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**DEC 22 2014**

**WILLIAM F. PENTNEY /  
Solicitor for  
A.G.C.**

**FEDERAL COURT**

**No. T-2030-13**

FEDERAL COURT  
COUR FÉDÉRALE  
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**BETWEEN:**

**NEIL ALLARD  
TANYA BEEMISH  
DAVID HEBERT  
SHAWN DAVEY**

Date DEC 22 2014  
Registrar  
Greffier

**PLAINTIFFS**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**DEFENDANTS**

**AFFIDAVIT OF SCOTT WILKINS**

I, SCOTT WILKINS, [REDACTED], MAKE OATH AND  
SAY AS FOLLOWS, THAT:

1. My name is Scott Wilkins, and I am a Licensed Insurance Broker at LMG Insurance Brokers, an Insurance Brokerage that specializes in insuring all types of Commercial & Residential properties. Specifically I have been insuring Health Canada Licensed Medical Marijuana Facilities since April 2010. I make this affidavit of my own personal knowledge, information and belief. Where matters are stated to be on information and belief I so indicate and believe them to be true.
2. Now produced and marked as Exhibit "A" to this my Affidavit is my Rebuttal Expert Report.

3. Now produced and marked as Exhibit "B" to this my Affidavit is my Certificate Concerning Code of Conduct for Expert Witnesses.

4. In addition to the material set out in Exhibit "A" I say:

(a) a statement of the issues addressed in the report;

The Report addresses assumptions and alleged risks of producing medical marijuana under license from Health Canada in the MMAR system raised by the Defendant's Expert Reports of Len Garis (October 8, 2014) and Constable Shayne Holmquist (October 9, 2014) and is in rebuttal to those Reports.

(b) a description of the qualifications of the expert on the issues addressed in the report;

I am a Level 2 provincially licensed insurance agent and have been since 1999. I have written policies covering licensed medical marijuana production locations since 2010. In addition, I have communicated directly with underwriters and other insurance professionals on issues related to those addressed in the Report. I have also consulted with various persons, entities and municipalities on issues of risk, risk management and risk assessment related to medical marijuana production.

(c) the expert's current *curriculum vitae* attached to the report as a schedule;

N/A

(d) the facts and assumptions on which the opinions in the report are based; in that regard, a letter of instructions, if any, may be attached to the report as a schedule;

In addition to the material set out in Exhibit A, I base my opinion on personal review of hundreds of insurance applications, insurance industry

information, my personal experiences with underwriters and clients and personal viewing and inspection of licensed medical marijuana locations.

(e) a summary of the opinions expressed;

The risks commonly associated with marijuana production (such as the risk of fire, mold, electrical issues, improper building/renovation/alteration of structures, environmental impact, public health and public safety risks) are not present, or are present at acceptable risk management levels at or below other ordinary uses of property, in medical marijuana facilities operating pursuant to MMAR licensing. Those risks may be present in illegal production settings, but are typically not present in legal settings.

(f) in the case of a report that is provided in response to another expert's report, an indication of the points of agreement and of disagreement with the other expert's opinions;

I disagree with the opinions expressed in the reports of certain of Defendant's experts (in particular and without limitation Defendant's Expert Reports of Len Garis (October 8, 2014) and Constable Shayne Holmquist (October 9, 2014) and is in rebuttal to those Reports) to the extent that those opinions are that lawful medical marijuana production, in residential, commercial and/or agricultural settings, is inherently or unacceptably dangerous. In fact, most of the risks alleged appear to be associated with illegal and unlicensed production, not legal MMAR licensed production.

(g) the reasons for each opinion expressed;

I base my opinions on my personal experience, my communications with insurance applicants, underwriters, tradespeople and other professionals, the data I've collected during my time writing these types of policies and my

personal experience viewing photographs and personally touring licensed medical marijuana production sites.

(h) any literature or other materials specifically relied on in support of the opinions;

N/A

(i) a summary of the methodology used, including any examinations, tests or other investigations on which the expert has relied, including details of the qualifications of the person who carried them out, and whether a representative of any other party was present;

Other than the risk assessment information contained in Exhibit "A", none.

(j) any caveats or qualifications necessary to render the report complete and accurate, including those relating to any insufficiency of data or research and an indication of any matters that fall outside the expert's field of expertise; and

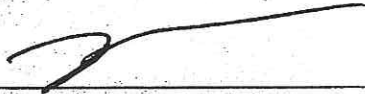
I do not write insurance policies covering unlawful medical marijuana production and therefore have insufficient data to form an opinion on those locations.

(k) particulars of any aspect of the expert's relationship with a party to the proceeding or the subject matter of his or her proposed evidence that might affect his or her duty to the Court.

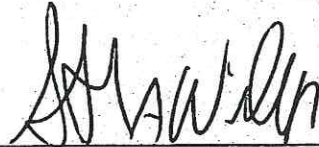
N/A.

5. I swear this Affidavit as an expert rebuttal witness on behalf of the Plaintiffs in this action.

SWORN BEFORE ME at the City )  
Of Duncan, in the Province of )  
British Columbia, this 13<sup>th</sup> day of )  
December, 2014 )



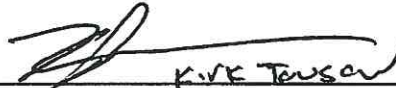
\_\_\_\_\_)  
A Commissioner for Taking Affidavits )  
in and for the Province of )  
British Columbia )  
Kirk Tousaw, Barrister )



\_\_\_\_\_  
SCOTT WILKINS

# EXHIBIT "A"

This is Exhibit "A" referred to in the Affidavit of Scott Wilkins sworn before me at Duncan, BC this 19 day of December, 2014



A commissioner for taking affidavits  
For British Columbia

## **EXHIBIT "A" TO AFFIDAVIT OF SCOTT WILKINS**

### **QUALIFICATIONS:**

I hold a Level 2 Insurance Licence in the Province of British Columbia. I have held a level 2 license since 1999. I specialize in placing hard-to-place Commercial Insurance policies.

