

**ONTARIO COURT OF JUSTICE**

**B E T W E E N :**

**HER MAJESTY THE QUEEN**

**— AND —**

**HARRY BARNES**

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Before Justice Carol Brewer  
Heard on May 5, 6, 17 and 20, 2011  
Reasons for Judgment released on June 24, 2011

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**Erin Pancer** ..... **for the Crown**  
**David Costa** ..... **for the defendant, Harry Barnes**

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**Brewer J.:**

**OVERVIEW**

- [1] Harry Barnes is charged with 18 counts of storing a firearm contrary to a regulation made under the *Firearms Act*, contrary to section 86(2) of the *Criminal Code*.
- [2] Mr. Barnes is a firearms collector. He is the owner of a large number of firearms and weapons, most of which have historical significance. In particular, he is licensed to possess prohibited firearms, including the fully automatic firearms involved in these charges. All of the defendant's guns are properly registered.
- [3] The charges arise out of the execution of a public safety warrant, issued pursuant to section 117.04 of the *Criminal Code*, on January 21, 2010 at Mr. Barnes' apartment. No challenge has been made to the validity of the warrant.
- [4] If Mr. Barnes is found guilty of these offences, Crown counsel is seeking forfeiture of the firearms pursuant to section 491 of the *Criminal Code*. Should the criminal charges be dismissed, Ms. Pancer has brought an application for forfeiture of the defendant's seized weapons under section 117.05 of the *Code*.

## THE CRIMINAL CHARGES

[5] The *Firearms Act* regulation allegedly breached by the defendant is section 7(b)(i) of the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, SOR/98-209. Section 7 provides:

7. An individual may store a prohibited firearm only if
  - (a) it is unloaded;
  - (b) it is
    - (i) rendered inoperable by means of a secure locking device and stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into, and, if the prohibited firearm is an automatic firearm that has a removable bolt or bolt-carrier, the bolt or bolt-carrier is removed and stored in a room that is different from the room in which the automatic firearm is stored, that is kept securely locked and that is constructed so that it cannot be readily broken open or into; *or*
    - (ii) stored in a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked; and
  - (c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in
    - (i) a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into; *or*
    - (ii) a vault, safe or room that has been specifically constructed or modified for the secure storage of prohibited firearms and that is kept securely locked.

[6] The initial defence position in relation to the charges is that the defendant's prohibited firearms were not being "stored" but were being used, as Mr. Barnes was in his residence at the time the warrant was executed. In my opinion the Supreme Canada's judgment in *R. v. Carlos*, [2002] S.C.J. No 36, has made it clear that a firearm has been stored when it has been put aside and the defendant is not making any immediate use of it. The 18 guns in issue were all located inside of two locked metal cabinets when the police attended to execute the warrant. This is a case involving storage.

[7] Mr. Costa has also submitted that there was compliance with the regulation, as Mr. Barnes' prohibited firearms were stored in accordance with the requirements of section 7(b)(ii), a statutory alternative to section 7(b)(i). It is not disputed that:

- all 18 of the firearms involved in these charges are operable, prohibited firearms;
- the guns were put away together with their removable bolts or bolt-carriers, contrary to section 7(b)(i);
- the ammunition was stored separately from the firearms consistent with section 7(c); and
- the guns were not kept in a vault or a room that was specially constructed or modified for the storage of prohibited firearms, as contemplated by section 7(b)(ii).

[8] The issue in this case is whether the prohibited firearms were stored in a “safe” as permitted by section 7(b)(ii). In such circumstances, it is permissible for removable bolts or bolt-carriers to be stored with the prohibited firearms and there would be no violation of the regulations.

[9] Section 86(2) is a strict liability offence. The Crown must prove non-compliance with the regulations beyond a reasonable doubt. The defendant may avoid liability by raising a reasonable doubt through a defence of due diligence: *R. v. Smillie*, [1998] B.C.J. № 2082 (C.A.); *R. v. Porter*, [2007] B.C.J. № 809 (C.A.).

