

File No. 35678

SUPREME COURT OF CANADA

(ON APPEAL FROM A JUDGMENT OF THE ONTARIO COURT OF APPEAL)

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT
(Party Intervener)

- and -

ATTORNEY GENERAL OF ONTARIO

APPELLANT
(Respondent)

- and -

HUSSEIN JAMA NUR

RESPONDENT
(Appellant)

- and -

**ATTORNEY GENERAL OF ALBERTA
ATTORNEY GENERAL OF BRITISH COLUMBIA
ATTORNEY GENERAL OF NOVA SCOTIA
ATTORNEY GENERAL OF QUEBEC**

INTERVENERS

**FACTUM OF THE APPELLANT
ATTORNEY GENERAL OF CANADA**
(Pursuant to Rule 42(1) of the *Rules of the Supreme Court of Canada*)

Nancy L. Dennison
Richard A. Kramer
Department of Justice Canada
Ontario Regional Office
Suite 3400, Box 36
130 King Street West
Toronto, Ontario
M5X 1K6

Tel.: 416 954-8032 (Mrs. Dennison)
Tel.: 416 952-6330 (Mr. Kramer)
Fax: 416 973-4328
nancy.dennison@justice.gc.ca
rkramer@justice.gc.ca

Counsel for Appellant
Attorney General of Canada

Riun Shandler
Andreea I. Baiasu
Ministry of the Attorney General
Crown Law Office – Criminal
10th Floor
720 Bay Street
Toronto, Ontario
M7A 2S9

Tel.: 416 326-4600
Fax: 416 326-4656
riun.shandler@ontario.ca
andreea.baiasu@ontario.ca

Counsel for Appellant
Attorney General of Ontario

Dirk Derstine
Janani Shanmuganathan
Derstine, Penman
Suite 302
559 College Street
Toronto, Ontario
M6G 1A9

Tel.: 416 304-1414 (Mr. Derstine)
Tel.: 416 304-1920 (Mrs. Shanmuganathan)
Fax: 416 304-1345
derstine@derstinepenman.com
shanmuganathan@derstinepenman.com

Counsel for Respondent

William F. Pentney
Deputy Attorney General of Canada
Per : **Robert J. Frater**
East Memorial Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Tel.: 613 957-4763
Fax: 613 954-1920
robert.frater@justice.gc.ca

Agent for Appellant
Attorney General of Canada

Robert E. Houston, Q.C.
Burke-Robertson LLP
Suite 200
441 MacLaren Street
Ottawa, Ontario
K2P 2H3

Tel.: 613 566-2058
Fax: 613 235-4430
rhouston@burkerobertson.com

Agent for Appellant
Attorney General of Ontario

Marie-France Major
Supreme Advocacy LLP
Suite 100
340 Gilmour Street
Ottawa, Ontario
K2P 0R3

Tel.: 613 695-8855
Fax: 613 695-8580
mfmajor@supremeadvocacy.ca

Agent for Respondent

Joshua B. Hawkes, Q.C.
The Attorney General of Alberta
Appeals Branch
Suite 300
332 6th Avenue S.W.
Calgary, Alberta
T2P 0B2

Tel.: 403 297-6005
Fax: 403 297-3453
Josh.hawkes@gov.ab.ca

Counsel for Intervener
Attorney General of Alberta

Rodney G. Garson
The Attorney General of British Columbia
Crown Law Division
3rd Floor
940 Blanshard Street
Victoria, British Columbia
V8W 3E6

Tel.: 250 387-9087
Fax: 250 387-4262
rodney.garson@gov.bc.ca

Counsel for Intervener
Attorney General of British Columbia

D. Lynne Watt
Gowling Lafleur Henderson LLP
Suite 2600
160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel.: 613 786-8695
Fax: 613 788-3509
lynne.watt@gowlings.com

Agent for Intervener
Attorney General of Alberta

Robert E. Houston, Q.C.
Burke-Robertson
Suite 200
441 MacLaren Street
Ottawa, Ontario
K2P 2H3

Tel.: 613 236-9665
Fax: 613 235-4430
rhouston@burkerobertson.com

Agent for Intervener
Attorney General of British Columbia

William D. Delaney, Q.C.
Jennifer A. MacLellan
The Attorney General of Nova Scotia
Public Prosecution Service of Nova Scotia
Maritime Centre
Suite 1225
1505 Barrington Street
Halifax, Nova Scotia
B3J 3K5

Tel.: 902 424-6795
Fax: 902 424-0653
delanewd@gov.ns.ca

Counsel for Intervener
Attorney General of Nova Scotia

Sylvain Leboeuf
Julie Dassylva
The Attorney General of Québec
Procureur général du Québec
2nd Floor
1200 de l'Église Road
Québec, Québec
G1V 4M1

Tel.: 418 643-1477
Fax: 418 644-7030
sylvain.leboeuf@justice.gouv.qc.ca

Counsel for Intervener
Attorney General of Québec

D. Lynne Watt
Gowling Lafleur Henderson LLP
26th Floor
160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel.: 613 786-8695
Fax: 613 788-3509
lynne.watt@gowlings.com

Agent for Intervener
Attorney General of Nova Scotia

Pierre Landry
Noël & Associés I.l.p.
111 Champlain Street
Gatineau, Québec
J8X 3R1

Tel.: 819 771-7393
Fax: 819 771-5397
p.landry@noelassocies.com

Agent for Intervener
Attorney General of Québec

TABLE OF CONTENTS

	Page
<hr/>	
<u>APPELLANT ATTORNEY GENERAL OF CANADA’S FACTUM</u>	
PART I – STATEMENT OF FACTS	1
A. Overview	1
B. Firearm Legislation In Canada	2
i. Regulation of Firearms and Mandatory Sentences for Firearms Offences	3
ii. <i>Tackling Violent Crime Act</i> Introduced to Deter, Denounce and Punish Serious Criminal Behaviour	5
iii. Understanding the <i>Firearms Act</i> and Regulations	7
a) <i>A Licence is Required to Possess Firearms</i>	8
b) <i>More Stringent Regulation Applies to Restricted and Prohibited Firearms</i>	8
C. Decision of the Court of Appeal for Ontario	10
PART II – QUESTIONS IN ISSUE	14
PART III – STATEMENT OF ARGUMENTS	14
A. The Test Under s. 12 of the <i>Charter</i>	14
i. Standard of Review of Parliament’s Sentencing Policies	14
ii. The Test to Access Whether Legislation is Grossly Disproportionate	16
B. S. 95(2)(a)(i) does not Violate s. 12 of the <i>Charter</i>	18
i. The Court of Appeal Erred in its Assessment of the Gravity of the Offence	18
a) <i>S. 95 is not a “Regulatory” Offence</i>	19

TABLE OF CONTENTS

	Page
b) <i>“Nearby” Ammunition is not Sufficient to Justify a s. 95 Conviction</i>	21
c) <i>S. 95 Prohibits Conduct with Considerable Risk of Harm</i>	22
ii. The Court of Appeal’s Hypothetical Offender was not Reasonable	24
a) <i>The Court’s View of the Crown Election made the Hypothetical even more Unreasonable</i>	26
iii. The Effect of the Sentence on the Offender must be Considered	27
iv. S. 95(2)(a)(i) Reflects Parliament’s Legitimate Criminal Law Policy	28
C. S. 95(2)(a)(i) does not Violate s. 7 of the <i>Charter</i>	30
D. The Law is Justified Pursuant to s. 1 of the <i>Charter</i>	31
PART IV – COSTS	33
PART V – ORDER SOUGHT	33
PART VI – TABLE OF AUTHORITIES	34
PART VII – STATUTES RELIED ON	36
APPENDIX “A” – Section 95 Convictions on First Offence	41



FACTUM OF THE APPELLANT ATTORNEY GENERAL OF CANADA

PART I – STATEMENT OF FACTS

A. OVERVIEW

1. Section 95 of the *Criminal Code* prohibits conduct that puts the public at significant risk of harm. It criminalizes the unlawful possession of prohibited or restricted firearms, including machine guns, handguns, sawed-off rifles and automatic rifles, that are loaded or together with readily accessible ammunition that is operable in the firearm. Possessing these types of firearms while loaded, or with readily accessible ammunition, is conduct so inherently dangerous it is only legal in the mostly highly regulated, strictly controlled circumstances.

2. Parliament seeks to deter, denounce and punish those who commit this dangerous conduct to avoid risk to the public before harm occurs. To achieve this objective, it has enacted a three-year mandatory minimum sentence where the Crown proceeds by indictment as set out in s. 95(2)(a)(i) of the *Criminal Code*.

3. The Court of Appeal for Ontario had no difficulty finding the three-year mandatory minimum sentence was not grossly disproportionate for Nur. He was arrested after dropping a loaded handgun as he fled from police at a community centre. However, the Court of Appeal concluded s. 95(2)(a)(i) violated s. 12 of the *Charter* when applied to a reasonable hypothetical offender. It did so in error.

4. The Court of Appeal failed to appreciate the gravity of the crime. It found the hypothetical offender was the “otherwise law abiding gun owner” who, while licensed for another location, had his firearm at the cottage with ammunition “nearby”. Section 95 is not committed by having ammunition “nearby” an unloaded firearm. This hypothetical offender also understates the gravity of s. 95. It is not a “regulatory” offence. It requires the offender to knowingly possess a loaded, or readily loaded, prohibited or restricted firearm without licence or authorization. It is criminal conduct with a significant risk of harm to public safety.

5. The Court of Appeal’s hypothetical offender was unreasonable. It was marginal and remote, not one based on “imaginable circumstances which could commonly arise”.¹ Exacerbating this error, the Court also presumed the Crown would unreasonably proceed by way of indictment in those circumstances.

6. Even if this hypothetical established the elements of the offence, or was reasonable within the meaning of the case law, the Court erred in striking s. 95(2)(a)(i). While a three-year sentence is significant, it is not grossly disproportionate when considered in the context of the gravity of the offence, actual length of time an offender would be incarcerated and the important objective of deterring, denouncing and punishing this dangerous criminal conduct.

7. The Court of Appeal properly concluded s. 95(2)(a)(i) does not violate s. 7 of the *Charter*. As this Court recently acknowledged in *R. v. Anderson*,² the ability of the Crown to elect to proceed by way of indictment does not encroach upon the judicial function of ensuring a proportionate sentence and is fundamental to the operation of the criminal justice system. Further, the two year sentencing gap between proceeding by indictment or summary conviction is not arbitrary. It is consistent with Parliament’s objectives to denounce, deter and punish this dangerous conduct, while recognizing that, in appropriate circumstances, the Crown may elect to proceed summarily.

B. FIREARM LEGISLATION IN CANADA

8. Section 95 sets out the elements of, and corresponding sentences for, the offence of unlawfully possessing a restricted or prohibited firearm that is either loaded or kept together with readily accessible ammunition.³ It provides:

95(1). Subject to subsection (3), every person commits an offence who, in any place, possesses a loaded prohibited firearm or restricted firearm, or an unloaded prohibited firearm or restricted firearm together with readily accessible ammunition that is capable of being discharged in the firearm, without being the holder of

95(1) Sous réserve du paragraphe (3), commet une infraction quiconque a en sa possession dans un lieu quelconque soit une arme à feu prohibée ou une arme à feu à autorisation restreinte chargées, soit une telle arme non chargée avec des munitions facilement accessibles qui peuvent être utilisées avec celle-ci, sans être titulaire à la fois :

¹ *R. v. Goltz*, [1991] 3 S.C.R. 485, at pp. 515- 516, Attorney General of Canada’s Book of Authorities (“B of A”), Tab 13

² *R. v. Anderson*, 2014 SCC 41, at paras. 25, 37, B of A, Tab 6

³ *Criminal Code*, RSC, 1985, c. C-46, as am., s. 95, B of A, Tab 36

- (a) an authorization or a licence under which the person may possess the firearm in that place; and
- (b) the registration certificate for the firearm.
- (2) Every person who commits an offence under subsection (1)
- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years and to a minimum punishment of imprisonment for a term of
- (i) in the case of a first offence, three years, and
- (ii) in the case of a second or subsequent offence, five years; or
- (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.
- (3) Subsection (1) does not apply to a person who is using the firearm under the direct and immediate supervision of another person who is lawfully entitled to possess it and is using the firearm in a manner in which that other person may lawfully use it.
- a) d'une autorisation ou d'un permis qui l'y autorise dans ce lieu;
- b) du certificat d'enregistrement de l'arme.
- (2) Quiconque commet l'infraction prévue au paragraphe (1) est coupable :
- a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant :
- (i) de trois ans, dans le cas d'une première infraction,
- (ii) de cinq ans, en cas de récidive;
- b) soit d'une infraction punissable, sur déclaration de culpabilité par procédure sommaire, d'un emprisonnement maximal de un an.
- (3) Le paragraphe (1) ne s'applique pas à quiconque utilise une arme à feu sous la surveillance directe d'une personne qui en a la possession légale, de la manière dont celle-ci peut légalement s'en servir.

i. Regulation of Firearms and Mandatory Sentences for Firearms Offences

9. Parliament has long recognized the dangers posed by the unauthorized possession and use of firearms. Their use and possession have been subject to regulation and sanction under the *Criminal Code* since 1892.⁴ Since that time, various permit requirements have existed for certain firearm owners.⁵ In 1934, Parliament enacted the first registration requirement for handguns.⁶ In 1968, Parliament created the categories of “restricted” and “prohibited” firearms, and granted the power to designate a firearm as “restricted” or “prohibited” by Order in Council. For the former, licence and

⁴ *Criminal Code*, 1892, c. 29, B of A, Tab 35

⁵ *Ibid.*

⁶ *An Act to Amend the Criminal Code*, S.C. 1934, c. 47, s. 3, B of A, Tab 33

registration was required; for the latter, it was an offence to possess a prohibited weapon unless exempted.⁷

