

**ONTARIO COURT (PROVINCIAL DIVISION)****HER MAJESTY THE QUEEN**

v.

**STEPHEN ALLAN HARRIS****JUDGMENT****BEFORE THE HONOURABLE JUDGE G.F.W. INRIG****On January 18, 2000, at Bracebridge****Appearances:****Counsel for the Crown  
Counsel for the accused****Kenneth Anthony  
Calvin Martin, Q.C.****REGINA V. HARRIS: In the Ontario Court of Justice, Bracebridge,  
Ontario.**

Before dealing with the Charges before this Court, I wish to make some introductory remarks.

**Firstly: This matter was originally scheduled for a two-day trial. It developed into a six-day trial. We have heard evidence from eighteen witnesses over these six full days of hearings. It is alleged that the offences occurred on the 6th day of February, 1997. The trial commenced on September 28th, 1998, almost twenty months after the event, and continued September 29th; and December 3rd and 4th, 1998, and January 28th and 29th, 1999. To save time and narrow the issues, the Court requested written submissions. That was a major error on the part of the Court. The transcripts were ordered to be delivered by the end of February, 1999. Written submissions by counsel were to be delivered by March 26th and any Reply was to be delivered by April 15th. The Court then proposed to deliver Judgment on these matters on May 14th, 1999.**

The transcripts were delivered by the end of February and consisted of six volumes totaling 631 pages. As well, there were Exhibits of several documents and a book of 58 photographs and a video tape. Defence submissions were received on April 8th. and consisted of 59 pages of presentation accompanied by 325 pages of reported cases. Problems developed and, with no intention of criticism, the Crown submissions were not received until July 19, 1999 with 11 pages of presentation on the law and the facts; and 117 pages of partial reports from 325 pages of reported cases. It was requested by the Court that any Reply be received by September 1 st, 1999. No Reply was received. The delay in receiving all of the materials occasioned the Court to adjourn, from time to time, the dates set for Judgment in these matters. This statistical information is provided to explain that delay.

**Secondly: I am mindful that there is in Canada at the present time an ongoing very emotional debate over the registration of firearms. There are two camps: those who support the registration of firearms, generally composed of persons who do not own firearms, although there may be some firearm owners who do not oppose registration; and those who oppose registration, generally composed of owners of firearms. They may be described as "The anti-gun camp" and "The pro-gun camp".**

**Society is fully represented in both of these camps. There are Crown Attorneys, Defence Counsel, police and even Judges in BOTH camps. Their viewpoint on firearms is affected accordingly.**

**I do not belong to either camp. I see no valid reason to oppose registration of firearms; but I also acknowledge that those who do register their firearms will be the law-abiding citizens, whereas the criminal element in our society will ignore the registration requirements. The matters before this Court do not involve the registration question.**

**I am not a gun person. During military service, I trained with bren guns, sten guns and military firearms. I do not own a gun and I have never owned a gun. I am not a hunter and I have never been a hunter. I mention this because it was submitted during the trial of the matters before the Court that one of the expert witnesses might be biased in favour of guns. In the opinion of the Court either expert witness may have a bias but that should not affect his expertise with regard to his knowledge of firearms.**

**Now, to proceed with the Charges before the Court:**

**Stephen Allan Harris is charged with six weapons offences. As I deal with each, I will provide a more complete recitation of the charge. But briefly, they are as follows:**

- 1. Possess a prohibited weapon: large capacity magazine.**
- 2. Possess a prohibited weapon: Lakefield Mossberg shot-gun with shortened barrel.**
- 3. Possess a prohibited weapon: a Vickers machine gun.**
- 4. Possess a restricted weapon without registration certificate: Davis Industries handgun.**
- 5. Store a firearm in a careless manner.**
- 6. Store ammunition in a careless manner.**

**The Crown elected to proceed summarily on all counts.**

**Counts Five and Six:**

Dealing firstly with the last two counts on the Information, those alleged to be in contravention of section 86 (2) of the Criminal Code, namely careless storage:

Count Five states: "you did without lawful excuse store a firearm in a careless manner, contrary to the Criminal Code, Section 86 (2)".

