

In the Provincial Court of British Columbia

IN THE CASE BETWEEN:

Regina

AND

NOTICE OF CONSTITUTIONAL ARGUMENT

TAKE NOTICE that the Applicant will raise arguments based on the Charter of Rights and Freedoms when he appears on APRIL 22, 2015 at 9:00 A.M., for his trial on a charge of possession of a controlled substance, to wit: Cannabis (marihuana) under the Controlled Drugs and Substances Act (C.D.S.A.) s. 4(1).

The relevant FACTS relating to this application are as follows:

1. Constable _____ approached the Applicant at the _____. The Applicant indicated that he did not have any identification on him.
2. During the ensuing conversation with the Applicant, _____ submits that the Applicant repeatedly touched his right front pocket. He further submits that he informed the Applicant that if he continued touching his pocket that a safety search would be conducted.
3. Cst. _____ indicates that at this time the Applicant advised him that he had a bag of marijuana on him, and proceeded to pull a bag of marijuana out of his pocket.
4. The Applicant was then arrested, chartered and warned with the assistance of _____.

The arguments the Applicant will raise are as follows:

1. A section 8 *Charter* breach occurred as a result of Cst. _____ not having reasonable and probable grounds to search the Applicant prior to arrest.

2. It is submitted that the Applicant did not spontaneously indicate that he had marijuana on him nor did he then spontaneously pull a bag of marijuana from his pocket. Rather, it is respectfully submitted that the Applicant was placed in a situation where he was investigatively detained.
3. It is respectfully submitted that the Applicant was in fact subject to a search while being investigatively detained and that such a search was not reasonable in the circumstances.

The remedy the Applicant seeks is the exclusion of the item seized during the illegal search, i.e. the bag of marijuana, pursuant to section 24(2) of the *Charter*. This should result in the dismissal of the charge against the accused.

The Authorities that the Applicant will refer to include:

- 1) *R. v. Mann*, [2004] 3 S.C.R. 59 (S.C.C.)
- 2) *R. v. Beepath*, [2011] O.J. No 3189 (Ont. Sup. Ct. J.)
- 3) *R. v. Besharah*, [2009] S.J. No. 350 (Sask. Ct. Q.B.) ; aff'd: [2010] S.J. No. 8 (Sask. C.A.)
- 4) *R. v. MacGillivray*, [2011] O.J. No. 4579 (Ont. Sup. Ct. J.)
- 5) *R. v. Grant*, [2009] S.C.J. No. 32 (S.C.C.)
- 6) Any such additional authorities as counsel may advise and this honourable court shall permit.

Dated *April 20, 2015*

Counsel for the Applicant

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