PART I THE FACTS

1. Alain Olivier (hereinafter referred to as « Appellant ») was imprisoned in Thailand on February 19th, 1989, due to the illicit actions of Respondent undercover agents of the Royal Canadian Mounted Police. Respondents knowingly misled Thai authorities by informing them that Appellant was a major drug dealer and drug importer who had an extensive criminal record in Canada. Because of the undercover operation (Operation Deception) that took place in Canada and Thailand and because of the false information passed to the Thai authorities, Appellant was arrested, convicted and sentenced to death in Thailand. Thai authorities, acting in accordance with their laws and known practice, offered Appellant an opportunity to live: if he would confess to the charges, the death sentence would be commuted to a life sentence. Appellant accepted this lifeline and made a false confession to the charges of possession of heroin for export, as had been denounced to the Thai authorities by Respondents. Appellant was facing a death sentence and put in chains for the first 42 months of his incarceration. He was placed in a 15ft x 40ft cell with approximately 100 to 150 other prisoners and forced to beg from his family and the Canadian Embassy to be able to pay for medicine and food to survive under extremely oppressive incarceration conditions. Appellant survived his ordeal and discovered that Respondents had falsely denounced him to the Thai authorities as a major international drug trafficker with an extensive criminal record in Canada. Respondents had threatened Appellant by staging a false execution (murder scenario) and subjected Appellant to 18 months of coercion and manipulation by a civil RCMP agent. Respondents had also used the promise of an enormous amount of drugs to lure Appellant to Thailand. Appellant was a drug addict, not a drug trafficker nor a drug importer. He lived long enough to discover that the same civil RCMP agent who had threatened and coerced him over an 18 month period, had been found by the Supreme Court of British Columbia, to have practiced illegal entrapment on another person who was fortunate enough not be taken outside Canada. And while being away from his home and his family, he endured the terrible hardships of life in a Thai prison, a harsh and brutal existence, compounded by the solitude of not speaking the language or having access to family visits and the terrible fate of learning of his mother's death while imprisoned abroad. Appellant managed to press the Canadian Government to

repatriate him, won his transfer and has been attempting to seek justice for the illegal acts performed against him by Respondents herein. Appellant sued for reparation and in the judgement currently under appeal, was deemed not believable and that in any event, he should have filed a lawsuit while incarcerated in Thailand. This appeal is being brought before this Court in and attempt to right the grave injustice perpetrated by the RCMP and the lower Court; it pertains only to the issue of liability and not to the issue of quantum.

2. Appellant started using drugs when he was 12 years old and became a drug addict in the 1980ûs.(1) He was a ñconsumer of many drugsò(2). He consumed marijuana, cocaine and developed a heroin addiction when he went on vacation to Thailand, for the first time, from November 1986 to February 1987(3).

3. Upon his return to Gibsonûs Landing, BC, in February, 1987, Appellant met an individual named Respondent Glen Howard Barry (aka Jean-Marie LeBlanc(4), hereinafter referred to as ñBarryò). He was a violent man(5), a ñpsychopathò(6) who was a heavy drinker and also consumed various drugs(7). He was a convicted fraud artist with a criminal record(8). He had worked in the past as an informant for the RCMP(9).

4. Respondent Barry was fully aware that Appellant was nothing more than a blue collar worker who had a serious drug problem (10). Appellant was neither a drug trafficker nor a drug importer. He was a junkie who brought back a few grams of heroin from Nepal for his personal use when he returned to Canada in February 1987(11).

5. In May 1987, Barry contacted the RCMP because he wanted a job (12). He told the RCMP that there were a lot of drug traffickers in Gibsonûs Landing. He knew how the system worked (13) and he knew that he would receive more money from the RCMP if he could target a major drug importer (14).

6. Barry was a ñsoldier of fortuneò(15) who was in it ñfor the moneyò(16). In order to increase his pay, he maliciously and intentionally told RCMP constable Respondent

Barry Bennett (hereinafter referred to as ñBennettò) that there was a major cocaine and heroin importer in Gibsonôs Landing named Alain Olivier who happened to be living in Gibsonôs Landing and happened to be working for him doing odd jobs on his 21 foot Sangster fishing boat. (17)

7. In May 1987, the RCMP made a background check on Appellant. The background check revealed that he had a lengthy criminal record for weapons and drugs (18). The criminal record, however, did not belong to Appellant but rather to his twin brother Serge Olivier (19). Appellant did not have, nor did he ever have, a criminal record (20).

8. Far from being a major cocaine and heroin importer, Appellant was a drug addict living hand to mouth. He did not have a car, did not have a house or an apartment, had no furniture and had no belongings except for some clothing and the tools he used when working as a tree planter (21). He slept wherever he could. He was penniless since all the money he made when he was working was spent by consuming various drugs. He was basically a ñquasi-homelessòperson. (22) In July, 1987, he was sleeping on Barryôs 21ôSangster fishing boat. (23)

9. In July 1987, Barry told Appellant that he wanted him to meet some of his friends. Barry told Appellant that his friends were serious individuals not to be messed with. (24) He told Appellant before the first meeting to simply go along with whatever was said and that everything would be fine (25).

10. Barry and Appellant met RCMP undercover police officers Bennett and Respondent the late Denis Massey (hereinafter referred to as ñMasseyò) with Barry on a beach at Robertôs Creek on July 18th, 1987.(26) Bennett and Massey were dressed like underworld mobsters and spoke to Appellant about importing heroin(27). Appellant told them that they could buy heroin in Thailand from any Tuk-Tuk (taxi) driver (28).

11. Because of the erroneous criminal record, Bennett was under the impression that Appellant was a violent individual and as a result, decided to stage a ñfake murder

scenarioòin order to intimidate Appellant. On July 24th, 1987, Bennett went to the marina where Barry kept the boat upon which Appellant was sleeping. He was accompanied by an unknown individual. Appellant cast them off and they left for the open waters without fishing rods (29).

12. Two days later, Bennett returned to Gibsonôs Landing alone (30). Appellant helped him dock the boat (31). Appellant went on board to clean and wash down the boat. He noticed that there were two nine millimetre shell casings on the floor and that there were blood splatters (32). Appellant went to see Barry to ask what was going on. Barry told him that Bennett had killed the unknown individual and that his body was thrown overboard tied with downriggers so that it would sink to the bottom (33). Barry told him that he had better cooperate with his drug dealing friends otherwise the same thing would happen to him (34)

13. Bennett instructed Barry to keep Appellant close to him (35). Barry went about the task of creating Appellant as a ñmajor international heroin and cocaine importer with contacts throughout Asia and South Americaò(36).

14. Barry fed false information to Bennett deliberately depicting Appellant as a major drug dealer (37). In December of 1987, Barry falsely told Bennett that Appellant was going to sell an unknown quantity of magic mushrooms in Montreal for $1,000 to $2,000 per pound. Barry falsely told Bennett that Appellant was going to Jamaica to pick up a kilo of cocaine that he was going to sell in Montreal. Barry falsely told Bennett that afterwards, Appellant was going to Thailand to purchase some heroin from his connection and make arrangements (38). Of course, none of this was true. Bennett nevertheless reports this in his notes as if it were reality, knowing that he was painting Appellant as something he was not.

15. In order for the Thailand Narcotics Suppression Bureau (BMNU) to consider an individual as a major target (ie: someone they are interested in), the target had to be capable of dealing with the purchase and sale of ten kilos of heroin (39). Thus, during

the second meeting with Appellant on January 15th, 1988, Massey speaks of bringing in five to ten kilos of heroin (40). Massey ***offered*** Appellant 10% of the heroin (41) that they would bring in (ie: one half kilo to one kilo of pure heroin with a street value of 3 to 6 million dollars (42)) and they would pay all of his expenses (41). Appellant did not ask for ten percent, it was offered to him by Massey. Appellant went along with the script that was written for him by Barry (43). Bennett wrote in his report that Appellant was dealing in five to ten kilos of heroin. Bennett wrote the false information in his notes knowing that the information would move up the ladder to Ottawa and then to Bangkok (44).

16. Barry had testified that he always spoke to Bennett before speaking to Appellant (45). Bennett told Barry what to say to Olivier. Barry always followed Bennettôs directions since Barry ñtook directions wellò (46).

17. Thus, in addition to the instructions concerning the ten kilos of heroin, Barry also instructed Olivier to say things that would make him appear to be a sophisticated, big time drug dealer. Appellant was a ñnaiveò (47), ñimpressionableò (48) quasi-homeless person with a serious drug habit. During the said meeting of January 15th, 1988, pursuant to Barryôs instructions, Appellant told Bennett and Massey that he had four couriers at his disposition that would swallow a kilogram each of heroin and would smuggle it into Canada (49). This proposition was absurd since it is impossible for someone to swallow a kilogram of heroin (50). Also, Appellant told Bennett and Massey that he had contacts to launder a quarter million dollars (51). Bennett wrote the above noted conversations in his notes knowing them to be probably false yet failed to insert a caveat to the effect that Appellantôs claims were probably not true (52). Bennett was intentionally creating the fictitious persona of Appellant as ña major international heroin and cocaine importer with contacts throughout Asia and South Americaò He knew that Ottawa and Thailand would interpret his notes as he intended (53).

18. After the above noted meeting, Barry continued to firm up his grip on Appellant as he had been directed to do by Bennett. Whenever he spoke to Barry, the underlying threat was always that if he didnôt co-operate he would be ñtaken care ofò (53.1) (ie: he

would be murdered at sea) and if he did cooperate he would receive between a half and a whole kilo of pure heroin with a street value of several million dollars and be in paradise (54). Barry told Appellant that Bennett had killed a "big black man" in Jamaica because he was interfering with his cocaine transactions (55). He also told Appellant that Bennett had killed Massey but not to ever mention it to Bennett (56). Appellant never did.

19. Barry and Bennett continued their creation of Appellant as a major international drug dealer. In subsequent meetings, a ten kilo heroin deal is always reported along with other information intended to solidify the impression that Appellant was indeed a sophisticated international drug dealer (57). The information was always transmitted to Ottawa and then to Thailand (58). Thus in May and June, 1988, Barry instructed Appellant to tell Bennett that he had 1000 pounds of Thai weed worth 1.7 million dollars that he wanted to sell 100 pounds at a time (59). In a subsequent meeting, Barry instructed Appellant to tell Bennett that he had 1000 pounds of BC marijuana worth 1.4 million dollars (60). Bennett also wrote in one meeting that Appellant concluded a transaction for 400 pounds of marijuana over the phone right in front of him (61). None of this was true. It was all make believe.

20. In June 1988, it was obvious that Appellant was stalling and didn't seem to want to go to Thailand (62). Appellant was making up excuses as to why he couldn't go. In one meeting, he proposed to give Bennett a picture of the supposed source, Richard "the one legged man", and that Bennett could go over to Thailand on his own (63). Bennett refused. He wanted Appellant. (64)

21. In July 1988, Bennett and Respondent Jack Dop (hereinafter referred to as "Dop") officially discovered that Appellant did not have a criminal record and officially realized that Appellant was not a drug trafficker and was not a heroin importer (65). Appellant did not have the financial capability of purchasing heroin (66), he did not have a network to get the heroin out of Thailand (67) and he did not have a distribution network in Canada to sell the heroin (68). He was **not a drug importer** (69).

22. Bennett stated that Appellant was nothing more than ña low-life doperò(70). Bennett and Dop did not inform their superiors that Appellant did not have a criminal record (71), was not a drug trafficker (72), and did not have the capability of importing heroin. They deliberately and intentionally kept RCMP drug enforcement in Ottawa and the Thai authorities in the dark about the truth concerning Appellant (73).