#### A. THE RELEVANT EVIDENCE

[10] The guns in issue were housed in metal cabinets in a locked bedroom. Sixteen of the automatic firearms were located beside the closet in a gray steel cabinet,<sup>1</sup> which had a t-shaped handle with a lock in it. After a key is used to unlock that cabinet, the handle must be turned in order to release metal rods in the top, bottom and centre of the door that slide into the frame of the unit. The police had to move the cabinet in order to get access to the guns, as it was facing a wall and situated so the door could only open about 12 inches wide. The other two prohibited firearms were in a padlocked steel cabinet at the foot of the bed, near the window.<sup>2</sup> Mr. Barnes testified that this cabinet had an internal lock, as well as the padlock.

[11] The defendant purchased the cabinets he used to store his guns at a government auction. He agreed they all had air vents and did not have seals around the doors. None of the cabinets had an electronic lock or a key pad or a drill-resistant steel plate behind the locks. According to Mr. Barnes, his gun lockers would be difficult to open with a pry bar.

[12] Michael Press, a civilian member of the Toronto Police Service, was qualified as an expert in the regulations made under the *Firearms Act* and the storage and handling of firearms.<sup>3</sup> Mr. Press was present in Mr. Barnes’ residence during the execution of the warrant. He described the containers used by the defendant to store his guns as “school lockers”. In Mr. Press’ opinion, the defendant’s gun lockers met the definition of a “cabinet or receptacle that is kept securely locked and is constructed so that it cannot be readily broken into” in section 7(b)(i). However, he did not believe that the lockers would qualify as a “safe”, as they did not have a level or extended locking mechanism that could not be knocked off with a sledge hammer. The Crown’s expert also stated that the metal construction of the locker should have been harder or heavier in order to be considered a safe. However, no measurement was made of the thickness of the metal on any of the lockers. According to Mr. Press, gun lockers such as the ones made by Canadian Tire did not meet the definition of a safe and should only be used to store prohibited firearms if the bolts or bolt-carriers are removed. The basis for Mr. Press’ interpretation of the word “safe” and its characteristics was not explained in his testimony. No objective source for his understanding of the language of the regulation was provided either from his training, judicial consideration of the word or authoritative reference materials.

[13] Richard Cornblum was qualified as a defence expert in firearms and their storage. Mr. Cornblum is the president of Movie Armaments Group, a supplier of firearms and military equipment to the movie industry. His company is licenced to manufacture, transport, import,

<sup>1</sup> Photographs of this cabinet were made exhibit 1D, p.8-11.

<sup>2</sup> See exhibit 9.

<sup>3</sup> His curriculum vitae was made exhibit 1C.

export and store prohibited firearms and weapons. Mr. Cornblum is a licenced gunsmith and is licenced to possess prohibited firearms. In Mr. Cornblum's opinion, a safe is a metal-sided cabinet that locks. He referred to a definition of "safe" from Black's Law Dictionary cited in an article on "Safe and Legal Storage of Non-restricted Firearms" from the National Firearms Association on the Great Canadian Sportsman website.<sup>4</sup> The definition describes a safe as a "metal container for the storage of valuables". On this basis, Mr. Cornblum testified that he believes the defendant's gun lockers are safes. Mr. Cornblum has not been to the defendant's residence; his opinion is premised on a view of the photographs made exhibits in the case, as well as an examination of other photographs that were not made evidence at the trial.

