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Indexed as:

Turner v. Manitoba

Between
Harold George Turner, Frank Henry Turner, Reginald Daniel Walker and Dennis George Turner, applicants, and
The Government of Manitoba, respondent

[2000] M.J. No. 308

2000 MBQB 94

Docket: CI 99-01-13750

Manitoba Court of Queen's Bench
Winnipeg Centre

Wright J.

June 7, 2000.

(14 paras.)

Fish and game -- Hunting, offences -- Indian, Inuit and Metis rights -- Offences, forfeitures -- Constitutional law -- Federal jurisdiction (s. 91) -- Criminal law, respecting particular matters -- Forfeiture of seized property -- Provincial jurisdiction (s. 92) -- Property and civil rights, regulatory statutes -- Fish and game -- Punishment -- Extent of power -- Civil rights -- Security of the person -- Presumption of innocence -- Circumstances not infringing presumption -- Equality and protection of the law -- Scope of right -- Cruel and unusual treatment or punishment -- Circumstances not constituting.

Application by Turner for a declaration that the forfeiture provisions of the Wildlife Act were null and void. Turner was

a Treaty Indian. He was convicted for the use of night-use lighting or reflective equipment to hunt an animal. The conviction resulted in the forfeiture of the items used to commit this offence that were seized by resource officers. The items seized included two high-powered rifles, several shotguns and a truck. The value of these items was $45,000. Turner claimed the following. The mandatory forfeiture provisions were criminal and were within federal jurisdiction.

The province lacked the power to impose this sanction. The provisions conflicted with the fiduciary obligations of the province and Turner's Treaty rights. The government was obligated to consult with the First Nations before it enacted the legislation. The legislation violated the rights contained in the Canadian Charter of Rights and Freedoms for life, liberty, security of the person and protection against unreasonable search or seizure. The seizure of this property prior to conviction was contrary to the presumption of innocence. The legislation was discriminatory and violated the equality provision of the Charter. It provided a natural resources officer with arbitrary discretion to discriminate in the seizure of property between similarly accused persons, without review or justification. The forfeiture was also cruel and unusual punishment.

HELD: Application dismissed. The Constitution Act gave the province the right to impose punishments by fines, penalties or imprisonment to enforce the laws it was entitled to create. Penalties included forfeiture. This case had nothing to do with aboriginal rights. The legislation did not interfere with any treaty. The penalty applied to anyone who violated the law. The government was not obligated to consult with the First Nations. Turner's personal security was not violated by the seizure and forfeiture. The legislation was patently reasonable. The presumption against innocence was not violated. The resource officers observed a crime in progress when they made the seizure. The equality rights provision of the Charter did not apply to the forfeiture provisions. Section 15(1) of the Charter only applied to discrimination that fell within its listed grounds. The forfeiture provisions did not discriminate between aboriginal and non-aboriginal hunters. Both were treated identically under the Act. Forfeiture was a long-existing consequence of illegal behaviour. It was never regarded as cruel and unusual punishment. The imposition of this sanction reflected the seriousness of the offence committed by Turner. It was appropriate to forfeit anything used in the commission of this dangerous offence.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, ss. 7, 8, 11(d), 12, 15, 15(1), 24(1).

Constitution Act, 1867, ss. 91(27), 92(15).

Constitution Act, 1982, ss. 35, 35(1), 52, 91(27).

Excise Act, R.S.C. 1970, c. E-12.

Wildlife Act, R.S.M. 1987, ss. 10,12(1), 13, 71(1), 78(2).

Counsel:

Vic Savino and P. Michael Jerch, for the applicants.
Heather Leonoff, Q.C. and Daron Werthman, for the respondent.

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1 WRIGHT J.:-- This is an application for a declaration that sections 71(1) and 78(2) of The Wildlife Act, R.S.M. 1987, c. W130 ("the Act"), be declared null and void and of no force and effect and alternatively that they be declared of no force and effect with respect to the applicants. An order for the return of property seized and forfeited pursuant to

the authority of this legislation is sought as well. Finally, the application includes a claim for damages, which has not been pursued.

2 Requisite notices of constitutional questions were given. No participation by any government served resulted, save of course, by the respondent.