Count Six states: "you did without lawful excuse store ammunition in a careless manner, contrary to the Criminal Code, Section 86 (2)"

Section 86 (2) states: "Every one who, without lawful excuse, uses, carries, handles, ships or stores any firearm or ammunition in a careless manner or without reasonable precautions for the safety of other persons is guilty etc. etc."

The section speaks, firstly, "without lawful excuse", secondly, "uses, carries, handles, ships or stores" and thirdly "in a careless manner or without reasonable precautions for the safety of other persons."

There is no evidence to suggest careless use or carrying or handling or shipping. The offence in this matter must rest on the word "stores".

The offence must relate to the time and place of the occurrence of the event. In this case, the offence must relate to the 6th day of February, 1997 at 9:13 a.m. and subsequent relevant time. We are not dealing with sloppy housekeeping. We are dealing with the criminal offence of careless storage of firearms and ammunition.

Constable LePage spoke of the "clutter" in the basement. I believe that "clutter" is the correct description of what the officers found in the basement of the defendant's residence. There were uniforms, helmets, duffle bags, web-equipment, mannequins, radios, and other military equipment and the photographs indicate in a state of clutter. Much testimony dealt with mortars, mortar bombs, aircraft bombs, grenades and a Boys rifle. No charges were laid with regard to these items and it can only be concluded that these items were inert, diffused or the powder had been removed. If that is so, it has nothing to do with careless storage of anything. The defendant could have a hundred grenades lying around, rolling around on the floor, but it in no way assists the court in concluding that there was careless storage of firearms or ammunition..

I am mindful of the cases of loaded firearms that may be a danger within a household, e.g. the loaded rifle in the corner of the farm kitchen, or the loaded handgun at the head of the bed, but we are not dealing with that type of situation. There is no evidence that there were any loaded weapons present at the time of the investigation.

The evidence indicates that the owner of the weapons and ammunition was present on the premises at the time of the investigation. The firearms, of which there were numerous, and the ammunition, of which there were copious quantities, were all contained in the basement of the residence. There is no evidence of any weapons or ammunition being in the other sections of the residence. The basement contained three rooms, one of which was the sleeping quarters for the owner of the weapons which is where the guns were kept, and had a wooden door and a lock. Much of the ammunition was in a second section of the basement which had no door and therefore was not capable of being locked. A third room contained no weapons and no ammunition.

Leonard Mailloux, an officer with the Huntsville Detachment of the Ontario Provincial Police, testified that he was satisfied that the door on Harris' bedroom was adequate. Sandra Harris, the sister of the defendant, testified that on the day in question, she knocked on the door to the defendant's bedroom to advise him of the presence of the investigators. At other times, she said, the door would be locked.

The extent of the quantity of weapons and ammunition would lead logically to the conclusion that the condition in which the firearms and ammunition were found on February 6th, 1997 at and after 9:13 a.m., would be the same condition that existed or would exist both before and after that time and place, but the only time that is material is THAT date and THAT time. Logic would produce a supposition or an assumption, but we do not convict on suppositions or assumptions. There must be concrete evidence of the condition of the storage of the guns and ammunition at other times, and that evidence is not present. And, in any event, the charge is for that date, February 6th, 1997, only.

The Court is concerned about the evidentiary value of the photographic evidence. Constable Roland Scott MacLeod, an Ontario Provincial Police constable, testified that he was called about 9:30 a.m. on the day in question, to come from Barrie to Huntsville to photograph evidence. He arrived around 12:00 noon and was present until 8:30 p.m. The officers executing the Warrant had been present from 9:13 a.m. Constable MacLeod stated that items were being moved around as he took pictures. These were being moved by the members of the Provincial Weapons Enforcement Unit, which was the unit of the Ontario Provincial Police executing the Warrant.