## B. STATUTORY INTERPRETATION

[14] The word "safe" is not defined in the *Storage, Display, Transportation and Handling of Firearms by Individuals Regulations*, the *Firearms Act* or in the *Criminal Code*. The approach to be followed in such circumstances is described by the Supreme Court of Canada in *R. v. C.D.*; *R. v. C.D.K.*, [2005] S.C.J. № 79 at ¶27:

In order to determine the meaning of an undefined term in a statute, it is now well established that a court is to read the words making up the term "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"....  
[citations omitted]

[15] The dictionary definitions of "safe" generally describe the noun as a "strong container, usually of metal, and provided with a secure lock for storing valuables": see *Black's Law Dictionary*, 5<sup>th</sup> edition; *Dictionary.com*, <http://dictionary.reference.com/browse/safe>; *Webster's New World Dictionary*, 2<sup>nd</sup> College edition; *Free Online Dictionary*, <http://thefreedictionary.com/safe>. In some dictionaries, the definition of "safe" also includes the quality of being fireproof: see, for example, *The New Shorter Oxford English Dictionary* (1993); *Oxford Dictionaries Online*, <http://oxforddictionaries.com/definition/safe>.

[16] Within the context of section 7 itself, it is apparent that Parliament considered a "safe ... that is securely locked" to be a more secure method of storage than a "container or receptacle ... that is kept securely locked and is constructed so that it cannot be readily broken into or open". This is evident from the fact that the guns stored pursuant to section 7(b)(i) must be rendered inoperable by a secure locking device, whereas the firearms stored in accordance with section 7(b)(ii) have no such requirement. Moreover, containers and receptacles may be constructed of wood or plastic, as opposed to the more durable metal from which a safe is traditionally made.

[17] In *R. v. Hasselwander*, [1993] S.C.J. № 57 at ¶32, the Supreme Court of Canada reflected on the unique dangers posed to the public by prohibited firearms. For the purpose of the storage regulation pertaining to individuals, Parliament appears to have been satisfied that the storage options of a safe, a vault or a specially constructed or modified room were secure choices for the storage of prohibited firearms, without any need for a secure locking device or the removal of a bolt or bolt-carrier. By contrast, businesses may store prohibited firearms, without them being rendered inoperable, in a "securely locked *cabinet*, vault or safe" or a "securely locked *location*", provided the business has an electronic burglar alarm and its windows and

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<sup>4</sup> See exhibit 8.

exterior doors are securely locked: see section 6 of the *Storage, Display and Transportation of Firearms and Other Weapons by Business Regulations*, SOR/98-210.

[18] Parliament's purpose in enacting the firearms legislation was to restrict the possession of potentially dangerous weapons to properly licenced individuals and businesses, for the safety of the public. The storage regulations are designed to ensure that inappropriate persons, such as children, emotionally distressed or violent individuals, do not have ready access to firearms that could harm them or others: see *Reference re: Firearms Act*, [2000] S.C.J. № 31 at ¶¶22-24, 57. In addition, where prohibited firearms are involved, collectors are "attractive targets for thieves" who intend to use the guns or sell them to others, thereby endangering the community: see *R. v. Hasselwander*, *supra* at ¶40.

[19] Even where a gun storage unit is described as a "safe", there may be considerable variations in its characteristics, including size, weight, wall thickness, the location of the hinges, the nature of the locking mechanism and resistance to water or fire: see, for example, exhibits 3A, 3B, 7A, 7B, 10, 11, 13. Unlike jurisdictions such as California,<sup>5</sup> Parliament has not chosen to designate minimum standards for gun safes or certify certain types of safes as meeting the regulatory requirements.

[20] The concerns expressed by Mr. Press about the vulnerability of gun storage units, such as those belonging to Mr. Barnes, to bolts cutters, sledge hammers and other methods of forced entry are understandable. Yet, Mr. Cornblum's observation, that given time and the right degree of skill, all safes are vulnerable to being broken into, is a valid one.

[21] Since a breach of the regulation leads to a criminal charge, there must be a discernable standard for licensed individuals to meet in storing automatic firearms: see *R. v. Smillie*, *supra* at ¶35. In my view, an interpretation of the word "safe" in its ordinary, dictionary meaning of a metal container with a secure lock is consistent with the objectives of the legislation and the intent of Parliament.