3 The relevant parts of the foregoing sections of the Act read:

> Seizure in execution of duties
> 71(1) Any officer acting in the course or scope of duty who discovers an offence being committed against this Act or the regulations may seize
>
> (a) any wildlife or part of wildlife or the pelt, skin or hide of any wildlife;
> (b) any firearm, ammunition, decoy, or other implement or appliance used for shooting, hunting or trapping; and
> (c) any vehicle, boat, aircraft, or other conveyance;
>
> which is being used to commit the offence or which is evidence of the offence, and may bring it before a justice, or report on it to a justice, to be dealt with according to law.
>
> Automatic forfeiture of other things 78(2) When an accused is convicted of any of the following offences, any thing seized under this Act in respect of the offence is forfeited to the Crown and shall be disposed of as the minister or an officer directs:
>
> (a) an offence under section 12, if the accused has used vehicle headlights, or other light powered by a vehicle, as lighting or reflecting equipment for the purpose of hunting, killing, taking or capturing a big game animal;
>
> . . .

BACKGROUND

4 The applicants, who are Treaty Indians, were tried in the provincial court by Her Honour Judge Everett on the charge that they "did unlawfully at night use lighting or reflecting equipment for the purpose of hunting, killing, taking or capturing a vertebrate animal" contrary to s. 12(1) of the Act. The offence, often described as night lighting, is located in a division of the Act headed "Dangerous Hunting Offences". The prescribed penalty, upon conviction, is a maximum $50,000 fine or imprisonment up to one year, or to both fine and imprisonment.

5 Judge Everett acquitted the applicant Reginald Walker on the finding he was asleep at the material times. She convicted the remaining three and fined each one $800 plus $282 costs. No appeal was taken from the convictions.

6 Pursuant to s. 78(2) of the Act, the convictions resulted in the automatic forfeiture of items seized by the resource officers that were utilized in the commission of the offence. The seizure and forfeiture included two high-powered rifles ideal for big game, several shotguns, and a 4x4 truck. The applicant, Harold Turner, the owner of the truck, has sworn the items seized are worth in the vicinity of $45,000. There is no provision in the Act to allow relief from the forfeiture.

7 There is nothing in the material identifying Reginald Walker with either the truck or the high-powered rifles. The

Government has indicated it is prepared to return the shotguns to whomever they belong. Consequently, Reginald Walker no longer has any practical interest in the present application.

8 Counsel for the Government have accepted that the procedure by notice of application, which has brought this matter before the court, is appropriate in the circumstances. Because of the automatic aspect of the forfeiture and the absence of any right to seek relief, the trial judge was without authority to deal with the issues now raised. In consequence, the evidence at trial is not before this court. However, by agreement, the findings of Judge Everett, as set forth in her reasons for decision, may be utilized on this application. As well, the following evidence is available for consideration:

1) an affidavit dated March 15, 2000 by the applicant Harold Turner;
2) an affidavit dated August 30, 1999 by Luke Peloquin, Enforcement and Hunter Safety Coordinator for the Manitoba Department of Natural Resources;
3) a memo from the Minister of Mines and Resources dated in 1994 when amendments to the Act were being made;

4) other releases then issued by the Government;
4) other releases then issued by the Government;

5) the transcript of the cross-examination of Mr. Peloquin on his affidavit.

9 This evidence reveals:

(a) at the time of the offence the truck and the applicants were on private farmland - without permission - after dark, with a spotlight shining from the passenger window;
(b) the various guns, a spotlight, and ammunition were found in the vehicle;
(c) no shots were fired at any time;
(d) it is especially dangerous at night to discharge a high-powered rifle, when vision is limited, and this was a paramount consideration for the 1994 amendments which substantially increased the penalties for night lighting that included the addition of the automatic forfeiture provision;
(e) the risk of serious harm, or even death, to third parties is greatly increased when hunting occurs in populated areas at night;
(f) statistics show a dramatic decrease in the number of night lighting offences since 1994;
(g) no statistics or information in the possession of Mr. Peloquin establishes any occurrence of injury or death as a result of night lighting;
(h) in consequence of the seizure of the truck and guns, Harold Turner has suffered financially with reduced credit rating and has been unable to carry on hunting to supplement income and food, and to travel for required purposes as a result of holding office as Chief of the Grand Rapids First Nation;
(i) 50%, or thereabouts, of the persons convicted for night lighting may be treaty or status Indians.