### **BACKGROUND:**

As a result of my specialisation with hard-to-place Insurance I was interested to try to assist an individual who approached our agency in early 2010 to insure a Health Canada Licensed Medical Marijuana Facility. The building owner and the tenant had a lease to execute with very specific insurance requirements. The Landlord was not going to allow him to occupy his building without a proper insurance policy. I was able to collect the correct information and impart it to many insurers to see what kind of results I could obtain. It took a month to convince an underwriter to look at it. That same underwriter wrote our first policy covering a Health Canada Licensed Medical Marijuana Facility in early April 2010.

It is now December 2014 and we have been pursuing this class of business and have written over 300 insurance policies insuring residential, commercial & agricultural locations where there is a licenced Health Canada Medical Marijuana facility. Through our specialised work and superior knowledge in this class we have become recognised by the Insurance Industry as the foremost experts on insuring and implementing risk management for Health Canada Licensed Medical Marijuana Facilities.

### **UNDERSTANDING THE RISK**

In order to start to pursue this class we needed to understand the risks involved and determine what controls can be put in place to significantly reduce the risks. To achieve this we use a standard Risk Management Process approach. Below are the key components of this process:

#### **1. Risk Identification**

- Knowledge of exposures through on-site inspections, discussions with growers and patients;
- Review of processes, and contracts;
- Review of historical activities and losses; and
- Identification of possible risk scenarios.

#### **2. Risk Analysis**

- Loss frequency and severity;
- Probability of occurrence;

- Maximum possible loss;
- Maximum probable loss;
- Consequences of loss;
- Possible impact on each stakeholder; and
- Public perception.

### **3. Risk Control**

- Due diligence process;
- Fire protection;
- Crisis and emergency plans;
- Business recovery plans;
- Claims and litigation management;
- Risk communication; and
- Continual monitoring, audits.

### **1. Risk Treatment**

- Contractual transfer;
- Risk retention/deductibles;
- Insurance/self-insurance/no insurance; and
- Alternative risk financing.

By implementing the above we have developed risk management controls that must be in place in order to consider insuring the locations with Health Canada Medical Marijuana Licensed Facilities (both Designated-person Production Licenses (DPL) and Personal-use Production Licenses (PPL)). This risk management process is no different than we would implement with any potential risk, such as a wood working shop on a property. We have developed our own application that is used for all buildings where the growing is done, commercial, agricultural or residential. It is the main application used to capture building underwriting, Health Canada Licensing information – including license expiry date and maximum plant count for the location, a safety and security section, and a “consent of property owner” for landlords to complete for tenant applicants who lease or rent a facility.

We always review with the applicant the gravity of misrepresenting a material fact on an application that can result in a claim denial. We also stress that after any loss the very first thing the adjusters will look into will be to ensure all Health Canada Licensing is current and they are operating within those specific parameters.

The application also confirms the applicant has the appropriate risk controls implemented at the growing location. We have very specific photo requirements in order to properly assess the buildings and electrical installations and the risk overall.



Attached as Schedules 1, 2 and 3 to this Report are examples of photographs and information collected from three of our clients (with identifying information removed for privacy reasons).

### **Electrical System Architecture**

Electrical System questions as they appear in the safety & security section on the application are:

- Has facility been inspected by a licensed electrician? No Yes
- Has the licensed electrician confirmed that the power supply and number of circuits are adequate for your operation? No Yes

If no please explain why:

If a no is answered here we stop and advise the applicant to have a licensed electrician go through installation, to inspect and amend anything that is necessary and to change or upgrade to confirm electrical system is safe, up to Code and that the power supply and number of circuits are adequate for operations. We eliminate writing risks with sub standard electrical installations.

Through the above pre-underwriting and application process we end up with applicants who are compliant with all Health Canada Licensing and have a safe HVAC and electrical system. The end result is clients that understand the insuring process, who are open to risk management and are willing to implement controls to reduce exposure to risk.

We have written policies for residential properties, agricultural properties and commercial properties. We have written policies covering medical production in principal residences (typically basement or attached garage), outbuilding on land with principal residences, and rented/leased residential properties and commercial properties.

### **Loss Ratio & Profitability of Class:**

Because of our continuous involvement in this class we have excellent knowledge of developing trends and as a result have maintained a very low loss ratio and high profitability in our portfolio of policies. A low loss ratio means that very few claims are made in relation to the number of policies written. I explain this in more detail below.

We have written over 300 Insurance policies for Health Canada Medical Marijuana Licensed Facilities since 2010.

The below is a summary of all of the claims we have experienced to date:

**Claim # 1 Commercial building fire – June 2010**

**Cause** – The Owner hired a roofer to install a new torch-on roof. Due to the roofer's negligence a fire was started and caused in excess of \$230,000 damage. Our insurance policies covered the building owner and tenant and repaired the building and contents.

**Result** – Damages were successfully subrogated and recovered from the roofer's insurance company.

**Claim # 2 Sewer back up in residential home – December 2011**

**Cause** – Septic field flooded. The medical garden was in an outbuilding and did not contribute to the loss.

**Result** - The homeowner decided to repair the damage himself because the \$2,500 sewer back up deductible was higher than the necessary repair.

**Claim # 3 Sewer back up in residential home – August 2012**

**Cause** - The drain pipe clogged. The medical garden was in outbuilding and did not contribute to the loss. The home had a finished basement and the homeowner made a claim.

**Result** – Paid approximately \$15,000.

**Claim # 4 Fire in residential home – March 2014**

**Cause** - Unknown ignition – this was a natural fire. The medical garden was in outbuilding and did not contribute to the loss however it (the outbuilding) was damaged during the fire. This claim is being settled now

**Result** – Reserve has been set at \$55,000.

**Claim # 5 Water Escape in residential home – December 2014**

**Cause** - Hot water heater failed and flooded basement. The medical garden was in outbuilding and did not contribute to the loss. The homeowner made a claim.

**Result** – Paid approximately \$8,000.

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**Loss ratio**

A loss ratio is a ratio of losses to gains, used normally in a financial context. For insurance, the loss ratio is the ratio of total losses incurred (paid and reserved) in claims plus adjustment expenses divided by the total premiums earned. For

example, if an insurance company pays \$60 in claims for every \$100 in collected premiums, then its loss ratio is 60% with a profit ratio/gross margin of 40% or \$40. Some portion of the \$40 must also pay all operating costs (things such as overhead and payroll) and what is left is the net profit. Loss ratios for property and casualty insurance (e.g. motor car insurance), range typically from 40% to 60%. Such companies are collecting premiums more than the amount paid in claims. Conversely, insurers that consistently experience high loss ratios may be in bad financial health. They may not be collecting enough premiums to pay claims, expenses, and still make a reasonable profit.