23. During the summer of 1988, Barry eased up on Appellant and Appellant was under the impression that Bennett and company had found someone else to take them to Thailand. Barry nevertheless, kept threatening Appellant that he better not disappear because he knew where Appellantôs family lived (74).

24. At the end of the summer 1988, Appellant took a bus and went to Magog, Québec where he got a job in construction (75). As usual, he was living at someone elseôs house. All his income was used to purchase drugs which he consumed on a daily basis (76).

25. In September 1988, Barry managed to track Appellant down and telephoned him in order to advise him that he had ñbetter get his shit togetheròand that he had to meet Bennett and company and that his services were required (77). As usual, Barry let it be known that he had no choice and that if Appellant would go to Thailand with his associates, he would receive a half kilo of heroin (78). Thus on October 4th, 1988, Bennett and the late Constable Derrick Flanagan (hereinafter referred to as ñFlanaganò) travelled from Vancouver, BC and arrived in Magog, Quebec, in order to impress upon Appellant that they were very serious individuals (79). Respondents went to Magog of their own initiative; they were not invited (79.1). Bennett and company wanted Appellant to go to Thailand to get a sample of heroin (80). Bennett wanted him to get a sample because he wanted to see ñif he could do itò (81)

26. During this time, Appellant was regularly consuming heroin as well as other drugs (82). He paid for his plane ticket to travel from Montreal to Vancouver with a cheque that was dishonoured due to lack of funds. (83) He left for Thailand on December 2nd, 1989. He had no contacts in Thailand. He went over there with a picture and a map of Chiang

Mai. He was looking for someone named Porn the Tuk-Tuk driver. Appellant had never met Porn before (84).

27. After finding Porn in Chiang Mai, he was introduced to Pornôs sister who was a ñred haired chubby thirty year oldòThai. Appellant had never met her before. He purchased 60 grams of heroin from her (85). His heroin consumption immediately rose to one gram a day. (86) He was getting a foretaste of the paradise that was promised him.

28. Appellant returned to Magog from Thailand on December 31st, 1989. Bennett and company were eager to receive the sample of heroin (87). Appellant had brought approximately 40 grams back with him from Thailand. Appellant gave the 40 grams to his friend Michel Beaulieu who cut the heroin with a foreign substance and gave 18 grams of the cut heroin back to Appellant (88). Appellant proceeded to spend the month of January 1989 consuming the heroin which he had brought back from Thailand (89). He was completely addicted. His addiction caused him to lose between 20 to 25 pounds (90). He looked like a beggar on the street (91). His only belongings were the clothes on his back and a small suitcase containing old clothes. (92).

29. Barry as well as Bennett kept calling Appellant for his heroin sample. Appellant was not going to Vancouver to bring Bennett his sample as he requested (93). Since Appellant was not going to Vancouver, Bennett, Dop, Constable Ray Peach (hereinafter referred to as ñPeachò) and Flanagan again travelled from Vancouver, BC, and arrived in Magog, Québec, on January 19th, 1989, in a white limousine (94). Before their arrival, Barry telephoned Appellant to tell him that he better ñget his act togetheròand that there was ñno free rideò He reiterated his usual threat that these individuals were not to be messed with and that if Appellant could do this one service, he would receive a half kilo of pure heroin and be in paradise (95).

30. Operation Deception was coming to a close and it was imperative to induce Appellant to go to Thailand with Bennett and company in order **that Appellant be arrested in Thailand in a ñbuy and bustò** operation (97). Appellant was facing no

criminal charges in Canada as a result of Operation Deception (98). Respondents wanted to have him arrested in Thailand (99). By having him arrested in Thailand, the chances of Appellant coming back to Canada alive were slim (100). Bennett and company would thus circumvent Canadian law and the Canadian judiciary. Thus, the illegal tactics employed by Barry under the direction of Bennett would never come to light.

31. Before returning to Vancouver, Barry called Appellant to tell him that he was having a little party and that he wanted Appellant to bring him some heroin (101). Barryôs request was not optional (102). Appellant went to see a local dealer in Montreal and borrowed four grams of heroin (103). He borrowed money from his mother to buy a plane ticket for Vancouver (104).

32. In Vancouver, Appellant kept about a half gram of the 4 grams of heroin that he had borrowed in order to use it on the plane ride to Thailand so he would not be sick. He replaced the half gram with a crushed aspirin (105). He then remitted the four grams with the crushed aspirin to Barry who in turn gave it to Bennett (106). The RCMP purchased Appellantôs plane ticket ($925) for Thailand and gave him $150 spending money (107). Respondents justify their actions by claiming that they had a deal (completely denied by Appellant) whereby Appellant was to sell them seven grams of heroin at $200 per gram (108). Thus, Bennett remitted the plane ticket (Appellant states that the ticket cost $925 whereas Bennett claims the ticket cost $1150) plus $150 for a total of $1300 if we are to believe Bennett (109). At two hundred dollars per gram, Bennett should have remitted $1400 to Appellant. Bennett simply says that the heroin ñlooked like a lotò(110). His notes indicate that he received six to seven grams (111). The certificate indicates that there were only 4 grams (112). There is no certificate of analysis for the four grams (113). The certificate of analysis of the four grams of heroin **disappeared and was removed from the file** (114). The plane ticket for Appellantôs trip to Thailand disappeared and was removed from the file (115). All disbursements by the RCMP must be accompanied by either a 1454 form which is an authorization to disburse money or a 1393 form which is reimbursement for a minor expenditure (116). The 1454 or the 1393 for the purchase of

the plane ticket disappeared and was removed from the file (117). The 1454 or the 1393 for the purchase of the heroin disappeared and was removed from the file (118).

33. There was no valid reason to have Barry meet Appellant in Vancouver on the eve of his planned departure for Thailand except one: Barry was there to make sure Appellant got on the plane for Thailand the next day. Thus Bennett left Barry and Appellant alone for the evening (119). While alone with Appellant in his hotel room, Barry looked at Appellant with his ñpsychopathic eyesòand told Appellant that this was his last chance. If he didnôt deliver heroin in Thailand, he would find himself at the bottom of Georgia Straight. If he did deliver, he would be in paradise with a half kilo of pure heroin with a street value of several million dollars (120).

34. The next day, February 10th, 1989, Appellant got on the plane and flew to Thailand.

35. In Thailand, Appellant quickly ran out of money and became completely dependent on the RCMP for his food and lodging (121). Respondents were all adamant: Appellant was just a conduit to a source. Respondents stated that Appellantôs life and his charter rights were irrelevant. Respondents wanted the unknown source in Thailand and were prepared to use Appellantôs life to get to it (122). Appellant was always targeted as a ñmajor international heroin and cocaine dealeròresponsible for a pipeline of heroin into Canada, never as a ñconduit to a sourceò(123).

36. In Thailand, Appellant was a quasi-homeless person with a heroin habit. He had no money (124). He had no network (125). He had no contacts other than Pornôs sister.

37. Appellant attempted to have Bennett and company buy heroin from Pornôs sister but to no avail since she refused to deal with them (129). Bennett let it be known that if Appellant could not find a heroin source in Thailand, there would be ñ**some pretty fuckin unhappy people at home if this thing didnôt fuckin work outò**(130). Appellant knew that if he came back to Canada empty handed, Barry, with the psychopathic eyes, was waiting for him and that he would end up at the bottom of the Georgia Straight (131).

38. Appellant was desperate (132). He begged Porn the tuk-tuk driver to find another source of heroin because his life was on the line and if Bennett and company returned to Canada empty handed, he would be killed. The next day, Porn found two Thai males who were going to sell Bennett and company the heroin (134). Appellant had never met the two Thai males (135). The deal fell through because the Thais and Bennett could not agree on a location to make the transaction (136).

39. Bennett and company were going to shut the operation down because the supposed pipeline of heroin between Thailand and Vancouver simply did not exist (137). Appellant was a desperate junkie who was in over his head with whom he believed to be underworld killers (138).

40. At the last minute, at 20:00hrs on February 19th, 1989, Porn advised that he had found another source: two Thai sisters who were willing to sell Bennett and company heroin (139). Appellant had never met the two Thai sisters and had no connection with them whatsoever (140)

41. Any source would do for Bennett and company (141). Their mission was to implicate Appellant in a buy and bust in Thailand (142) and that's what they did.

42. He never had possession of the heroin for which he was criminally charged (142.1) and never had possession of the $70,000US flash roll that Respondents had brought to purchase heroin. (142.2). When Appellant was arrested, he had the equivalent of $4 and a gram of heroin in his wallet (143). Appellant also had a small vial with traces of heroin in his room (144). He was 10,000 kilometres from home, penniless, severely addicted to heroin (145) and with no means of getting back.

43. After the arrest, Bennett, Dop and Girdlestone gave false information to the Thai police and to the Thai Courts. They stated that Appellant had a criminal record (146), that he was a drug trafficker between Montreal and Vancouver (147), that he had sold Bennett

heroin (148), that Appellant had brought 3 kilograms of heroin to Bennett for inspection during the meeting of January 19th, 1989 in Magog, Quebec (149) , that the 3 kilograms of heroin were subsequently stolen and that there was only residue left to sell in exchange for a plane ticket (150), that Appellant was to receive $3,000 from the sellers of the heroin in Thailand (151) and that he was to get $10,000 in Thailand from Bennett and company for his efforts (152). This was all false. They omitted to tell the Thais the truth about Appellant: i.e. he did not have a criminal record (153), not a drug trafficker (154), never sold heroin (155), was a ñow life doperò(156), never brought 3 kilos of heroin to Bennett for inspection in Magog, Quebec (157), the 3 kilos of heroin were never stolen because they never existed, no evidence that Appellant was to receive $3000 from the Thai sisters (158), was not to receive $10,000 from the RCMP (159), the RCMP had purchased his plane ticket (160), Appellant was dependent on RCMP for his sustenance in Thailand (161), was promised one half kilo of pure heroin (162) and that he had been subjected to 18 months of coercive manipulation at the hands of Glen Barry (163).

44. Appellant spent the following 42 months facing the death sentence in chains in a cell 15ft X 40ft which he shared with 100 to 150 prisoners (164). He slept on a cement floor. A hole in the middle of the cell served as a communal toilet (165). He ate putrid food and contracted various diseases (166). The conditions were extremely harsh (167). Appellant was not expected to make it out of Thailand alive (168). Appellant was completely destitute (169). While in jail, he received $100 to $150 per month handout from the Canadian Embassy to pay for his food and medicine (170). Appellant wrote letters to anyone who would listen. He was determined not to die in Thailand.

45. The Canadian government finally repatriated Appellant to Canada on July 11th, 1997 (171). Appellant was in a federal penitentiary until November 28th, 1997, (172) and then a half way house until November 28th, 1998 (173). Appellant is currently on parole with various conditions. His sentence will only terminate in 2029 (174).

PART II QUESTIONS IN DISPUTE

1) Is Appellantôs recourse prescribed?

2) Was Appellant entrapped by Respondents?

3) Did Respondents violate Appellantôs Charter rights in Canada?

4) Did the Canadian Charter of Rights and Freedoms the Québec Charter of Human Rights and Freedoms apply to the parties while in Thailand?

5) Did Respondents breach the RCMP Act and their code of ethics?

6) Liability of Glen Barry (a.k.a. Jean-Marie Leblanc)

7) Is the Attorney General of Canada liable for the acts of Glen Barry?

8) RespondentsôAdmission of Liability

9) Did the trial Judge evaluate all the evidence in an impartial, objective and reasonable manner?

10) Were the Trial Judgeôs conclusions as to credibility reasonable?

11) Is the Attorney General of Canada ñmale fidesò?

PART III ARGUMENT

1) IS APPELLANTôS RECOURSE PRESCRIBED?