ISSUES

10 In this context, the applicants have raised a number of constitutional arguments, of which only two are non-Charter submissions. In the course of the hearing I indicated my preliminary reaction that, with the exception of an

argument founded on s. 12 of the Charter which prohibits cruel and unusual treatment or punishment, the position of the applicants appeared to me to be unsupportable. With respect to s. 12, I indicated a similar reaction but stated I wished to digest more fully the case law in that area cited to me, before coming to any final conclusion. Indeed, I informed counsel my mind would remain open on all the arguments advanced until I had the opportunity to look at and review, if not fully digest, the four volumes of cases filed on behalf of the applicants that were unfortunately lost in the system and not deposited with me until the day of the hearing. In the course of my review following the hearing, I asked counsel to submit further argument relative to the effect of s. 15(1) of the Charter, if desired. Submissions from both were received.

11 My review of all the case law and written argument submitted, including the latest briefs on s. 15(1), has now been completed and my initial impression overall has not changed. On the specific question of the applicability of s. 12 of the Charter, I have read each of the cases relied upon by the applicants but remain of the opinion that s. 78(2) of the Act does not run counter to s. 12 of the Charter.

DECISION

12 I will comment briefly on each of the substantive arguments presented on behalf of the applicants, although I will expand my observations somewhat when I deal with s. 12 and s. 15(1) of the Charter:

12a 1) Non-Charter, Constitution Act, 1867 - s. 91(27)

> The applicants ask the court to find that the pith and substance of the mandatory forfeiture provisions are criminal in character and, therefore, offend against the criminal law powers of Parliament under s. 91(27) of the Constitution Act, 1867 (now the Constitution Act, 1982).
>
> It is not contested that the Province has the right and authority under s. 92(15) of the Constitution Act to impose punishment by fine, penalty or imprisonment to enforce the laws it is entitled to create. The word "penalty" includes forfeiture [see R. v. Nat Bell Liquors Ltd. (1922), 37 C.C.C. 129 (P.C.)]. The nature and dangerous classification of the night lighting offence and the extent of the penalties provided on conviction indicate the high level of seriousness the legislature has placed on this activity. Mandatory forfeiture of whatever is used in the commission of the offence is consistent with that concern and, in my opinion, is a legitimate exercise of provincial authority. I do not find there to be an intrusion into the criminal law arena by the mandatory forfeiture law.

12b 2) Non-Charter, Constitution Act, 1982, s. 35

> It is submitted that s. 78(2) of the Act conflicts with the fiduciary obligations of Manitoba and the treaty rights of the applicants, as protected by s. 35(1) of the Constitution Act, 1982, or otherwise by common law.
>
> I find no merit to this position. As counsel for the Government emphasized, this case is not about any breach of aboriginal rights. It is not argued that the law directly interferes with any treaty. At most it is submitted the forfeiture provisions impact on treaty rights. The impact is suggested to include restriction on the applicants' ability to hunt or exercise normal living habits, due to the confiscation of the guns and truck, and thereby to limit their treaty rights. However, results of this kind can apply to anyone who breaks the law, and as long as the law is within

constitutional boundaries and by its terms, either explicitly or implicitly, does not interfere with treaty rights, such consequences are not grounds for declaring the forfeiture legislation invalid or inapplicable to the applicants.

As well, the proposition that the Government had an obligation to consult with the Aboriginal First Nations before the impugned provisions of the Act were enacted, is unfounded. As counsel for the applicants suggests, there are some circumstances where consultation may be required, for example, where proposed legislation truly may impact on or infringe treaty rights. But, as I have just noted, the present case reveals a law that neither impacts nor infringes those rights in any legal sense requiring consultation.

12c 3) Charter - s. 7 and s. 8

Counsel for the applicants argued the wildlife legislation in issue offends s. 7 and s. 8 of the Charter, which provide for life, liberty and security of the person and protection against unreasonable search or seizure. The applicants' brief includes suggestions the applicants were unfairly penalized by the removal and retention of the truck and guns, and that particularly because of their aboriginal background, the security of their persons suffered. However, I am unable to identify any breach of the applicants' personal security, and I cannot see how a law providing for immediate seizure and forfeiture of items, instruments or equipment used in the commission of an offence is unreasonable. On the contrary, such a law appears to me to be patently reasonable.

