smith (Edward Dewey), [1987] 1 S.C.R. 1045**

**Dated at Toronto this 30<sup>th</sup> day of April, 2006.**

**All of which is respectfully submitted.**

**Calvin Martin, Q.C.  
600 Church Street  
Toronto, Ontario  
M4Y 2E7  
Tel 416 922-5854  
Fax 416 944-0285  
Email dvc14@calvinmartinqc.com**

**To:**

**The Attorney General of Ontario  
Public Law Division  
Constitutional Law Branch  
7<sup>th</sup> Floor, 720 Bay Street  
Toronto, Ontario, M5G 2K1  
Fax 416 326-2073**

**The Attorney General of Canada  
Box 3400 Exchange Tower  
First Canadian Place  
Toronto, Ontario M5X 1K6  
Fax 416 973-3004**

**Peter Keen**  
**Assistant Crown Attorney**  
**North Region - Dryden**  
**P.O. Box 3000**  
**Dryden, Ontario P8N3B3**  
**Fax 807 223-5746**

**Robert A. Young**  
**Crown Attorney**  
**Court House**  
**333 Church Street**  
**Fort Frances, Ontario**  
**P9A 1C9**  
**Fax 807 274-2521**

**Superior Court of Justice**  
**Jennifer Marquis**  
**Supervisor of Operations**  
**Court House**  
**216 Water Street**  
**Kenora, Ontario**  
**P9N 1S4**  
**Fax 807 468-2749**