10. Mandatory minimum sentences for firearms offences were first introduced in the *Criminal Code* in 1933, which provided for a two-year mandatory sentence for carrying a handgun while committing an offence. That provision was repealed in 1951 following the decision of this Court in *R. v. Quon*.⁸ Beginning in 1977, the provision was reintroduced in a revised form. It imposed a mandatory one-year sentence for use of a firearm in the commission of an indictable offence, to be imposed consecutive to any other sentence.⁹

11. Until 1995, firearms control measures were set out exclusively in the *Criminal Code*. In 1995, through Bill C-68, Parliament enacted the *Firearms Act*¹⁰ to take the administrative and regulatory aspects of the licensing and registration system out of the *Criminal Code* and at the same time enhance the criminal law response to the misuse and unlawful possession of firearms.¹¹

12. The Bill amended the *Criminal Code* to create a variety of new offences related to the unauthorized possession, transfer, import and export of firearms and the use of firearms in the commission of offences. One of the key objectives of the Bill was to deter the criminal possession and use of firearms through the use of tougher penalties.¹² This included the four-year mandatory minimum sentences where a firearm is involved in the commission of any of the following offences: criminal negligence causing death,¹³ manslaughter,¹⁴ attempted murder,¹⁵ causing bodily harm with intent,¹⁶ sexual assault,¹⁷ aggravated sexual assault,¹⁸ kidnapping,¹⁹ hostage taking,²⁰ robbery²¹ and extortion.²² In addition, one-year mandatory minimum sentences were enacted for unauthorized possession of a

⁷ *Criminal Law Amendment Act*, S.C. 1968-69, c. 38, B of A, Tab 37

⁸ *R. v. Quon*, [1948] S.C.R. 508, B of A, Tab 23

⁹ *Criminal Law Amendment Act*, S.C. 1977, c. 53, now s. 85 of the *Criminal Code*, *supra*, B of A, Tab 38

¹⁰ *Firearms Act*, S.C. 1995, c. 39, as am., B of A, Tab 39

¹¹ *Reference Re Firearms Act (Can.)*, [2000] 1 S.C.R. 31, 2000 SCC 31, at paras 19-21, B of A, Tab 4

¹² *Firearms Reference*, *ibid.*, at para. 20

¹³ *Criminal Code*, *supra*, s. 220(a)

¹⁴ *Criminal Code*, *ibid.*, s. 236(a)

¹⁵ *Criminal Code*, *ibid.*, s. 239(1)

¹⁶ *Criminal Code*, *ibid.*, s. 244(1)

¹⁷ *Criminal Code*, *ibid.*, s. 272(1)

¹⁸ *Criminal Code*, *ibid.*, s. 273(1)

¹⁹ *Criminal Code*, *ibid.*, s. 279(1)

²⁰ *Criminal Code*, *ibid.*, s. 279.1(1)

²¹ *Criminal Code*, *ibid.*, s. 344

²² *Criminal Code*, *ibid.*, s. 346(1.1)

loaded (or easily loaded) restricted or prohibited firearm (s. 95) and for a second offence of possession of a firearm knowing it was unauthorized (s. 92). Two of the above mandatory minimum sentences have been upheld by this Court in *R. v. Morrissey*²³ (s. 220(a)) and *R. v. Ferguson*²⁴ (s. 236(a)), respectively.

ii. *Tackling Violent Crime Act* Introduced to Deter, Denounce and Punish Serious Criminal Behaviour

13. Bill C-10 was first introduced in 2006. It aimed to further toughen sentencing for firearm offences by imposing longer mandatory minimum penalties for serious and repeat firearm crimes. Bill C-10 sought to impose higher mandatory minimum sentences for eight specific offences involving the use of restricted or prohibited firearms or firearm-related conduct associated with organized crime. It also targeted trafficking, smuggling and the illegal possession of a restricted or prohibited firearm with ammunition. Among the proposed changes was an increase from the one-year mandatory minimum sentence where the Crown proceeded by way of indictment to a three-year mandatory minimum sentence following a conviction under s. 95.

14. These measures were designed to denounce serious criminal behaviour involving firearms and/or gangs, to incapacitate those involved in these dangerous activities, and to deter future involvement.²⁵ In support of this legislative initiative, the then Minister of Justice advised the Standing Committee:

Bill C-10 is a targeted measure that focuses on gang members who use firearms to commit their crimes and on individuals who would use restricted weapons to threaten Canadians. It is a direct response to the scourge of handgun crime that plagues our country, especially in our cities. It focuses on the limited number of individuals who commit these crimes and will make sure that they face significant penalties for their actions.²⁶

²³ *R. v. Morrissey*, [2000] 2 S.C.R. 90, 2000 SCC 39, B of A, Tab 20

²⁴ *R. v. Ferguson*, [2008] 1 S.C.R. 96, 2008 SCC 6, B of A, Tab 12

²⁵ See: *Standing Committee on Justice and Human Rights*, No. 34 (November 23, 2006) at 0945-0950 (Chief William Blair) at 1100 (Hon. Michael Bryant), Appellants' Record ("A.R."), Tab 39; *Standing Committee on Justice and Human Rights*, No. 43 (February 1, 2007) at 0920 (Sergeant Larry Butler, Vancouver Police Department), A.R., Tab 45; *House of Commons Debates*, No. 156 (May 17, 2007) at 1035 (Hon. Rob Nicholson), A.R., Tab 49

²⁶ *Standing Committee on Justice and Human Rights*, No. 30 (November 7, 2006) at 1530 (Hon. Vic Toews), A.R., Tab 35

15. The Committee had before it evidence demonstrating that, while overall crime was decreasing, certain serious firearms offences, including s. 95 offences, were dramatically increasing.²⁷ In fact, s. 95 charges more than doubled from the period 2000/2001 to 2006/2007 in cases where that was the most serious charge.²⁸

16. The Committee heard evidence from law enforcement in support of the proposed measures. Chief Blair, speaking for the Toronto Police Service in favour of the measures, stated:

As I am sure you are all aware, in the past year in particular, but actually over the past three or four years, we have experienced a significant increase in the level of gun violence in our city. That culminated in what was characterized by the media last year as the year of the gun. It was a year that saw an increase in gun-related homicides in excess of 85% in Toronto, a significant increase in the number of shooting occurrences, and, equally significant, great concern among our citizens about public safety on our streets.²⁹

He went on to note that, as Chair of both the Canadian Association of Chiefs of Police, Organized Crime Committee and Ontario Association of Chiefs of Police, Organized Crime Committee, he had spoken to colleagues across the country, who shared his concern about the escalation of gun violence.³⁰

17. Chief Blair's concerns for the safety of citizens are amply illustrated by the 2008 Annual Statistical Report of the Toronto Police Service. The Report includes a map depicting the wide array of locations where shootings occurred across the Greater Toronto Area in 2008.³¹ It also demonstrates that

²⁷ *Standing Committee on Justice and Human Rights*, No. 33 (November 22, 2006) at 1550 (Lynn Barr-Telford, Director, Statistics Canada, Canadian Centre for Justice Statistics), A.R., Tab 38. See also: Service de Police de la ville de Montréal, *Additional Information and 2008 Statistics Table*, online: SPVM <http://www.svvm.qc.ca/upload/Documentations/Bilan_SPVM_chiffres_A.pdf>, firearms offences nearly doubled between 2004 and 2008 (p. 15, Appendix 6), A.R., Tab 29.

²⁸ Statistics Canada, Canadian Centre for Justice Statistics, *Section 95 charges where that charge is the most serious charge*, Custom Request, March, 2010, A.R., Tab 27. Section 95 charges, where that charge is the most serious charge, increased 139% during the 6 year period.

²⁹ *Standing Committee on Justice and Human Rights*, No. 34 (November 23, 2006) at 0940 (Chief William Blair)

³⁰ *Standing Committee on Justice and Human Rights*, No. 34 (November 23, 2006) at 0945 (Chief William Blair). See also: *Standing Committee on Justice and Human Rights*, No. 35 (November 27, 2006) at 1550 (Tony Cannavino, President, Canadian Police Association), A.R., Tab 40; Calgary Police Service, Centralized Analysis Section Strategic Services Division, *Annual Statistical Report 2004-2008*, online: Calgary Police Service <http://www.calgarypolice.ca/pdf/Annual_Statistical_Report_2008.pdf>, p. 28, A.R., Tab 30

³¹ Toronto Police Services Report, *2008 Annual Statistical Report*, online: Toronto Police Service <<http://www.torontopolice.on.ca/publications/files/reports/2008statsreport.pdf>>, p. 34, A.R., Tab 31

the majority of guns seized by the Toronto Police Service in the course of criminal investigations were restricted and prohibited firearms and that unauthorized possession of a loaded or readily loaded restricted or prohibited firearm is among the two offences leading to seizure of firearms.

18. Handgun violence is not limited to Toronto. Sergeant Larry Butler of the Vancouver Police Department expressed similar concerns:

I can't explain enough the seriousness of the firepower that's being used in Vancouver...In British Columbia last year, we seized over 2,300 firearms. Almost 80% of the shootings were in public places, coming at the cost of human lives, those of innocent people and bystanders. It's not just the gangsters. The gangsters don't seem to be able to shoot that well...There's just indiscriminate firepower out there on the West Coast of Canada.³²

19. In addition to the widespread support from law enforcement, provincial and territorial Justice Ministers also urged increased mandatory minimum sentences for firearms crimes. The Hon. Michael Bryant, then Attorney General of Ontario, spoke in support of the Bill on behalf of Ontarians, and advised the Committee of the support for the proposed measures among his colleagues throughout Canada.³³

20. While Bill C-10 did not pass in the first session of Parliament, it was re-introduced as part of Bill C-2 (the *Tackling Violent Crime Act*) in October 2007, and was passed on February 28, 2008.³⁴ The firearm related provisions, including the mandatory minimum sentences in s. 95(2) came into force on May 1, 2008.³⁵

iii. Understanding the *Firearms Act* and Regulations

21. The scope of the offence under s. 95 of the *Code*, and the seriousness of the conduct it seeks to proscribe, can only be understood by examining the statutory and regulatory context within which restricted and prohibited firearms may be legally possessed in Canada.

³² *Standing Committee on Justice and Human Rights*, No. 43 (February 1, 2007) at 0915 (Sergeant Larry Butler, Vancouver Police Department)

³³ *Standing Committee on Justice and Human Rights*, No. 34 (November 23, 2006) at 1055 (Hon. Michael Bryant, Ontario Ministry of the Attorney General)

³⁴ *Tackling Violent Crime Act*, S.C. 2008, c.6, B of A, Tab 41

³⁵ SI/2008-34, April 2, 2008, B of A, Tab 40

a) A Licence is Required to Possess Firearms

22. All individuals seeking to possess or acquire a firearm of any kind require a valid licence. Licences are issued by the Chief Firearms Officer (“CFO”) in each province and must be renewed every five years. Licences specify which class of firearm a person may possess or acquire (non-restricted, restricted or prohibited).³⁶

23. A person is not eligible to hold a firearms licence if the CFO finds it desirable, in the interest of public safety, that the individual not possess a firearm.³⁷ In making this determination, the CFO must have regard to whether, within the previous five years, the potential licensee:

- i. has been convicted or discharged of an offence where violence against a person was used, threatened or attempted;
- ii. has been convicted or discharged of criminal harassment;
- iii. has been convicted or discharged of any firearms related offence;
- iv. has been convicted or discharged of a drug trafficking offence;
- v. has been treated for mental illness associated with violence or threatened violence; and/or
- vi. has a history of violent behaviour.³⁸

The CFO may attach conditions to the licence that he/she considers desirable in the interests of safety.³⁹

24. Where an applicant is ineligible to hold a firearm, the CFO must refuse to issue a licence. The CFO may revoke a licence at any time in the interest of public safety, including where the licensee becomes ineligible, was never eligible, or fails to comply with the terms of the licence.⁴⁰

b) More Stringent Regulation Applies to Restricted and Prohibited Firearms

25. Restricted and prohibited firearms have limited legitimate uses and are therefore more strictly regulated. Of the nearly seven million legally held firearms that were registered in Canada as of 2006,

³⁶ *Firearms Act, supra*, s. 4, 54, 56, 64

³⁷ *Firearms Act, ibid.*, s. 5

³⁸ *Firearms Act, ibid.*, s. 5

³⁹ *Firearms Act, ibid.*, s. 58

⁴⁰ *Firearms Act, ibid.*, s. 68, 70

restricted and prohibited firearms accounted for only 8%, with rifles and shotguns representing the vast majority.⁴¹

26. In order to lawfully possess a restricted or prohibited firearm, a licensee must pass both the Canadian Firearms Safety Course and an additional restricted firearm safety course.⁴² Each restricted or prohibited firearm must also be registered.⁴³ Licensing ensures that only properly trained persons are permitted to possess these types of firearms. Registration ensures police know who is in licensed possession of a prohibited or restricted firearm, enabling them to assess the risk when dealing with people who are believed to be in possession of such firearms.

27. There are specified permitted purposes for which individuals may be licensed to possess or acquire restricted firearms, the most common being target practice or target shooting competitions at approved ranges or as part of a collection. In limited circumstances, restricted firearms are allowed for use in connection with lawful employment or to protect life.⁴⁴ It is unlawful to possess prohibited firearms unless the individual possessed them prior to the prohibition (grandfathered individuals).⁴⁵

28. Restricted or prohibited firearms may only be possessed at a pre-authorized place.⁴⁶ Restricted firearms may only be transported with prior authorization.⁴⁷ Prohibited firearms may be transported only in limited circumstances and only for approved, limited purposes.⁴⁸ Restricted and prohibited firearms that may be transported must be unloaded, locked, and in a locked opaque container that cannot readily be broken open or into.⁴⁹

29. Restricted or prohibited firearms must be stored unloaded, with a secure locking device and in a locked container or in a vault, safe or room that has been constructed for the secure storage of firearms. Ammunition may not be stored with the firearm unless both the ammunition and the unloaded locked

⁴¹ *Firearms and Violent Crime*, 2006, Statistics Canada Catalogue No. 85-002 XPE, Vol. 28, No. 2, Ottawa, Ontario, p. 8, Text Box 2, A.R., Tab 24

⁴² *Firearms Act*, *supra*, s. 7

⁴³ *Firearms Act*, *ibid.*, s. 12.1

⁴⁴ *Firearms Act*, *ibid.*, s. 20

⁴⁵ *Firearms Act*, *ibid.*, s. 12. This grandfathering also applies to next of kin.