12d 4) Charter - s. 11(d)

Counsel for the applicants also have argued that the seizure of property prior to conviction is contrary to the presumption of innocence. There may be circumstances where this statement can be supported but certainly not from those related to the present proceedings. Here the resource officers observed an apparent crime in progress. Just as an arrest in such circumstances makes sense, the removal of the means by which the alleged crime was being committed is equally logical. The presumption of innocence is not offended where reasonable grounds exist to begin the proceedings necessary to enforce the law. Pre-conviction arrest, bail, bonds, sureties, and seizures are long established parts of that process.

12e 5) Charter - s. 15(1)

The next submission on behalf of the applicants is founded on s. 15(1) of the Charter. It is claimed the impugned legislation is discriminatory because it provides a natural resources officer with arbitrary discretion to discriminate in the seizure of property between similarly accused persons, without review or justification.

This claim perhaps can be expressed another way: that a statutory provision providing for automatic forfeiture of items used in the commission of an offence, upon the conviction of the offender, is contrary to s. 15(1) requirements of equality before and under the law, if the choice of whether to seize such items is left to the arbitrary decision of a natural resources officer.

It is submitted by counsel for the applicants that such a law means one offender apprehended in the exact same circumstances as another can be subject to far more serious consequences than the other offender.

The applicants rely on the reasoning in R. v. Hillyard (Nfld. S.C.), [1989] N.J. No. 8, Action 1988 No. G-63. In that case, the Newfoundland Supreme Court held legislation similar to the Manitoba wildlife provisions in issue here was unconstitutional. The Newfoundland Wildlife Act gave a wildlife officer authority, at his option, to seize a firearm suspected of being kept contrary to the law. Upon conviction for a connected offence, the statute provided for automatic forfeiture of the seized firearm to the Crown.

Barry, J. rejected defence arguments based on ss. 12, 7 and 8 of the Charter but held that the forfeiture aspect was contrary to s. 15(1) of the Charter as being discriminatory (and could not be saved under s. 1). He held that the discretion given the wildlife officer to seize or not seize a firearm created a situation where unequal treatment could result between one group of offenders and another group of offenders in the same circumstances. He declared the offending provision of the Newfoundland Wildlife Act to be unconstitutional and, therefore, invalid and of no effect.

In reaching this decision, Barry , J. identified the class of individuals treated differently as those whose firearms were seized and those in the same or similar circumstances whose firearms were not seized.

In a number of judgments, including those in:

- Egan v Canada, [1995] 2 S.C.R. 513;
- Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497;
- Corbiere v. Canada (Minister of Indian and Northern Affairs), [1999] S.C.J. No. 24;
- Granovsky v. Canada, [2000] S.C.J. No. 29, [2000] S.C.C. 28,

all subsequent to the Hillyard decision, the Supreme Court of Canada has made clear that persons distinguished in this way do not fall within the enumerated or analogous grounds covered by s. 15 and, therefore, are not within the scope of the protection offered by s. 15. For that reason alone the judgment in Hillyard now cannot be supported. The Supreme Court of Canada has interpreted s. 15 to be measured by several tests which apply only if the person or persons alleged to suffer discrimination fall within the listed or analogous grounds indicated in s. 15(1). In determining an analogous ground the court has taken a purposive approach. It has concluded that the general purpose of s. 15(1) is to prevent the violation of human dignity through the imposition of disadvantage based on stereotyping and social prejudice, and to promote a society where all persons are considered worthy of

respect and consideration. By this standard, I am satisfied s. 15(1) was not intended to apply to the kind of distinction identified by the court in Hillyard. Accordingly, the submission in the present case that the discretionary authority given the Manitoba resource officers offends Charter s. 15(1), is rejected.

In the second written submission by counsel for the applicants pursuant to s. 15(1), the Hillyard argument was not further advanced. Instead, counsel concentrated on other grounds, also earlier presented, that the effect of the impugned provisions of the Act is to discriminate between aboriginal and non-aboriginal hunters. Counsel relied on the judgment of the Supreme Court of Canada in Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143, that a law disproportionate in its impact can in some circumstances be discriminatory despite its apparent equal treatment provisions. Furthermore, counsel utilized the tests identified in Corbiere v. Canada (supra) (and the other cases listed above at p. 12) to argue that the combined effect of ss. 71(1) and 78(2) of the Act removes all consideration of the special circumstances of aboriginal treaty hunters as a group vis-à-vis the general Manitoba population.