He stated (at page 76/Vol. 1, line 16)

"Some of the ones that were moved just for the ease of taking a photo to record what was there. The basement was extremely cluttered".

Question: "With what?"

Answer: "Military paraphernalia, a lot of what you see before you, as well as clothing, radio -military radio equipment, mannequins dressed in military

uniforms, military rations. All manners and types military paraphernalia were in the basement. In order to get -- for ease of a proper picture some things were moved around, yes".

On page 75/Vol. 1, line 20, he was asked:

Question: "Okay, of the pictures in which there seems to be ammunition and firearms, what rooms were they found in by you?"

Answer: "The majority -- if I remember correctly, the majority of the, of the ammunition, the magazines, the majority of them, I believe, were found in what I would -- what I called the storage room".

On page 79/Vol. 1, line 3: "... I went downstairs and took I think enough photos to illustrate what was in the basement and where the majority of them were."

Question: "... there wasn't any pretense at all by Sergeant Shadgett or anybody that you were taking pictures of the rooms as they appeared when the officers first came into them in the morning?"

Answer: "Certainly not. I got there at least three and a half hours or two and a half hours after they entered the residence".

Question: "So as far as you know a lot of the items were piled out there from wherever they'd been before, moved by the officers".

Answer: "It's possible that some items had been moved, yes."

Question: "In fact, they moved some items in your presence, didn't they, so you could take better pictures of them?"

Answer: "That's right".

Question: "So you never were told or got the idea that you were walking into a place to show what it looked like before anyone touched anything."

Answer: "I never had that feeling, no."

Question: "No. You had the feeling that the officers had been taking stuff out from whenever they got there until whenever you got there."

Answer: "As I said, some things -- a few, a few weapons had been moved, yes. There were many others lying out, in the open".

Since Constable MacLeod did not arrive until 12:00 noon, how he found the items is of little value since the team had moved things around. Where the majority of anything was located when the investigation took place, he could

not say. He found some things "lying about" but when they were so placed, he could not say.

The photographer acknowledged that items were moved and assembled in other locations to more clearly display the items found at the scene. In the opinion of the Court, this constitutes fabrication of the evidence. The photos showing a number of items on the bed are photos taken after those items were placed on the bed. The items were not on the bed at the time that investigators entered the room. Likewise, items were assembled on the floor. This was not their original location. Firearms were removed from cabinets to better display the type of weapon. What does this prove? Only that those items were in existence at the scene. It does not indicate how they were kept prior to photos being taken. It does not assist in the establishment of careless storage.

The quantity of weapons and quantity of ammunition is not important. What is important is how they were stored. And neither the photographs, nor the videotape, provide that information since the evidence has been tampered with.

It is interesting to note, however, that some cabinets and a safe had to be opened for him to take the photos and on one occasion he mentioned that the defendant had difficulty locating the key to open the safe. This certainly indicates that many of the firearms were stored in cabinets. The photos and the video do show that there were a number of metal cabinets and wooden boxes present.

The defendant testified that the ammunition was stored in hard-wood boxes and the guns in cabinets. And where guns were on racks, they were normally secured with a cable through the trigger mechanism. The photos disclose that cable was present.

The defendant testified that he had released the guns in order to catalogue them and had been working most of the night doing so. The Crown was somewhat skeptical that the defendant, being unemployed, would work throughout the night to catalogue his guns when he would have the day-time to do so. I, as a Per Diem Justice, do not preside in Court every day, but it is not unusual for me to work well into the night in preparing a Judgment, even though I may have the next day to do so.

The Court was referred to the decision in Regina v. Tsui, a decision of the Ontario Court of Justice (General Division) as it then was, now the Superior Court of Justice. In that decision, Mr. Justice Jarvis stated that "the situation depicted on the videotape and observed by the officers is clear violation of the standards imposed and to argue that at the moment of discovery these items were not "stored" is circular and self-serving."