⁴⁶ *Firearms Act*, *ibid.*, s. 17

⁴⁷ *Firearms Act*, *ibid.*, s. 19

⁴⁸ *Firearms Act*, *ibid.*, s. 19

⁴⁹ *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, SOR/98-209 (*Storage Regulations*), s. 11, 12

firearm are stored in a securely locked container or room that cannot be readily broken open or into.⁵⁰ As with all firearms, they may only be loaded in a place where they can be lawfully discharged.⁵¹

30. Notwithstanding that lawfully held restricted and prohibited firearms in Canada are the clear minority, illegal handguns feature in the strong majority of firearm related violent crime, including homicide. Between 1998 and 2007, 70% of firearms homicides involved restricted or prohibited firearms.⁵² Unlawfully possessed restricted and prohibited firearms are the demonstrated weapon of choice for gangs.⁵³ A firearm, typically a handgun, is used in more than 2/3 of gang related homicides.⁵⁴

C. DECISION OF THE COURT OF APPEAL FOR ONTARIO

31. The Court of Appeal concluded the mandatory three-year minimum sentence was not cruel and unusual for the respondent. He fled a community centre when approached by police and was found in possession of a fully operable, 22 calibre, semi-automatic handgun equipped with an oversized ammunition clip. There were twenty-three bullets in the clip and one in the chamber. The gun could fire all rounds in three and a half seconds.⁵⁵ The firearm was a prohibited firearm as defined in the *Criminal Code*.

⁵⁰ *Storage Regulations, ibid.*, s. 6, 7

⁵¹ *Storage Regulations, ibid.*, s. 15

⁵² *Homicide in Canada*, 2008, Statistics Canada Catalogue No. 85-002 X, Vol. 29, No. 4, p. 21, Table 5, A.R., Tab 26. A handgun is also the most frequently used firearm in attempted murder, robbery and forcible confinement, see: *Firearms and Violent Crime*, 2006, *supra*, p. 5. See also: Hung, Kwing, *Firearms Statistics Updated Tables* (Ottawa, Department of Justice, 2006), pp. 18-19, Tables 16 and 17, which demonstrate that, between 1994 and 2004, in violent crimes where firearms were present, a handgun was used in more than 2/3 of those violent incidents, A.R., Tab 25.

⁵³ See: *Standing Committee on Justice and Human Rights*, No. 34 (November 23, 2006) at 0940 (Chief William Blair); *Standing Committee on Justice and Human Rights*, No. 43 (February 1, 2007) at 0915 (Sergeant Larry Butler, Vancouver Police Department); *House of Commons Debates*, No. 156 (May 17, 2007) at 1035 (Hon. Rob Nicholson); *Debates of the Senate*, No. 143 (June 14, 2007) at 1610 (Hon. Terry Stratton), A.R., Tab 50

⁵⁴ Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey, *Firearm-related and gang related homicide, 1991-2007*, Custom Request, March 2010, A.R., Tab 28; *Standing Committee on Justice and Human Rights*, No. 33 (November 22, 2006) at 1610 (Lynn Barr-Telford, Canadian Centre for Justice Statistics)

⁵⁵ Reasons of Doherty J.A. dated November 12, 2013 (*Appeal Reasons*), at paras. 11-16

32. Notwithstanding that finding, and the same finding in the three related appeals heard by the Court at the same time,⁵⁶ the Court of Appeal concluded the mandatory minimum sentence had the potential to be grossly disproportionate for a hypothetical offender, contrary to s. 12 of the *Charter*.

33. In coming to this conclusion, the Court reviewed the development of the s. 12 jurisprudence commencing with *R. v. Smith*.⁵⁷ In that case, this Court applied the “most innocent possible offender principle”, finding that the seven-year mandatory minimum prison sentence for importing any amount of any narcotic was grossly disproportionate when applied to a young person importing a single joint of marijuana. The Court of Appeal acknowledged that in *R. v. Goltz* and *R. v. Morrissey* this Court further refined the s. 12 test such that a court’s function is to focus on a reasonable hypothetical offender, one that is “not far-fetched or only marginally imaginable” but is derived from “imaginable circumstances which could commonly arise in day-to-day life”.⁵⁸

34. With this guidance, the Court of Appeal concluded the reasonable hypothetical is “one that operates at a general level to capture conduct that includes all the essential elements of the offence that trigger the mandatory minimum, but no more”.⁵⁹

35. Purporting to apply this standard, the Court of Appeal then created the least morally blameworthy hypothetical offender.⁶⁰

36. The Court described the hypothetical offender in various ways throughout its decision,⁶¹ making the offender’s essential characteristics difficult to identify. As one example, the Court suggested someone who has an unloaded restricted firearm “safely” stored in their cottage with useable ammunition nearby in the next room, coupled with the knowledge that under the terms of their licence, the firearm could only be kept in that person’s dwelling.⁶²

⁵⁶ *R. v. Smickle*, 2013 ONCA 678 (who challenged the same provision), B of A, Tab 25; Judgment of the Court of Appeal in *Charles*, Charles Appellants’ Record, Tab 3 (which is also before this Court), and *R. v. Chambers*, 2013 ONCA 680 (who challenged the 5 year mandatory penalty but is not before this Court), B of A, Tab 8

⁵⁷ *R. v. Smith*, [1987] 1 S.C.R. 1045, B of A, Tab 26

⁵⁸ *Appeal Reasons*, at para. 121, citing *Goltz*, *supra*, at pp. 515-16

⁵⁹ *Appeal Reasons*, at para. 142

⁶⁰ *Appeal Reasons*, at para. 150

⁶¹ *Appeal Reasons*, at paras. 51, 85, 149, 150, 165, 167 and 175

⁶² *Appeal Reasons*, at para. 167

37. The Court drew no legal distinction between breaching the regulations on safe firearm storage and intentionally possessing a strictly regulated firearm in a manner that is inherently dangerous to anyone in the vicinity.

38. The Court accepted there were no reported cases that shared the characteristics of this hypothetical offender. It also accepted this offender was far removed from the facts of this and the other appeals heard at the same time. Nonetheless, the Court deemed this hypothetical offender reasonable on the basis that Parliament created a hybrid offence permitting sentences less than one year. In the Court's view, this suggested Parliament must have anticipated prosecutions at the "regulatory end of the spectrum".⁶³

39. The Court of Appeal determined that the Crown's ability to elect to proceed summarily in the face of this hypothetical offender was not a sufficient safeguard to prevent a breach of s. 12 of the *Charter*. In its view, "except perhaps when the accused pleads guilty, the Crown cannot know the facts on which the accused will be sentenced when the Crown makes its election".⁶⁴

40. Based on its constructed hypothetical, the Court of Appeal concluded that a three-year penitentiary sentence for "what is essentially a violation of a term of a licence" is cruel and unusual.⁶⁵ In coming to this conclusion, the Court found its hypothetical offender risks "no harm to anyone or anything and very little, if any, risk of harm to anyone or anything", particularly where there is an "unloaded gun in the possession of a licensed gun owner who has ammunition stored nearby".⁶⁶

41. The Court came to this conclusion notwithstanding its concurrent observation that all firearms are dangerous but that certain kinds of firearms, e.g. handguns, sawed-off rifles, and automatic firearms, are the weapons of choice of the criminal element posing an added danger. This danger is exacerbated when these types of firearms are loaded or when useable ammunition is readily available.⁶⁷

42. The Court of Appeal found the level of moral blameworthiness applied to its constructed hypothetical offender different than that applied to persons who engage in activities with firearms that

⁶³ *Appeal Reasons*, at paras. 151-152

⁶⁴ *Appeal Reasons*, at para. 162

⁶⁵ *Appeal Reasons*, at para. 169

⁶⁶ *Appeal Reasons*, at para. 165

⁶⁷ *Appeal Reasons*, at para. 54

demonstrate a wanton or reckless disregard for the lives or safety of others, such as the offender standing on a street corner with a loaded gun.⁶⁸

43. Finally, the Court compared the conduct addressed in s. 95 with that in related provisions.⁶⁹ For example, s. 92 creates an offence that applies to anyone in possession of a firearm knowing that the person is not a holder of a licence or registration certificate (where one is required). It carries no mandatory minimum sentence for a first conviction. Section 93 applies to a person who is licensed to have a restricted or prohibited firearm but possesses it at a place that is not authorized under the licence. Section 93 is a hybrid offence with no mandatory minimum prison sentence and the maximum sentence of five years where the Crown proceeds by way of indictment. The Court of Appeal acknowledged that, unlike s. 95 neither of these offences requires the firearm to be loaded or possessed with readily accessible ammunition. However, it considered this distinction to be “relatively minor”.⁷⁰

44. In all of the circumstances, the Court of Appeal found there to be a “cavernous disconnect”⁷¹ between the severity of the offence in its constructed hypothetical and the three-year mandatory minimum prison sentence. On this basis, the Court found s. 95(2)(a)(i) contrary to s. 12 of the *Charter*. It further concluded the legislation could not be saved under s. 1 of the *Charter*.⁷²

45. The Court of Appeal rejected the argument that the three-year mandatory minimum prison sentence contained in s. 95(2)(a)(i) violated s. 15 of the *Charter*. It similarly rejected the two arguments proposed under s. 7: (1) that the scheme effectively puts the sentencing decision in the hands of the Crown through its ability to elect to proceed summarily without explanation; and (2) that the gap between the maximum sentence of one-year that is available where the Crown proceeds summarily and the minimum three-year sentence where the Crown proceeds by indictment is arbitrary.

⁶⁸ *Appeal Reasons*, at para. 167

⁶⁹ *Appeal Reasons*, at paras. 170-175

⁷⁰ *Appeal Reasons*, at para. 175

⁷¹ *Appeal Reasons*, at para. 176

⁷² *Appeal Reasons*, at paras. 178-181

PART II – QUESTIONS IN ISSUE

46. By order dated June 3, 2014, the Honourable Chief Justice stated the following constitutional Questions:

1. Does the mandatory minimum sentence on Crown election by indictment under s. 95(2)(a)(i) of the *Criminal Code*, R.S.C., 1985, c. C-46 infringe s. 12 of the *Canadian Charter of Rights and Freedoms*?
2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
3. Does the mandatory minimum sentence on Crown election by indictment under s. 95(2)(a)(i) of the *Criminal Code*, R.S.C., 1985, c. C-46 infringe s. 7 of the *Canadian Charter of Rights and Freedoms*?
4. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

47. Section 95(2)(a)(i) of the *Criminal Code* does not violate s. 12 or s. 7 of the *Charter*. If it does violate either of these sections of the *Charter* it is a justifiable limitation of those rights pursuant to s. 1 of the *Charter*.

PART III – STATEMENT OF ARGUMENT

A. THE TEST UNDER S. 12 OF THE *CHARTER*

i. Standard of Review of Parliament’s Sentencing Policies

48. This Court has recognized the high degree of deference that should be given to Parliament to achieve legitimate penological objectives. A mandatory minimum sentence is a “forceful expression of government policy in the area of criminal law”.⁷³ As a majority of this Court acknowledged in *R. v. Smith*, “[i]t is not for the court to pass on the wisdom of Parliament with respect to the gravity of

⁷³ *R. v. Nasogaluak*, [2010] 1 S.C.R. 206, 2010 SCC 6, at para. 45, B of A, Tab 21

various offences and the range of penalties which may be imposed upon those found guilty of committing the offences”.⁷⁴

49. Parliament has broad discretion to proscribe conduct as criminal and to determine the appropriate punishment. Constitutional concerns do not arise simply because a particular sentence appears unfit or even disproportionate. While it is a judicial function to determine whether a punishment exceeds constitutional limits set by the *Charter*, “the court should be reluctant to interfere with the considered views of Parliament and then only in the clearest cases...”⁷⁵

50. Parliament is “entitled to take appropriate measures to address the pressing problem of firearm-related deaths”.⁷⁶ Parliament is equally entitled to take appropriate measures to address the pressing problem of unlawful possession of prohibited and restricted firearms that creates a significant risk of harm. As this Court recognized in *Morrissey*, the misuse of a firearm always “presents the ultimate threat of death to those in its presence”.⁷⁷

51. Deference to legislative choice in sentencing is also necessary given the varied purposes of criminal sanctions. The importance of these principles may vary depending upon the crime and the offender.⁷⁸ As Justice Gonthier acknowledged in *Morrissey*, the fact that a legislative sentencing regime focuses on the principles of general deterrence, denunciation and retribution more than on the rehabilitation of the accused and specific deterrence, does not render the sentencing regime unconstitutional:

Extra vigilance is necessary with guns, and while society would expect people to take precautions on their own, unfortunately people do not always do so. Consequently, Parliament has sent an extra message to such people: failure to be careful will attract severe criminal penalties.⁷⁹

⁷⁴ *Smith, supra*, at p. 1070. See also: *Goltz, supra*, at pp. 501-503 (*per* Gonthier J.); *R. v. Latimer*, [2001] 1 S.C.R. 3, 2001 SCC 1, at paras. 73-87, B of A, Tab 17; *R. v. Morrissey, supra*, at paras. 26-56; *R. v. Wiles*, [2005] 3 S.C.R. 895, 2005 SCC 84, at para. 4, B of A, Tab 28

⁷⁵ *Smith, supra*, at p. 1070

⁷⁶ *Morrissey, supra*, at para. 43

⁷⁷ *Morrissey, ibid.*, at para. 43

⁷⁸ *R. v. Lyons*, [1987] 2 S.C.R. 309, at pp. 328-330, B of A, Tab 18; *Morrissey, ibid.*, at para. 46

⁷⁹ *Morrissey, ibid.*, at para. 54; See also *R. v. Danvers*, [2005] O.J. No. 3532 (Ont. C.A.), at para. 78, B of A, Tab 111; *R. v. Chin*, 2009 ABCA 226, at paras. 10-13, B of A, Tab 9

52. Even a disproportionate sentence does not violate the *Charter*. A sentence must be *grossly* disproportionate to offend the prohibition against cruel and unusual punishment in s. 12 of the *Charter*. This Court has articulated this stringent standard using a variety of language, in numerous cases:

... [T]o be considered grossly disproportionate, the sentence must be more than merely excessive. The sentence must be ‘so excessive as to outrage standards of decency’ and disproportionate to the extent that Canadians ‘would find the punishment abhorrent or intolerable’.⁸⁰

...