50. The trial Judgeôs conclusion that Appellantôs recourse is prescribed is completely unrealistic and out of touch with the reality of incarceration in a Third World prison.

51. The conditions of Appellantôs incarceration in Thailand were frightening, horrendous and appalling (175). For the first 42 months, Appellant was under a death sentence and was chained to the wall of his cell (176). He had lost his will to live. He was incarcerated in a cell 15ôX 40ôthat he shared with 100 to 150 prisoners. He slept on a cement floor. The cell had a hole in the middle that served as a communal toilet. He was given rotten food which he was obliged to eat (177). He contracted numerous illnesses, diseases and infections (178). He did not have water to wash himself. He witnessed numerous beatings in his cell as well as inmates being tortured and killed (179). He struggled to stay alive. The conditions were extremely harsh and his chances of survival were slim (180). He wasnôt expected to get out of Thailand alive. He was financially destitute. The only money he had was a $100 to $150 per month handout that he received from the Canadian embassy for food and medicine (181). Without the handout, he would perish.

52. It is ludicrous to expect Appellant to have taken a very complicated action against the Canadian Government while incarcerated in a third world prison. He was not expected to live. There is no legal aid in Thailand. How was he to pay for a Court stamp (181.1)? How was he to retain the services of a lawyer? Was the lawyer expected to fly to Thailand for free each time Appellant wished to speak with him? There were no telephones, no fax machines, there was no privacy, and all communication was intercepted and censored by the prison officials (182). Appellant could not have private communication with the lawyer. And If the lawyer should fly to Thailand, was he expected to communicate through a fence over an open sewer with the din of millions of flies in the background as described by CTV reporter Victor Malarek (183)? Appellant could not be present for examinations on discovery nor could he be present for trial.

53. The trial Judgeôs finding that Appellant could have instituted a multi-million dollar lawsuit against the Canadian government from a prison cell in Thailand is a palpable and overriding error of fact and of law. It demonstrates the trial Judgeôs total disregard for Appellantôs suffering.

54. The trial Judge adopted the very myopic viewpoint that because Appellant wrote letters and said he had lawyers and that he threatened to sue, he could have done so (183.1). Appellant wrote letters to anyone who would listen **because he wanted to live**. He did not want to die in a Thai jail discarded by Respondents (184).

55. The trial Judge completely ignored the fact that Appellant was writing the letters from a jail cell, 15ôX 40ôthat he shared with 100 to 150 prisoners. He was living hand to mouth and fighting to stay alive. A personôs right to self preservation does not take a back seat to prescription. The right to life and self preservation is above all else. The only help he received was the handout from the Canadian embassy who gave him $100 to $150 per month for food and medicine. The Canadian government recognized in 1994 that Appellantôs chances of leaving Thailand alive were not very good (185). Without the food and medicine that he purchased with the handout from the Canadian government, his chances of survival would go from slim to zero. How could the trial Judge reasonably expect someone fighting for his life to sue the one entity that was providing him with a lifeline and enabling him to live? Even if it were possible for Appellant to take an action (which it was not), asking him to sue the Canadian government while incarcerated in Thailand was asking him to commit suicide.

56. The only entity that could get Appellant out of the atrocious Thai penal system was the Canadian government. Only the Canadian government had the power to repatriate him to Canada. It was not an obligation (186). The Canadian government could arbitrarily decide not to repatriate him. Appellant was completely at its mercy. If the Canadian government refused to repatriate him, Appellant would be obliged to serve out the remainder of his 100 year sentence in Thailand where he would perish. Again, asking Appellant to sue the Canadian government was asking him to commit suicide.

57. The trail Judge decided that prior to 1993, prescription was suspended because it was impossible for Appellant to act since he was chained in his cell. After the removal of his chains, the trial Judge decided that prescription began to run against Appellant since he could then sue the Canadian government. The chains did not make a difference. The conditions of incarceration were still as atrocious and his chances of leaving Thailand alive were still ñslimò

58. The trial Judgeôs findings concerning prescription are not only illogical; they are grossly erroneous and constitute manifest and overriding error.

59. Appellant found himself incarcerated in Thailand due to the actions of the RCMP and by extension, the Canadian government. In Gauthier vs Beaumont:

> ñAu Québec, la doctrine et la jurisprudence soutiennent que la prescription est suspendue lorsque lôimpossibilité dôagir résulte de la faute du dèbiteur de lôobligation é Ceci nôest quôune expression de la règle contra valentem agree qui reflète un principe fondamentale exprimé aussi par la théorie de lôabus du droit, la maxime *fraus omnia corrumpit,* et le **principe moral voulant que lôon ne doive tirer profit de la mauvaise foi ou des mauvaise actions**.Ò(187) (Emphasis ours)
> Gauthier c. Beaumont 1998 CanLII 788, 1998 2 RCS 3

60. The trial Judge failed and or neglected to apply the above noted principles to the question of prescription. Canadian state actors were responsible for targeting and coercing Appellant into a ñbuy and bustòin Thailand and were responsible for putting him in a Thai jail to face horrendous conditions 10,000 kilometres from Canada and a death sentence that was commuted to 100 years imprisonment. Respondents cannot invoke prescription when they were the ones who created the impossibility to act. To allow Respondents to claim prescription would be to allow them to profit from their own turpitude.

61. In cases of abuse of process whether penal or civil, prescription starts at the end of the abuse. The party who is the cause of the abuse is not permitted to benefit in any manner of the situation in which it has placed a Plaintiff. When a person is the victim of abuse of penal proceedings, including entrapment and incarceration, the Court of

Appeal presumes the victim is in harmôs way if he undertakes civil proceedings seeking remedy to the abuse, during the period of abuse. In Quane -vs- Procureur Général du Québec et al., 1999 IIJCAN 11151, paragraph 33, Justice Nicole Duval-Hesler states at paragraph 33:

> ñEn effet, il serait déraisonnable de tenir une personne qui fait lôobjet dôune fausse accusation doive instituer sa poursuite avant de connaitre le sort de cette accusation. Lôaccusé pourrait craindre que son action civile en dommages ne **soit un facteur antagonisant** pour la poursuiteò(188) (Emphasis ours)

62. The Canadian government had the power of life and death over Appellant during his incarceration in Thailand. It would be manifestly unreasonable and a manifest error of law to expect Appellant to ñantagonizeòthe Canadian government with a multi-million dollar lawsuit.

Prescription not applicable for Charter violations

63. Appellantôs claim is based primarily on a violation of his Charter rights. The Canadian Charter was put into place to control and remedy abuse by State actors against Canadian citizens. If a province is allowed to place time limits on recourses in virtue of the Canadian Charter, then the Canadian Charter would be rendered without effect by provincial statute. Prescription in the present case would not apply. We thus refer to the majority judgment of the Ontario Court of Appeal, in the case of Prete -vs- Ontario, 1993 CanLII 3386. Permission to appeal to the Supreme Court of Canada was refused.

Application of Erroneous Prescription Periods

64. The trial Judge states that prescription began to run against Appellant some time after 1993 because of the ñ*faits, gestes et écrits dôOLIVIER à partir de 1993*ò (Judgement paragraph 213). He applies the one and three year prescription period to declare the case prescribed.

65. The trial judge places particular emphasis on an August 26, 1995 letter to the Canadian Ambassador in Thailand where Appellant mentions his intention to sue the Canadian Government. At paragraph 200 the trial Judge underlines a passage stating

that Alain Olivier has an attorney in Toronto, Brain H. Greenspan. (The Judge never bothered to ask himself how exactly a penniless, destitute junkie facing a 100 year prison sentence in a Thai jail and whose survival was doubtful was supposed to retain the services of any lawyer let alone such a reputable one). Throughout his assessment, the trail Judge seems incapable of differentiating bravado and desperation from reality; incapable of differentiating between someone who is fighting for his life and someone who is sitting back in his living room wondering out loud if he should sue the government. The trial Judgeôs indifference to Appellantôs suffering is palpable.

66. Section 32 of the Crown Liability and Proceedings Act states the following:

Provincial laws applicable

> **32.** Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken **within six years** after the cause of action arose. (Emphasis ours) R.S., 1985, c. C-50, s. 32; 1990, c. 8, s. 31.

67. The impugned actions of the Respondents took place in British Columbia, Quebec, Ontario and Thailand. The violations occurred in all jurisdictions and thus s. 32 should apply. The applicable prescription period in the present case should be six years as set forth in the Federal statute. Such was the finding of the Federal Court of Appeal in Canada v. Maritime Group (Canada) Inc. [1995] 3 F.C. 124, 1995 CanLII 3513 (F.C.A.) where the Court interpreted s.39 of the Federal Court Act, which has a similar drafting to that of s. 21, but states the following:

> « Tout en respectant lôobservation des règles de droit privé provinciale, lôarticle 39 assure une certaine uniformisation et présente lôavantage insigne de prévenir tout conflit de lois possible. En matière de prescription, côest le droit provincial qui prévaut lorsque tous les éléments de la cause dôaction se sont produits dans la province concernée, dans les autres cas, lôaction se prescrit par six ans ».

68. The trial Judge applied an erroneous prescription period and failed to state at exactly what point Appellant was able to act. Failure by the trial Judge to determine the exact point of departure of neither the prescription period nor its end is a total denial of justice that should permit this Court to intervene.

2) WAS APPELLANT ENTRAPPED BY RESPONDENTS?

69. The trial Judge erred in fact and in law when he failed and/or neglected to apply the law concerning entrapment to the facts that had been proven before him. In the case of R. v Mack (1988) 67 CR (3rd) p 49, Justice Lamer states that entrapment occurs when:

> ña) when the authorities provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that this person is already engaged in criminal activity or pursuant to a bona fide enquiry, or
>
> b) although having such reasonable suspicion or acting in the course of a bona fide inquiry, they go beyond providing an opportunity and induce the commission of an offence.ò

70. In regards the first criteria, if we assume that Bennett was not directing Barry to manipulate Appellant in the Fall of 1987 and the Spring of 1988 and that Bennett was in good faith (which assumption is not supported by the evidence), it could be argued that the RCMP was acting pursuant to a reasonable suspicion or pursuant to a bona fide enquiry until the summer of 1988. In July of 1988, Respondents Bennett and Dop officially ascertained that Appellant did not have a criminal record (189), that he was not a heroin importer (190), that he did not have the capacity to import heroin (191), that he did not have a network to bring heroin into the country (192), that he did not have a distribution network in Canada to sell heroin (193), and that it was doubtful that he had a source (193.1), that he was not a drug dealer (194), that he was «flat broke» (195) and that he was nothing more than a ñjunkieò (196) a ñlow life doperò(197).

72. Bennett and Dop failed to tell Ottawa the truth about Appellant who in turn failed to advise Thailand. They never informed their superiors (198). Why? Only one answer presents itself: Bennett and Dop knew that if they told their superiors the truth about Appellant, the Operation insofar as Appellant was concerned would be shut down (198.1). Appellant had been targeted by Barry and Respondents as a major heroin importer from the outset (199). The prestige of an operation that was going all the way to Thailand because Bennett and Dop were doing such extraordinary police work was going to be lost. Bennett and Dop would not reach the pinnacle of drug law enforcement and would not receive the accolades that were to go with it (200). And, assuming that Bennett and

Dop were in good faith which they were not, they would suffer the embarrassment of having been taken for a ride by Barry, the slick ñsoldier of fortuneòñpsychopathòthat started the whole operation (201).