The Tsui case can be distinguished on the facts. The circumstances in that case are in no way similar to the present case. And this Court does not

concur in the remarks of Mr. Justice Jarvis that "to argue that at the moment of discovery these items were not "stored" is circular and self-serving".

An owner has the right to handle his property and work with it. He can have his weapons present, unchained, and uncased, and unlocked, and for whatever purpose he wishes. He may wish to catalogue it, to clean it, to examine it, to play with it, to admire it. He may do as he wishes with it, so long as he is present. And he may also have his ammunition in any condition that he chooses, so long as he is present. The important factor is that he be present when his collection is not secured. And all of the weapons found and all of the ammunition found were in the presence of the defendant. There is no regulation that requires the owner to display or work with or catalogue one gun at a time. If he chooses to have all of his firearms uncased and unlocked in order to perform whatever duties he wishes, that is his prerogative. It was suggested that the owner may have been asleep. I am not only not satisfied that that conclusion can be reached, but whether asleep or awake, the property was in that condition when he was present. No carelessness was established by the evidence at the time that the investigation took place when the owner was present. In the opinion of this Court, the owner had lawful excuse to have his firearms and ammunition as it was found because he was present on that occasion.

If Parliament wishes to outlaw the possession of all firearms, let it do so clearly and unequivocally. If Parliament wishes to only regulate firearms, then the definition of "storage" is important. Just as the general public have rights to be secure from improper storage of firearms, so too, the gun owners also have their rights to work with their collection..

Should it be suggested that there could never be a successful prosecution for careless storage, the investigators should have waited until they knew that the defendant was not present in the residence and then executed their Warrant. They would then have had evidence of the manner in which the defendant stored his firearms and ammunition when he was not present. As it is, there is no evidence of the manner in which the defendant stores his firearms and ammunition since he was present at the time of the investigation and has the right to have his collection open and available for his own pleasure.

It is also to be noted that the residence was protected by a security alarm system. It was noted that the location of the defendant's residence would be at least fifteen minutes away from the Huntsville Detachment of the Ontario Provincial Police. The law is not clear as to what extent an owner must go to adequately store his property to ensure "the safety of other persons" It would seem that security-minded persons place great emphasis on the need to place a chain or cable through the trigger-guard of rifles. Chains and cables can be easily broken or cut.

Consider a break-in of a residence with no security system. The owner might be vacationing in Florida. It might very well be the case that upon returning from Florida the break-in would be discovered and the police notified. If there were guns there and the chains had been cut, it might be weeks or even months before the police would know that those guns were out in the community.

With the security system that the defendant had, the police would know immediately of the break-in and within fifteen minutes, would either have the thieves arrested, or would know that the guns were out in the community.

Mr. Harris had metal cabinets, and cable for his firearms. He had them in a locked room, the door of which at least one Constable considered to be adequate. He had his ammunition in wooden boxes. He had a security system for his home. In the opinion of the Court, the defendant had far better security arrangements than most gun collectors. Counts 5 and 6 are dismissed.

**Count Three:**

Count Three reads: "On or about the 6th day of February, 1997, at the District of Muskoka in the said region, you did have in your possession a prohibited weapon, to wit, a Vickers machine gun, contrary to the Criminal Code, Section 90 (1)".

s. 90 (1) of the Criminal Code states the offence.

The definition of "a prohibited weapon" is contained in s. 84 of the Code and states:

... "any firearm that is capable of, or assembled or designed and manufactured with the capacity of, firing projectiles in rapid succession during one pressure of the trigger, whether or not it has been altered to fire only one projectile with one such pressure."

The evidence disclosed that the defendant had in his possession two partial Vickers Machine Guns. These are Exhibits Five and Six. The firearms expert, Yves Quevillon, from the Central Forensic Laboratory for the Royal Canadian Mounted Police in Ottawa, referred to Exhibit Five as "item three" and Exhibit Six as "item four".