We should be careful not to stigmatize every disproportionate or excessive sentence as being a constitutional violation, and should leave to the usual sentencing appeal process the task of reviewing the fitness of a sentence.⁸¹

...

The word ‘grossly’, it seems to me, reflects this court’s concern not to hold Parliament to a standard so exacting, at least in the context of s. 12, as to require punishments to be perfectly suited to accommodate the moral nuances of every crime and every offender.⁸²

...

It will only be on rare and unique occasions that a court will find a sentence so grossly disproportionate that it violates the provisions of s. 12 of the *Charter*. The test for determining whether a sentence is disproportionately long is very properly stringent and demanding.⁸³

ii. The Test to Assess Whether Legislation is Grossly Disproportionate

53. Beginning with its decision in *Smith*, and later developed in *Goltz* and *Morrisey*, this Court has formulated a two-stage test to determine if a sentence is grossly disproportionate and therefore contrary to s. 12:

i) Do the circumstances of the particular offence and offender, when balanced against the gravity of the offence itself, the penological goals and the actual sentence that would be served, lead to the conclusion that the sentence is grossly disproportionate? (The particularized inquiry); and

⁸⁰ *R. v. Ferguson*, *supra*, at para. 14, citing *Wiles*, *supra*, at para. 4, *Smith*, *supra*, at p. 1072, *Morrisey*, *supra*, at para. 26

⁸¹ *Smith*, *ibid.*, at p. 1072

⁸² *Lyons*, *supra*, at pp. 344-45, *per* La Forest J.

⁸³ *Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385, at p. 1417, B of A, Tab 32

ii) If not, is the sentence grossly disproportionate in reasonable hypothetical circumstances? (The reasonable hypothetical inquiry)⁸⁴

54. To assess this, under both inquiries, a court may consider the relevant contextual factors such as the gravity of the offence; the actual effect of the punishment on the individual; the penological goals and sentencing principles upon which the sentence is fashioned; the existence of valid alternatives to the punishment imposed; and a comparison of the punishments imposed for other crimes in the same jurisdiction.⁸⁵

55. As noted in *Goltz*, it is difficult to overcome the strong indication of validity arising from the first particularized step of the s. 12 analysis.⁸⁶ As such, the reasonable hypothetical test seeks to avoid “far-fetched or only marginally imaginable” facts, ensuring that it does not result in a court invalidating a statute “on the basis of remote or extreme examples”.⁸⁷

56. This is equally the case for offences that capture a range of conduct. In *Morrisey*, this Court recognized that, while the offence of criminal negligence causing death by a firearm could be committed in almost an infinite variety of ways, it is nonetheless a far from common occurrence in Canada.⁸⁸ To guard against formulating an unreasonable hypothetical offender, the majority in *Morrisey* stressed the importance of developing a hypothetical with reference to the case law. This is done not to focus on the idiosyncrasies or case-specific facts from the jurisprudence, but to ensure the hypothetical reflects “common examples of the crime” with a view to “distilling their common elements” and, through that, determining the common elements of the offence.⁸⁹

57. Applying this approach to the offence of criminal negligence causing death by a firearm in *Morrisey*, the majority of this Court found there were two types of situations that commonly arise and which could be gleaned from the reported cases: i) the individual who plays around with a gun unreasonably, thinking it will not go off; or ii) the hunting trip gone awry where the hunter forms the unreasonable belief that he is shooting game, when in fact it is another human being.⁹⁰

⁸⁴ *Goltz, supra*, at pp. 505-506

⁸⁵ *Morrisey, supra*, at paras. 27-28

⁸⁶ *Goltz, supra*, at p. 519

⁸⁷ *Goltz, ibid.*, at p. 515

⁸⁸ *Morrisey, supra*, at paras. 31, 33

⁸⁹ *Morrisey, ibid.*, at paras. 33, 50

⁹⁰ *Morrisey, ibid.*, at paras. 51, 52

58. Measured as it is, the reasonable hypothetical test maintains the necessary balance between providing a substantial degree of certainty in the law⁹¹ while ensuring that the constitutionality of the law is not decided in a factual vacuum.⁹² In this way, the test protects against the concern expressed by Justice MacIntyre, in dissent in *Smith*, that there is an “air of unreality” of considering whether a sentence is cruel and unusual for a hypothetical offender.

59. It may often be possible to think of a far-fetched example of conduct that may technically fall within the outer limits of the offence in order to conclude the sentence is grossly disproportionate. However, the test developed by this Court protects against that improper outcome by focusing on common examples of the offence, rather than a hypothetical representing the furthest reaches of the proscribed conduct.

60. The measured approach to formulating a reasonable hypothetical also respects the deference that must be given to Parliament’s legitimate penological objectives. It precludes the invalidation of a law based on far-fetched or marginal examples and ensures Parliament’s legitimate criminal law policy objectives are not lightly disturbed. It recognizes that, “it simply is not necessary that legislated punishments be ‘perfectly suited to accommodate the moral nuances of every crime and every offender’”.⁹³

B. S. 95(2)(A)(I) DOES NOT VIOLATE S. 12 OF THE CHARTER

61. There is no issue in this case concerning whether the mandatory minimum sentence contained in s. 95(2)(a)(i) of the *Criminal Code* violates s. 12 as it relates to the particular circumstances of the respondent for the reasons articulated by the Court of Appeal. The only issue is the effect of s. 95(2)(a)(i) on the reasonable hypothetical offender.

i. The Court of Appeal Erred in its Assessment of the Gravity of the Offence

62. The Court of Appeal made three errors in assessing the gravity of the offence under s. 95 that skewed its subsequent reasonable hypothetical analysis. First, it mischaracterized the offence as one capturing “regulatory” misconduct. Second, it failed to appreciate that ammunition “nearby” is not

⁹¹ *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, at pp. 334-335, B of A, Tab 7

⁹² *MacKay v. Manitoba*, [1989] 2 S.C.R. 357, at pp. 361-362, B of A, Tab 3; *Reference Re Same-Sex Marriage*, [2004] 3 S.C.R. 698, 2004 SCC 79, at para. 51, B of A, Tab 5

⁹³ *Lyons, supra*, at pp. 344-345; *Goltz, supra*, at p. 519

sufficient to ground a conviction under s. 95. Finally, the Court of Appeal failed to appreciate the significant risk of harm s. 95(1) seeks to prevent.

a) S. 95 is not a “Regulatory” Offence

63. Section 95 criminalizes serious criminal conduct that undermines public safety – the unlawful possession of loaded or readily loaded prohibited or restricted firearms. Section 95 is a *mens rea* offence. It is not committed by accident or inadvertence. Section 95 is directed at deterring, denouncing and punishing those who knowingly place anyone within gunshot range at risk of serious injury or death. It is intended to prevent injury and harm before it occurs by sanctioning i) the unauthorized possession, or authorized possession at an unauthorized place, of a restricted or prohibited firearm – both activities which are criminal offences in and of themselves pursuant to s. 91 and 93 of the *Criminal Code*; and ii) possessing the prohibited or restricted firearm while loaded or together with readily accessible ammunition. There is nothing improper in Parliament’s decision to mete out a significant punishment for those who commit this dangerous conduct before the harm occurs.⁹⁴

64. Section 95 is limited to the most strictly regulated firearms: restricted firearms (principally handguns) and prohibited firearms (principally machine guns and sawed-off rifles or shotguns).⁹⁵ These types of firearms are the most strictly regulated because they are either easily concealable or generally do not serve a legitimate hunting or target shooting purpose.

65. Parliament determined that the combination of licensing, registration and authorization for prohibited and restricted firearms is vital to ensure the safety of the owner and the public because of the extreme risk caused by their unlawful possession.

66. It can only be lawful to possess these specific firearms under the strictly limited terms of authorizations that permit (i) specified individuals (ii) who are properly trained and (iii) licensed to possess a restricted or prohibited firearm at (iv) a defined location. The legislative scheme does not permit the possession of a loaded restricted or prohibited firearm without the two tiers of societal protection – the authorized person at the authorized place.

⁹⁴ *R. v. Khawaja*, [2012] 3 S.C.R. 555, 2012 SCC 69, at paras. 55, 63, B of A, Tab 16

⁹⁵ *Appeal Reasons*, at paras. 32, 45

67. Section 95 is no more a licensing offence than is s. 6(1) of the *Controlled Drugs and Substances Act* in relation to a pharmacist who traffics oxycontin outside the legal protection afforded by the dispensary or the authority of a prescription.

68. Section 95 is only one of several criminal sanctions in the *Criminal Code* designed to protect the public from the unlawful possession of firearms which are inherently dangerous. These sanctions operate in tandem with the licensing, registration and authorization scheme in the *Firearms Act*. However, s. 95(1) is considerably more targeted in scope than other offences. It relates only to prohibited or restricted firearms and requires the firearm to be loaded or together with readily accessible ammunition.

69. By comparison, s. 91 of the *Criminal Code* makes it an offence to possess any firearm without a licence and, in respect of restricted or prohibited firearms, a registration certificate. The Crown can proceed by summary conviction or by way of indictment, in which case the sentence is not more than five years. Section 93 makes it an offence if a person is in lawful possession of any firearm or ammunition but possesses it at an unauthorized place. Again, the Crown can proceed summarily or by way of indictment where the penalty is not more than five years. A person may be convicted pursuant to s. 86(2) of the *Criminal Code* if he or she lawfully possesses a firearm but does not comply with the *Firearms Act*, and the *Storage Regulations* that set out stringent requirements in relation to the safe storage, handling and transportation of firearms or ammunition. As a regulatory breach, s. 86(2) captures individuals who simply fail to meet the storage requirement, whether by accident, ignorance, or carelessness. This is also a hybrid offence where the maximum punishment is not more than 2 years on a first offence.

70. In contrast to s. 95(1), none of these offences are limited to prohibited or restricted firearms and none of the offences require the firearm to be loaded or together with readily accessible ammunition. Section 95 also stands in contrast to the strict liability offence of s. 86(2) because it addresses conduct that is more morally culpable – with knowledge and intent, unlawfully possessing a loaded restricted or prohibited firearm, or one with readily accessible ammunition.

71. The added element of knowledge creates a more grave offence and provides added constitutional justification for a mandatory minimum sentence.⁹⁶ As recently stated by Justice Lebel in *R v. MacDonald* the *mens rea* required for a conviction under s. 95(1) requires:

An individual who knowingly possesses a loaded restricted firearm in a particular place with an intention to do so will be liable to punishment for the offence provided for in s. 95(1) unless he or she holds an authorization or a licence under which the firearm may be possessed in that place. Thus, a proper authorization or licence serves to negate the *actus reus* of the offence, thereby allowing someone who legitimately possesses a restricted firearm in a given place to avoid liability.⁹⁷ [Emphasis added]

72. The requisite evidentiary burden on the Crown under s. 95(1) is more exacting than in the case of some firearms offences contained in the *Criminal Code* where, pursuant to s. 117.11, the accused has the burden of proving that he or she is the holder of the authorization, licence or registration certificate.

73. This offence is significantly different from the offence in *Smith*, where this Court struck down the seven-year mandatory minimum sentence for importing narcotics because it could capture the “small time” first time offender bringing a joint of marijuana across the border. That offence did not limit the drug involved, or the amount of the drug.

74. There are no small time offenders under s. 95(1). Section 95(1) captures a narrow range of conduct, although it can be committed in a variety of circumstances. The elements of the offence have only two variables: i) the gun is either loaded or readily loaded, a distinction without a significant difference given the inherent risk in both; and ii) the person is either unlicensed or unauthorized.

b) “Nearby” Ammunition is not Sufficient to Justify a s. 95 Conviction

75. Contrary to the view of the Court of Appeal, having ammunition “nearby” is not sufficient for a conviction pursuant to s. 95(1). The prohibited or restricted firearm and ammunition must be stored contrary to the regulations. Proper storage under the *Storage Regulations* ensures that the firearm cannot be readily loaded for discharge – the harm that s. 95(1) seeks to prevent. Compliance with the firearm regulations ensures that prohibited and restricted firearms are not unsafely located together with readily accessible ammunition within the meaning of s. 95(1) of the *Criminal Code*.

⁹⁶ *Goltz, supra*, at p. 507 (per Gonthier, J.)

⁹⁷ *R. v. MacDonald*, 2014 SCC 3, at para. 55, B of A, Tab 19

76. To be properly stored, the prohibited or restricted firearm must be unloaded. It must also be rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked that cannot easily be broken into or stored in a locked vault, safe or room that has been specifically constructed or modified for the secure storage of restricted or prohibited firearms.⁹⁸ The *Storage Regulations* provide that the firearm must not be readily accessible to the ammunition, unless the ammunition is also in the locked container, room or vault rendering it inaccessible for the purpose of s. 95(1).

77. Because simply having ammunition “nearby” is not sufficient to ground a conviction pursuant to s. 95(1), the Court of Appeal’s description of the “otherwise law abiding responsible”⁹⁹ gun owner is a fallacy.