It is unnecessary to spell out the numerous factual distinctions argued by counsel, as I have no hesitation in concluding they are not applicable to the principles expressed in the above cited case law. I agree with the observations of counsel for the Government that both the aboriginal and non-aboriginal groups are treated identically under the night lighting provisions of the Act. Both are subject equally to forfeiture of the property they put at risk when breaking the law. The law does not remove the right to hunt. It simply imposes restrictions, applicable to everyone, for breach of the law. As long as the law does not legally impact or interfere with a treaty right, and is not otherwise illegal, aboriginal hunters are subject to its authority just as anyone else, including non-aboriginal hunters, and s. 15(1) has no applicability.

12f 6) Charter - s. 12

The strongest argument on behalf of the applicants arises from the anti-cruel and unusual punishment provisions of s. 12. However, as earlier noted, I have concluded it is of no help to the applicants' position in the circumstances of this case. In R. v. Smith (E. D.), [1987] 1 S.C.R. 1045, Lamer, J., as he then was, stated at pp. 1072-1073:

... The criterion which must be applied in order to determine whether a punishment is cruel and unusual within the meaning of s. 12 of the Charter is, to use the words of Laskin C.J. in Miller and Cockriell, [1977] 2 S.C.R. 680, supra, at p. 688, whether the punishment prescribed is so excessive as to outrage standards of decency'. In other words, though the state may impose punishment, the effect of that punishment must not be grossly disproportionate to what would have been appropriate.

... The test for review under s. 12 of the Charter is one of gross disproportionality, because it is aimed at punishments that are more than merely excessive. ...

... Section 12 ensures that individual offenders receive punishments that are appropriate, or at least not grossly disproportionate, to their particular circumstances, ...

> In the Smith case, the Supreme Court established a test for determining whether a law created the potential for cruel and unusual punishment, to be applied in two stages. The first stage provides for assessment of the impact on the person or persons subject to the law. The second stage directs that the law be measured based by its effect generally given reasonable hypothetical situations.

> In R. v. Goltz, [1991] 3 S.C.R. 485, a divided Supreme Court upheld a conviction and the imposition of a minimum sentence of seven days in gaol on a first conviction for driving a motor vehicle while prohibited, under the Motor Vehicle Act of British Columbia, R.S.B.C. 1979, c. 288. The majority found this mandatory minimum penalty was not in breach of s. 12 of the Charter.

> In R. v. Desjardins (F.) (1996), 182 N.B.R. (2d) 321 at 336, Bastarache, J.A., speaking for the New Brunswick Court of Appeal (as he then did), observed:

However, it is important to emphasize that while, in the normal process of sentencing, it is the judge's responsibility to inquire as to the offender's ability to pay before imposing a fine, we must keep in mind that s. 12 of the Charter has nothing to do with these principles and the related social problems. This section only provides a constitutional limit on Parliament's discretion to impose sentences, and does not authorize judges to ameliorate as they please the sentences mandated by Parliament ...

> Earlier, at p. 333, Bastarache, J.A. commented:

... Courts have a duty of deference towards Parliament and should not challenge its decision to take steps deemed appropriate for the protection of society. ...

> The importance of deference to parliament or a legislature was reaffirmed in Smith (supra) when, at p. 1070, the court quoted with approval the following statement of Borins, J. in R. v. Guiller (1985), 48 C.R. (3d) 226 (Ont. Dist. Ct.):

It is not for the court to pass on the wisdom of Parliament with respect to the gravity of various offences and the range of penalties which may be imposed upon those found guilty of committing the offences. Parliament has broad discretion in proscribing conduct as criminal and in determining proper punishment. While the final judgment as to whether a punishment exceeds constitutional limits set by the Charter is properly a judicial function the court should be reluctant to interfere with the considered views of Parliament and then only in the clearest of cases where the punishment prescribed is so excessive when compared with the punishment prescribed for other offences as to outrage standards of decency.

A judgment of the Federal Court of Canada, Trial Division is founded on a situation very similar to the present case - Porter v. Canada (1989), 26 F.T.R. 69. The facts involved the mandatory forfeiture of a vehicle in which illegally manufactured spirits were found, resulting in a conviction under a provision of the Excise Act, R.S.C. 1970, c. E-12.