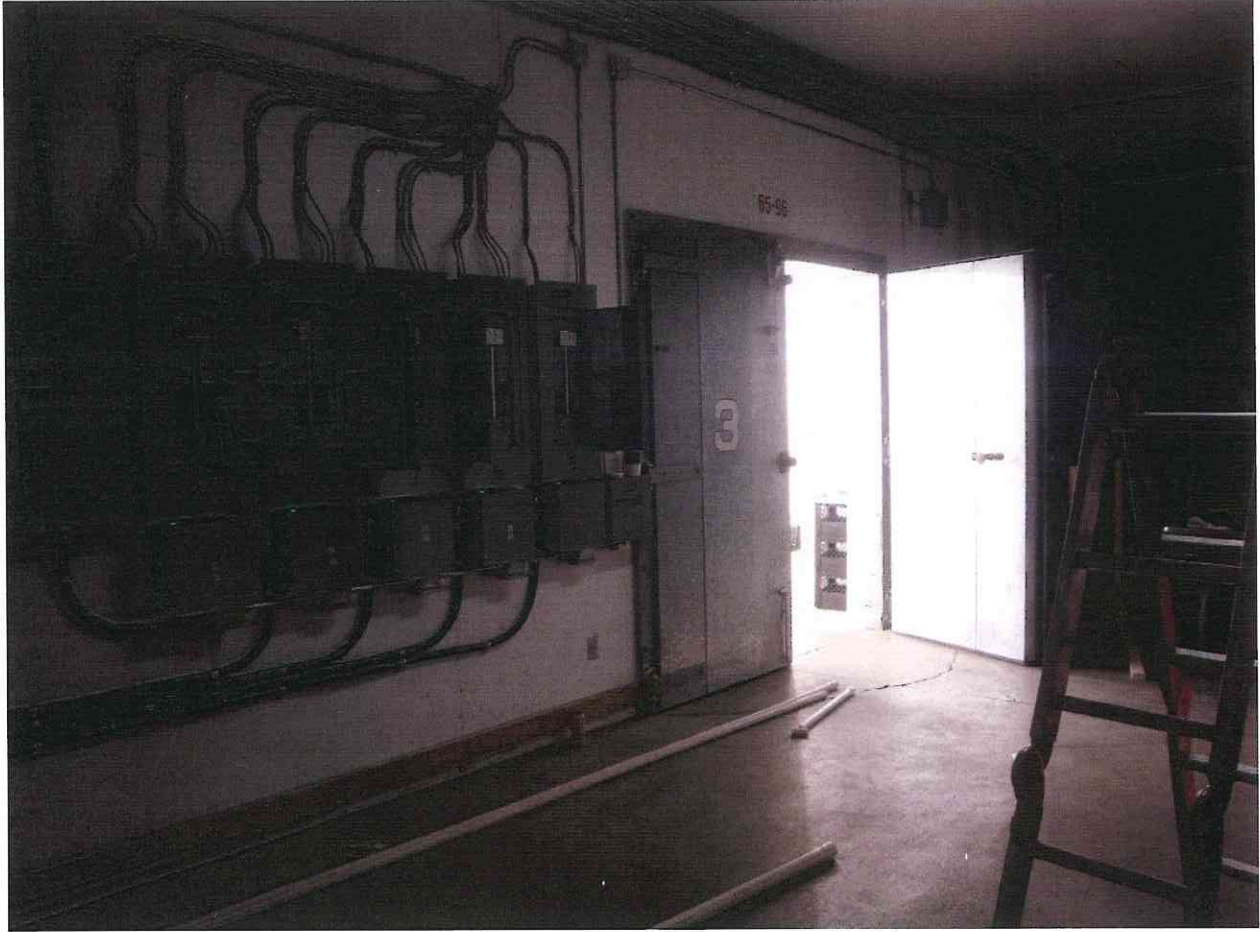
Our loss ratio over since 2010 is under 6% with our Health Canada Medical Marijuana Licensed Facilities insurance portfolio. This loss ratio outperforms almost all classes of business we write.

We have found that from a risk point of view there is a misunderstanding of this class. We have removed the stigma with proper disciplined business practices as they relate to the insurance industry. Health Canada Licensed Facilities seem to be compared to the illegal grow ops. It has been our experience that there is no real comparison. Based on our data, the licensed gardens are very good risks. Of course there will always be some bad operators however the percentage of these in the MMAR is on par with many other classes of business when looked at from an insuring point of view, ie: there are good toy store operators and there are bad toy store operators.

It has been our experience that the majority of Health Canada Medical Marijuana Licensed facilities fall into the "good operator" category and therefore qualify them as insurable.

I prepared the attached Schedule 4 to identify the main risk elements associated with this class and how our experience does not corroborate the suggested risks associated with illegal producers. Schedule 4 was prepared to provide to various municipalities and bylaw officers. I adopt the opinions expressed in Schedule 4 herein.