[22] I find that the cabinets in which the defendant's prohibited firearms were stored fall within the definition of a safe. Both of the lockers in which the prohibited firearms were stored were made of steel. Each cabinet was securely locked: one by a key and a padlock; the other by a locking system that uses a key to unbolt rods in the door from the frame of the unit. Indeed, despite their disagreement on other issues, the Crown and the defence expert both accepted that the units were securely locked. The Crown has not proven beyond a reasonable doubt that there was non-compliance with the regulation. The charges are dismissed.

### **THE SECTION 117.05 HEARING**

[23] In a hearing pursuant to section 117.05 of the *Criminal Code*, the Crown applicant must establish on a balance of probabilities that possession of the weapons seized from Mr. Barnes' residence "is not desirable in the interests of the safety of the person from whom the thing was seized or of any other person". Hearsay evidence may be adduced in the hearing. A determination of the sufficiency of all relevant evidence relied upon to support a forfeiture order is to be made as of the date of the hearing, rather than the date the application was commenced: *R. v. Peacock-McDonald*, [2007] O.J. № 712 (C.A.). In Ontario, it is well established that the court hearing the application does not need to be satisfied that the respondent will, in fact, use

<sup>5</sup> See <http://www.ag.ca.gov/firearms/fdscertlist.htm> and <http://www.ag.ca.gov/firearms/gunsafe.htm>.

the weapons to cause harm to a person. It is sufficient that there be a legitimate concern that the respondent lacks the responsibility and discipline the law requires of gun owners: *R. v. Biscope*, [2001] O.J. № 628 (S.C.); *R. v. Shannon*, [2005] O.J. № 1653 (S.C.); *R. v. Day*, [2006] O.J. № 3187 (S.C.); *R. v. Bokhari*, [2009] O.J. № 5975 (C.J.); *R. v. Davidson*, [2011] O.J. № 1199 (S.C.).

#### A. JURISDICTION

[24] As indicated earlier, the prohibited firearms involved in these charges, together with other firearms and weapons were seized from the defendant's residence pursuant to a warrant issued under section 117.04 of the *Criminal Code*. Section 117.04(3) requires a peace officer executing the warrant to make a return to a justice, listing the items seized and the date the warrant was executed. Within 30 days of the seizure, the officer must make an application for an order for the disposition of the weapons seized before a justice and a hearing date is to be fixed: section 117.05(1). Where such an application is not made within 30 days after the execution of the warrant, section 117.06(1) states that the seized property is to be returned to the person from whom it was taken.

[25] In this case, Mr. Press and Constable Rossel were directed to make an inventory of the guns seized from the defendant's bedroom, in which they identified each gun and where it was stored in the room. After paperwork was prepared for each seized item, the gun was placed in a separate cardboard box. The individual guns were, initially, left in their soft-sided gun cases and packaged with the gun rug. However, there were bedbugs in the bedroom, which led the police to stop transporting the guns with the gun rugs. The guns were taken by van to the Guns and Gangs Unit of the Toronto Police Service, to be tested, stored and for the completion of the inventory. According to the officers, the main floor of the facility, including the vault and test area became infested with bedbugs that were transported in the gun cases. The secure vault where the firearms were stored was sealed off during the infestation and could not be accessed until after several visits from a pest control company.

[26] It is acknowledged that an inventory was not made to a justice, nor was an application made for an order for a disposal of the weapons made within 30 days of the execution of the warrant. Ms. Pancer has also conceded that the defendant's seized property was not returned as required by section 117.06 when the 30 day deadline was not met. However, Michael Press testified that the police subsequently obtained another section 117.04 warrant, which was executed at the Guns and Gangs Unit to re seize the defendant's weapons. A return was made to a justice and an application was filed within 30 days from the execution of the new warrant.

