Court File No. _____

COURT OF APPEAL FOR ONTARIO

Between:

_____

Applicant-Accused

and

Her Majesty the Queen

Respondent/Plaintiff

RECORD OF APPLICATION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

For the Applicant/Accused:

Name: _____

Address: _____

Tel: _____ Fax: _____

Email: _____

For the Respondent:

Attorney General for Canada

Address: _____

or Suite 3400 - 130 King St. W. Toronto Ontario M5X 1K6

Court File No. _____

COURT OF APPEAL FOR ONTARIO

Between:

_____

Applicant/Accused

and

Her Majesty the Queen

Respondent/Plaintiff

NOTICE OF APPLICATION FOR
EXTENSION OF TIME TO FILE NOTICE OF APPEAL

IN THE MATTER OF _____ convicted at _____ before Judge _____ on the _____ day of _____, 20___, of the offence under S._____ and sentenced on the _____ day of _____, 20___, to _____ .

TAKE NOTICE that on _____, 20___ at 10:00am in the courthouse at Osgoode Hall, 130 Queen St. W., in Toronto, Applicant will make a application to a judge for an Order:

1) extending the time to file and serve a Notice of Appeal against the Applicant's conviction on marijuana charge(s);

2) dispensing with the affidavit and transcript; and

3) expediting the hearing of the appeal.

THE GROUNDS ARE that the Applicant was unaware when convicted that the Smith decision of June 2015 would declare the MMAR medical exemption from the CDSA flawed since Aug. 1 2001 and absent a viable medical exemption, no offence existed when Applicant was charged.

THE APPEAL WILL BE FOR AN ORDER that
A) absent a viable medical exemption, the prohibitions on marijuana in the CDSA be declared of no force and effect; and
B) the Accused's CDSA convictions relating to marijuana be overturned;
C) the word "marijuana" be struck from CDSA Schedule II;
D) all convictions registered since the Smith Bad Exemption created No Offence to be indicted be expunged.

OVERVIEW

1. BENO: Bad Exemption = No Offence [R. v. J.P. 2003]
Just as the Hitzig "Bad Exemption" [2003] by regulated Mis-Supply meant there was "No Offence" in force since Aug 1 2001 absent an acceptable medical exemption when J.P. was charged; so too, the Smith Worse "Bad Exemption" [2015] by regulated Mis-Use means there was "No Offence" in force since Aug 1 2001 absent an acceptable medical exemption when the Accused herein was charged. This Court is bound by the Ontario Court of Appeal's J.P. precedent to declare that NO OFFENCE was in force while the Smith BAD EXEMPTION existed since Aug. 1 2001, the same as Hitzig, on Terry Parker Day.

PART I - FACTS

2. On July 31 2000, the Ontario Court of Appeal in R. v. Parker declared the prohibition on possession of marijuana in CDSA s.4 to be invalid absent an adequate medical exemption; suspended 1 year for time to set up a viable acceptable constitutional working medical exemption during which time Parker was exempted from the Cultivation and Possession prohibitions in the CDSA. Crown did not seek leave to appeal.

3. On Dec 11 2000, Alberta Superior Court Justice Acton adopted the reasons of the Ontario Court of Appeal to strike down the prohibition on cultivation in S.7! suspended 1 year; sustained by the Alberta Court of Appeal, Leave to Appeal to the Supreme Court of Canada denied.

4. On July 30, 2001, Health Canada issued the Marihuana Medical Access Regulations MMAR to comply with the Parker Order for an acceptable medical exemption to the prohibitions.

5. On Aug 1 2001, Terry Parker's court exemption expired and the Parker Order requiring an acceptable medical exemption took effect on Terry Parker Day.

6. On Oct 7 2003 in Hitzig v. HMQ, the Ontario Court of Appeal declared the MMAR patient/grower and growers/garden limits on supply made the exemption illusory: Bad Exemption!

7. On the same day in R. v. J.P., the Court of Appeal sustained the quash of J.P.'s Possession Count ruling there was No Offence in force once Hitzig established there had been a Bad Exemption!