78. The hypothetical gun owner imagined by the Court of Appeal would have successfully completed two firearms safety courses. The person would therefore understand the inherent risk posed by such firearms. Notwithstanding, this “responsible” gun owner would have then proceeded to commit three criminal offences in addition to that in s. 95. He or she would have: transported the firearm without authorization, contrary to s. 94 of the *Criminal Code*; possessed the firearm at an unauthorized place, contrary to s. 93 of the *Criminal Code*; and kept the firearm together with readily accessible ammunition, contrary to the *Storage Regulations* in violation of s. 86(2) of the *Criminal Code*.

79. The Court of Appeal understated the seriousness of a conviction under s. 95. It is inaccurate to say, “it is irrelevant to a charge under s. 95 that the accused took all necessary precautions to ensure the safety of others”. If a person took all necessary precautions, they could not be convicted under s. 95(1) of the *Criminal Code*.

c) S. 95 Prohibits Conduct with Considerable Risk of Harm

80. Given the conduct necessary for a conviction under s. 95, the Court of Appeal also erred in characterizing s. 95(1) as an offence that does not require proof of a “risk of harm”.¹⁰⁰ The possession of these deadly weapons, by their very nature, poses a real risk of harm. The Court of Appeal actually acknowledged this:

⁹⁸ *Storage Regulations, supra*, s. 6, 7

⁹⁹ *Appeal Reasons*, at para. 51

¹⁰⁰ *Appeal Reasons*, at para 49

All firearms pose a danger, both to users and to others. The possession and use of firearms have been tightly regulated in Canada for many years. Experience teaches that certain kinds of firearms, *e.g.* handguns, sawed-off rifles, and automatic firearms, are the weapons of choice of the criminal element. Those kinds of firearms pose an added danger to the public. They become even more dangerous when loaded or when useable ammunition is readily available to the person in possession of the firearm.¹⁰¹
[Emphasis added]

81. This is not controversial. The inherent risk of any loaded firearm was also noted by this Court in *Morrissey*: “If the gun is loaded, there is a sufficient probability that any person in the line of fire could be killed. The need for general deterrence is as great (if not greater) for the hypothetical offenders playing with guns as it is for people such as the offender”.¹⁰²

82. The inherent risk of harm is not significantly diminished where the restricted or prohibited firearm is unloaded but kept, “together with readily accessible ammunition that is capable of being discharged in the firearm”, as is required for a conviction pursuant to s. 95. Consider, for example:

- The back pack with the handgun and ammunition;
- The handgun under the seat of the car, and the ammunition in the glove compartment; or
- The handgun and ammunition in the drawer of a bedside table at the family cottage.

83. Lower courts have interpreted “readily accessible” as meaning “quickly without delay” and “without difficulty”.¹⁰³ The ammunition must be suitable for discharge in the firearm and the time to bring the firearm into loadable and operable condition must be short.¹⁰⁴ It is a fact-specific inquiry based on the circumstances of the offence. If the ammunition is not truly, readily accessible, there is no s. 95(1) offence.

84. Ultimately, the Court of Appeal misunderstood the serious conduct that is required to commit an offence pursuant to s. 95(1) of the *Criminal Code*. This, in turn, skewed its s. 12 *Charter* analysis. Whether this offence is committed by a person who unlawfully takes their prohibited or restricted

¹⁰¹ *Appeal Reasons*, at para. 54

¹⁰² *Morrissey*, *supra*, at para. 53

¹⁰³ *R. v. Khan*, [2007] O.J. No. 137 (Sup Ct.), at paras. 17-18, B of A, Tab 15; *R. c. Joubert* 2010 QCCQ 5726, at para. 53, B of A, Tab 14

¹⁰⁴ *R. v. Vader*, [2012] A.J. No. 569 (Q.B.), at paras. 123-129, B of A, Tab 27; *R. v. Nicholson*, 2011 BCPC 316 (Prov. Ct.), at para. 16, B of A, Tab 22

firearm to the cottage and leaves it loaded or with ammunition readily accessible, or whether that gun is found unsecured in a house during the execution of a search warrant, the inherent risk of harm to those around the gun is significant.

85. The risk of harm exists whether or not the accused has an intention to use the gun for an unlawful purpose or even to fire the gun. This is borne out by the evidence before the Standing Committee for Justice and Human Rights – that thirty improperly stored handguns were stolen during a break and enter and used in a subsequent gang war, resulting in twelve shooting deaths and many more shooting injuries.¹⁰⁵

ii. The Court of Appeal’s Hypothetical Offender was not Reasonable

86. The Court of Appeal mistakenly concluded the offence under s. 95 captures a broader range of conduct than it actually does. Its mischaracterization of the gravity of the offence skewed its analysis of the reasonable hypothetical offender under s. 12 of the *Charter*.

87. The Court of Appeal created a hypothetical offender, the “otherwise law abiding responsible gun owner,”¹⁰⁶ possessed with the following characteristics:

- i. s/he was knowingly in possession of an unloaded restricted or prohibited firearm;
- ii. with useable ammunition stored nearby and readily accessible;
- iii. s/he had an authorization to possess the firearm;
- iv. had registered the firearm; but
- v. to his or her knowledge, the authorization did not permit possession of the firearm at the place or in the manner in which the offender had possession;¹⁰⁷
- vi. the possession of the firearm was not connected to any unlawful purpose or activity; and
- vii. the offender was not engaged in any dangerous activity with the firearm.¹⁰⁸

¹⁰⁵ *Standing Committee for Justice and Human Rights*, No. 34 (November 23, 2006) at 1040 (Chief William Blair)

¹⁰⁶ *Appeal Reasons*, at para. 51

¹⁰⁷ Knowledge is no longer required. See: *MacDonald*, *supra*, at para. 55

¹⁰⁸ *Appeal Reasons*, at para. 150

88. Having ammunition “nearby” does not equate with having it readily accessible. However, even if the above conduct could amount to an offence under s. 95, it does not constitute a reasonable hypothetical. When creating a reasonable hypothetical offender, courts are not to use “far-fetched or only marginally imaginable facts” nor should they “invalidate statutes on the basis of remote or extreme examples”.¹⁰⁹ In the instant case, the Court of Appeal did both.

89. This hypothetical does not represent “imaginable circumstances which could commonly arise in day-to-day life”,¹¹⁰ nor is it a common example of the offence.¹¹¹ In the same way that it would be unreasonable to select the most uncommon, egregious criminal outlaw at one end of the spectrum, it was equally unreasonable for the Court of Appeal to select someone uncommonly found, “[a]t the other end of the spectrum”.¹¹²

90. Contrary to *Morrissey*, the Court of Appeal declined to consider the body of reported s. 95 cases in order to glean “the imaginable circumstances which could commonly arise” with a view to “distilling their common elements”.¹¹³ Had it done so, the Court of Appeal could have begun by considering the accused in the four cases before it to provide an important benchmark for determining a reasonable hypothetical. It did not. The Court ultimately chose a hypothetical offender who bore no resemblance to any of the offenders before it, something the Court freely acknowledged.¹¹⁴

91. Even a cursory consideration of the four offenders before the Court demonstrates the remoteness of the Court of Appeal’s hypothetical. None of the offenders were ever licensed to possess the restricted or prohibited firearm. Two were in possession of loaded handguns in the community. Two were found in possession of a loaded handgun in a residence. In all four appeals, the Court of Appeal held under the particularized inquiry that the mandatory minimum sentences were not grossly disproportionate on the facts of the case before them.

92. The Court of Appeal did not engage in any review of the common elements that arise in the case law where the Crown proceeds by indictment. A review of the case law under s. 95(2)(a)(i) from 2008 to 2014 reveals a pattern showing the presence of an unlicensed/unauthorized, loaded, or readily loaded, restricted/prohibited firearm frequently discovered following the execution of a warrant or a

¹⁰⁹ *Goltz, supra*, at pp. 515-516

¹¹⁰ *Goltz, ibid.*, at p. 516; *Morrissey, supra*, at para. 31

¹¹¹ *Morrissey, ibid.*, at para. 33

¹¹² *Appeal Reasons*, at para. 51

¹¹³ *Morrissey, supra*, at paras. 33, 50

¹¹⁴ *Appeal Reasons*, at para. 151

search incident to arrest.¹¹⁵ The common elements in these reported cases demonstrate conduct that endangers lives and puts public safety at risk. These circumstances, rather than the hypothetical constructed by the Court of Appeal, are “imaginable circumstances which could commonly arise”.¹¹⁶

93. The Court of Appeal purported to recognize that a reasonable hypothetical offender should be constructed by considering only the constituent elements of the offence: “[A]fter *Morrisey* and *Goltz*, a reasonable hypothetical is one that operates at a general level to capture conduct that includes all the essential elements of the offence that trigger the mandatory minimum, but no more”.¹¹⁷ Notwithstanding, it then imbued the hypothetical offender with virtuous intent – the “otherwise law abiding” licensed owner who took his gun to the cottage in contravention of the licence. This further skewed its s. 12 *Charter* analysis. On the basis of a marginal and remote offender, the Court of Appeal incorrectly concluded the three-year mandatory minimum sentence violates s. 12 of the *Charter*.

a) The Court’s View of the Crown Election made the Hypothetical even more Unreasonable

94. The constitutionality of the provision should be tested on what is truly a reasonable hypothetical, considering not just the conduct of the offender, but the reasonableness of the Crown’s election, with due latitude given to this exercise of Crown discretion. The Court should not assume the Crown will elect to proceed by indictment in marginal cases absent evidence that the Crown is actually doing so.

95. The Court of Appeal erred in its reasonable hypothetical analysis by presuming the Crown would elect to proceed by way of indictment in the circumstances of the least morally blameworthy hypothetical offender, notwithstanding the hybrid nature of the offence. To simply presume the Crown would elect to proceed by way of indictment in the context of this marginal and remote example makes the hypothetical even more unreasonable.

96. The Court of Appeal also suggested the possibility of an unreasonable Crown election on the basis that facts concerning the circumstances of the offence and the offender would not be known earlier in the criminal process when the Crown makes its election.¹¹⁸ This reasoning ignores the

¹¹⁵ See the chart of first conviction cases under s. 95 at Appendix “A”, *infra*, p. 42 and ff.

¹¹⁶ *Morrisey*, *supra*, at para. 50

¹¹⁷ *Appeal Reasons*, at para. 142

¹¹⁸ *Appeal Reasons*, at paras. 157-158

common practice of early plea discussions, where counsel for the accused often brings mitigating facts to the attention of the Crown in the hope of beneficial treatment for their client.

97. In *R. v. Anderson*, this Court very recently confirmed that, if a mandatory minimum regime requires a judge to impose a disproportionate sentence, the regime should be challenged on that basis, not the manner of Crown discretion.¹¹⁹ Equally, it would be improper to presume an unreasonable exercise of Crown discretion in determining whether a particular sentencing regime for a hybrid offence is grossly disproportionate, as the Court of Appeal appears to have done.

98. That is not to say the Crown's ability to proceed summarily is a "safety valve" for the constitutionality of s. 95. Rather, it is a reflection of, "...the wisdom of Parliament with respect to the gravity of various offences and the range of penalties which may be imposed...",¹²⁰ as demonstrated by the hybrid nature of the offence under s. 95.

99. The ability of the Crown to proceed by way of summary conviction is distinguishable from the argument rejected in *Smith*, that the ability of the Crown not to apply the law in those cases where it would be a violation of the *Charter* could not save the legislation. In the case of s. 95, the Crown would be doing the opposite – applying the law as created by Parliament. Consistent with the decision of this Court in *Ferguson*, if the Crown makes an unreasonable election in an actual case, it runs the risk that the law will be struck down under the particularized inquiry.

100. As a practical matter, the Court of Appeal's approach to fashioning its hypothetical offender effectively precludes Parliament from creating a hybrid offence that carries a mandatory minimum sentence on indictment. Following that approach, the conduct chosen will be the least morally blameworthy, with an accompanying presumption that the matter is nonetheless proceeding by way of indictment. The end result will almost always be a finding of gross disproportionality.

iii. The Effect of the Sentence on the Offender must be Considered

101. The minimum length of a sentence is not the complete measure of the proportionality of the punishment. The complete effect of the sentence is "often a composite of many factors and is not

¹¹⁹ *Anderson, supra*, at para. 25

¹²⁰ *Smith, supra*, at p. 1070

limited to the quantum or duration of the sentence but includes its nature and the conditions under which it is applied”.¹²¹

102. The severity of the sentence may be ameliorated in several ways in the s. 12 analysis. An offender’s length of incarceration will be shortened by any period spent in pre-trial custody.¹²² The availability of parole also shortens the time spent in custody.¹²³ For example, an offender serving a three-year sentence is eligible for full parole after serving one third of the total sentence, meaning twelve months.¹²⁴ Day parole is available after six months.¹²⁵ Offenders are also eligible for unescorted and escorted temporary absences.¹²⁶ Parole may also be granted at any time for exceptional reasons, such as illness,¹²⁷ and absent exceptional circumstances an offender under this section must be paroled after two thirds of the sentence (i.e. twenty-four months).¹²⁸

103. The availability of parole means the actual impact of the sentence imposed may be significantly less than it may appear on its face. Considered as a whole, the statutory scheme appropriately metes out severe punishment to serious offenders while maintaining the capacity to deal with cases where releasing an offender on parole prior to completion of the full sentence is appropriate.

iv. S. 95(2)(a)(i) Reflects Parliament’s Legitimate Criminal Law Policy

104. Parliament considered the evolving social conditions, including the dramatic increase in the possession of illegal handguns in Canada, and determined that the mandatory minimum sentence of one-year upon conviction of an indictable offence should be increased to three-years to denounce, deter and punish this type of conduct.¹²⁹ To achieve this objective, Parliament intentionally limited judicial discretion by imposing a three year floor below which a judge may not go when sentencing an offender convicted by way of indictment. This is a reasonable response to the legitimate concern about increased

¹²¹ *Smith, ibid.*, at p. 1073

¹²² *R. v. Wust*, [2000] 1 S.C.R 455, 2000 SCC 18, at paras. 41-43, B of A, Tab 29

¹²³ *Morrissey, supra*, at para. 41

¹²⁴ *Corrections and Conditional Release Act*, S.C. 1992, c. 20 as am., s. 120, B of A, Tab 34. A sentencing court has the authority to delay parole for certain offences under s. 743.6 of the *Criminal Code*. These provisions do not apply to offences committed under s. 95.