Mr. Ouevillon stated that, depending on one's status, it was legally possible to possess a Vickers Machine Gun in Canada. He was asked about the legality of these items and on other occasions was asked about the legality of other items, but declined to give an answer to such questions, stating that his expertise was in the mechanical condition of the items.

The defendant had registration papers for one of the Vicker Machine Guns, Exhibit Six (item 4).

On page 43, Quevillon stated: " ...both Vickers are designed and manufactured with the capacity of firing projectile in rapid succession during one pressure of the trigger, but in this case both contain parts which were added or modified in order to alter them to fire only one projectile during one pressure of the trigger".

However, he went on to say, on page 44: "in the condition I examined them they were not functional because they were missing parts and my conclusion is that ... in order to return them to their original capacity you would ... have to acquire the necessary parts, replace those parts using normal hand tools. It would take probably less than five minutes to replace the parts to return them to their original capacity".

It is to be remembered that this is a firearms expert testifying.

On page 50, he was asked if he did any mechanical conditioning regarding the machine gun. He replied:

"I did. Like I said, both are missing parts and they have parts which have been modified in order to convert them to semi-automatic fire only. The Vickers, which I numbered item three, I was able to make it fire in semi-automatic using a part from the second Vickers, the one which I numbered four in my report. So number three I was able to fire using a part from number four. It fired in semi-automatic mode. Number four, I was not able to fire because I did not have the part, the missing parts."

Since there were sufficient parts to make item three fire, it must be concluded that there were sufficient parts to make item four fire. He obviously did not take enough parts from item three to make item four fireable. Had he done so, then item four would have been the fireable firearm and it is the one that has been registered.

It is, again, interesting to note that the search that was made at the request of the Provincial Weapons Enforcement Unit of the Ontario Provincial Police by Sgt. Michael Foran of the Firearms Registration and Administration Section of the Royal Canadian Mounted Police was for a Vicker's Machine Gun, serial no. D 258, O 258 and Zero 258, the concern being the distinctiveness of the letter, was it a "D" or "O" or "Zero". This was the serial number for the unregistered partial Vickers machine gun. There is no indication of a search being made for the other Vickers Machine Gun. But the evidence is that the one partial machine gun was registered.

And asked as to the mechanical condition: at page 51, he said: "Well, once I placed the part on it, it was functional. I don't want to say it was in good mechanical condition cause it's not -- it is not using the standard parts. Like, as I said, parts have been modified, but it was functional. I was able to fire it. It fired in semi-automatic mode."

We are concerned about a "prohibited firearm" which is capable of "firing projectiles in rapid succession during one pressure of the trigger". Of course, there is the added phrase in the section about alteration to fire only one projectile.

Mr. Justice Cory in Regina v. Hasselwander 81 C.C.C. (3rd) 471 at page 480 stated:

"it is clear that "capable" does in fact include a potential for conversion. It is then fair and reasonable to interpret the definition of prohibited weapon as including a gun that has the potential to be readily converted to a fully automatic weapon."

However, there must be a distinction between an assembled Vickers Machine Gun that has been altered to fire one projectile, and is capable of being readily converted to a fully automatic weapon, and a quantity of parts which when assembled by an expert will produce a firearm that will fire one projectile with one pressure of the trigger. The expert was able to produce, from the parts available, a firearm that would fire one projectile at one pressure of the trigger. He was never able to produce a firearm that would fire projectiles in rapid succession during one pressure of the trigger. And at no time, did he ever testify that he could convert the semi-automatic weapon that he produced by putting the parts together into an automatic weapon.

Surely, the paragraph (c) of "prohibited weapon" as defined in s. 84 of the Criminal Code refers to the firearm that has been altered to fire one projectile, and is easily capable of being restored to the original as manufactured, to fire a succession of projectiles with the one pressure of the trigger. And the firearms expert was not able to do that. He was only able to restore these items to produce a firearm that fired one projectile with one pressure of the trigger.