73. After July 1988, Bennett and Dop were definitely in bad faith. Whatever doubts that could be entertained about their good faith prior to July, 1988, disappeared because at that point in time, they deliberately and intentionally withheld the truth about Appellant from their superiors. Their actions were directly responsible for Ottawa mounting the might and the resources of the Canadian government against a quasi-homeless person with a drug problem. Ottawa thought they were targeting a **major international heroin importer with contacts throughout South America and Asia**. He was supposed to be **responsible for a pipeline of heroin coming from Thailand to Canada.** (202)

74. Bennett and Dopôs actions also tricked Thailand into thinking that they were dealing with a major heroin dealer capable of dealing 10 kilos of heroin at a time (203). Thailand would never have targeted a penniless junkie. Bennett and Dop were aware of that fact. They let Thailand believe that Appellant was a ñmajor heroin importer with contacts throughout South America and Asiaòbecause they wanted the operation to end in Thailand.

75. The crime of possession and exporting heroin in Thailand could never have existed if it werenôt for the participation of the RCMP who provided: i) the financial backing necessary for the transaction (Appellant had the equivalent of $4.00 in his wallet when arrested in Thailand) (203) ii) the network necessary to extract the heroin from Thailand (ie: Respondents had the pilot and a cleaning crew who would smuggle the heroin into Canada) (204) iii) the distribution network in Canada to sell the heroin (Appellant had no network of distribution) (205).

76. The RCMP created the crime. If it werenôt for the RCMP and their money, the transaction in Thailand could never have taken place. Bennett admitted:

> ñQ. Could he have set up a deal and purchased five kilos (5k) of heroin without you and your money?

A. Could he have purchased five (5) himself?
Q. That's right , could he have done that?
A. I don't know. I don't think he had the money at the time.ò(206)September 15th, 2003 page 104

The foregoing on its own should have been sufficient for the trial Judge to conclude that there had been entrapment. Failing to do so is a palpable and overriding error of fact and law.

77. The trial Judge also had the obligation to consider the following factors in their entirety in order to determine if there had been entrapment: i) The RCMP staged a fake murder in July 1987 designed to frighten Appellant and intimidate him into cooperating with them; ii) The RCMP directed their civil agent Barry to manipulate, cajole and threaten Appellant for 18 months prior to flying to Thailand (207); iii) The RCMP **offered** Appellant, a junkie, one half kilo of pure heroin delivered to him in Vancouver (208); iv) The RCMP **offered** Appellant, who was a quasi-homeless person, ñflat out brokeò, a half kilo of heroin with a street value of several million dollars (209); v) Appellant had a weak character, was ñnaiveò(209.1); he was a drug addict (210), a junkie (211) who was ñimpressionable in his own wayò(212); vi) The RCMP paid for Appellant's plane ticket to Thailand and gave him $150 spending money (213); vii) During Operation Deception, Respondents hounded Appellant over an 18 month period (214); viii) Respondents went to Magog uninvited; it was an RCMP initiative (215); ix) Bennett specifically brought Barry to meet Appellant the night before Appellant was to board the plane for Thailand. Barry was left alone with Appellant for the evening. Barry was there to make sure Appellant boarded the plane. He looked at Appellant with his psychopathic eyes and let him know that this was his last chance. If he didn't deliver heroin he would be ñtaken care ofò(ie: murdered at seaò). If he did what was asked, he would have all the heroin he wanted and would be in paradise (216); ix) In Thailand, Appellant was completely broke. He was entirely dependant on Respondents for food and lodging. He had no way of returning to Canada unless he delivered heroin to Respondents (216.1); ix) In Thailand, Respondents coerced Appellant to enter into a drug transaction. Bennett told Appellant ñ*Pretty fuckin unhappy people at home if this thing doesn't fuckin work out*ò(217). Appellant knew if Respondents were unhappy, he would be killed. (218) Flanagan told

Appellant that he had better deliver heroin or else (219); x) In Thailand, Dop acknowledged that Appellant was ñdesperateò(220); xi) In Thailand, Appellant never had possession of the heroin and never had possession of the money (221);

Acknowledgement of Entrapment by the Canadian Government

78. The RCMP **offered** Appellant a half kilo of pure heroin in order to induce him to accompany them to Thailand. Respondent Palmer, acknowledged that offering someone a half kilo of heroin was **repugnant** and could be construed as going down the slippery slope towards entrapment.

> ñA. Itôs a personal gut instinct about some things youôd be best stayed away from. And making an offer even though you know that you would never do it, to provide heroin to someone, if thereôs a wayé if thereôs an opportunity to get the same result without doing that, my preference would be donôt do it.
> Q. Why?
> A. **Because I would find it repugnant**.ò
> Q. So you would find ité
> A. Not (inaudible).
> Q. é .repugnant?
> A. Buté
> Q. Okay. Would it be possible that it would be to preclude a defense of entrapment?
> A. The minute you make offers like that, I suppose that someone reviewing it after the fact could construe that **youôre starting down the slippery slope towards entrapment**. And that is one (1) of the things that youôre constantly trying to make sure that your operators donôt go in that directionò (223) (Emphasis ours)

79. The RCMP also paid for Appellantôs hotel room in Vancouver, purchased Appellantôs plane ticket and gave him spending money. Palmer stated:

> Qé ..where the RCMP would have paid the way for somebody and they got nothing but trouble?
> A. Iôm not aware of any specific cases. But again, I think it starts the whole issue of going beyond simply providing a target é
> Q.An opportunity?
> A. é with opportunity. Youôre **starting then to head in a direction that potentially raises the issue of entrapment**. (224)

80. Also, Palmer became aware of the murder scenario in the fall of 1987 or 1988 (225). Palmer states that the murder scenario was a ñsource tacticòand not a police tactic (226). Palmer states that the murder scenario was not a tolerable ñpolice tacticòbut as a

source tactic, he was prepared to live with it (227). Volume XXXIV pages 12345 to 12349.

3) DID RESPONDENTS VIOLATE APPELLANTôS CHARTER RIGHTS IN CANADA?

81. The conduct of Glen Barry has already been found to be both police action and entrapment by the Hon. S.M. Leggatt of the Supreme Court of British Columbia in R. v. Whellihan 1990 CanLII 2125 (B.C.S.C.) who states

> ñEven if the police have a reasonable suspicion or are acting in the course of a bona fide investigation, conduct which goes beyond the provision of an opportunity and which induces the commission of an offence is entrapment. I have come to the conclusion that Barryôs conduct meets this test. It is necessary, in this case, that the police have a reasonable suspicion that Wheelihan was engaged in criminal activity. Because of Barryôs extensive involvement in Operation Deception and his very close and ongoing association with the police, **his conduct and ñpolice conductò can be equated** (é) **His conduct is clearly unacceptable. It violates our notions of fair play and decencyò**.(228) (Emphasis ours)

We rely on this judicial finding by Justice Leggatt as *res judicata* on the issue of applicability to the Charter.

82. Respondents knew that Appellant was going to be arrested in Thailand, they knew that he was going to be turned over to the Thai authorities and they knew that he was going to be incarcerated in atrocious conditions. They knew that he would receive a death sentence (229). On January 13th, 1989, Superintendent Eyman states as follows:

> ñ Olivier, however, faces no charges at present as a result of Operation Deception. Therefore, it is most important to involve Olivier in a **proposed ñbuy and bustò scenario in Thailand** in efforts to curtail his international heroin importation schemes.ò(230)Exhibit P-1 (e) (emphasis ours)

83. Luring Appellant to Thailand was **a violation of his rights under s. 6** of the Canadian Charter. It is our submission to this Honorable Court that the unacceptable conduct of Barry (as determined by Justice Legatt and Justice Allan in the Vancouver Courts (231)) and the other Respondents to lure Alain Olivier to Thailand, knowing that he

was to be arrested, tried, convicted and sentenced overseas, was a violation of his right to return to Canada.

84. The Supreme Court has stated, in United States v. Cotroni, that the right to enter and remain in Canada is not to be interfered with unless it is justified by a reasonable state purpose:

> ñIn approaching the matter, I begin by observing that a Constitution must be approached from a broad perspective. In particular, this Court has on several occasions underlined that the **rights under the *Charter* must be interpreted generously** so as to fulfill its purpose of securing for the individual the full benefit of the*Charter*'s protection (see the remarks of Dickson C.J. in *Hunter v. Southam Inc.*, 1984 CanLII 33 (S.C.C.), [1984] 2 S.C.R. 145, at pp. 155-56; *R. v. Big M Drug Mart Ltd.*, 1985 CanLII 69 (S.C.C.), [1985] 1 S.C.R. 295, at p. 344). **The intimate relation between a citizen and his country invites this approach in this context. The right to remain in one's country is of such a character that if it is to be interfered with, such interference must be justified as being required to meet a reasonable state purpose**.ò(232) (emphasis ours)

85. Under the Charter s. 24, a citizen who is being denied his entry rights by the Government has the right to obtain relief from the Courts. In Abdelrazik v. Canada the H. Justice Zinn of the Federal Court states regarding s. 6 in commenting the above quotation from Cotroni:

> ñThe same is to be said of the right, as a citizen of Canada, to enter Canada. Interference with that right is not to be lightly interfered with; if a citizen is refused the right to enter Canada then that refusal **must be justified as being required to meet a reasonable state purpose.ò** (233) (emphasis ours)

There was no reasonable state purpose by the ñpolice actionò to knowingly take Appellant to Thailand to purchase drugs. Respondents claim repeatedly that Appellant was nothing more than a ñconduit to a sourceò(234). Respondents conspired to have him arrested in Thailand and turned over to the Thai authorities. Respondents did not care what happened to Appellant. He was **an expendable by-product of Respondents policing schemes.**

86. The alleged source that Respondents were supposedly after kept changing. The alleged source kept changing because **there was no source and there was no**

pipeline. It was a complete fabrication (234.1). In January 1988, the source was Richard the "one legged man" (235). In May 1988, it was Denis the "hotel worker" (236) and then Sigmund the "road worker" (237). Appellant had never met these individuals and it is not certain if they existed (238). In December 1988, the alleged source was an unknown individual that Appellant was sent to find in Thailand aided by a map of Chang Mai and a picture (239). In January 1989, the source was a "chubby 30 year old Thai woman with red hair" (240). Once in Thailand on February 18th, 1989, the 30 year old Thai with red hair refused to deal with Respondents (241). The next day, February 19th, 1989, during the afternoon, the source became two Thai males (242). Appellant did not know the two Thai males and had never met them before (243). The two Thai males refused to deal with Respondents. At 20:00hrs on February 19th, 1989, the source became two Thai sisters who finally sold the heroin to Respondents (244). There was absolutely no connection between the two Thai sisters and Appellant. Appellant had never met nor seen them before (245).

87. **Unknown criminals in a foreign country are not the concern of the RCMP** (246). Inducing a Canadian citizen to violate another country's laws in order to apprehend an unknown foreign criminal is not a "*reasonable state purpose*". Nor can handing a Canadian citizen over to the foreign authorities for violating the same laws that citizen was induced to violate be deemed a "*reasonable state purpose*". This would for all intents and purposes, enshrine international entrapment, where it is proscribed domestically.

88. If the purpose of Canadian state actors in luring Appellant to Thailand was to enforce that Asian country's narcotics trade laws, it could not be considered a "*valid state purpose*" by Canadian authorities. Extraterritorial enforcement of another country's laws would not only fail to meet the Supreme Court's test, it would be an abrogation of Canadian sovereignty.