¹²⁵ *Corrections and Conditional Release Act, ibid.*, s. 119

¹²⁶ *Corrections and Conditional Release Act, ibid.*, s. 17 and 18

¹²⁷ *Corrections and Conditional Release Act, ibid.*, s. 121

¹²⁸ *Corrections and Conditional Release Act, ibid.*, s. 127(3)

¹²⁹ *House of Commons Debates*, No. 33 (June 5, 2006) at 1305-1325 (Hon. Vic Toews), AR, Tab 34; *Standing Committee on Justice and Human Rights*, No. 30 (November 7, 2006) at 1530-1540 and 1600 (Hon. Vic Toews); *House of Commons Debates*, No. 156 (May 17, 2007) at 1035 (Hon. Rob Nicholson).

possession and use of illegal handguns, given the potential dire consequences of such unlawful possession.¹³⁰

105. The fact that no one was actually seriously harmed in the cases before this Court does not substantially diminish the importance of denunciation, deterrence and punishment in cases involving unlawful possession of loaded or readily loaded prohibited or restricted firearms. There is a need to make it clear that it is simply unacceptable to knowingly possess a loaded or readily loaded prohibited or restricted firearm in circumstances that put the life and safety of others at risk.¹³¹

106. The sentencing principles in ss. 718, 718.1 and 718.2 of the *Criminal Code*, including the principle of proportionality, still apply to allow the sentencing judge to determine the proper sentence within the statutory range. The prescribed sentence in s. 95(2)(a)(i) establishes a sentencing floor setting a new minimum punishment for the least blame-worthy or “best” offender. The three-year mandatory minimum sentence in s. 95 is not out of step with the four-year mandatory minimum sentences upheld by this Court for firearm offences in *Morrissey* and *Ferguson*.

107. It is only luck that separates someone convicted of an offence pursuant to s. 95 from an offender like *Morrissey*. The respondent in the instant case showed a complete disregard for the lives and safety of others when he threw the loaded handgun after being pursued by police. The loaded handgun could have easily discharged when he dropped or mishandled it, killing a neighbour or police officer. Even the cottage owner who knowingly leaves his handgun with readily accessible, and loadable, ammunition depends on nothing more than good fortune that someone else does not come across the handgun, “play” with it or take it.

108. A three-year mandatory minimum sentence considered in this context is not grossly disproportionate. Rather, it reflects the degree of denunciation, deterrence and punishment determined appropriate by Parliament for this type of dangerous criminal activity. As the original sentencing judge concluded after reviewing the relevant case law, an appropriate sentence for an offence pursuant to

¹³⁰ Other sentences have been increased in response to evolving social conditions. These include sentences for sexual assault (s. 271), child pornography (s. 163(2)) and impaired driving (s. 255).

¹³¹ *Morrissey, supra*, at paras. 43-47; *Ferguson, supra*, at para. 28

s. 95(2) would be in the range of two years less a day to three years even without the mandatory minimum.¹³²

109. The three-year mandatory minimum sentence is significant. However, it is not grossly disproportionate, taking into account the seriousness of the conduct, the actual sentence that a hypothetical offender would likely serve, and weighed against the legitimate penological objectives of deterring and denouncing dangerous conduct that puts the public at risk. It therefore does not violate s. 12 of the *Charter*.

C. S. 95(2)(A)(I) DOES NOT VIOLATE S. 7 OF THE *CHARTER*

110. The Court of Appeal properly rejected both arguments raised before it under s. 7 of the *Charter*: (1) that the scheme effectively puts the sentencing decision in the hands of the Crown through its ability to elect to proceed summarily without explanation; and (2) that the so-called “gap” between the maximum sentence of one-year that is available where the Crown proceeds summarily and the minimum three-year sentence where the Crown proceeds by indictment is arbitrary.

111. This Court’s recent decision in *R. v. Anderson* is a complete answer to the first issue. It confirms that:

- the exercise of Crown discretion – including the decision whether to proceed summarily or by indictment – accords with the principles of fundamental justice and is indispensable for the effective enforcement of the criminal law;¹³³
- the exercise of Crown discretion is reviewable solely for abuse of process;¹³⁴ and
- the duty to impose a proportionate sentence rests with the judge, not the Crown. As such, the issue is the statutory regime itself, not the exercise of Crown discretion.¹³⁵

¹³² Reasons for Judgment, Ontario Superior Court of Justice, A.R., tab 1 at para. 45; *R. v. Smickle*, 2012 ONSC 602 (sentencing decision) at para. 63, varied 2013 ONCA 678, B of A, Tab 27

¹³³ *Anderson, supra*, at paras. 37, 44; *Sriskandarajah v. United States of America*, [2012] 3 S.C.R. 609, 2012 SCC 70, at para. 27, B of A, Tab 31

¹³⁴ *Anderson, ibid.*, at para. 51

¹³⁵ *Anderson, ibid.*, at para. 25

112. Secondly, the difference between the maximum one-year sentence available where the Crown proceeds summarily and the minimum three-year sentence where the Crown proceeds by indictment is not arbitrary. This Court has held that a law is not arbitrary if, “there is a direct connection between the purpose of the law and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law’s purpose”.¹³⁶ The sentencing scheme under s. 95(1) meets this standard.

113. As the Court of Appeal noted, the hybrid election scheme is consistent with the legislative purpose of s. 95(1): to respond to the real and increasing societal danger posed by the proliferation of illegal firearms and the escalation of gun-related violence and other criminal activity with the certainty of severe punishment that maximizes deterrence and denunciation. To achieve this objective, Parliament introduced a new inflationary floor that creates a three-year minimum punishment, while allowing for the possibility that, in some circumstances, such a minimum may not be appropriate.¹³⁷

114. The availability of summary election does not undermine the purpose of the legislation. The election simply permits the Crown to exercise its discretion where, given the circumstances of the offender, it may be appropriate for the Crown not to seek the mandatory minimum sentence.

D. THE LAW IS JUSTIFIED PURSUANT TO S. 1 OF THE *CHARTER*

115. If this Court finds that the three-year mandatory minimum sentence violates either s. 7 or s. 12 of the *Charter*, the legislation is justified under s. 1 of the *Charter*. While it is acknowledged that legislation can rarely be justified if found contrary to ss. 7 or 12, this Court has left open that possibility, “particularly in extraordinary circumstances where concerns are grave and the challenges complex”.¹³⁸

116. The objective of s. 95(1) is pressing and substantial. Parliament was faced with information that there was an increase in the use of handguns in particular, and the possession of prohibited and restricted firearms in the community. Parliament sought to deter and denounce the unlawful possession of these types of firearms when they are loaded or quickly loaded with readily accessible ammunition.

¹³⁶ *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, 2013 SCC 72, at para. 111, B of A, Tab 1; *Rodriguez v. British Columbia*, [1993] 3 S.C.R. 519, at pp. 594-595, B of A, Tab 30

¹³⁷ *Appeal Reasons*, at paras. 198-200

¹³⁸ *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, 2007 SCC 9, B of A, Tab 2, at para. 66; *Bedford*, *supra* at para. 129

It did so to save lives. This Court has recognized that the use of mandatory minimum sentences is a rational way to advance these legitimate sentencing goals.¹³⁹ The statistics considered by this Court in *R. v. Clayton* more than demonstrate the objective of the law is pressing and substantial.¹⁴⁰

117. The law also minimally impairs the *Charter* rights of the accused. The offence applies in limited circumstances to inherently dangerous conduct. It only applies to restricted and prohibited firearms and they must be loaded or readily loaded. It is a true *mens rea* offence, ensuring a significant degree of moral blameworthiness rather than a strict liability offence.¹⁴¹ Moreover, the Crown has the ability to proceed summarily in appropriate circumstances.

118. The deleterious effect of s. 95(2)(a)(i) is minimal. Courts have recognized that the range of appropriate sentence for this offence is between two and three years.¹⁴² Given that the vast majority of people convicted of this offence would receive significant custodial sentences in any event, the overall effect of raising the sentences for a small number of offenders to three years is within a reasonable range of legislative choice.

119. The limited deleterious effect must be balanced against the benefits of the law. In addition to saving lives, the broader effect of the law for society is a valid consideration under s. 1 of the *Charter*.¹⁴³ The benefits to Canadian society for the strict control of firearms were underscored by this Court in *R. v. Schwartz*:

The [*Criminal*] *Code* has included provisions for the control, use and possession of firearms since the enactment of the 1892 *Criminal Code*, S.C. 1892, c. 29, s. 105. That section prohibited the possession of pistols and air guns at other than specific places and, as well, provided for exemptions from the operation of the section. Since that time, there have been successive amendments which without exception have strengthened the controls upon possession and use of firearms. The history of this process is summarized by Martin L. Friedland, *A Century of Criminal Justice* (1984), commencing at p. 125. He concludes, at p. 128, with what may be considered a sober warning:

Canada has been fortunate in having had a gradual development of control over firearms for the past 100 years. We have never

¹³⁹ *Morrissey, supra*, at paras. 46-48

¹⁴⁰ *R. v. Clayton*, [2007] 2 S.C.R. 725, 2007 SCC 32, at para. 110, B of A, Tab 10

¹⁴¹ *MacDonald, supra*, at paras. 54-55

¹⁴² *Nur* (sentencing decision), *supra*, at paras. 41-57

¹⁴³ *Bedford, supra*, at para. 125

had to face a situation as in the United States today, which appears to many observers to be almost out of control.

This is a consideration which may well be significant in any judicial approach to the construction of Part II.1 of the *Code*. It is evident that the strict control of handguns has been and remains an essential feature of the Canadian gun control laws. [Emphasis added]¹⁴⁴

120. Parliament is entitled to take a stern view of the seriousness of this offence – one that involves loaded handguns or those that can be quickly loaded with readily accessible ammunition – based on its appreciation of evolving social conditions and values. Parliament has sought to enhance public safety by deterring the criminal possession and misuse of firearms. It is entitled to deference in pursuit of that important objective.

PART IV – COSTS

121. The Attorney General of Canada does not seek costs and submits that costs should not be ordered.

PART V – ORDER SOUGHT

122. The Attorney General of Canada respectfully requests that the appeal be allowed and that s. 95(2)(a)(i) of the *Criminal Code*, be declared consistent with the *Canadian Charter of Rights and Freedoms*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, this 20th day of August, 2014

Nancy Dennison

Richard Kramer
Department of Justice Canada
Ontario Regional Office
Counsel for the Appellant
Attorney General of Canada

¹⁴⁴ *R. v. Schwartz*, [1988] 2 S.C.R. 443 at p. 483, B of A, Tab 24

PART VI – TABLE OF AUTHORITIES

<u>Cases</u>	<u>Paragraph(s)</u>
<i>Canada (Attorney General) v. Bedford</i> , [2013] 3 S.C.R. 1101	..... 112, 115, 119
<i>Charkaoui v. Canada (Citizenship and Immigration)</i> , [2007] 1 S.C.R. 350	..... 115
<i>MacKay v. Manitoba</i> , [1989] 2 S.C.R. 357	..... 58
<i>Reference Re Firearms Act (Canada)</i> , [2000] 1 S.C.R. 31	..... 11, 12
<i>Reference Re Same-Sex Marriage</i> , [2004] 3 S.C.R. 698	..... 58
<i>R. v. Anderson</i> , 2014 SCC 41	..... 7, 97, 111
<i>R. v. Big M. Drug Mart</i> , [1985] 1 S.C.R. 295	..... 58
<i>R. v. Chambers</i> , 2013 ONCA 680	..... 32
<i>R. v. Charles</i> , 2013 ONCA 681, leave to appeal granted, [2014] S.C.C.A. No. 18	..... 32
<i>R. v. Chin</i> , 2009 ABCA 226	..... 51
<i>R. v. Clayton</i> , [2007] 2 S.C.R. 725	..... 116
<i>R. v. Danvers</i> , [2005] O.J. No. 3532 (Ont. C.A.)	..... 51
<i>R. v. Ferguson</i> , [2008] 1 S.C.R. 96	..... 12, 52, 105
<i>R. v. Goltz</i> , [1991] 3 S.C.R. 485	..... 5, 33, 48, 53, 55, 60, 71, 88, 89
<i>R. c. Joubert</i> , 2010 QCCQ 5726	..... 83
<i>R. v. Khan</i> , [2007] O.J. No. 137 (Sup Ct.)	..... 83
<i>R. v. Khawaja</i> , [2012] 3 S.C.R. 555	..... 63
<i>R. v. Latimer</i> , [2001] 1 S.C.R. 3	..... 48
<i>R. v. Lyons</i> , [1987] 2 S.C.R. 309	..... 51, 52, 60
<i>R. v. MacDonald</i> , 2014 SCC 3	..... 71, 87, 117
<i>R. v. Morrissey</i> , [2000] 2 S.C.R. 90 12, 48, 50, 51, 52, 54, 56, 57, 81, 89, 90, 92, 102, 105, 116
<i>R. v. Nasogaluak</i> , [2010] 1 S.C.R. 206 48

