

FEDERAL COURT

BETWEEN:

NEIL ALLARD
TANYA BEEMISH
DAVID HEBERT
SHAWN DAVEY

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

AFFIDAVIT #2 OF SHANE HOLMQUIST

VOLUME II

William F. Pentney
Deputy Attorney General of Canada

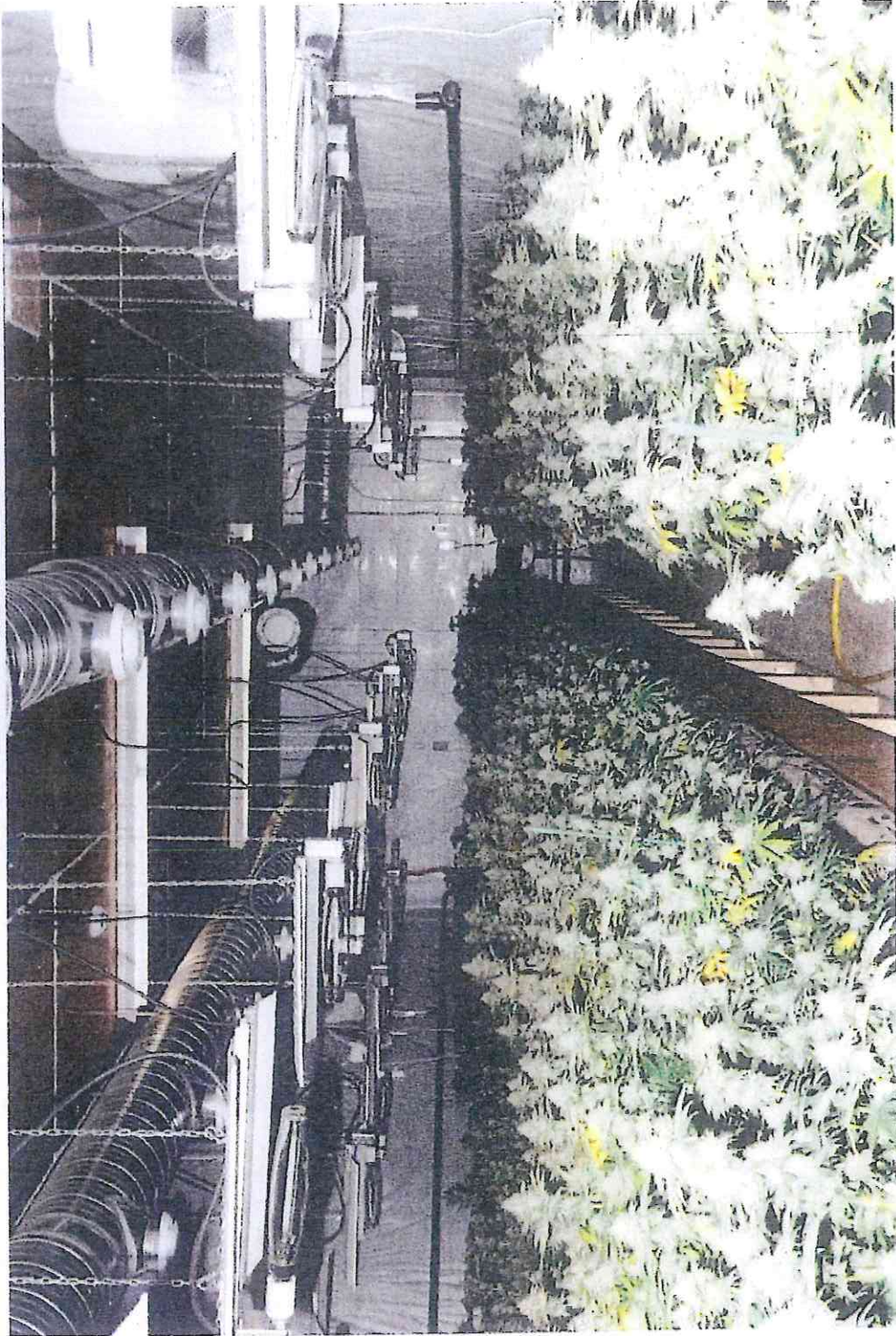
Per: Jan Brongers
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Solicitor for the Defendant

Annex Y



This MMAR production site was authorized to produce 220 plants but had 1,490 marijuana plants.

This represents the overproduction of 1,270 marijuana plants.



A helicopter was located on this MIMAR production site that was growing 1,270 over the authorized limit.



A black trailer was located on the MMAR production site that appeared to be a 'mobile grow operation.'



A second trailer was located at the MMAR production site that appeared to be a 'mobile grow operation.'

Annex Z



On April 17, 2014 police officers from the Toronto Police Services Drug Section executed a search warrant in this strip mall that was also the site of an MMAR production license for 195 marihuana plants. From the outside, the unit appears empty. During the search 935 plants were located which is 740 more marihuana plants than authorized.



Medical marijuana plants drying in a closet inside the MMAR production site.



Photograph on the left: Packaged medical marijuana in Ziploc type bags and piles of discarded materials on the floor.

Photograph on the right: myriad of ducting vents to supply air to the marihuana plants.