89. In Abdelrafik (which was later affirmed by the Federal Court of Appeal) Justice Zinn states as follows:

> ñ **An allegation that Canada was complicit in a foreign nation detaining a Canadian citizen is very serious, particularly when no charges are pending against him** and in circumstances where he had previously fled that country as a Convention refugee. However, in my view, the evidence before the Court establishes, on the balance of probabilities, that the recommendation for the detention of Mr. Abdelrazik by Sudan came either directly or indirectly from CSIS. I find, on the balance of probabilities, on the record before the Court, that CSIS was complicit in the initial detention of Mr. Abdelrazik by the Sudanese. This finding is based on the record before the Court on this application. The role of CSIS may subsequently be shown to be otherwise if and when full and compete information is provided by that service as to its role.
> (é)
> I find that the applicantôs Charter right as a citizen of Canada to enter Canada has been breached by the respondents in failing to issue him an emergency passport. In my view, **it is not necessary to decide whether that breach was done in bad faith; a breach, whether made in bad faith or good faith remains a breach and absent justification under section 1 of the Charter, the aggrieved party is entitled to a remedy**.ò (247) (emphasis ours)

Canadian state actors conspired with Thai authorities to have Appellant implicated in a ñbuy and bustò knowing that such action would result in Appellant being arrested, incarcerated in horrendous conditions and sentenced to death. Appellant would thus be denied his Charter right to return to Canada by Canadian State actors working with foreign authorities. As with Abdelzarkik, Appellantôs rights to enter the country were unreasonably breached by a police action and he is entitled to claim relief under the Canadian Charter of Rights.

90. Respondents all state on numerous occasions that they had absolutely no regard for Appellantôs life or for what happened to him once he was turned over to the Thai authorities. Respondents are all adamant: they were after an unknown criminal in Thailand (the source) (248). They did not care about Appellant, his rights or his life (249). They used Appellant as a disposable by-product and a stepping stone to apprehend that unknown criminal. Appellantôs life was nothing more than collateral damage in their policing schemes.

91. Article 7 of the Canadian Charter of rights provides that:

> 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.

92. The Quebec Charter of rights provides that:

> 1. Every human being has the right to, life, and to personal security, inviolability and freedom. He also possesses juridical personality.

93. Canadian state actors lured Appellant to Thailand with the unequivocal intention of depriving Appellant of his right to life and liberty. Their actions are a clear violation of article 7 of the Federal Charter and article 1 of the Provincial Charter.

94. The s.9 of the Canadian charter further provides that Canadian citizens have the right not to be arbitrarily detained, s. 10 provides right to counsel upon arrest, s. 11 provides various rights when charged and s.12 provides the right not to be subjected to cruel and unusual punishment (248.1).

95. Respondents conspired to involve Appellant in a "buy and bust" in Thailand and conspired to turn him over to the Thai authorities in order to face the Thai justice system. Such actions on the part of Canadian state actors were a clear and unequivocal violation of Appellant's above noted Charter rights. The Canadian state actors deliberately and intentionally circumvented both Charters of rights and freedoms and deliberately and intentionally circumvented the Canadian judiciary system. Respondents knew that Appellant would be incarcerated in horrendous conditions and that he would receive the death sentence. The death penalty in Canada has been abolished for over thirty years. Canadian state actors cannot sidestep Canadian law and cause a Canadian citizen to be executed by a foreign country. To permit them to do so would render Canadian law meaningless.

96. The Attorney General admitted that Respondent Frank Palmer (hereinafter referred to as Palmer) acted at all times with the full knowledge and authority of the Canadian government (249.1)

> Q. It didn't bother you about bringing a Canadian citizen to Thailand to be arrested in Thailand for a crime you knew carried the death penalty? That didn't bother you at all?
> A. No.

Q. Okay. And you knew that bringing him to Thailand, if he were arrested there, he wouldn't have the protection of the Charter of Rights, he wouldn't be able to make a defense as he could in Canada?
Q. Nor would he in the United States or any other countryé
Q. Okay, I'm justé
A. é in the world.
Q. I'm just asking. You were aware of that.
A. Yes.
Q. Okay. And that didn't bother you? It didn'té
A. No.
Q. é .didn't have any bearing whatsoever on the file?
A. No. Palmer (250) October 9th, 2003, at page 123

4) DID THE CANADIAN CHARTER OF RIGHTS AND THE QUEBEC CHARTER OF HUMAN RIGHTS AND FREEDOMS APPLY TO THE PARTIES WHILE IN THAILAND?

97. The trial Judged relied in the Supreme Court case of *R. v. Hape* to insinuate that the Canadian Charter of Rights, and by logical extension the Quebec Charter of Human Rights and Freedoms, would not apply to the actions of the RCMP while on an undercover operation in Thailand.

98. The trial judge's analysis makes a wrongful summary of the Supreme Court's finding in *Hape* and is inconsistent with the subsequent Supreme Court cases of *Suresh v. Canada* and *Canada (Justice) v. Khadr*. As applied to the facts of this case, the criteria set out by our highest court in all of those cases render it manifest and apparent that Canadian law applies to the conduct of the Respondents while conducting operation Deception in British Columbia, then to Quebec, back to British Columbia and then to Thailand.

99. The operation mounted against Appellant in Thailand was conceived and executed by Respondents. Thai officials were not aware of Appellant before Respondents brought him to their attention (251). Respondents managed to get the Thai authorities interested in Appellant by falsely depicting him as a major international heroin dealer who was dealing at the ten kilo level (252). Respondents approached the Thai authorities and proposed their "buy and bust" scheme (253). The scheme did not originate with the

Thais. Furthermore, to keep the Thais interested, Respondents had to pay the Thai police 40,000 baht to operate surveillance of the RCMP operation (254). Respondents provided the surveillance equipment. Respondents operated the surveillance equipment, not the Thais (255). Respondents controlled everything about the operation. Respondents decided where, when, how and with whom. The Thais were passive observers and were paid to stay in the background and come out once the RCMP operation terminated. It was Respondent Girdlestone who arrested Appellant in Chang Mai, not the Thais (256). Appellant attempted to escape and it was Girdlestone who **ordered the Thai police to shoot Appellant**. (257) Fortunately, the order was not understood and was not executed.

100. In Hape, the Supreme Court through Justice LeBel stated as follows:

> ñThe methodology for determining whether the Charter applies to a foreign investigation can be summarized as follows,. **The first stage is to determine whether the activity in question falls under s.32(1) such that the Charter applies to it. At this stage, two questions reflecting the two components of s. 32(1) must be asked. First, is the conduct at issue that of a Canadian state actor? Second, if the answer is yes, it may be necessary, depending on the facts of the case, to determine whether there is an exception to the principle of sovereignty that would justify the application of the Charter to the extraterritorial activities of the state actor**. In most cases, there will be no such exception and the Charter will not apply. The inquiry would then move to the second stage, at which the court must determine whether evidence obtained through the foreign investigation ought to be excluded at trial because its admission would render the trial unfairò (258) (Emphasis ours)

101. Respondents were all employed or serving the RCMP and began their activities in British Columbia to enforce Canadian law. It would be a perverse and manifestly unconscionable result to allow Canadian authorities to deliberately exclude themselves from the application of the Charter by inducing a Canadian citizen, as they did in this case, to commit a crime in a foreign country knowing full well that such conduct would be denounced to a more cruel and severe foreign authority. Secondly, unlike the Hape case, Respondents were in control at all times, not the Thais. As stated, the evidence clearly revealed that the Respondents were in charge and in control from the moment

Appellant left Canada to the moment he was arrested and handed over to the Thai authorities.

102. However, the Supreme Court itself has revisited the issue of Charter applicability beyond Canadaôs territory in Canada (Justice) v. Khadr. A unanimous Court clarified the previous pronouncement by stating that comity could not justify a violation of Canadaôs international obligations which would require applying Charter principles even for action taken outside Canada under the authority of foreign officials. In that case, a Canadian citizen was apprehended by United States military forces in Afghanistan and sent to the Guantanamo Bay concentration camp. While in Cuba Mr. Khadr was questioned by CSIS officials and that information was subsequently given to United States Intelligence officers. The Supreme Court found that even if the questioning had taken place outside Canada and under the consent and supervision of United States authorities, Mr. Khadr still benefitted from the Charter right of disclosure of evidence against him, because the Guantanamo Bay camp was a violation of International obligations subscribed by Canada, namely the right to due process. The statement is found at page 39 where it is stated

> ñIn *Hape*, however, the Court stated an important exception to the principle of comity. While not unanimous on all the principles governing extraterritorial application of the charter, **the Court was united on the principle that comity cannot be used to justify Canadian participation in activities of a foreign state or its agents that are contrary to Canadaôs international obligations. It was held that the deference required by the principle of comity ñends where clear violations of international law and fundamental human rights beginò** (*Hape*, at para 52, per LeBel Jôsee also paras 51and 101). The Court further held that in interpreting the scope and application of the Charter, the courts should seek to ensure compliance with Canadaôs binding obligations under international lawò(para. 56, per LeBel J.) (Emphasis ours)

103. Furthermore, at pages 43 and 44 of Khadr, the Court is even clearer as to the duty of Canadian officials acting overseas when the liberty of Canadians is at stake:

> ñWith Mr. Khadrôs present and future liberty at stake, s.7 of the Charter required that CSIS conduct itself in conformity with the principles of fundamental justice. The principles of fundamental justice are informed by Canadaôs international human rights obligations. (é) **To the extent that Canadian officials operating abroad are bound by s.7 of the Charter, as we have earlier concluded was**

> **the case in this appeal, they are bound by the principles of fundamental justice in an analogous way.** Where, as in this case, an individualôs s.7 right to liberty is engaged by Canadaôs participation in a foreign process that is contrary to Canadaôs international human rights obligations, s.7 of the charter imposes a duty on Canada to provide disclosure to the individual.ò(Emphasis ours)

104. In the present case, Respondents knew that Appellant would ultimately be handed to Thai officials, as they never intended to return Appellant to Canada. From the moment they left Canadian soil, Respondents knew that Appellant would be left in a country where torture is routine, where conditions of incarceration are extremely harsh and where the chances of coming back alive were slim. They exacerbated these possibilities by **providing the Thai authorities with false information** (259). It is manifest that the Respondents grossly and intentionally violated all principles of fundamental justice.

105. Unlike Khadr, who was the son of a proven terrorist and who knowingly did participate in terrorist activities with his family in Afghanistan; Appellant would never get a fair and open trial in Thailand pursuant to Canadian standards and would never benefit from even a full disclosure of the evidence against him. The Thai courts would never give him an opportunity to review the conduct of Respondents while in British Columbia and Quebec and challenge the entrapment he suffered. He was submitted to the Thai court system which provides for the execution of drug smugglers. The death penalty has been abolished in Canada for over thirty years. Respondents knew that they would hand Appellant over to the Thais and that, with the false information they provided, he would be incarcerated in horrendous conditions and sentenced to death. The horrendous incarceration conditions in Thailand and the death sentence **are the equivalent of torture** by Canadian standards.

106. The above noted element of torture in Thailand was a sufficient factor for the Charter to continue to be applied to Canadian state actors who were the ones responsible for Appellantôs departure from Canada. The Supreme Court has found this in the case of Suresh v. Canada (Citizenship and Immigration). In that case, Mr. Suresh, a proven terrorist, succeeded in obtaining a new review of his deportation order

because the Minister failed to consider that he would likely face torture in Sri Lanka. It is in that case that the Supreme Court stated the unquestionable condemnation that the Canadian people have made of state-sanctioned torture. At p.33 a unanimous Court states:

> ñIt can be confidently stated that Canadians **do not accept torture as fair or compatible with justice.** Torture finds no condonation in our *Criminal Code*, indeed the *Code* prohibits it (see, for example, s.269.1) The Canadian people, speaking through their elected representatives, **have rejected all forms of state-sanctioned torture**. Our courts ensure that confessions cannot be obtained by threats or force. The last vestiges of the death penalty were abolished in 1988 and Canada has not executed anyone since 1962ò (Emphasis ours)

Appellantôs confession of guilt in Thailand was obtained through physical torture (ie: the horrendous conditions of his incarceration) coupled with the threat of being executed (ie: mental torture) (260).