[27] Mr. Costa has submitted that the conduct of the police has failed to meet the requirements of section 117.05. He raised concerns about why an inventory could not have been made within the 30 day period following execution of the warrant at Mr. Barnes' home based upon the paperwork done at the residence and the fact that all of the defendant's firearms were registered. Defence counsel has also questioned the apparent delay on the part of the authorities in having the police premises fumigated. While these issues might have been relevant had a *Charter* application been pursued, I do not see them as bearing on the jurisdiction of the court to deal with this matter. This proceeding is founded on the warrant executed at the Guns and Gangs vault, following which there was compliance with the statutory requirements. No challenge has been made to the validity of this warrant.

[28] Mr. Costa relies on *R. v. Morgosh*, [2002] O.J. № 2421 (C.J.) in support of his argument. In that case, a proper return was filed and a notice of hearing was issued. However, due to an administrative error, the court file went missing and the application was not dealt with on the scheduled hearing date. The police obtained a second notice of hearing from a justice, but it was made outside of the 30 day period. Megginson J. held that jurisdiction was lost on the day the application was scheduled for hearing and no action was taken by the court. He concluded that seeking a new notice of hearing did not cure the jurisdictional error. Significantly, Justice Megginson found that “the only option open to the peace officer was to ‘start again’”, noting that if the police saw fit to re seize the respondent’s firearms, a warrant under section 117.04 would be required.

[29] In this case, the police did just what had been recommended in *R. v. Morgosh*, *supra* at ¶10-11. I am satisfied that there is jurisdiction to deal with this application.

## **B. THE EVIDENCE**

[30] Mr. Barnes is 76 years old. He has lived in the North York area for 43 years and at his present address for the past 10 years. The respondent has a colourful and gregarious personality. Mr. Barnes often goes by his childhood nickname, Johnny Sombrero. He is well known in his neighbourhood and, in particular, in his “very quiet” apartment building.

[31] Mr. Barnes has experienced some health problems. He is a diabetic. Three years ago he underwent triple bypass surgery and was hospitalized for 27 days. Several months later, the respondent developed a staph infection that necessitated another hospital visit. In 2010, Mr. Barnes spent six days in the hospital for fluid in his lungs.

[32] The respondent has been a gun collector for about 50 years. He is a regular participant in gun shows, which sometimes involve overnights stays outside of the city. It was through Mr. Barnes’ involvement in gun shows that he became acquainted with Richard Cornblum in 1978. Mr. Cornblum describes the respondent as a passionate collector of valuable historical weapons, who enjoys sharing his knowledge with others. According to Mr. Cornblum, Mr. Barnes is scrupulous about firearms safety.

[33] The respondent is the leader of the Black Diamond Riders Motorcycle Club (BDR). He is the last of the group of 14 men who founded the club in 1950. Within the club, Mr. Barnes is affectionately known as the ‘Supreme Commander’ – a reference to the position held by General Eisenhower during World War II. The respondent is proud of his involvement in the club: he wears clothing and jewellery bearing the club logo; he carries a business card with the club name and his nickname, Johnny Sombrero, on it; and his car has a sticker with the club logo on it. Apart from a passing reference to fights among motorcycle clubs in the 1950s, the only evidence put before me connecting the BDR to any form of violence was an incident in 1992, where members of the Satan’s Choice shot Mr. Barnes in the face. At the time, the respondent and his companions were unarmed.

[34] On December 7, 2009 Constables Gill and Weeks noticed a vehicle that failed to stop at a stop sign. They followed the car and stopped it at the rear of an apartment building. Mr. Barnes was the driver. The respondent was cooperative and friendly when dealing with the officers. Constable Gill exercised his discretion not to issue a certificate of offence and simply warned Mr. Barnes about the driving infraction. Both officers testified that the respondent described himself as the Supreme Commander of the BDR during conversation with them and

showed them a business card with the name Johnny Sombrero. In addition, Constable Weeks stated that Mr. Barnes made a number of comments he considered unusual. The respondent mentioned that he had a number of guns upstairs in his residence. Mr. Barnes also said that the BDR are WASPS that fight for their country against all enemies foreign and domestic and that they had trained police services and the military in firearms use. The officer filed a Field Information Report about the contact and flagged it for the attention of the Biker Enforcement Unit.