If Parliament intends to restrict the possession of any part of such a weapon, it should clearly say so. When parts are missing, or when the owner thereof is not an expert, to suggest that parts might be available elsewhere, or a knowledgeable person might be found to perform the mechanical adaptation, is too wide an extension of the section. And in this Court's opinion, this is a matter for Parliament, not the courts.

Notwithstanding the evidence of the firearms expert, no evidence was adduced that the defendant, at any time, had taken the parts of the one gun to incorporate into the other machine gun so as to produce a complete weapon. There was no evidence that the defendant had ever done so, ever intended to do so, nor had the necessary knowledge to do so. And it is clear from the evidence of the expert that these parts could not be made into a "prohibited weapon capable of firing a rapid succession of projectiles with one pressure of the trigger".

Having all of the parts to a prohibited weapon does not constitute possession of the weapon itself. One can learn from the inter-net or web, how to make a firearm from a fountain pen. Many "science" magazines give detailed instructions and plans on how to construct a firearm from household items. Surely, it is only when that act has taken place, can it be said that the person has possession of the firearm, whether prohibited or restricted or not.

I am not satisfied beyond a reasonable doubt that the defendant had possession of a prohibited weapon in the form of a Vickers Machine Gun that was capable of firing projectiles in rapid succession during one pressure of the trigger.

Count three is dismissed.

Count Two:

Count Two states: "you did have in your possession a prohibited weapon, to wit, a Lakefield Mossberg shotgun adapted so that the barrel was less than 459 millimeters in length, contrary to the Criminal Code, section 90(1)".

Section 90(1) contains the offence. "Every one who has in his possession a prohibited weapon is guilty ..." etc. etc.

Section 84 defines "prohibited weapon" and paragraph (d) states: "any firearm adapted from a rifle or shotgun, whether by sawing, cutting or other alteration or modification, that, as so adapted, has a barrel that is less than 457 mm in length or that is less than 660 mm in overall length"

The key word in this definition is "adapted". According to the Shorter Oxford English Dictionary, "adapt" means "to alter so as to fit for a new purpose".

A firearm was found in the defendant's possession which, according to the expert witness, Yves Quevillon, "failed on both counts", that is to say, it had a barrel of less than 457 mm. in length and that it was less than 660 mm. in overall length. It is interesting to note that Const. LePage was of the opinion that the overall length was permissible. He stated (page 55/Vol. 2) that he originally measured the entire length of the weapon and "it did not fall within the measurements". He pointed out that at that time he did not measure the barrel by itself.

The question, however, is not whether the weapon was or was not of those lengths, but rather whether it was "adapted" to the length in which it was found.

The evidence of the second expert witness, David Allan Tomlinson, President of the National Firearms Association, is that there are several firearms on the market that are legal to own because they have been manufactured at that length. He acknowledged that had the firearm, Exhibit One, been shortened

by sawing, cutting or other alteration or modification, it would be a prohibited weapon, but if it had been manufactured in that condition, it would not be a prohibited weapon.

The evidence introduced by the Prosecution is that this weapon was sold with two separate barrels, one of 28 inches and one of 24 inches. The 28" barrel had a "vented rib". The one barrel, and there is some confusion in this regard, is called "a deer barrel"; the other was called a "bird barrel". The term "slug barrel" was also used. The witness, a clerk from the Canadian Tire Store in Huntsville, could not identify the barrel that was present on this frame or receiver, the whole of which constituted "Exhibit One", as one of the barrels that was sold with this firearm.

The witness, David Allan Tomlinson, stated that the barrel on Exhibit One was not a vented barrel.

The question is whether the barrel that was a part of Exhibit One had been adapted "by sawing, cutting or other alteration or modification" to arrive at the length thereof.