[14]... The Parker order by its terms took effect one year after its pronouncement. That order was never varied. After the MMAR came into effect, the question was not whether the enactment of the MMAR had any effect on the Parker order, but rather whether the prohibition against possession of marihuana in s. 4 of the CDSA, as modified by the MMAR, was constitutional. If it was, the offence of possession was in force. Paired with the suspension of the declaration in Parker, this would have the effect of keeping the possession prohibition in force continually. If the MMAR did not create a constitutionally valid exception, as we have held, then according to the ratio in Parker, the possession prohibition in s. 4 was unconstitutional and of no force and effect. The determination of whether there was an offence of possession of marihuana in force as of April 2002 depended not on the terms of the Parker order but on whether the Government had cured the constitutional defect identified in Parker. It had not.

[15] The order made by Lederman J. in Hitzig in January 2003 did not address the prohibition against possession in s. 4 of the CDSA. While, according to the ratio in Parker, supra, Lederman J.'s determination that the MMAR did not provide an adequate medical exemption meant that there was no constitutional prohibition against possession of marihuana in s. 4 of the CDSA, Lederman J. did not make that declaration...

[16]... whether there was a crime of possession of marihuana in force on the day the respondent was charged turned on whether s. 4 combined with the MMAR created a constitutional prohibition against the possession of marihuana....

[31] The court in Parker, supra, declared that the marihuana prohibition in s. 4 was inconsistent with the Charter and consequently of no force or effect absent an adequate medical exemption...

[32]... After the MMAR came into force, the question therefore became whether the prohibition against possession of marihuana as modified by the MMAR was constitutional. If it was, then the possession prohibition was in force. If the MMAR did not solve the constitutional problem, then the possession prohibition, even as modified by the MMAR, was of no force or effect.

[33] There was no need to amend or re-enact s. 4 of the CDSA to address the constitutional problem in Parker. That problem arose from the absence of a constitutionally adequate medical exemption. As our order in Hitzig demonstrates, the prohibition against possession of marihuana in s. 4 is in force when there is a constitutionally acceptable medical exemption in force.

[34] We would dismiss the appeal. [of the Crown]

8. The BENO (Bad Exemption = No Offence) Test is defined no less than eight times!! twice in paragraph [14], in [15], [16], [31], [32], and twice more in [33]. Whether a Valid Offence needs a Valid Exemption or its corollary that a Bad Exemption = No Offence! An Offence is in force with an Acceptable Exemption; No Offence is in force with a Bad Exemption. BENO!

9. After the May 16 2003 decision of Superior Court Justice Rogin in R. v. J.P., marijuana charges laid while there was a Bad Exemption and No Offence starting on Terry Parker Day Aug. 1 2001 were stayed or withdrawn across Ontario.

10. On Dec. 3 2003, after Leave to Appeal the J.P. decision to the Supreme Court of Canada was not sought, the Crown stayed all remaining 4,000 charges laid during the BENO period July 31, 2001 to October 7, 2003 across Canada.

11. Leave to Appeal to the Supreme Court of Canada to expunge the 100,000 bogus convictions registered during the 2-year BENO period was dismissed.

12. In R. v McCrady, et al [2011], the Ontario Court of Appeal explained the Parker-Hitzig Beno Argument:

> **[28].. These appeals are some of many cases that have recently found their way to this court either as conviction appeals or attempts at prerogative remedies. They all turn on an argument referred to by the appellants as BENO (Bad Exemption = No Offence)... It was only in Hitzig that the effect of the Bad Exemption was to retroactively render of no force and effect the s. 4 CDSA possession prohibition as it related to marihuana. That order gave effect to the order of this court in Parker (2000). In Parker (2000), this court gave Parliament a year to fix the problem identified in that case. The effect of Hitzig was to find that Parliament had not succeeded. Hence the order in Parker (2000) declaring s. 4 as related to marihuana of no force and effect, took effect, but only until October 7, 2003. Put another way, the BENO argument only applied to the period from July 31, 2001 to October 7, 2003.**

13. In R. v McCrady, et al [2011], the Ontario Court of Appeal explained the BENO principle in R. v. Mernagh:

> **[27]... The appellants also make reference to the trial decision in R. v. Mernagh, [2011] O.J. No. 1669, 2011 ONSC 2121 (CanLII). In that case, Taliano J. declared that the prohibitions against possession and production of marihuana in ss. 4 and 7 of the CDSA are invalid. However, this court has already extended the Mernagh suspension of invalidity pending appeal.**

14. Justice Taliano ruled the S.4 Possession and S.7 Production were No Offences while the MMAR was as Bad Exemption with over 90% of doctors not participating; overturned absent proof the doctors used non-medical reasons to refuse.