[35] During his testimony, Mr. Barnes denied telling the two officers that he was the Supreme Commander of the BDR. According to the respondent, the police have put this information on CPIC. The comments that Constable Weeks attributed to Mr. Barnes were not put to the respondent during cross-examination.<sup>6</sup>

[36] Although the warrant and way in which it was executed were not challenged by way of a *Charter* application, Mr. Costa alleged that the police mistreated his client during the time they were in his residence. This was advanced as an issue bearing on the assessment of credibility. It is common ground that the police contacted Mr. Barnes and, as a ruse to get him to open the door of his apartment, told him that someone was breaking into his vehicle. Although he was sceptical about the validity of this information, the respondent got dressed and opened the apartment door. As soon as the door was ajar, officers entered into the residence. It is at this point that the accounts of the events significantly diverge.

[37] Mr. Barnes testified that Michael Press was the first officer to enter the apartment. According to the respondent, Mr. Press grabbed him by the throat with both hands and drove him backwards. Mr. Barnes fell onto his back with Press on top of him, causing two of his ribs to break. The respondent was grabbed his arms, which were twisted backward. One officer bent Mr. Barnes' index finger backward, damaging it so that it hurt for months. The respondent was "plunked" into a dining room chair and held with a gun pointed at his head for several hours. He was not able to take his insulin.

[38] Mr. Press, Constable Rossel and Detective Rabbito all testified that Rossel was the first officer to enter the residence, followed by Press and Rabbito. Constable Rossel was carrying a long gun and ordered Mr. Barnes to get on the floor. There were discrepancies in the officer's evidence as to the respondent's position of the floor. Detective Rabbito and Mr. Press testified that Mr. Barnes was helped up from the floor. They denied that he was physically mistreated. Detective Rabbito confirmed with the respondent that he had taken his insulin and offered him food to eat. The detective denied that Mr. Barnes was held at gunpoint. Indeed, the officer testified that Mr. Barnes was given the opportunity to leave the apartment and to be called when the search of the premises was complete but the respondent chose to remain in his residence.

[39] It was agreed that Detective Rabbito and Mr. Barnes talked about the BDR for several hours while the warrant was being executed. According to the detective, at one point during the conversation the respondent stated that the police were weakening the club by taking his guns.

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<sup>6</sup> Counsel had agreed that the evidence led in the trial would be attributed to the section 117.05 hearing. Mr. Barnes testified during the trial. Constable Weeks, Constable Gill and Detective Rabbito gave their evidence during the course of the s.117.05 hearing, after the respondent's testimony.

C. ANALYSIS

[40] It is the Crown's position that forfeiture of the respondent's weapons should be granted due to the cumulative effect of three factors:

- Mr. Barnes is a senior citizen whose health has caused him to spend significant periods of time in hospital. In addition, he regularly travels to gun shows, which can lead to him being away from his home overnight. As the respondent lives alone, his weapons are unattended during these periods when intruders could gain access to his firearms.
- Due to his long-time residence in his neighbourhood and his position as the leader of the Black Diamond Riders, Mr. Barnes has gained some notoriety. The respondent's contact with the media during his trial has also made public his possession of a large number of firearms. This increases the likelihood that Mr. Barnes' gun collection will become a target for thieves.
- The comments made by the respondent to Constable Weekes and Detective Rabbito and his inaccurate recounting of the events involved in the execution of the warrant raise concerns about his attitude and perceptions.

[41] I accept that there are always concerns about the vulnerability of a large gun collection, especially one involving automatic firearms, in an urban environment when the owner is away from the residence. Indeed, during Mr. Costa's submissions, he commented that it might be prudent if the respondent supplemented his present security measures by installing an alarm system. Although this is a wise suggestion, I have found that Mr. Barnes' firearms are stored in a manner that complies with the regulations and, as described in the evidence, he has taken some additional precautions to enhance their security. Detective Rabbito testified that he was not aware of any issues involving the police in Mr. Barnes' building since the warrant was executed or in the 10 years preceding its execution. Mr. Barnes has been a gun collector for roughly 50 years without the loss or theft of his firearms or any other incidents involving his weapons. Further, in a quiet building where the respondent is well known, one might anticipate that the neighbours would notice strangers in the area of Mr. Barnes' apartment. In the event that Mr. Barnes becomes ill for a significant period of time, he also has the option of asking his friend, Richard Cornblum, to store his firearms – something that Mr. Cornblum testified he has done for others.