The expert witness, Yves Quevillon, concluded that the barrel had been altered after manufacture by the fact that there was no bluing at the end. Most manufactured firearms are finished by bluing the material. In the case of Exhibit One, the end of the barrel did not contain any bluing. From this, Quevillon formed the opinion that the gun had been reduced by some means after manufacture. This was the sole evidence that the barrel was not manufactured at that length. Constable Robertson of the Ontario Provincial Police stated to the accused at the time of the investigation that he could see that the barrel had been sawed. Neither of the expert witnesses could give this evidence and they had the opportunity to examine the weapon thoroughly. As stated, the sole evidence that the barrel was not manufactured at that length is the expert witness' conclusion based on the absence of bluing at the muzzle end of the barrel..

The expert, Tomlinson, pointed out that in some jurisdictions, bluing is not requested. The shortened firearm, manufactured to that size, was provided to the military and to police forces in the United States and the bluing was deliberately not applied so that the muzzle of the shotgun would appear to be larger to the person at whom the shotgun is pointed, thereby causing the person at whom the shotgun was pointed to surrender without violence.

The presence or absence of bluing does not conclusively establish the time at which the barrel on Exhibit One was made to its present length. If the barrel was manufactured at that length, it does not constitute a prohibited weapon. If it was reduced to that length following manufacture, it would constitute a prohibited weapon.

In Reply Evidence, the Crown called Joseph Bartozzi, who is Director of Technical Services for "O.F. Mossberg & Sons" gun manufacturers. Mr.

**Bartozzi was emphatic in his denial that the company would produce a weapon like Exhibit One. However, he eventually did agree that guns of a short barrel are manufactured by the company and exported to Canada and may not have any reference on the barrel that the weapon was for the military or police only. Although, Mr. Bartozzi raises some doubts about the barrel, the doubt does not assist the Crown in proving beyond a reasonable doubt that Exhibit One was not manufactured in that form. The Court holds some suspicion in this matter, but as previously stated, we do not convict upon suspicion. I am satisfied that the defence has raised a doubt as to whether Exhibit One was sawed, cut or otherwise altered or modified or whether it was manufactured in that condition. The Prosecution has not established, beyond a reasonable doubt, that Exhibit One is a prohibited weapon. Count Two is dismissed.**

**Count Four:**

**Count Four is possession of a Davis Industries handgun. The charge is worded:**

**"you did have in your possession a restricted weapon, to wit, a Davis Industries handgun, serial number 290426, for which you did not have a registration certificate issued to you, contrary to the Criminal Code, Section 91 (1)".**

**There is no question that the defendant had such a handgun in his possession. Exhibit 4 is a 32 caliber automatic Davis model D-32 derringer pistol. He acknowledged in his testimony that he did not have a registration certificate for this firearm. The evidence also discloses that the defendant is registerable, that is to say, he has been approved on other occasions for the registration of firearms. He has in his possession forty-five restricted weapon registration certificates. It seems most unusual that, having received certificates for the registration of other firearms, he would not have a certificate for the registration of this particular firearm.**

**His explanation is that he received this weapon from a person connected with an Estate, and had no personal interest in it, and intended to surrender it to the Ontario Provincial Police in Huntsville. He stated that he had made arrangements with Constable Terry Jelly, the Registration Officer, at the Huntsville Detachment to attend to register some guns and to de-activate others. However, the blacksmith who assists in de-activating (I think the term "dewatted" was used) the weapons was on holidays and Constable Jelly was about to go on holiday, and so it was arranged that the defendant's attendance with the weapons would take place when the two persons had returned from holidays. The report to Crime Stoppers which brought about this whole investigation and the investigation itself took place in the interim.**

**The Court finds no reason to disbelieve the defendant in this regard. It is not particularly surprising that a person might bring a weapon to the defendant because he is known in the community to be a person who not only owns**

firearms, but he gives lessons on gun safety and handling to the Cadets and puts on displays for the Royal Canadian Legion and assists the Huntsville Detachment of the Ontario Provincial Police in gun matters. He must be well-known as a "gun person" in the community. The officer, Jelly, was not called as a witness for the defence, nor was he called in Reply Evidence. There is no reason to believe that had the defendant wished to have a registration certificate, one would not be forthcoming. The possession of the unregistered firearm may be a strict liability offence but remains a criminal offence and it is the opinion of this Court that "mens rea" should be a factor under the circumstances of this matter. I accept the defendant's explanation.