107. Furthermore, at pp.35-36 the Court stated a principle that if there is a prospect that a person may be tortured by foreign officials, he is entitled to s.7 protection:

> ñIn *Burns*, nothing in our s.7 analysis turned on the fact that the case arose in the context of extradition rather than *refoulement*. Rather, the governing principle was a general one-namely; that **the guarantee of fundamental justice applies even to deprivations of life, liberty or security effected by actors other than our government, if there is a sufficient causal connection between ourgovernmentôs participation and the deprivation ultimately effected.** We reaffirm that principle here. At least where Canadaôs participation is a necessary precondition for the deprivation and where the deprivation is an entirely foreseeable consequence of Canadaôs participation, the government does not avoid the guarantee of fundamental justice merely because the deprivation in question would be effected by someone elseôs hand. (é) While this Court has never directly addressed the issue of whether deportation to torture would be inconsistent with fundamental justice, we have indicated on several occasions that extraditing a person to face torture would be inconsistent with fundamental justice. As we mentioned above, in *Schmidt*, supra, LaForest J. noted that s.7 is concerned not only with the immediate consequences of an extradition order but also with ñthe manner in which the foreign state will deal with the fugitive on surrender, whether that course of conduct is justifiable or not under the law of that country.ò(p.522) La Forest J. went on to specifically identify the possibility that the requesting country might torture the accused and then to state that ñ(s)ituations falling far short of this may well arise **where the nature of the criminal procedures or penalties in a foreign country sufficiently shocks**

> **the conscience as to make a decision to surrender a fugitive for trial there one that breaches the principles of fundamental justice enshrined in s.7** (p.522)ò(Emphasis ours)

108. In this case, Respondents knew that a result of their actions would be that Appellant would be deprived of his right to life and liberty and his right to return to Canada. These factors are sufficient to find that the trial judge made a reversible error of law and on this matter the appeal should be allowed and the judgment set aside by this Honorable Court.

5) DID RESPONDENTS BREACH THE RCMP ACT AND THEIR CODE OF ETHICS?

109. The RCMP Act provides as follows:

> 37. It is incumbent on every member
> (a) to respect the rights of all persons;

Respondents violated the above noted provision of the RCMP act in that Respondents failed to respect Appellantôs rights and treated Appellantôs life as an expendable by-product of their international policing schemes.

110. The RCMP operational investigation guidelines provides that :

> H.1.b. Unless there is an operational requirement and the appropriate director at Headquarters approves, sources shall not:
> 1. be introduced to a handlerôs family or to the family of any other member, or
> 2. become socially involved with a member or a memberôs family

Respondent Bennettôs allegations that he went to borrow a boat from a source accompanied by his brother is a violation of the above noted regulations (261).

111. The RCMP operational investigation guidelines further provide as follows:

> C. 2. A member shall at all times perform his/her duties in accordance with the law and Force policy.
> C. 3. Members shall **respect the rights and freedoms of all persons as provided for in the Canadian Charter of Rights and Freedoms**, statutes and Force policies. (Emphasis ours)

112. It is submitted that Respondents did not respect Appellantõs rights and freedoms in Canada as well as in Thailand. Failing to do so constituted a civil fault on the part of Respondents.

J.1.b. Undercover operations shall be targeted toward the upper levels of a criminal organization.
1) Drug undercover operations shall be targeted only at traffickers who have been identified on the Violator Classification System.
J.1.c. Undercover operations **shall be terminated when it is apparent only low level criminals are involved**.

113. In July of 1988, it was ascertained by the Respondents that Appellant did not have a criminal record (261), was not a drug trafficker (262), did not have the financial resources to import heroin (263), did not have a network to extract heroin from Thailand (264) and did not have a distribution network to sell heroin in Canada (265). Respondents were aware that Appellant was a quasi-homeless person with a serious drug problem and that he definitely was not a ñmajor international heroin and cocaine importer with contacts throughout Asia and South Americaò (266). In fact he was determined to be a ñlow life doperò (267) who was ñflat out brokeò (268). He was not a drug trafficker nor was he a drug importer. Appellant was not a criminal. In virtue of the above noted guidelines, Respondents had the **obligation of terminating their undercover operation against Appellant in July 1988**. The decision not to terminate was a civil fault and violated their guidelines as well as their own standards. Bennett declared that:

> ñWe were not looking to find somebody and put them into the drug business. Thatõs one of the standards on our operationsð and including this one. We do not like to take somebody whoõs a ï letõs say a ñgram dealerò and make them into an ounce or a half pound dealer when that is not the case, and we will not pursue those fields. (269) Volume VI page 1486

Respondents catapulted a drug addicted quasi-homeless person into the stratosphere of drug violators: An A-1 heroin and cocaine importer with contacts throughout Asia and South America responsible for a pipeline of heroin from Thailand to Canada.

J.2.c. 3. The use of entrapment is prohibited, ie instigating a person to commit an offence that the person does not have an intent to commit.
1. Instigation to commit an offence is not deemed to have happened when the person with an intent to commit an offence **is merely given an opportunity to commit it**.

K.1 .d At all times, Members shall perform their duties in accordance with the laws of Canada and the foreign country.
K.1.g. Members shall not be present at, or be a party to, enforcement procedures that are not acceptable in Canada.

114. Respondents did not conduct their duties in Canada and in Thailand in accordance with the laws of Canada. Appellant was a quasi-homeless person with a serious heroin addiction. In Thailand, he was dependant upon Respondents for his lodging, his food, his travel as well as the heroin to feed his addiction. Respondents put enormous pressure on Appellant to come up with a source. They did not provide an opportunity to commit a crime. They went far beyond inducing it; they actually **created it.**

115. Appellant did not have the financial capacity to purchase heroin. He never had possession of the heroin (270). He did not have a network to extract the heroin from Thailand and smuggle it into Canada (Girdlestone, the pilot with a commercial airplane and with a cleaning crew to get the heroin through customs) (271). He did not have a distribution network to sell heroin in Canada (272). RCMP provided the funds to purchase heroin, they provided the network to extract the heroin from Thailand and smuggle it into Canada, they provided the distribution network to sell the heroin. If the RCMP is removed from the equation, you are left with a destitute, quasi-homeless person in Thailand with a serious heroin habit. No money, no heroin, no pilot, no cleaning crew, no distribution network. Without the RCMP, **the crime of possession of heroin for the purpose of export could not have existed.**

K.2.d. If possible, prosecute Canadian citizens in Canada.

116. Respondents could have repatriated Appellant in order that he be prosecuted in Canada as was suggested in the Simard report (273). Respondents made no effort whatsoever to have Appellant prosecuted in Canada thereby violating their investigational guidelines.

D.3.a.7. Members shall retain notebooks in a secure manner and destroy them when no longer required.

117. Bennett declared that he would never turn over his original notes.

> A. ñI'll tell you now, I personally won't give it to you, and only a Judge will order it, and then even then, we will take it to the Courts above the Judge before we do that. You must understand, we do it for procedure --- this will not happen.ò (273.1)

118. Appellant sent Bennett a subpoena duces tecum requesting that the original of his notes be brought before the Court because Appellant suspected that they had been tampered with. Bennett came to Court and told the trial Judge with a straight face that he had lost the original note books (274).

119. Appellant also suspected that Dop had doctored his notes. Dop filed his original notebooks. The first notebook only contains 97 pages and if the binding is carefully examined, it is apparent that pages have been removed (275).

6) LIABILITY OF GLEN BARRY (A.K.A. JEAN-MARIE LEBLANC)

120. The trial Judge concluded that Barry was not liable in any way for the damages sustained by Appellant. With respect, such a conclusion is a gross misapplication of the Trial Judge's duty to evaluate all the evidence in a fair, objective and judicious manner.

121. Appellant's testimony regarding Barry's constant threats and manipulation over a period of 18 months was not contradicted by any witness. The only person that could refute what Appellant was saying was Barry. In order to determine if Appellant had made his case against Barry on a balance of probabilities, the trial Judge should have examined **all the evidence** in order to determine if Appellant's testimony was corroborated. The trial Judge completely ignored most of the evidence.

122. In assessing whether Appellant had proven Barry's liability on a balance of probabilities, the trial Judge had the obligation of considering the following evidence: 1) Barry was a ñsoldier of fortuneò, a ñviolent individualò, a ñpsychopathò (276) 2) Barry knew what to do to make money. He knew how the system worked (277) 3) the testimony of Louis Arguin (278) 4) the testimony of Jardine (279) 5) the testimony of Wheelihan (280) 6) the testimony of Barry at the Cahill and Wheelihan trials (281) 6) the

judgment of Justice Allan in the Cahill trial (282) 7) the judgment of Justice Legatt in the Wheelihan trial (283) 8) the judgment of the British Columbia Court of Appeal in the Cahill trial (284) 9) the tacit acknowledgement by Barry that Appellant was telling the truth since he did not bother to defend against the lawsuit 10) the tacit acknowledgement by the Attorney General that Appellant was telling the truth about Barry since the Attorney General decided not to have Barry testify despite the fact that he was under contract to do so (285). 11) the tacit acknowledgement by the Attorney General that Appellant was telling the truth since they did not bother to cross-examine Appellant on most of the crucial aspects of his testimony.

123. Appellantôs case against Barry was by default to appear. It is completely unconscionable that faced with such overwhelming evidence, the trial Judge could possibly come to the conclusion that Appellant had not made his case against Barry on a balance of probabilities. Failing to conclude that Barry was liable for the damages sustained by Appellant is a palpable and overriding error amply justifying this Court to set aside the trial Judgeôs findings. The trial Judgeôs apparent willful blindness and failure to consider the evidence pertaining to Barry are tantamount to gross negligence and brings the administration of justice into disrepute and unlawfully participates in the protection of a rogue RCMP civil agent.

7) IS THE ATTORNEY GENERAL OF CANADA LIABLE FOR THE ACTS OF GLEN BARRY?

124. Barry was an employee of the RCMP. He had: i) an employment contract (286) (Exhibit P-8a); 2) had to assist the RCMP for a determined period of time (287); 3) Received $500 to $1000 per week to pay for his expenses (288); 4) Was to receive $25,000 initially for his service which amount was increased to $79,000 at the end of the operation (289); 5) Was obliged to do as the RCMP directed (290); 6) Was obliged to take notes (291); 7) Could be terminated at any time (292); 8) Had to testify in Court if needed (293); 9) Was under the constant supervision and direction of Bennett (294).

125. The civil code defines an employment contract as follows:

> Article 2085 A contract of employment is a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer.

126. If the law is applied to the facts of the case, there can be no doubt that Barry was employed by the RCMP as a civil agent. The relationship between the RCMP and Barry was that of employer-employee.

127. Despite the overwhelming evidence that Barry was in fact an employee of the RCMP, the trial Judge concluded that Barryôs relationship with the RCMP was that of a contract for services (295). With respect, to conclude that the relationship between the RCMP and Barry was a contract for services is completely erroneous and constitutes palpable and overriding error.

> Article 2099. The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance.