**SCHEDULE 1**



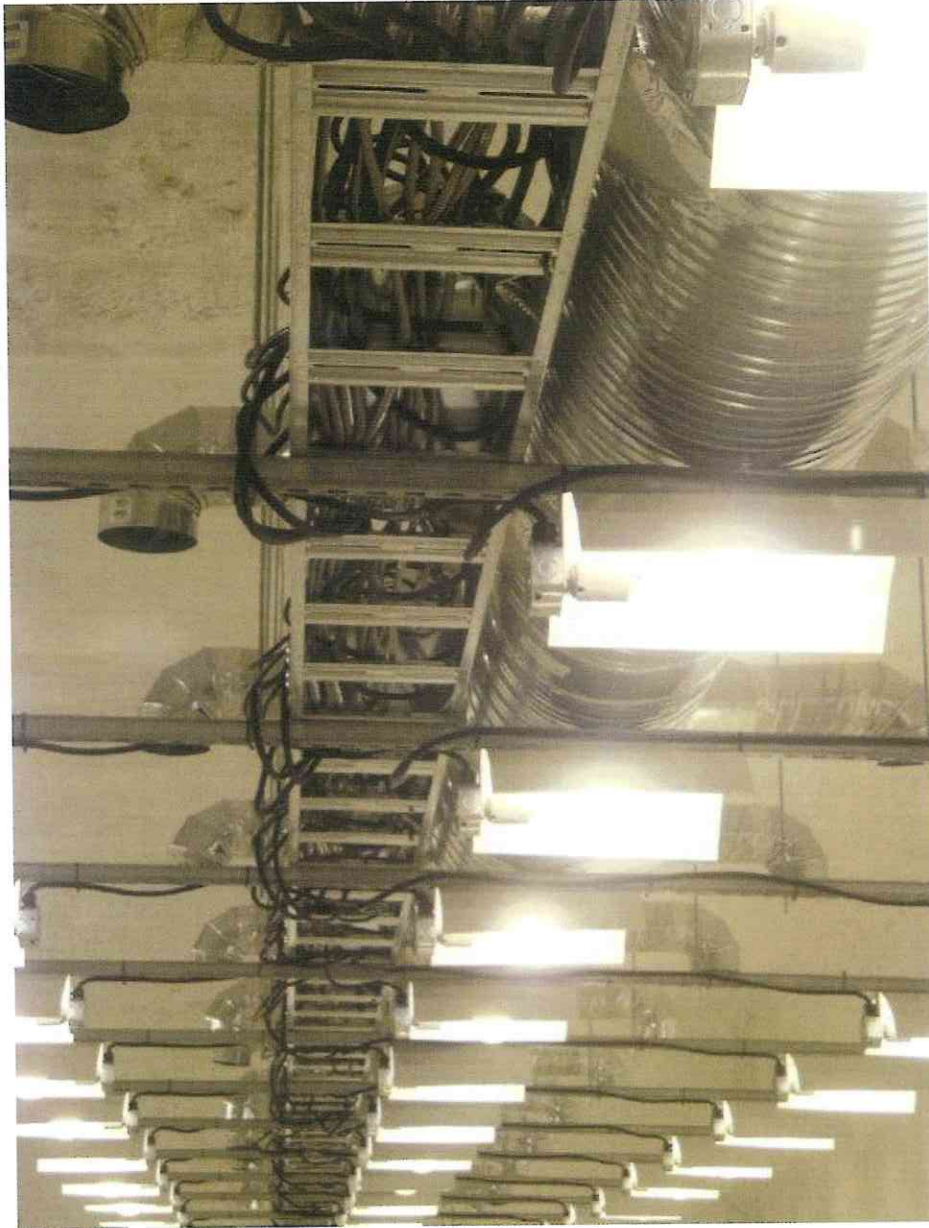
**PROPER PANELS**

**SCHEDULE 1**



**QUALITY WORKMANSHIP**

**SCHEDULE 1**



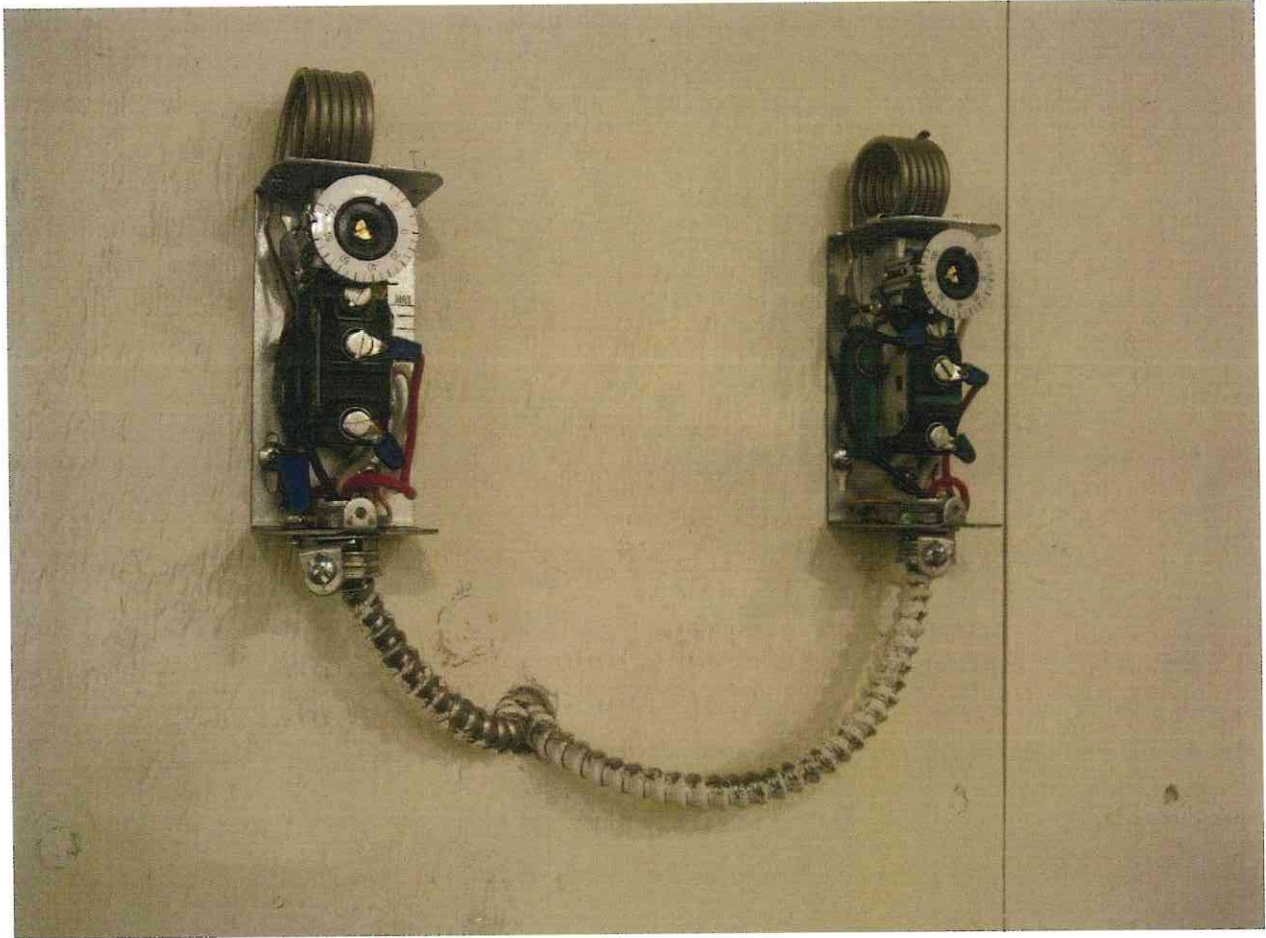
**QUALITY WORKMANSHIP**

## SCHEDULE 1



TYPICAL LARGE BAY SET UP PROFFESIONALLY

**SCHEDULE 1**



HIGH HEAT SHUT OFF X 2 FOR REDUNDANCY



## SCHEDULE 2

Example of MMAR electrical improvement done to code and in a residential home



SCHEDULE 2



SCHEDULE 3

Building Exterior:

Front: All Exterior Doors Fitted w/ Heavy Gauge Steel Anti-Pry Plates



Rear: Exterior Door Fitted w/ Heavy Gauge Steel Anti-Pry Plate



Front Office / Entry: Secured with Steel Security Mesh



Front Office Interior Door w/ Keyed Locking Handle & Additional Steel Security Door w/ Enclosed Pad-Lock



Exterior Man-Door: Located at the front of building (Photo taken from interior):



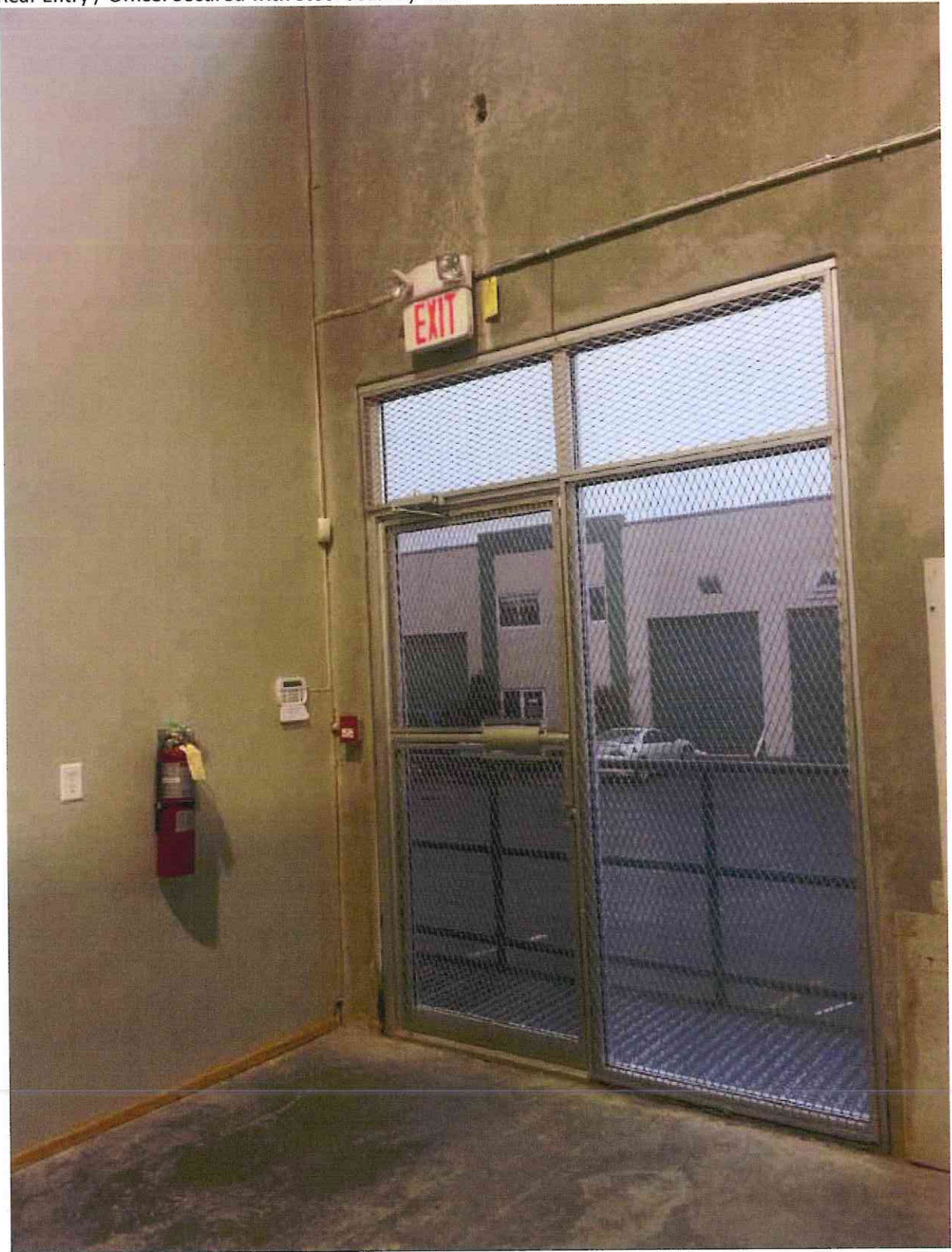




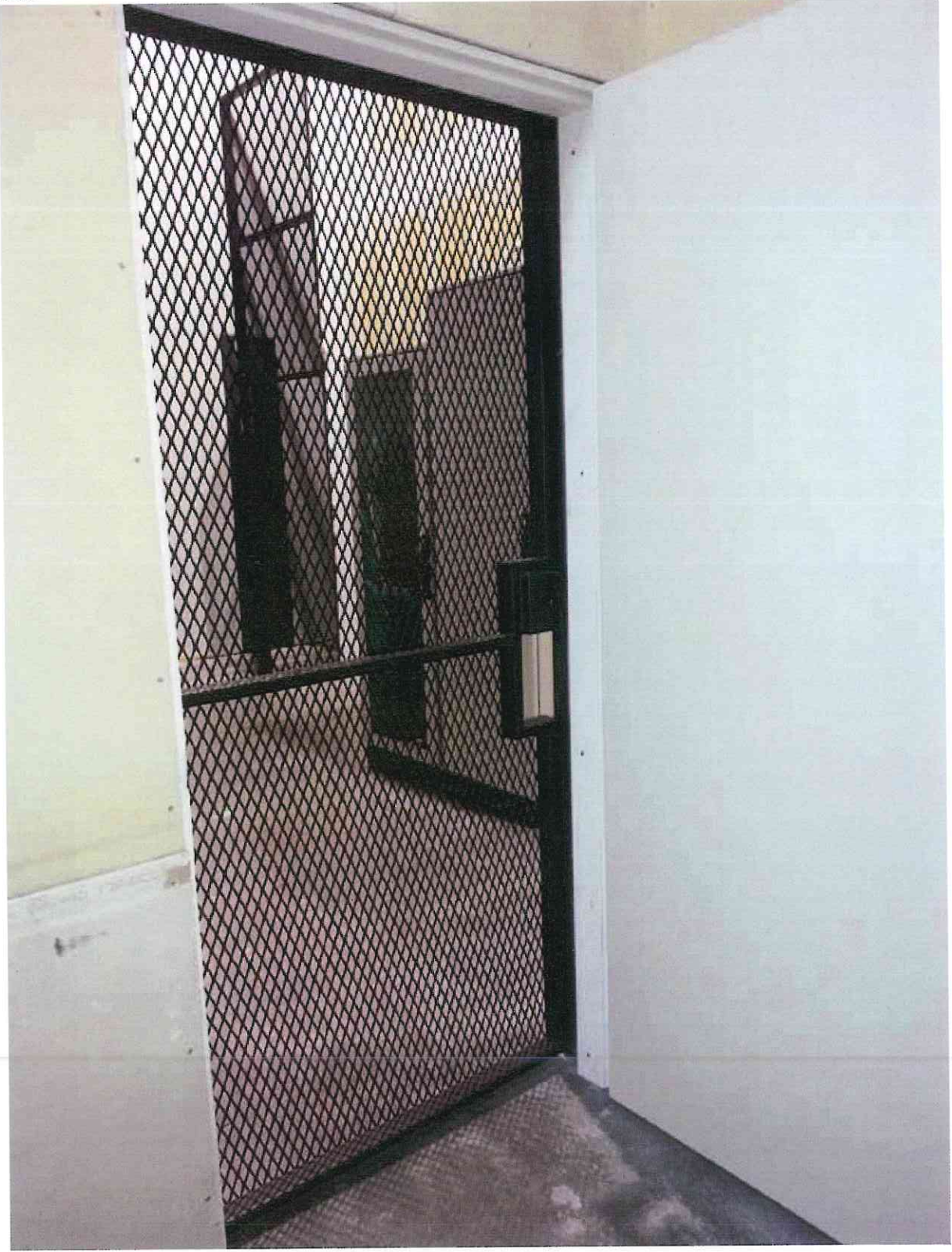
Steel Security Door & Wall System w/ Enclosed Pad-Lock (Rear):



Rear Entry / Office: Secured with Steel Security Mesh



Rear Office Interior Door w/ Keyed Locking Handle & Additional Steel Security Door w/ Enclosed Pad-Lock



Hallway: Secured Access to Cultivation Rooms (Looking towards front of building)



Power Distribution Area:

















Ballast & Contactor Enclosure:

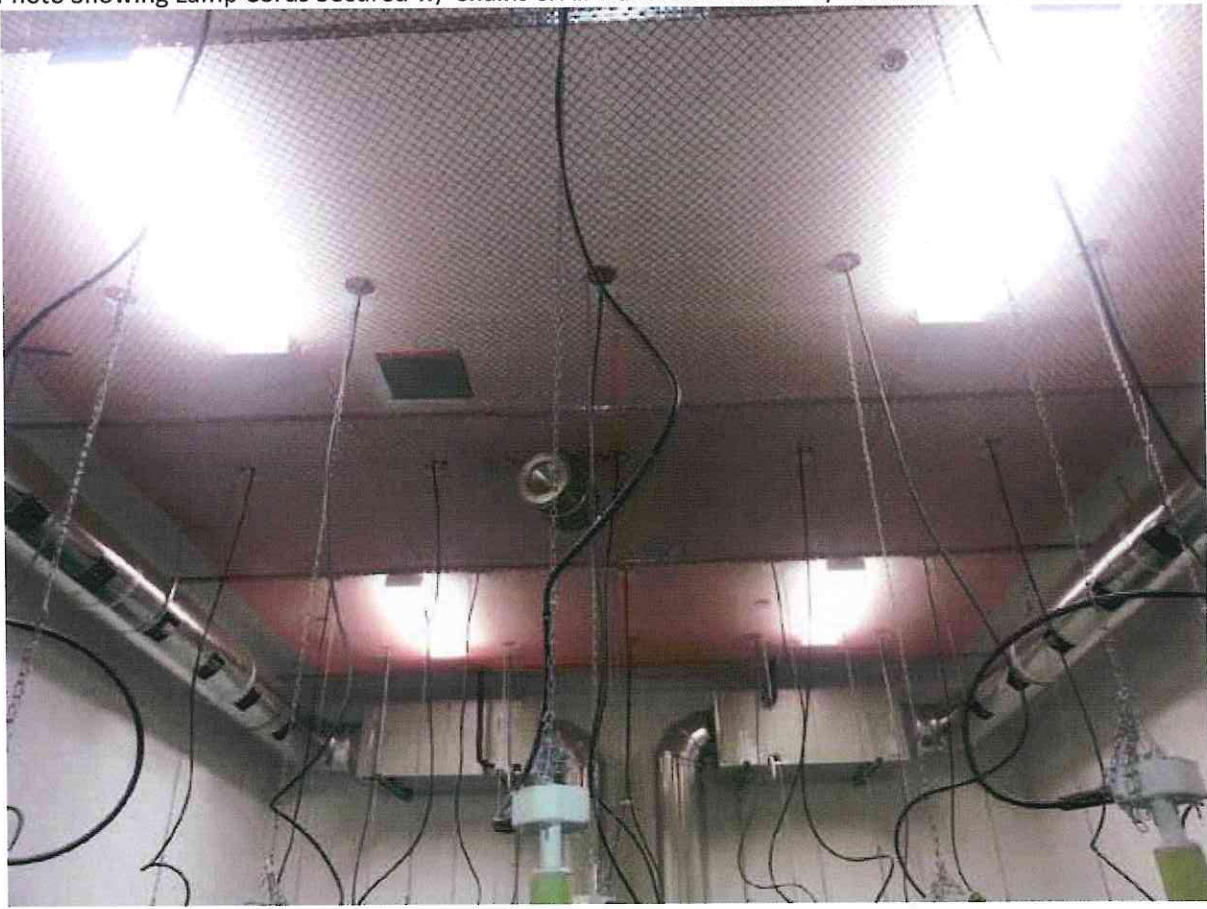




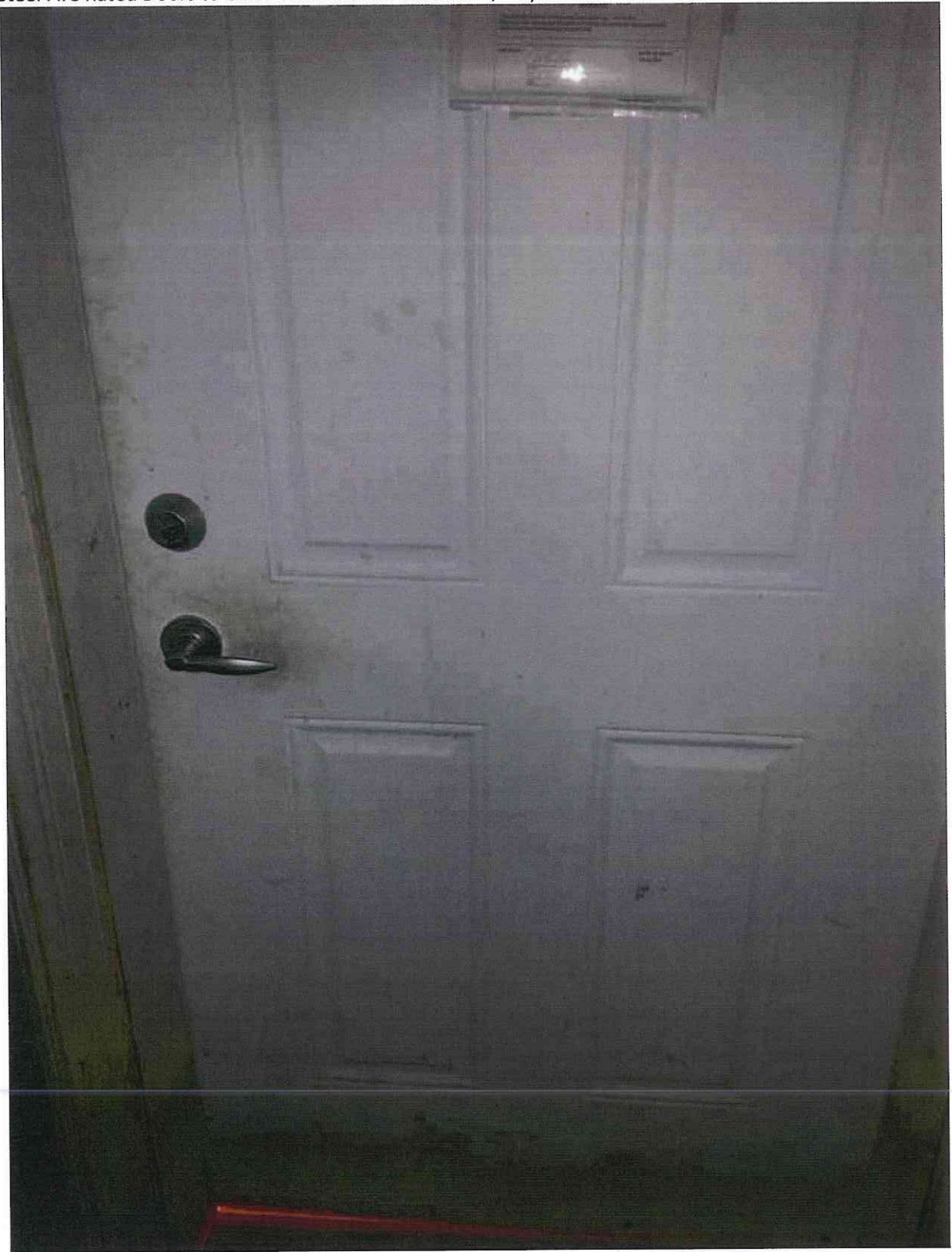
Lamp Assembly: Chained, 600V Lamp Cord w/ Strain Relief



Photo Showing Lamp Cords Secured w/ Chains & Air Handlers Secured w/ Seismic Uni-Strut



Steel Fire Rated Doors to Cultivation Rooms: Secured w/ Keyed Dead-Bolt





Fire Rating on Cultivation Room Doors





DO NOT REMOVE

# Escape Fire Protection Ltd.

COMMERCIAL - INDUSTRIAL  
RESIDENTIAL - SPRINKLER INSTALLATIONS  
FIRE EXTINGUISHERS

#8 - 30465 Progressive Way, Abbotsford, B.C. V2T 6W3

FOR SERVICE CALL

**604-864-0376**

FIRE PROTECTION SYSTEMS RECORD	TESTED INSPECTED	ADDITIONAL WORK REQ'D	SEE LOG & REPORT
FIRE ALARM SYSTEM			
SMOKE CONTROL SYSTEM			
EMERGENCY LIGHTING SYSTEM			
SPRINKLER SYSTEM			
STANDPIPE SYSTEM			
FIRE PUMP			
PORTABLE FIRE EXTINGUISHERS	✓		
SPECIAL FIRE PROTECTION SYSTEMS			
BACKFLOW DEVICE			

TECHNICIAN STAMP

REGISTERED  
FIRE PROTECTION  
ASST BC  
*B. B. B.*  
TECHNICIAN  
BUTCHER  
FP0306  
AL EM EX

NEXT SERVICE DUE ON OR BEFORE

2013 08 16  
YEAR MONTH DATE

DO NOT REMOVE THIS TAG UNTIL NEW TAG IS APPLIED

J F M A M J J A S O N D  
2010/2011/2012/2013/2014

## **Assessing Risk Management Issues:**

**The OLD - Illegal Grow Ops**

**vs.**

**The NEW - Licensed Legal Medical Marijuana  
Facilities. Residential & Commercial Locations)**

Most risk data that is available for this class has been collected and assessed mainly with the Illegal operations associated with residential buildings. The data is available from Insurance companies, municipal offices, fire departments and the police. As well as numerous reports that are available just by doing a Google search.