In a comprehensive judgment, Joyal, J. rejected the claim that the forfeiture provision was unconstitutional, and in the course of his reasons extensively reviewed the law pertaining to forfeiture. He identified forfeiture as a long existing consequence of illegal behaviour. He found that none of the provisions of the Charter relied upon, which included ss. 8, 11(d), and 12, were breached. His detailed reasoning is directly supportive of my own conclusions in respect of these Charter provisions as applied or considered in the context of the present case. Specifically, as to s. 12, he observed that to the extent forfeiture can be regarded as punishment, and he concluded it could, normally and historically it has not been held to be cruel and unusual. At p. 77 he noted that the thrust of challenges to the constitutionality of statutory provisions regarded as imposing cruel and unjust punishment has been substantially directed to the physical and emotional constraints of the person, and not the individual's financial (or property) loss. On the same page he went on to specifically reject the s. 12 argument by the following comments, with which I respectfully agree:

In the case at bar, the forfeiture of the truck causes financial loss to the plaintiff but it cannot be said that such loss is so cruel and unusual as to give it the protection of the Charter. Forfeiture, under either the Customs Act or the Excise Act, is certainly not unusual and, in terms of our long and historical experience with it, cannot be said, to quote the words of Lamer, J., in the Smith case (supra) to be so excessive as to outrage standards of decency'. To adopt a contrary position would be to conclude that Canadian standards of decency were radically altered on the coming into force of the Charter.

I must, therefore, conclude that even if s. 163(3) of the Excise Act contains a punitive aspect, its harsh quality does not make it cruel and unusual.

It is by the standards and the approach identified in the case law that I have arrived at the conclusion s. 78(2) of the Act is not contrary to s. 12 of the Charter. Sections 10 through 13 of the Act reflect the concern of the Manitoba Legislature that hunting of vertebrate animals, which includes big game animals, at night in areas where other people are located, can be exceptionally dangerous. As noted at the outset of these reasons, the sections are located in a division of the Act headed "Dangerous Hunting Offences", and the maximum penalty for night lighting is a $50,000 fine and/or one year in prison. This reflects the seriousness in which the Government and those involved in enforcement regard the offence. This in turn provides considerable support for the conclusion the added potential of forfeiture of anything used in the commission of night lighting is a fitting, and not illogical, part of the penalty upon conviction.

It is important to keep in mind the applicants are not claiming that the penalty, aside from the forfeiture provision, amounts to cruel and unusual punishment. It is only the forfeiture aspect of the legislation the applicants seek to negative.

Counsel for the applicants advanced the alternative argument that the facts before the court justify the application of a constitutional exemption based on the cruel and unusual punishment submission. This is a concept developed in part by the British Columbia Court of Appeal in R. v. Chief (1989), 51 C.C.C. (3d) 265, where a convicted native Indian trapper was the subject of a mandatory order under the Criminal Code prohibiting possession of firearms or ammunition for five years. It was held that for this particular person the punishment was cruel and unusual and was grossly disproportionate to what right-thinking members of the public would expect, and exceeded severity and excessiveness sufficiently to outrage standards of decency or was shocking.

Nevertheless, the court concluded these findings did not apply in most cases and, therefore, it was not appropriate, just or necessary to strike down the particular Criminal Code legislation. Rather, relying on s. 52 of the Constitution Act, 1982, and s. 24(1) of the Charter, the court fashioned a constitutional exemption applicable only for the benefit of the trapper concerned to allow the valid law to be avoided by him.

In R. v. Johnson, [1994] 2 C.N.L.R. 106, the Yukon Territorial Court granted a constitutional exemption on the factual finding that the same mandatory provisions of the Criminal Code considered in the Chief case were an unwarranted interference with the aboriginal offender's cultural expression and participation.

On behalf of the applicants it was submitted their circumstances at the time of the night lighting offence were such as to warrant a constitutional exemption. However, I do not agree. After a careful analysis of the standards utilized in the Chief and Johnson cases, and a consideration of those standards having regard to the situation of the applicants, I find no basis demonstrated upon which they reasonably could be entitled to the benefit of an exemption.

[The Court did not number the above paragraphs. Quicklaw has assigned the numbers 12a - 12f.]

13 In the result, the applicants have not succeeded and the application is dismissed.

14 Costs may be spoken to if they cannot be resolved by agreement.

WRIGHT J.

cp/i/qljpn/qlwag