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<i>R. v. Nur</i> , 2011 ONSC 4874 (sentencing decision) 108, 118
<i>R. v. Quon</i> , [1948] S.C.R. 508 10
<i>R. v. Schwartz</i> , [1988] 2 S.C.R. 443 119
<i>R. v. Smickle</i> , 2012 ONSC 602 (sentencing decision), varied 2013 ONCA 678	..... 32, 108
<i>R. v. Smith</i> , [1987] 1 S.C.R. 1045	..... 33, 48, 49, 52, 98, 101
<i>R. v. Vader</i> , [2012] A.J. No. 569 (Q.B.)	..... 83
<i>R. v. Wiles</i> , [2005] 3 S.C.R. 895	.....48, 52
<i>R. v. Wust</i> , [2000] 1 S.C.R. 455	..... 102
<i>Rodriguez v. British Columbia</i> , [1993] 3 S.C.R. 519	..... 112
<i>Sriskandarajah v. United States of America</i> , [2012] 3 S.C.R. 609	..... 111
<i>Steele v. Mountain Institution</i> , [1990] 2 S.C.R. 1385	..... 52

PART VII – STATUTES RELIED ON

Criminal Code, R.S. 1985, c. C-46

<p>95. (1) Subject to subsection (3), every person commits an offence who, in any place, possesses a loaded prohibited firearm or restricted firearm, or an unloaded prohibited firearm or restricted firearm together with readily accessible ammunition that is capable of being discharged in the firearm, without being the holder of</p> <ul style="list-style-type: none">○ (a) an authorization or a licence under which the person may possess the firearm in that place; and○ (b) the registration certificate for the firearm. <p>(2) Every person who commits an offence under subsection (1)</p> <ul style="list-style-type: none">○ (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years and to a minimum punishment of imprisonment for a term of<ul style="list-style-type: none">▪ (i) in the case of a first offence, three years, and▪ (ii) in the case of a second or subsequent offence, five years; or○ (b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year. <p>(3) Subsection (1) does not apply to a person who is using the firearm under the direct and immediate supervision of another person who is lawfully entitled to possess it and is using the firearm in a manner in which that other person may lawfully use it.</p>	<p>95. (1) Sous réserve du paragraphe (3), commet une infraction quiconque a en sa possession dans un lieu quelconque soit une arme à feu prohibée ou une arme à feu à autorisation restreinte chargées, soit une telle arme non chargée avec des munitions facilement accessibles qui peuvent être utilisées avec celle-ci, sans être titulaire à la fois :</p> <ul style="list-style-type: none">○ a) d’une autorisation ou d’un permis qui l’y autorise dans ce lieu;○ b) du certificat d’enregistrement de l’arme. <p>(2) Quiconque commet l’infraction prévue au paragraphe (1) est coupable :</p> <ul style="list-style-type: none">○ a) soit d’un acte criminel passible d’un emprisonnement maximal de dix ans, la peine minimale étant :<ul style="list-style-type: none">▪ (i) de trois ans, dans le cas d’une première infraction,▪ (ii) de cinq ans, en cas de récidive;○ b) soit d’une infraction punissable, sur déclaration de culpabilité par procédure sommaire, d’un emprisonnement maximal de un an. <p>(3) Le paragraphe (1) ne s’applique pas à quiconque utilise une arme à feu sous la surveillance directe d’une personne qui en a la possession légale, de la manière dont celle-ci peut légalement s’en servir.</p>
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Canadian Charter of Rights and Freedoms, Being Part I of the Constitution Act, 1982

<p>1. The <i>Canadian Charter of Rights and Freedoms</i> 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.</p>	<p>1. La <i>Charte canadienne des droits et libertés</i> garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.</p>
<p>7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p>	<p>7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p>
<p>12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.</p>	<p>12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.</p>

Storage, Display, Transportation and Handling of Firearms by Individuals Regulations (Storage Regulations) (SOR/98-209)

<p>6. An individual may store a restricted firearm only if</p> <p>(a) it is unloaded;</p> <p>(b) it is</p> <ul style="list-style-type: none"> ○ (i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or ○ (ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked; and 	<p>6. Le particulier ne peut entreposer une arme à feu à autorisation restreinte que si les conditions suivantes sont respectées :</p> <p>a) elle est non chargée;</p> <p>b) elle est, selon le cas :</p> <ul style="list-style-type: none"> ○ (i) rendue inopérante par un dispositif de verrouillage sécuritaire et entreposée dans un contenant, un compartiment ou une pièce qui sont gardés bien verrouillés et qui sont construits de façon qu'on ne peut les forcer facilement, ○ (ii) entreposée dans une chambre forte, un coffre-fort ou une pièce qui ont été construits ou modifiés expressément pour l'entreposage sécuritaire des armes
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<p>(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in</p> <ul style="list-style-type: none">○ (i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or○ (ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of restricted firearms and that is kept securely locked.	<p>à feu à autorisation restreinte et qui sont gardés bien verrouillés;</p> <p>c) elle ne se trouve pas à proximité de munitions, à moins que celles-ci ne soient entreposées, avec ou sans l'arme à feu :</p> <ul style="list-style-type: none">○ (i) soit dans un contenant ou un compartiment qui sont gardés bien verrouillés et qui sont construits de façon qu'on ne peut les forcer facilement,○ (ii) soit dans une chambre forte, un coffre-fort ou une pièce qui ont été construits ou modifiés expressément pour l'entreposage sécuritaire des armes à feu à autorisation restreinte et qui sont gardés bien verrouillés.
<p>7. An individual may store a prohibited firearm only if</p> <p>(a) it is unloaded;</p> <p>(b) it is</p> <ul style="list-style-type: none">○ (i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, and, if the prohibited firearm is an automatic firearm that has a removable bolt or bolt-carrier, the bolt or bolt-carrier is removed and stored in a room that is different from the room in which the automatic firearm is stored, that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or○ (ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked; and	<p>7. Le particulier ne peut entreposer une arme à feu prohibée que si les conditions suivantes sont respectées :</p> <p>a) elle est non chargée;</p> <p>b) elle est, selon le cas :</p> <ul style="list-style-type: none">○ (i) rendue inopérante par un dispositif de verrouillage sécuritaire et entreposée dans un contenant, un compartiment ou une pièce qui sont gardés bien verrouillés et qui sont construits de façon qu'on ne peut les forcer facilement et, s'il s'agit d'une arme automatique dont le verrou ou la glissière peut être enlevé, le verrou ou la glissière est enlevé et entreposé dans une pièce — distincte de celle où l'arme est entreposée — qui est gardée bien verrouillée et est construite de façon qu'on ne peut la forcer facilement,○ (ii) entreposée dans une chambre forte, un coffre-fort ou une pièce qui ont été construits ou modifiés expressément pour l'entreposage sécuritaire des armes à feu prohibées et qui sont gardés bien

<p>(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in</p> <ul style="list-style-type: none"> ○ (i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into, or ○ (ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked. 	<p>verrouillés;</p> <p>c) elle ne se trouve pas à proximité de munitions, à moins que celles-ci ne soient entreposées, avec ou sans l'arme à feu :</p> <ul style="list-style-type: none"> ○ (i) soit dans un contenant ou un compartiment qui sont gardés bien verrouillés et qui sont construits de façon qu'on ne peut les forcer facilement, ○ (ii) soit dans une chambre forte, un coffre-fort ou une pièce qui ont été construits ou modifiés expressément pour l'entreposage sécuritaire des armes à feu prohibées et qui sont gardés bien verrouillés.
<p>11. An individual may transport a restricted firearm only if</p> <p>(a) it is unloaded;</p> <p>(b) it is rendered inoperable by means of a secure locking device;</p> <p>(c) it is in a locked container that is made of an opaque material and is of such strength, construction and nature that it cannot readily be broken open or into or accidentally opened during transportation; and</p> <p>(d) if it is in a container described in paragraph (c) that is in an unattended vehicle,</p> <ul style="list-style-type: none"> ○ (i) when the vehicle is equipped with a trunk or similar compartment that can be securely locked, the container is in that trunk or compartment and the trunk or compartment is securely locked, and ○ (ii) when the vehicle is not equipped with a trunk or similar compartment that can be securely locked, the vehicle, or the part of the vehicle that contains the container, is securely locked and the container is not visible from outside the vehicle. 	<p>11. Le particulier ne peut transporter une arme à feu à autorisation restreinte que si les conditions suivantes sont respectées :</p> <p>a) elle est non chargée;</p> <p>b) elle est rendue inopérante par un dispositif de verrouillage sécuritaire;</p> <p>c) elle se trouve dans un contenant verrouillé qui est fait d'un matériau opaque et dont la résistance, la construction et les caractéristiques sont telles qu'on ne peut le forcer facilement et qu'il ne peut s'ouvrir accidentellement pendant le transport;</p> <p>d) dans le cas où le contenant visé à l'alinéa c) se trouve dans un véhicule non surveillé :</p> <ul style="list-style-type: none"> ○ (i) si le véhicule est muni d'un coffre ou d'un compartiment similaire pouvant être bien verrouillés, le contenant se trouve dans le coffre ou le compartiment, lequel est bien verrouillé, ○ (ii) si le véhicule n'est pas muni d'un coffre ou d'un compartiment similaire pouvant être bien verrouillés, le véhicule — ou la partie de celui-ci renfermant le contenant — est bien verrouillé et le contenant n'est pas visible de l'extérieur

	du véhicule.
<p>12. An individual may transport a prohibited firearm only if</p> <p>(a) it is unloaded;</p> <p>(b) it is rendered inoperable by means of a secure locking device;</p> <p>(c) if it is an automatic firearm that has a bolt or bolt-carrier that is removable with reasonable facility, the bolt or bolt-carrier is removed;</p> <p>(d) it is in a locked container that is made of an opaque material and is of such strength, construction and nature that it cannot readily be broken open or into or accidentally opened during transportation; and</p> <p>(e) when it is in a container described in paragraph (d) that is in an unattended vehicle,</p> <ul style="list-style-type: none"> ○ (i) if the vehicle is equipped with a trunk or similar compartment that can be securely locked, the container is in that trunk or compartment and the trunk or compartment is securely locked, and ○ (ii) if the vehicle is not equipped with a trunk or similar compartment that can be securely locked, the vehicle, or the part of the vehicle that contains the container, is securely locked and the container is not visible from outside the vehicle. 	<p>12. Le particulier ne peut transporter une arme à feu prohibée que si les conditions suivantes sont respectées :</p> <p>a) elle est non chargée;</p> <p>b) elle est rendue inopérante par un dispositif de verrouillage sécuritaire;</p> <p>c) s'il s'agit d'une arme automatique dont le verrou ou la glissière peut être enlevé avec une facilité raisonnable, le verrou ou la glissière est enlevé;</p> <p>d) elle se trouve dans un contenant verrouillé qui est fait d'un matériau opaque et dont la résistance, la construction et les caractéristiques sont telles qu'on ne peut le forcer facilement et qu'il ne peut s'ouvrir accidentellement pendant le transport;</p> <p>e) dans le cas où le contenant visé à l'alinéa d) se trouve dans un véhicule non surveillé :</p> <ul style="list-style-type: none"> ○ (i) si le véhicule est muni d'un coffre ou d'un compartiment similaire pouvant être bien verrouillés, le contenant se trouve dans le coffre ou le compartiment, lequel est bien verrouillé, ○ (ii) si le véhicule n'est pas muni d'un coffre ou d'un compartiment similaire pouvant être bien verrouillés, le véhicule — ou la partie de celui-ci renfermant le contenant — est bien verrouillé et le contenant n'est pas visible de l'extérieur du véhicule.
<p>15. An individual may load a firearm or handle a loaded firearm only in a place where the firearm may be discharged in accordance with all applicable Acts of Parliament and of the legislature of a province, regulations made under such Acts, and municipal by-laws.</p>	<p>15. Le particulier ne peut charger une arme à feu ou manier une arme à feu chargée qu'à un endroit où il est permis de tirer au moyen de l'arme à feu selon les lois et règlements fédéraux et provinciaux et les règlements municipaux applicables.</p>

APPENDIX “A” – Section 95 Convictions on First Offence: January 2010 – February 2014

Citation (2014)	Offence	Location and Type of Firearm
<i>R. v. Ball</i> , 2014 BCCA 120	ss. 95 , 117.01(1) x 2; <i>CDSA</i> s. 4(1)	Loaded handgun found on accused in the community
<i>R. v. Bassoo-Narine</i> , 2014 ONSC 1743	ss. 91, 95 , 117.01(1)	Loaded handgun in waistband of accused, in car
<i>R. v. Brown</i> 2014 BCPC 113	ss. 95 , 91, 88	Loaded handgun found on accused outside a hotel
<i>R. v. Browne</i> , 2014 ONSC 4217	ss. 95 , 117.01(1)	Loaded semi-automatic handgun found in executing search of accused’s residence
<i>R. v. Cappello</i> , 2014 BCSC 840	ss. 94(1) x2, 95 x2, 117.01(1), 351(2)	2 loaded handguns found in vehicle with accused during planned robbery of rival drug dealer
<i>R. v. Dauphinee</i> , 2014 NSSC 12	s. 95	Glock found on the accused in the community
<i>R. v. Delchev</i> 2014 ONCA 448	ss. 91 x2, s. 92 x2, 95 , 86; <i>CDSA</i> s. 5(2) x2, 4	Handgun with readily accessible ammunition located during execution of search warrant
<i>R. v. Duale</i> , 2014 ONSC 3030	ss. 86(1), 91(2), 95 , 108(1)(a), 117.01(1), 733.1 x3	Loaded handgun found in backyard of townhouse complex after accused disposed of it during police chase
<i>R. v. Gladish</i> , 2014 BCSC 977	ss. 86, 91, 95 , 117.01(1); <i>CDSA</i> s. 5(2)	Loaded handgun found in executing search of accused’s residence following drug arrest
<i>R. v. Hickey</i> 2014 ONCJ 193	ss. 91(1), 95 , 117.01(1), 145(3), 348(1), 354(1) x2; <i>CDSA</i> s. 4(1)	Handgun and ammunition located in backpack during search incident to arrest
<i>R. v. Ishmael</i> 2014 ONCJ 136	ss. 95 , 92	Loaded semi-automatic pistol located in drawer in bedroom during execution of search warrant
<i>R. v. Le</i> , 2014 ONSC 4288	ss. 86(1), 92(1), 95 , 117.01 x2, 354(1)(a); <i>CDSA</i> s. 5(2)	Loaded semi-automatic handgun found on accused after fleeing backyard of housing complex
<i>R. v. Ongaro</i> 2014 BCPC 118	s. 95	U.S. citizens bringing handgun across border
<i>R. v. Petten</i> 2014 NWTSC 38	s. 95	Loaded handgun located during vehicle stop after accused threatened bar employee with it