[42] With respect to the comments the officers describe Mr. Barnes making to them, I believe that they were said. Given Mr. Barnes' belief that the police had put information about him being the Supreme Commander of the BRD on CPIC, it seems plausible that he would describe himself in this fashion when speaking with Constables Weeks and Gill. I do not find it unusual that Mr. Barnes would mention his ownership of guns to Officer Weeks. It would be reasonable for him to believe that this information was also on CPIC.

[43] I give little weight to the other unusual comments attributed to Mr. Barnes. Since they were not put to the respondent in cross-examination, he had no opportunity to respond to or provide an explanation for a factor that is being raised in support of the forfeiture order: see *R. v. Giroux*, [2006] O.J. No 1375 (C.A.). The possibility that the utterances were misunderstood,

misinterpreted or were not intended to be taken seriously cannot be excluded. In any event, even if the unusual comments are taken at face value, I am not persuaded that they are sufficient to raise legitimate concerns that Mr. Barnes lacked the responsibility and discipline the law requires of gun owners.

[44] In relation to the events at Mr. Barnes' apartment when the warrant was executed, I am satisfied that the respondent was startled and frightened by the abrupt entry of the police into his home and that he fell backwards to the floor. I find that Mr. Press and Detective Rabbito were mistaken about Mr. Barnes' position on the floor – a sign of human frailty in a swiftly moving situation.

[45] I do not believe Mr. Barnes' account of being mistreated by the police. My reasons for this conclusion are as follows:

- The respondent's insistence that Mr. Press was the first officer through the door is contradicted by the three police witnesses. More importantly, it is highly unlikely that a civilian employee of the police, who is not permitted to carry a firearm, would be the first to enter a residence where a public safety warrant involving numerous firearms was being executed;
- Mr. Barnes' evidence regarding his medication was contradictory. In examination-in-chief the respondent said that he did not get his insulin. During cross-examination, Mr. Barnes admitted that he did not remember if he had taken his insulin, but that he usually takes it at 11:00 a.m. and that the police did not arrive until 11:20 a.m.;
- The respondent's claim that he had a gun pointed at his head for hours is implausible. Mr. Barnes was being watched over by the younger and far larger Detective Rabbito, while other officers were in the apartment. The detective considered Mr. Barnes to be a low level threat. The respondent was cooperative with the police. It seems incredible that the police would bother to point a gun at Mr. Barnes while he was having a conversation with the detective; and
- Mr. Barnes' conduct is inconsistent with that of a person who was physically abused by police. He made no complaint about the alleged misconduct. No *Charter* application was made seeking a stay of proceedings due to the abuse. No medical evidence was tendered to confirm his version of events.

[46] I am concerned about Mr. Barnes' inaccurate characterization of his interaction with the officers. However, this must be assessed in conjunction with all of the other evidence. Harry Barnes has been a licenced gun owner and collector for 50 years. He is known for his careful compliance with firearms safety. There has been no evidence of any violation of the firearms legislation. There is no suggestion of any psychiatric condition, mental disorder or suicidal thinking. Significantly, Mr. Barnes' actual conduct in dealing with the police was described as polite and cooperative.

[47] Assessed in the context of the evidence as a whole, I find that the Crown has not shown on a balance of probabilities that it is not desirable in the interests of the safety of Mr.

Barnes or any other person that he should possess any firearm. Accordingly, the application is dismissed.

**Released: June 24, 2011**

Signed: "Justice Carol Brewer"