15. The Supreme Court of Canada in Owen Smith [2015] declared the Regulations to be a far more genocidal violation of the Right to Life than any caps on gardening ratios in Hitzig. Mis-Application by prohibiting optimal use and mandating use in its most dangerous form, smoking, has violated the right to life of many more corpses over the life of the regime than any supply flaw.

16. Of all the regulations designed by Health Canada to impede access and maximize mortality, prohibiting the most effective use of a medication and mandating its most dangerous form of ingestion has to be it. Dried bud on a nose cancer won't work, nor will smoking. Topical application takes prohibited oil. All good citizens with cancer who obeyed their exemption regulations could not use it to cure their tumors.

17. Also, given a reduction from 5 or even 10 grams of bud down to each gram of oil, prescriptions based on presumed smoking are therefore inordinately insufficient. A patient with the court-recommended maximum of 5 smokable dried grams per day gets 1/2 a gram of oil to apply to a 3-inch tumor?

18. Crown Attorney Sean Gaudet to Supreme Court of Canada in Sfetkopoulos v. Canada:
"[33] The Court in R. v. J.P. ruled that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig. Courts may construe the Federal Court of Appeal's decision as creating a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) was re-introduced into the MMAR."

19. The Accused moves this Court to construe the Supreme Court of Canada's decision in Smith as creating a similar period of retrospective invalidity dating back to Aug 1 2001 the date that the flawed MMAR was enacted.

PART II - ISSUE

20. Is this Court bound by the Ontario Court of Appeal's J.P. precedent to declare that NO OFFENCE was in force while the Smith BAD EXEMPTION existed since Terry Parker Day Aug. 1 2001, the same as for the Hitzig BAD EXEMPTION?

PART III - ARGUMENT

21. The order made by the Supreme Court of Canada in Smith [2015] did not address the prohibitions against marijuana in the CDSA. While, according to the ratio in Parker, supra, the Supreme Court's determination that the MMAR did not provide an adequate medical exemption meant that there was no constitutional prohibition against marihuana in the CDSA, just as in Hitzig, the Supreme Court did not make that declaration...

22. But just as J.P. cited the Hitzig declaration of Bad Exemption to quash his charge laid while it was deficient, Accused herein may cite the Smith declaration of Bad Exemption to quash any charge laid while it was deficient but with the greater certainty that the unconstitutional prohibition on optimal use found in Smith has been a far more genocidal violation of the patient right to life than any gardener ratios for supply could ever be. The facts of the Accused and J.P. are "on all fours."

ORDER SOUGHT:

23. Applicant seeks an order:

1) extending the time to file and serve a Notice of Appeal against the Applicant’s conviction on marijuana charge(s);

2) dispensing with the affidavit and transcript; and

3) expediting the hearing of the appeal.

AND FOR ANY ORDER abridging any time for service or amending any error or omission as to form, color, font, margins, content which the Honourable Justice may deem just.

Documentation to be used:
- R. v. J.P. Ont.C.A [2003]
http://canlii.ca/t/5290
- R. v. McCrady Ont.C.A. [2012]
http://canlii.ca/t/fpfkg
- R. v. Smith S.C.C. [2015]
http://canlii.ca/t/gjgtl
- Interpretation Act Section 2.2 & 43
http://canlii.ca/t/8dcs

PROPOSED METHOD OF HEARING is oral.

Dated at _____ on _____, 200__.

_____
Applicant Signature

Name: _____

Address: _____

Tel: _____ Fax: _____

TO: The Registrar of the Ontario Court of Appeal
AND TO: Attorney General for Canada

_____ **V.** **HER MAJESTY THE QUEEN**

Applicant/Accused **Respondent**

Court File No. _____

ONTARIO COURT OF APPEAL

(proceedings commenced

(in _____)

NOTICE OF APPLICATION
FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL

For the Applicant:

Name: _____

Address: _____

_____

Tel: _____

Fax: _____

_____ V. HER MAJESTY THE QUEEN

Applicant/Accused Respondent

Court File No. _____

ONTARIO COURT OF APPEAL

(proceedings commenced

(in _____)

RECORD OF APPLICATION
FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL

AFFIDAVIT OF SERVICE
(used only if Crown won't accept service)

I, _____, did personally serve a true copy of this document on the office of the Crown Attorney at _____ on _____, 20_____

_____
Affiant's Signature

Sworn before me on _____, 20___

_____
A COMMISSIONER, ETC

For the Applicant:

Name: _____

Address: _____

_____

Tel: _____

Fax: _____