Citation (2013)	Offence	Location and Type of Firearm
<i>R. v. Adamo</i> , [2013] M.J. No. 302 (under appeal)	ss. 95 , 117.01(1)	Handgun with ammunition discovered in execution of search warrant in shed at accused’s residence
<i>R. v. Bayfield</i> 2013 ONCA 420	s. 95	Loaded handgun found as accused entering taxi
<i>R. v. Brown</i> , 2013 ONSC 4230	ss. 90, 91, 94, 95 ; CDSA s. 4(3)	Loaded handgun found on accused at traffic stop
<i>R. v. Channer</i> , 2013 ONSC 4100	s. 95 ; CDSA s. 5(2)	Accused arrested with loaded handgun in taxi
<i>R. v. Crevier</i> , 2013 ONSC 2630	ss. 91, 92, 95 , 354(1); CDSA ss. 4(4), 5(2)	Semi-automatic handgun and ammunition found in executing search warrant on accused’s residence
<i>R. v. D.K.D.B.</i> , 2013 BCSC 2321	ss. 86, 88, 95 , 430(4); CDSA ss. 5(2), 7(1)	Handgun and ammunition discovered while executing search warrant at accused’s residence
<i>R. v. Deeb</i> , 2013 ONSC 7870	ss. 95 , 145(3)(a), 239(1)(a.1)	In the community, on his person, while attempting to commit murder with firearm on a TTC vehicle
<i>R. v. Dockerill</i> 2013 BCSC 2429	s. 95	Handgun, in community, after gun fight
<i>R. v. Evans</i> , 2013 ONSC 7003 (*accused: Rashard Green)	ss. 95 , 117.01, 465(1)(c), 467.12 x2	Semi-automatic handgun found while executing search warrant re: drug trafficking gang at accused’s residence
<i>R. v. Farrell</i> , 2013 BCSC 1537	s. 95	Loaded Beretta semi-automatic pistol, two sawed-off shotguns (one loaded), discovered in execution of search warrant where accused resided
<i>R. v. Gobire</i> , 2013 ONSC 3073	s. 95	Loaded semi-automatic handgun found on accused in residential apartment building
<i>R. v. Horsley</i> , 2013 ONCJ 310	ss. 91(2) x 3, 95 x 2, 96, 117.01	Semi-automatic handgun and “zip gun” discovered in execution of search warrant at accused’s residence
<i>R. v. Husaini</i> , 2013 ONSC 7737	ss. 91(3), 94(2), 95 , 96, 117.01	2 loaded handguns (one stolen) in car where accused was passenger
<i>R. v. Johnson</i> , 2013 ONSC 4217	ss. 90, 95 , 354(1)(a); CDSA s. 5(2)	Loaded handgun found on accused during execution of search warrant in apt. where he was residing
<i>R. v. Laponsee</i> , 2013 ONCJ 295	ss. 86(2), 91, 95 , 463(b)	Handgun and ammunition found concealed in luggage while attempting to be checked at airport
<i>R. v. Laraway</i> , [2013] O.J. No. 2585	ss. 95 , 249; CDSA s. 4(1)	Accused arrested for driving offence. Pistol found on his person during search at police station
<i>R. v. Morant</i> 2013 ONSC 2177	ss. 95 x 2, 90, 91	2 handguns located in bag of accused after police respond to shots fired in community

<i>R. v. Mullings</i> , [2013] O.J. No. 4522	ss. 92 x2, 95 , 355(b); <i>CDSA</i> s. 5(2)	Loaded handgun discovered in execution of search warrant at home where accused resided
<i>R. v. Nuttley</i> , 2013 ONCJ 727	ss. 95 , 254(5) 265, 344(b), 811	High capacity rifle and magazines discovered by police while investigating domestic dispute
<i>R. v. Paryniuk</i> , 2013 ONCJ 443	ss. 86 x2, 95, 354(1)(a); <i>CDSA</i> ss. 4(6), 5(2) x2, 7(2)	Loaded semi-automatic handgun found while executing search warrant at accused’s residence
<i>R. v. Paterson</i> 2013 BCSC 880	ss. 95 x4; <i>CDSA</i> ss. 4 x2, 5(2) x2	Loaded revolver and three loaded handguns found during execution of search warrant at accused’s residence
<i>R. v. Peterkin</i> , 2013 ONSC 2116	s. 95 ; <i>CDSA</i> s. 5(2)	Loaded semi-automatic handgun found on accused, in community, while investigating 911 call
<i>R. v. Rider</i> , 2013 MBQB 116	ss. 95 , 91; <i>CDSA</i> s. 5(2)	Sawed off shotgun with shells located during execution of search warrant
<i>R. v. R.L.M.</i> , 2013 BCSC 493	ss. 95 , 117.01(1)	Loaded restricted firearm taken from accused during fight in a bar
<i>R. v. Scarlett</i> , 2013 ONSC 562	s. 95	Loaded handgun found on accused during execution of search warrant
<i>R. v. Smickle</i> , 2013 ONCA 678	s. 95	Loaded, Colt .25 calibre semi-auto handgun found in apartment. Successful constitutional challenge
<i>R. v. Swales</i> , 2013 BCPC 144	ss. 92 x4, 95 , 249.1; <i>CDSA</i> ss. 5(1), 5(2)	14 handguns, ammunition and 6 silencers found in apartment used to store multiple kg of cocaine, crack, methamphetamine and ecstasy
<i>R. v. T.A.P.</i> , 2013 ONSC 797; varied, 2014 ONCA 141	ss. 95 , 108(1)(b)	Loaded handgun found hidden in chair while investigating domestic dispute
<i>R. v. Taylor</i> , 2013 ONSC 4306	ss. 91, 95 x2, 99, 100	2 loaded semi-automatic handguns found on accused
<i>R. v. Tyrell</i> , 2013 ONSC 6555	ss. 88, 92, 95	Loaded semi-automatic handgun discovered in execution of search warrant at accused’s residence
<i>R. v. Vader</i> , 2013 ONSC 109	ss. 92, 94, 95 , 96 x5, 117.01 x2	Firearms and ammunition discovered by police during a traffic stop; handgun found at residence
<i>R. v. Vandyke</i> , 2013 ABPC 347	ss. 86(1), 90, 95	Gun in the community, found on his person
<i>R. v. Williams</i> , 2013 ONSC 1855	ss. 88(1), 91, 95 , 117.01 x2, 733.1 x2	Attempted home invasion robbery, Loaded firearm found on his person in the community

Citation (2012)	Offence	Location and Type of Firearm
<i>R. v. Burnett</i> , [2012] O.J. No. 5706	ss. 94 x2, 95 x2, 103(1)(a) x2; <i>Customs Act</i> ss. 153(a), 160	Two loaded handguns hidden in accused’s vehicle as he tried to enter Canada from the United States
<i>R. v. Cater</i> , 2012 NSPC 38	ss. 95 x6; 99(1) x 8	Loaded sawed off shotgun, rifle and handgun with ammunition found during search of accused’s residence
<i>R. v. Choken</i> , 2012 MBPC 44	ss. 95 , 108(1)(b), 117.01(1)	Loaded 45 mm handgun found in vehicle at feet of accused, a gang member
<i>R. v. Christensen</i> , 2012 BCPC 374	ss. 91, 95 , 100	3 rifles found in accused’s vehicle during the course of being investigated for firearms trafficking
<i>R. v. Dehaney</i> , 2012 ONSC 3014	ss. 91, 95 , 355(b); <i>CDSA</i> s. 5(2)	Firearm discovered in the execution of a search warrant on premises associated with accused
<i>R. v. Guha</i> , 2012 BCCA 423	ss. 90, 92, 95 , 117.01	Loaded semi-automatic handgun discovered on accused during a traffic stop
<i>R. v. Harutyunyan</i> 2012 ONSC 58 affd 2012 ONCA 637	ss. 95 , 91, 92, 94, 86, 88, 89	Loaded handgun fell from accused pants during vehicle stop
<i>R. v. Iser</i> , 2012 BCPC 186	ss. 91(2), 94, 95 , 117.01	Loaded handgun found on accused in community
<i>R. v. J. M.</i> , 2012 ONSC 1938	ss. 95 , 92, 91, 94, 86, 90, 88, 117.01	Accused holding loaded handgun on lap during vehicle stop
<i>R. v. Johnsrud</i> , 2012 ABPC 298	ss. 86, 94 95 , 117.01(1), 267(1)	Loaded handgun found in suitcase in accused’s vehicle after he threatened bar employee
<i>R. v. Lawson</i> 2012 ONSC 1305	s. 95	Handgun thrown from window during execution of search warrant 77 bullets on dresser
<i>R. v. Massey</i> , 2012 BCSC 935	ss. 91 x2, 95 , 354(1); <i>CDSA</i> ss. 5(1), 5(2)	2 semi-automatic rifles, 3 semi-automatic pistols and 2,750 rounds of ammunition found in accused’s residence on arrest re cocaine trafficking
<i>R. v. McCormick</i> , 2012 NSSC 150	ss. 246, 88, 117.01, 95, 86	Loaded revolver in holster under coat located during search incident to arrest
<i>R. v. McCue</i> , 2012 ONCA 772	ss. 95 , 117.01, 91, 86, 140	Loaded handgun dropped after accused fled from taxi when stopped by police
<i>R. v. Rousselle</i> , 2012 YKTC 6	ss. 95 , 253(1)(a), 264.1(1)(a)	Loaded 357 magnum handgun discovered in accused’s vehicle during police takedown
<i>R. v. Safarzadeh-Markhali</i> , 2012 ONCJ 494	ss. 95 , 91, 94, 96, 86, 117.01 <i>CDSA</i> s. 4(5)	Loaded pistol located on person when searched incident to arrest

Citation (2011)	Offence	Location and Type of Firearm
<i>R. v. Barr</i> , 2011 BCPC 484	s. 95 x4	Handgun, revolver, shotgun and loaded Glock 9 mm found in American accused’s vehicle at border
<i>R. v. Beals</i> , 2011 NSSC 17	s. 95 ; <i>CDSA</i> s. 4(1)	Circumstances of possession of firearm not specified
<i>R. v. Brooks</i> 2011 NSSC 64	s. 95	Sawed off shotgun located search incident to arrest
<i>R. v. Browne</i> , 2011 BCPC 393	ss. 95 , 129(a) x2, 249(1)(a), 252(1)(b), 266, 344; s. 4(1) <i>CDSA</i>	Loaded handgun found on accused following high speed car chase and arrest for assault
<i>R. v. D.A.J.</i> , 2011 ONSC 5330	ss. 94, 95 , 108(1)(b), 117.01; s. 4(1) <i>CDSA</i>	Loaded handgun found on the accused’s person after vehicle in which he was a passenger stopped
<i>R. v. James</i> , 2011 ONSC 241	ss. 95 , 117.01(1)	Accused tossed loaded semi-automatic handgun during police chase after he fled community centre
<i>R. v. Higgins</i> , 2011 ONCJ 653	s. 86(1) 95 , 117.01, 145(3); ss. 4(1), 5(2) <i>CDSA</i>	Handgun and ammunition found while executing search warrant on accused’s residence
<i>R. v. Ho</i> , 2011 ABPC 47	ss. 86 x7, 88 x7, 92 x7, 95 x7, 96, 108(1)(b)	7 loaded handguns seized in execution of search warrant at accused’s residence
<i>R. v. Morris</i> , 2011 ONSC 5206	ss. 86, 91, 94, 95 , 117.01(1)	Loaded handgun found in secret compartment in accused’s vehicle during a search incident to arrest
<i>R. v. Pye</i> , 2011 NSPC 104	ss. 90, 95 , 117.01, 145(3) x2	Loaded, Colt .45 handgun found on the accused, in the community, following traffic stop and chase
<i>R. v. Roberts</i> , 2011 BCPC 329	ss. 85, 86, 88, 90, 91, 92, 94, 95 , 267(a)	Recently discharged Glock handgun found in accused’s vehicle by police investigating nearby shooting outside nightclub
<i>R. v. Robinson</i> , 2011 BCSC 1291	s. 95 ; s. 4(1) <i>CDSA</i>	Loaded handgun found in accused’s vehicle during execution of search warrant
<i>R. v. Velez-Lau</i> , 2011 ONSC 4805	ss. 86(3)(a) x2, 95 x2	Loaded .38 calibre revolver, 9 mm semi-automatic handgun and ammunition seized in execution of search warrant on storage locker leased to accused
<i>R. v. Z.L.M.</i> 2011 ONSC 4051	ss. 95 , 92, 86(2), <i>CDSA</i> , ss. 4(3), 5(4)	Loaded revolver located in accused’s pants after vehicle stop

Citation (2010)	Offence	Location and Type of Firearm
<i>R. v. A.A.S.</i> , 2010 BCPC 421	ss. 90, 94, 95 ; s. 4(1) <i>CDSA</i>	Loaded .45 calibre Glock found in accused's car after search following shots fired from vehicle
<i>R. v. Bashir</i> , 2010 ONCJ 548	ss. 95 , 96, 88 (2), 91	Loaded handgun located during vehicle stop
<i>R. v. Blanchard</i> , 2010 BCPC 380	ss. 91, 95 , 268	Loaded handgun used during assault
<i>R. v. Gojevic</i> , 2010 ONCJ 269	ss. 86(1), 86(2), 92, 95 , 140, 354	In the community, loaded handgun found in a bag accused dropped beside vehicle while fleeing police