128. The trial Judge omitted to consider the evidence. In order to conclude that the relationship between Barry and the RCMP was a contract for services, the trial Judge had to determine that Barry was free to determine the means of performing his contract and that there was no relationship of subordination between Barry and the RCMP. Referring to Barry, Bennett states:

> ñA. He definitely was not a neophyte, and that was one of the reasons we used him and we liked him, **he took direction well**, he was a good agent.ò(296)

129. And referring to the meeting of May 22nd, 1987, Bennett further states:

> ñA. In that meeting, I would haveé I would have gone into detail of what itôs going to be to be an agent. We would have discussed this already the first time when we met him, but itôs going to be setting down the ground rules. Once weôre operational, this is what must take place. You must do notes, **you will take direction, must be contact with us all the time**. We set down the ground rulesé yeah, you must testify in court was a big one.ò(297)

130. Referring to the above noted meeting of May 22nd, 1987, Bennett further states:

> ñA It would have been howé what the rules are for being an agenté

Q. Yes.
A. é ..because he had to understand that he was going to be required to testify in court. Itôs a big issue. Heôs **going to be required to, you know, follow directions,** no drugs, to get targets, search out targetsé
Q. Okay, did heé ..
A. é .et ceteraé .
Q. é ..mention any targets at that point, in May nineteen eighty-seven (1987)?
A. Justé . Your Honour, one second, going back to the letter of agreement, he also had been advised, and we stated it very clearly in there, **if he steps out of our parameters, or causes us problems that we deem to be extremely serious, we can terminate his employment at any given time**, and we are not obligated in any fashion, other than his expenses, to pay him any awards. And he had to understand thisé .ò(298) (Emphasis ours)

131. Respondent Dop states:

ñA Your Honour, I would ensure that members of the undercover team, Glen Barry was living in Gibsonôs, although itôs part of the mainland to British Columbia, it requires a ferry trip, twenty (20) minutes. Members of the team went to Gibsonôs frequently, they were both announced trips and unannounced trips, and simply met or talked to him as frequently as possible.
Q. Okay, You as beingé .talked to him as frequently as possible in whaté what was the goal of talking to him?
A. It was to ensure that he was aware of his responsibilities, and just simply to touch base with him, and **make him aware that he was being managed**.ò(300)

ñA Well, I think weôd have to take that into context, I thought Mr. Barry from all indications that I had, Your Honour, was **conducting himself according to our instructions**. é ..ò(301) (Emphasis ours)

132. Barry was an employee of the RCMP and by extension the Attorney General of Canada. The Attorney General is liable for the actions of Barry since an employer is responsible for the actions of his employee in the execution of his mandate.

8) RESPONDENTSôADMISSION OF LIABILITY

133. On October 20th, 1994, (5 1/2 years after Appellantôs incarceration), the Attorney General of Canada through the Canadian Embassy in Thailand, issued a letter addressed to the Thai authorities seeking immediate release of Appellant under the terms of the treaty pertaining to execution of sentences (302) (P-37). The request was motivated by the findings of the RCMP Public Complaints Commission recommending

that efforts should be made to repatriate Appellant notwithstanding the terms of the treaty (303).

134. The chronology of material facts pertaining of this issue discussed at paragraphs 163 to 167 of the trial Judgeôs judgment: i) On July 8th, 1988. The Treaty came into force (304); ii) On February 12th, 1989, Appellant was arrested and incarcerated; iii) March 1991: The interim PCC report prepared by Paul McEwan (305); iv) March 18th, 1992, final PCC report prepared by Fernand Simard (306); v) October 20th, 1994: The diplomatic note issued by the Canadian Embassy, Bangkok addressed to the Royal Thai government, Ministry of Foreign Affairs (307); vi) December 16th, 1994. A memo is issued prepared by Serge Boudreault of Corrections Canada stating ñ

> ñRCMP now recognizes and **accepts its role and responsibilities in subjectôs conviction and sentence**é ..the Government of Canada through Foreign affairs, considering asking Thai authorities to relax its eligibility criteria to allow transfer earlier; subject eligible only after eight years that is 1997. Problem is **subject not likely to make it in view of the harshness of conditions** of incarceration (308) (Emphasis ours) (Exhibit P-54)

vi) Jan 25, 1995. The Thai government invokes the provision of the treaty stating that a minimum of eight years incarceration is required under the treaty (309) vii) Respondents were well aware of the terms of the Canada Thailand treaty on the cooperation in the Execution of Penal Sentences (310). viii) Respondents knew of the illicit comportment of the RCMP in the light of the findings of the PCC, knew the terms of the treaty with Thailand and sought to minimize damages by prematurely calling for the repatriation of the prisoner.

135. The act of attempting to set aside the rules of the treaty in light of the findings of the Commission constitutes an admission of liability for the illicit acts of the RCMP.

9) DID THE TRIAL JUDGE EVALUATE ALL THE EVIDENCE IN AN IMPARTIAL, OBJECTIVE AND REASONABLE MANNER?

136. The trial Judge concludes at paragraph 89 of his judgment that Bennett gave nebulous testimony concerning the murder scenario. With respect, the trial Judge was

not dealing with nebulous testimony, he was dealing with a complete fabrication.

Bennett testified on October 22nd, 2002, that:

> ñIt was a **horribly stormy day with very, very deep swells**, out in the chuckéAnd these swells were so bad I wouldnôt take my brother with me because he wasnôt used to the oceanò(311) (Emphasis ours)

On September 15th, 2003, Bennett testified

> Q.òHow big are the waves? How many feet?
> A. Swells, Iôm going to say between **at least six, eight feet (6,8 ft), and maybe some deeperò.**(312) (Emphasis ours)

And at page 57 of the same day, Bennett testified

> ñé ..and Iôll go back to the wave conditions those days, **I had to stand the complete ride back**, which was probably four (4) to six (6) hour ride. Again, it was very hard. It took water over the top of the boat on a continuous basis. At one point, I thought I was going to stall the engine out, which is a bad thing. M,hm.
>
> é .And for that to happen, Iôm takingé water is coming right over the top, coming down the deck of the boat. It was saturated with sea water, for a minimum of four (4) if not six (6) hoursò(313) (Emphasis ours)

137. On December 5th, 2005, the parties filed the following admission:

> «The parties admit that on Sunday, July 26, 1987, during the early morning, Defendant Bennett returned alone to Gibsons marina in the boat that had been borrowed from Defendant Glen Barry two days before.» (315)

138. A month before trial in August 2007, Appellant managed to obtain and file the weather reports for Georgia straight. The weather reports were from the buoys actually located in Georgia Straight during the morning of July 26, 1987. They showed that there was no storm and that the winds were light (316).

139. At trial, Bennettôs testimony changed. The waves were suddenly only three to five feet (317) (Even three to five foot waves are **impossible** using the Beaufort scale (318)). But the falsehood that would conclude beyond a doubt that his testimony concerning the murder scenario was a complete fabrication was the fact that he claimed to have stood for 4 to 6 hours in a boat **in which it was impossible for someone 5ô10ò to stand.**

Q. Okay. And I understand that the seas were so rough that **you had to stand up the whole way back?**
A. **I did, actually**.
Q. Okay. And you are five foot ten (5'10").
A. That's correct.
Q. Okay. Now… okay, I am very curious to know Mr. Bennett, how you managed to stand up in this boat all the way back. The headroom in this boat is five foot five (5'5"), you are five foot ten (5'10") .
A. Five foot ten (5'10")
Q. Yeah. Tell the Court how you stood up all the way back in these very rough waves.
A. I don't recall, I'd have to get on the boat. I know I spent a lot of time standing up, and it was very difficult.
Q. Tell the Court how you stood up in there.
A. **I can't answer the question.**
Q. Okay. You see this boat? You see there's a person sitting there?
A. I do.
Q. That person is sitting. So you're telling the Court, and you're under oath, you stood…
A. I'm quite…
Q. … you stood up in that boat the whole way back?
A. Well, I may have sat then for a while. I remember standing up for a good portion of that ride…
Q. How were you standing up?
A. I …
Q. Show physically to the Court how you stand up in five foot five (5'5") headroom?
A. **I can't answer you**, your Honour.
Q. What, you were squatting down like this?
A. **I can't… I can't answer.**
Q. You can't answer?
A. **I can't answer**.
Q. Are you making this up, Mr. Bennett?
A. Don't go there Counselor. (319) (Emphasis ours)

140. Bennett can't answer the question because **it was impossible for him to stand** in the boat (319.1). It is not a question of being there to appreciate the testimony and the demeanor of the witness etc. It is in black and white. Bennett was not telling the truth and the trial Judge failed to notice. If Bennett was not telling the truth about the boat crossing, it is respectfully submitted that no possible credibility can be given to the remainder of his testimony.

141. If the trial Judge failed to notice such a blatant fabrication, the Court cannot rely on the trial Judgeôs ability to evaluate the remainder of the evidence. The failure of the trial Judge to appreciate the above noted evidence is a manifest and overriding error and is sufficient grounds, on its own, to permit this Court to intervene and rectify the trial Judgeôs findings.

142. Not only did the trial Judge fail to determine that Bennett was not telling the truth about the murder scenario, he also completely disregarded the admission from Respondent Glen Barry that the entire murder scenario was a ñplay for Olivierôs benefitò In 1989 Barry testified as follows:

> Q. Did you ever relate a story to Mr. Olivier to the effect that the guys you were associated with---and this may not be a true story, I appreciate that---but did you ever tell him a story about the guys that you were associated with, this big time dope dealers, where they took a guy who owed them money out in a boat, and then when he came back there were some rifle shells in the bottom of the boat and there was no guy, this alleged debtor. Do you remember telling him that story?
> A. Yes, I do remember saying that story, yes.
> Q. Do you remember that Mr. Olivier was actually there when the boat came in and there were rifle shells and there was no alleged debtor?
> A. That is correct.
> Q. Yes. And that was a **little play for Olivierôs benefit, wasnôt it**?
> A. Thatôs correct.
> Q. Of course, nobody was killed.
> A. Nobody.
> Q. You let him off down the coast somewhere or something.
> A. Thatôs correct. (320) (Emphasis ours)

And Barry further testified:

> Q. Okay. And you donôt think it was a lie when you took the boat out with this person and let him off and brought the boat back with a few rifle shells and made it look as though this guy had been---had been murdered? You donôt think thatôs a lie either, do you?
> A. I didnôt do that boat trip, Your Honour.
> Q. Were you on the boat?
> A. No, I wasnôt.
> Q. No. But you knew it had been done.
> A. Thatôs correct.
> Q. I see. How did you know about it?
> A. Because Iôm the one that loaned the boat to Corporal Bennett (321).

143. The trial Judge had the obligation of evaluating **all** the evidence in a fair and impartial manner. Bennettôs testimony concerning the murder scenario is ñcousu de fils blancò At every turn it demands a level of credulity that borders on the insulting.

144. The only logical conclusion that a fair and impartial Court could come to was that Bennett deliberately and intentionally misled the Court about the murder scenario. When evaluating the remainder of the evidence, the trial Judge had the obligation to bear in mind the fact that Bennett had deliberately misled the Court. The trial Judge failed and/or neglected to do so.

145. When asked if Barryôs testimony concerning the murder scenario was the truth, Bennett states:

> ñQ. Thatôs not the truth?
> A. Thatôs correct. Itôs incorrect, as I previously stated, Your Honor. Mr. Barry **was not the most prepped witness; more time should have been spent with him.** I went over what happened, why it wasnôt. Again, he wasnôté . he wasnôt our strongest witness, as noted by Madam Justice Marian Allan at that time. This is incorrect, whatôs being stated here by Mr. Barry.
> Q. I donôt understand, you didnôt prep him properly; whaté . **How about telling Mr. Barry to tell the truth? How about that? Isnôt that good enough preparation?**
> A. We didnôt spend enough time with him to work with his evidence. We were taken off the team at that time. The prosecutor has troubles getting lots of time. No, whatôs being said here, again, heôs not a é . Heôs not a great witness as far asé .English isnôt his first language, and how it comes out here in incorrect.ò(323)
> (Emphasis ours)

146. Bennettôs preoccupation is that Barry was not properly prepared. What seems important is to render testimony according to certain predetermined guidelines. The truth seems to be irrelevant. Bennett implies that if Barry had been properly ñpreppedò by a professional witness such as himself, Barry would not have blurted out that the murder scenario had been orchestrated by Bennett for Appellantôs benefit.