Count Four is dismissed.

Count One:

The last count before the Court is Count One: namely possession of a large capacity magazine, which is a prohibited weapon.

S. 84 defines "prohibited weapon". Subsection (1) (f) states:

"a large-capacity cartridge magazine prescribed by regulation"

The Regulations were never brought to the attention of the Court. They are not contained in the 1997 edition of Martin's Criminal Code. However, the Regulations are contained in the 2000 edition of Martin's Criminal Code and the Court can only assume that the regulation that was in force in 1997 is the same as that in force in 2000. At page CC/139 of the 2000 edition, it is stated:

"(4) A cartridge magazine described in subsection (1) that has been altered or re-manufactured so that it is not capable of containing more than five or ten cartridges, as the case may be, of the type for which it was originally designed is not a prohibited device as prescribed by that subsection if the modification to the magazine cannot be easily removed and the magazine cannot be easily further altered so that it is so capable of containing more than five or ten cartridges, as the case may be."

The evidence suggests that the magazines that the defendant had in his possession fell within this regulation. The expert witness, Quevillon, stated that he received twenty-one magazines of which seven were altered so that they would not contain more than five cartridges. There were, therefore, at least fourteen magazines that had not been so altered. The defence did not dispute this evidence.

It was pointed out that the magazines in question were items from the Second World War and that they would become valuable artifacts for museums at a later date. It was suggested that public museums tend to discover the value of items after they have ceased to exist or have become scarce and rare. It was suggested that the defendant was performing a service to the community in

**keeping this material for future presentation. I have no hesitation in accepting that.**

**The Court has no hesitation in finding that the defendant is the owner of a private museum. He has collected memorabilia from the Second World War and the Korean War and it is these items that were stored in his basement, including not only firearms and ammunition, but, as has been previously stated, military uniforms from the Second War, web-equipment, helmets, duffle bags, haversacks, water bottles, radios, netting, mortars, mortar bombs, aircraft bombs, grenades (diffused) and many other items. There were mannequins with Second World War uniforms on them. However, his method of display left something to be desired. As stated: it was a clutter.**

**However, the Court cannot take the position that because the defendant holds these items as part of a museum, he is not in contravention of the regulations. There may be available provisions that would allow the defendant to hold certain items as artifacts in a private museum, but those provisions are unknown to the Court.**

**I must find that the defendant is in contravention of the regulations regarding the possession of magazines that will hold more than five cartridges of the type for which they were designed. The Crown has successfully proven beyond a reasonable doubt that this offence has occurred. There will be a finding of guilty to Count One.**

**The usual procedure, now, would be to have the Prosecution and the Defence make submissions as to sentence. I do not propose to do so. If either counsel is disturbed by this, they know their remedy.**

**In the opinion of the Court, Mr. Harris is not a criminal. A Conviction should not be registered. He has breached one of the regulations. As stated, I find that he is a private collector and effectively has a private museum. He provides a service to the community. He lectures on gun safety, puts on displays for the schools and the Royal Canadian Legion. In the opinion of this Court, he is to be complimented for his community service.**

**The question is whether to give Mr. Harris an Absolute Discharge or a Conditional Discharge. His firearms and his ammunition and all other items that have been seized are to be returned to him, including the Second World War revolver that was never presented in evidence to the Court, but excluding the 32 caliber automatic Davis model D-32 derringer pistol which Mr. Harris intended to surrender to the Ontario Provincial Police detachment at Huntsville..**

**I impose upon Mr. Harris a Conditional Discharge for a period of six months. He is to keep the peace and be of good behaviour. He is to organize his museum in a less cluttered condition and he is to render all of his magazines in compliance with the regulations.**