

**COURT OF APPEAL FOR ONTARIO**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**(Appellant)**

**- and -**

**ANTONIO PROVOLONE**

**(Respondent)**

---

**APPELLANT'S / RESPONDENT'S FACTUM**  
**(Select One)**

---

**NAME OF LAW FIRM**  
**Address of law firm**

**Names of Counsel (Include First and Last Names)**  
**Of Counsel for the Appellant / Respondent (select one)**

**Telephone:**

**Fax:**

**Email:**

**PART I:  
INTRODUCTION**

1. This case is about the **[insert a short summary of the main issue raised by this appeal]**.

**PART II:  
SUMMARY OF THE FACTS**

2. On July 7, 2007, Matt's Gas Bar was robbed. A lone attendant was working the midnight shift when a man wearing what was described as a dark blue or black ski mask approached him, pointed what appeared to be a gun and demanded all the money in the register. The attendant was warned not to try to trigger any alarms or resist; otherwise he would be shot. The gas attendant agreed, fearing for his safety. The gunman fled. The incident was recorded on video tape by means of a security camera. This and other robbery prevention devices installed at the gas bar allowed the police to begin an investigation which came to centre upon the accused, Mr. Antonio Provolone.
3. The accused was arrested at his home on De Grassi Street two months later. A search warrant was executed and a bored out replica .357 magnum revolver was recovered in a crawl space at the premises. A forest green ski mask was found amongst winter clothing in a closet. No money was recovered.
4. The accused was granted bail. A two day preliminary inquiry was held before Justice Mozzarella of the Ontario Court of Justice in May of this year. This resulted in the accused being ordered to stand trial on charges including robbery using a firearm, threatening death, possession of a weapon for a purpose dangerous to the public peace and disguise with intent. The most serious of these, the robbery charge, carries a minimum four year prison sentence. The accused was represented by counsel at the preliminary inquiry. Sadly, counsel suffered a heart attack after the preliminary and could not continue with representing the accused.
5. As a result, in July of this year, the Ontario Legal Aid Corporation (OLAC) issued a

new certificate to the accused to allow him to retain new counsel. However, between the time of the illness of previous counsel and the issuance of a new certificate, the Criminal Counsel Association of Ontario (CCAO) called upon its members to enter into a boycott of the legal aid plan to protest what they described as unduly low fees for legal work. The accused appeared unrepresented at trial, expressing his wish to retain a lawyer and explaining that he was unable to get one. The trial judge, Justice Asiago, determined that the matter should proceed if possible.

6. During the trial the accused was unable to articulate any Charter issues, recognize defences, question witnesses or properly present his case. The trial judge felt it unfair to the accused to continue in this situation with the jury that had been selected, finding that the accused was simply not capable of conducting his own defence, even with the limited help the trial judge could give. The trial judge suggested that the jury be excused and the accused bring an application for a court-appointed lawyer and/or a stay.
7. The trial judge appointed amicus curiae to assist in determining whether the trial could proceed. Intervenor status was granted to the OLAC and to the CCAO and the Crown responded. The accused – through amicus – invoked s. 7 and s. 11(d) of the Charter arguing that he had a right to state funded counsel. He sought a remedy under s. 24(1), requesting a stay of all charges if counsel was not appointed at rates set by the court. The Crown responded by invoking s. 32(1) and arguing that the Charter was not engaged on these facts. The Crown also argued, in the alternative, that if the Charter applied, there was no breach of s. 7 or s. 11(d) because the state already provides funding for a legal aid plan. Lastly, the Crown submitted that if a breach of s. 7 or s. 11(d) occurred, this infringement was a reasonable and justifiable limit prescribed by law.
8. The trial judge granted the accused's application and ordered a stay of all charges.

[This is where you will need to summarize the trial judge's decision, by explaining how Justice Asiago decided on each of the four issues. All quotes should be indented and single-spaced, like this

paragraph. All quotes must be referenced immediately after the paragraph, noting the page **or** paragraph number of the quote.]

### **PART III**

#### **GROUNDINGS OF APPEAL**

##### **ISSUE ONE: APPLICATION OF THE CHARTER UNDER S. 32(1)**

9. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

##### **ISSUE TWO: RIGHT TO STATE FUNDED COUNSEL AND FAIR TRIAL RIGHTS UNDER S. 7 & S. 11(D)**

10. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

##### **ISSUE THREE – REASONABLE LIMITS UNDER S. 1**

11. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

##### **ISSUE FOUR – REMEDIES**

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

##### **APPLICATION TO THIS CASE**

13. [Insert a concluding statement, summarizing how the preceding arguments support the

order you have requested.]

**PART IV**  
**ORDER REQUESTED**

14. It is respectfully requested that [Explain what it is that you are requesting – whether you are requesting that the appeal be granted or dismissed.]

**ALL OF WHICH** is respectfully submitted by

\_\_\_\_\_  
**Name of all four counsel**  
Of Counsel for the Appellant/Respondent (**Select One**)

**DATED AT (LOCATION)** this \_\_\_\_<sup>th</sup> Day of (month), (year)

## APPENDIX A

### AUTHORITIES TO BE CITED

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]