147. Bennett is a professional witness (324). He spent his adult life testifying in Court. Throughout his testimony, he is constantly skating around questions (325), refuses to

answer (326) or gives vague, evasive answers (327). Bennett often employs a tactic of theoretical reality to avoid answering a question (328). Girdlestone and Dop are also professional witnesses who testify the same way Bennett does.

148. A list of the other factors that the trial Judge ignored are listed in the end notes (329)

10) WERE THE TRIAL JUDGEÕS CONCLUSIONS AS TO CREDIBILITY REASONABLE?

149. The trial Judge basically concludes that Appellant was not credible. The trial Judge only considered a small portion of the evidence that had been adduced before him. His conclusions as to credibility are illogical.

150. Appellant testified for approximately six days. Appellant is not a professional witness. It was his first time in a Canadian Court room. The vast majority of his testimony was not challenged by the Attorney General (330). The trial Judge does not state that AppellantÕs testimony was not credible because he was hesitant or that he contradicted himself or that what he was saying was not logical or did not make sense. AppellantÕs testimony was delivered without hesitation. The trial Judge does not criticize his testimony as such. He rather comes to the conclusion that Appellant is not credible because his behavior, as reported by the RCMP and excerpts from the recordings in Chiang Mai were not compatible with someone who was living under a ñregne de terreurò With respect, the trial JudgeÕs reasoning is flawed and his conclusions are equally flawed. The trial JudgeÕs conclusions as to credibility are the equivalent of someone assessing an actorÕs personality, his real intentions or his mindset by viewing a play and/or a movie. The actor is acting. It is impossible to evaluate an actorÕs personality, his real intentions or his mindset because the actor is acting, he is playing a role. Appellant as well as Respondents were all acting in Thailand.

151. When appreciating AppellantÕs credibility, the trial Judge failed to consider that everything that was written about Appellant and reported by the RCMP was the result of a well orchestrated manipulation by Barry under the direction and supervision of

Bennett. Appellant did and said what Barry instructed him to do. Before he left for Thailand, Barry had looked at Appellant with "psychopathic" eyes and told him it was his last chance (331). That was one of the reasons why Appellant played the role of the importer in Thailand.

152. In assessing Appellant's credibility, the trial Judge failed to consider the following points 1) Appellant was a drug addict and a junkie; 2) Appellant had been promised a half kilo of heroin and what effect this would have on a heroin addict; 3) Appellant was promised a half kilo of heroin with a street value of 3 million dollars and what effect that would have on quasi-homeless person who was "flat out broke"; 4) Glen Barry was a convicted fraud artist, a "soldier of fortune" a "psychopath", and what effect such an individual would have on Appellant; 5) The trial Judge failed to consider the non contradicted testimony that Barry continuously threatened Appellant over an 18 month period; 6) The trial Judge failed to consider the impact of Barry's threat on the eve of Appellant's departure for Thailand on February 10th, 1989, when Barry looked at him with "psychopathic" eyes and told him it was his last chance; 7) The trial Judge failed to consider the impact of Barry's promise on the eve of Appellant's departure for Thailand on February 10th, 1989, when Barry looked at him with "psychopathic" eyes and told him that if he did what was requested of him, he would be in paradise with a half kilo of pure heroin; 8) The fact that while in Thailand, Appellant was totally dependant on Respondents for his travel, food, lodging and the heroin to feed his habit; 9) The fact that Dop acknowledged that Appellant was "desperate" in Thailand (332); 10) The fact that two independent Courts in Vancouver came to the conclusion that Barry was "male fides" and that he had seriously abused his position as an agent in the small community of Gibson's Landing; 11) The findings and conclusions of the BC Court of Appeal in the Cahill file; 12) The fact that Bennett deliberately misled the Court concerning the murder scenario; 13) The fact that Respondents gave false evidence before the Thai Courts; 14) The tacit acknowledgement by Barry that Appellant was telling the truth since he was not interested in coming to Court; 15) The tacit acknowledgement by the Attorney General that Appellant was telling the truth since the Attorney General decided not to have Barry testify despite the fact that he was under contract to do so; 16) The tacit

acknowledgement by the Attorney General that Appellant was telling the truth since he was not cross examined on most of the events in Canada as well as most of the events leading up to his arrest in Thailand; 17) The trial Judge completely ignored the testimony of Serge Olivier, of Robert Joly, of Louis Arguin, of Jardine, of Wheelihan.

153.The trial Judge myopically evaluated Appellantôs credibility in a vacuum. His reasoning is manifestly flawed and his conclusions are palpable and overriding.

11) IS THE ATTORNEY GENERAL OF CANADA ñMALE FIDESò?

154. The Attorney General was aware of the injustice perpetrated against Appellant since the McEwen interim report on March 6th, 1991. The Attorney General was aware of the conclusions of the Simard report on March 18th, 1992. Despite having been made aware of the injustice perpetrated against Appellant, the Attorney General waited three years before making a half hearted attempt to repatriate Appellant by sending a diplomatic note on October 20th, 1994 (334). (Volume 43 pages 13813 to 13185

155. The Attorney General refused to defend Barry despite the clear evidence that Barry was an employee of the RCMP. The Attorney General decided not to have Barry testify at trial (335). The Attorney General had presented a motion to dismiss Plaintiffôs suit based on prescription on July 5th, 2001 but elected to withdraw it on July 21st, 2001 (336). After the first five days of the trial, all the evidence pertaining to prescription had been adduced. Appellant applied to the trail Judge after five days to have the matter of prescription settled immediately. The Attorney General refused to present the motion to dismiss based on prescription and the trial Judge decided not to hear it and continued the trial for another 35 days. The trial Judge knew what stance he was going to take in regards to prescription. The trial Judge did not discharge his responsibilities in a fair, equitable and judicious manner. The decision not to terminate Appellantôs suit based on prescription after five days of hearing, cost taxpayers an enormous amount of money. It also made a mockery of the thousands of hours of work performed by the undersigned attorneys. The Attorney General is the trial Judgeôs employer. The Attorney General must be held to a higher standard than a common litigant. By not ending the trial after

five days, the Attorney General of Canada and the trial Judge **have brought the administration of justice into disrepute**.

156. The Attorney General had announced that it would have a toxicologist, a Thai law expert, a Thai interpreter and General Bamroong testify at trial. Appellant relied on the Attorney Generalôs position in order to make further evidence in order to elucidate the Court. Halfway through Respondentsôdefence, the Attorney General suddenly announced that it would not have the said witnesses testify thereby depriving the Court and Appellant of the additional light that their testimony would have brought. Such tactics are not befitting of the Attorney General and further confirms the Attorney Generalôs bad faith in the present matter.

157. In addition, the suit filed by Appellant against Respondents involves the violation of the human rights of a Canadian citizen against his government. The government has unlimited resources. Appellant has no resources (335). The trial Judge dismissed Appellantôs action with costs. By condemning Appellant to pay court costs (in excess of $500,000), the trial Judge was in effect putting Appellant into bankruptcy. It is submitted that by so doing, the trial Judge grossly misused his discretion and has further demonstrated his lack of judicious, fair and equitable dealings with a litigant.

PART IV CONCLUSIONS SOUGHT

GRANT the present appeal with costs;

QUASH the judgment of first instance;

MAINTAIN Appellantôs action against Defendants on the issue of liability only;

DISMISS DefendantsôPlea;

CONDEMN Respondents Jean-Marie Leblanc, a.k.a. Glen Howard Barry, by default to appear as being solidarily liable with the Attorney General of Canada as being liable for all damages claimed by Appellant;

DECLARE that the constitutional rights of Appellant as provided for under Sections 6, 7, 9, 10(c), 11(d), 11(f), 12 and 24(1) of the Canadian Charter of Rights and Freedoms have been wilfully and intentionally breached;

DECLARE that the constitutional rights of Appellant as provided for under Sections 1 and 49 of the Quebec Charter of Human Rights and Freedoms have been wilfully and intentionally breached;

DECLARE that the Respondents did not comply with their policy contained in their Operational Manual, Chapter II.1, Investigation Guidelines, Investigations Outside Canada under Section K.2.d requiring that if possible, to prosecute Canadian citizens in Canada;

DECLARE that the Respondents have acted in breach of the Royal Canadian Mounted Police Act under Section 37 and their policies and guidelines in that they failed to perform their duties in accordance with the law and Force policy, they failed to terminate their undercover operations in July of 1988 when it became apparent that Appellant was not a drug trafficker and they failed to retain their notebooks in a secure manner;

DECLARE that Respondentsôbehaviour, use of stratagems, trickery and deceit are considered so reprehensible as to bring the administration of justice into disrepute, the whole in breach of RCMP policy as provided for in Exhibit D-18, Operational Manual, under Investigation Guidelines, Chapter II.1, Section J.2.c.;

DECLARE that pursuant to Canadian law and the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms,

Appellant was illicitly charged, convicted and sentenced to death in the Kingdom of Thailand;

DECLARE that the undercover agents of the RCMP, Respondents Bennett, Dop, Girdlestone, and Glen Barry, have acted in bad faith;

THE WHOLE with costs both judicial and extra judicial in first instance and in appeal.

ORDER that the present file be returned before the Superior Court of Québec before any Judge other than the trial Judge in order to assess the amount of damages to be awarded herein.

IN THE EVENT that this Honourable Court dismisses the present appeal:

ORDER that it be without costs against Appellant in both instances and with costs, both judicial and extra judicial, against the Attorney General in first instance and in appeal.

PART V AUTHORITIES CITED

1. Gauthier c. Beaumont 1998 CanLII 788, 1998 2 RCS 3 Page 17 Paragraph (59)
2. Quane -vs- Procureur Général du Québec et al., 1999 IIJCAN 11151, paragraph 33 Page 18 Paragraph (61)
3. Crown Liability and Proceedings Act R.S.C. (1985) c. C-50, Section 32 page 19 paragraph 66
4. Canada v. Maritime Group (Canada) Inc. [1995] 3 F.C. 124, 1995 CanLII 3513 (F.C.A.) Page 19 Paragraph 67
5. R. v Mack (1988) 67 CR (3rd) p 49 Page 20 Paragraph 69
6. R. v. Whellihan 1990 CanLII 2125 (B.C.S.C.) Page 24 Paragraph 81
7. United States v. Cotroni [1989] 1 S.C.R. 1469 Page 25 Paragraph 84
8. Abdelrazik v. Canada (Foreign Affairs) 2009 FC 580 (CanLII) Page 25 Paragraph 85 and Page 27 Paragraph 89
9. Canadian Charter of Rights and Freedoms R.S.C. (1985), App. II, No. 44, s.7, Page 28 Paragraphs 91 and 94
10. Charter of Human Rights and Freedoms, R.S.Q., c. C-12, s 1, Page 28 Paragraph 92
11. R. *v.* Hape, [2007] 2 S.C.R. 292 Page 30 Paragraph 97 and Page 31 Paragraph 100
12. Suresh v. Canada (Minister of Citizenship and Immigration) [2002] 1 S.C.R. 3 14 Page 30 Paragraph 98 and Page 33 Paragraph 107, and Page 34 Paragraph 108
13. Canada (Justice) v. Khadr [2008]2 S.C.R. 125 Page 30 Paragraph 98, Page 32 Paragraph 103 and Page 32 Paragraph 103
14. Royal Canadian Mounted Police Act R.S.C. (1985) c. R-10, s. 37 Page 34 Paragraph 110

15. Civil Code of Quebec, S.Q 1991. c. 64 art. 2099 Page 39 Paragraph 126

16. Regina ï vs- Michael Shane Cahill, Court of Appeal for British Columbia Vancouver Registry CA01242, April 15, 1992

ENDNOTES

TO FOLLOW