The below is a summary of the major Risk Management Concerns currently associated with:  
**ILLEGAL GROW OPSS**

- **ELECTRICAL**  
**ILLEGAL GROW OPSS - non-code wiring, ballasts, bypassed electric panels, high Wattage bulbs not secured or hung correctly.**
- **Risk of fire 40X greater – Risk of injury**
- **STRUCTURAL**  
**ILLEGAL GROW OPSS - holes in floor boards, ceilings, walls to install extensive ventilation system; holes drilled into foundations for electric bypasses; booby traps...**
- **Risk of injury/death to emergency responders - Structurally unsound dwelling**
- **ENVIRONMENTAL**  
**ILLEGAL GROW OPSS - fertilizers, pesticides, fungicides, corrosives, refinement Chemicals...**
- **Recklessly disposed into sewage system, or anywhere convenient, or left behind.**
- **PUBLIC HEALTH ILLEGAL GROW OPSS - excessive heat & humidity; structural modifications, booby traps; chemicals on site; drug endangered children.**
- **Children vulnerable to inherent dangers in the home. – Toxic Mould**
- **FINANCIAL LOSS THAT IS NOT RECOVERABLE**  
**No Insurance Coverage Available**  
**Coverage voided when illegal grow ops discovered**

In Contrast there is very little to no risk data available for the Legal Medical Marijuana operation, even though they have been in operation in Canada for over 10 years. However once the data is found you will see there is not a history like the illegal trade.

The risk data for the Legal Medical Marijuana operation will show that it is an injustice to compare the Legal operation to the clandestine operation, yet that is what is done constantly, and it's not only done in my trade. The word Marijuana carries an unjust stigma when it comes to reviewing the MMAR participants. I have compiled the following in order to inform the uninformed and is based on over 4 ½ years of Insurance Policy data from our program.

The comparison below details the risk controls put in place to reduce the risk of each of the concerns as they pertain to the Legal Medical Marijuana operation.

- **ELECTRICAL**

**ILLEGAL GROW OPPS** - non-code wiring, ballasts, bypassed electric panels, high Wattage bulbs not secured or hung correctly.

- **Risk of fire 40X greater – Risk of injury**

**LEGAL MEDICAL OPERATIONS** - Have professionally installed electrical systems installed by Licensed and Insured Electrical contractors to local building codes, including pulling permits when necessary. Many have been inspected by the BC safety authority.

- **Risk of fire & Risk of injury reduced to zero (normal)**

- **STRUCTURAL**

**ILLEGAL GROW OPPS** - holes in floor boards, ceilings, walls to install extensive ventilation system; holes drilled into foundations for electric bypasses; booby traps...

- **Risk of injury/death to emergency responders. Structurally unsound dwelling -**

**LEGAL MEDICAL OPERATIONS** – Do not do any of the above without consulting building owners and will be done professionally, any hole in walls or ceilings made for ventilation is done by to building code and proper HVAC contractors.

- **Risk of structurally unsound dwelling & injury/death to emergency responders reduced to zero (normal)**

- **ENVIRONMENTAL**

**ILLEGAL GROW OPPS** - fertilizers, pesticides, fungicides, corrosives, refinement Chemicals...

- **Recklessly disposed into sewage system, or anywhere convenient, or left behind.**

**LEGAL MEDICAL PRODUCERS** – are proud of their product, the trend is to be in dirt and grow with Organic fertilizers and Organic pesticides. No corrosives used in Medical Marijuana production. Producers dispose of any excess chemicals in a normal acceptable fashion, like local municipal collection sites – if necessary.

- **Environmental Risk reduced to zero (normal)**

- **PUBLIC HEALTH**

**ILLEGAL GROW OPPS** - excessive heat & humidity; structural modifications, booby traps; chemicals on site; drug endangered children.

- **Children vulnerable to inherent dangers in the home. – Toxic Mould**

**LEGAL MEDICAL PRODUCERS** – Have very carefully designed `Growing Environments `and go to great lengths to keep moisture out, as they have powerful ventilation and controls in place. This also protects any building that they are installed in against the development of mould. Children do not go into Legal Medical Marijuana Facilities.

- **Toxic Mould risk and vulnerable children reduced to zero (normal)**

- **FINANCIAL LOSS THAT IS NOT RECOVERABLE**

*No Insurance Coverage Available Coverage voided when illegal grow ops discovered.*

*LEGAL MEDICAL PRODUCERS Financial Loss is recoverable as Insurance is available.*

- **Non recoverable Financial Loss risk is reduced to zero (normal)**

We are working with hundreds of Legal Medical Marijuana policy holders, a mix between residential & commercial locations. Our loss experience with this class has been superior to many "mainstream" classes of business's we insure. To have this good of a loss ratio for a class that is perceived by many as very risky attests to our greater technical understanding of the MMAR regulations and the locations that the medicine is being grown.

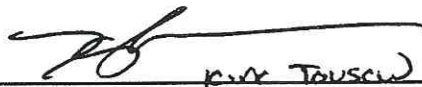
We understand the risks and are confident in our work.

Sincerely,

Scott A Wilkins

# EXHIBIT "B"

This is Exhibit "B" referred to in the  
Affidavit of Scott Wilkins sworn before  
me at Duncan, BC, this 19 day of  
December, 2014



A commissioner for taking affidavits  
For British Columbia

**EXHIBIT "B" TO AFFIDAVIT OF SCOTT WILKINS**

**No. T-2030-13**

**FEDERAL COURT**

**BETWEEN:**

**NEIL ALLARD  
TANYA BEEMISH  
DAVID HEBERT  
SHAWN DAVEY**

**PLAINTIFFS**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**DEFENDANTS**

**CERTIFICATE CONCERNING CODE OF CONDUCT FOR EXPERT WITNESSES**

I, Scott Wilkins, having been named as an expert witness by the Plaintiffs, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the Federal Courts Rules before the commissioning of my Affidavit and agree to be bound by it.

Dated: December 19, 2014



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Scott Wilkins  
Expert Witness