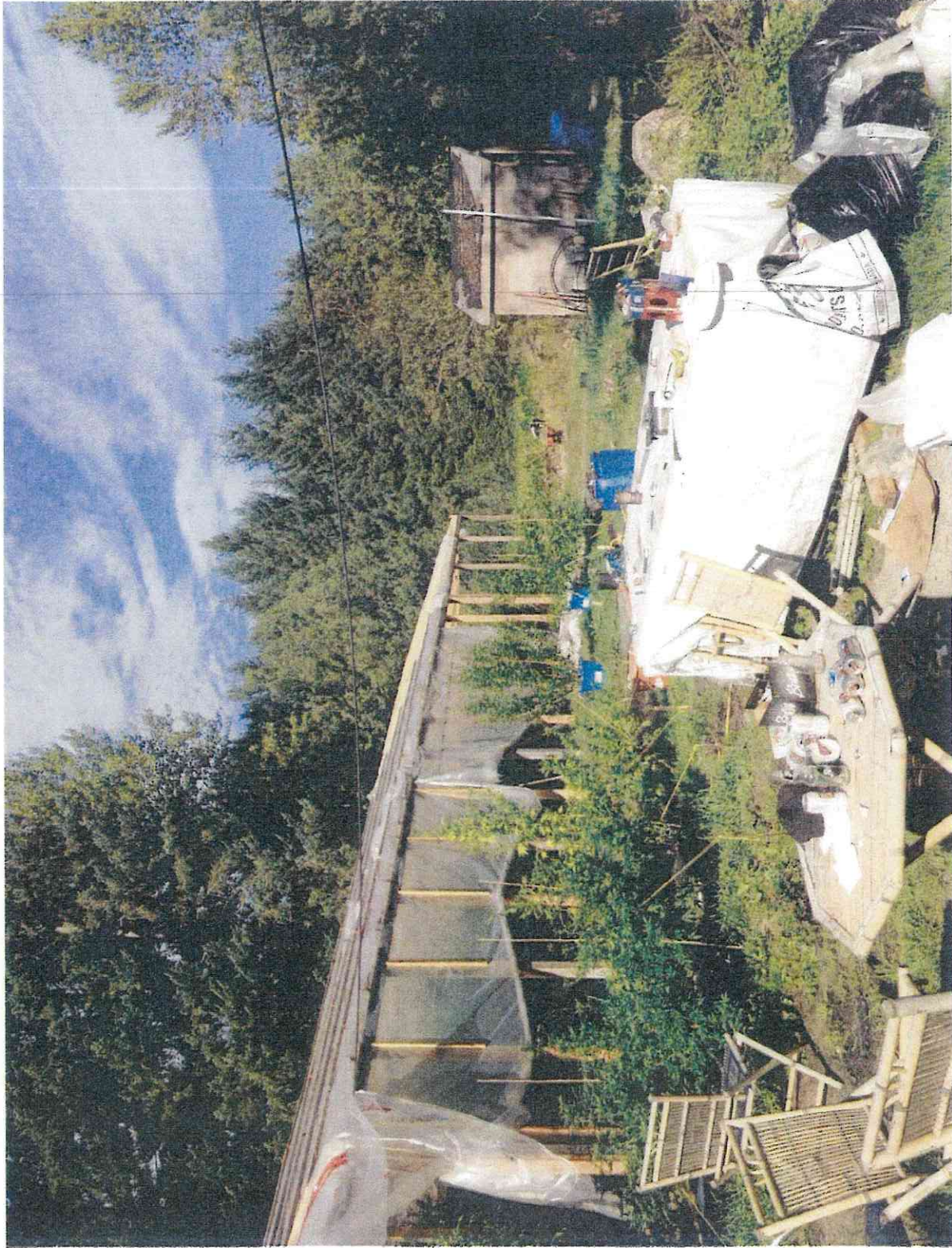
Annex AA



Photograph on the left: Outdoor MMAR production site authorized to grow 77 plants, however 240 plants were located.

Photograph on the right: Outdoor MMAR production site authorized to grow 49 plants, however 193 plants were located.

Annex BB



This MIMAR production site was authorized to produce 195 indoor plants however 351 marijuana plants were growing outdoors. The conditions at this site appear unsanitary.



*This MMAR production site was growing 156 more plants than authorized.
The monster marihuana plants were between six and nine feet tall.*

Annex CC

News

Legal pot growers feel betrayed by gov't

By PAUL J. HENDERSON
phenderson@chilliwacktimes.com

Doug Hewer tends to his garden with the loving care of a dedicated horticulturalist. That's because the 61-year-old's plants are his medicine and after decades of being criminalized for using marijuana, then a few years of it being legal, he can't believe the federal government plans to end his legal ability to grow in his home.

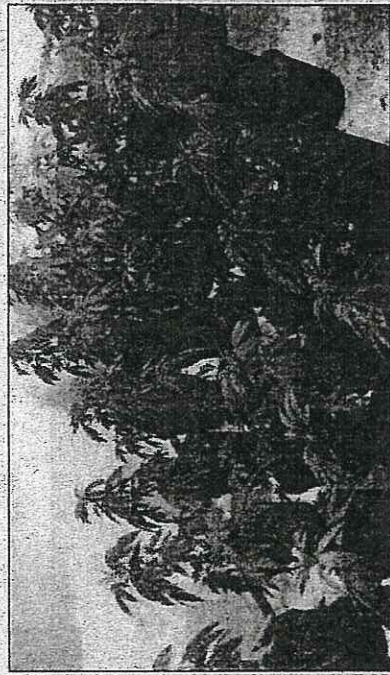
"The fact that they can't kick my door down, rob me of everything, make me spend all my extra money on a lawyer, it's been a bonus and to take it away now is ripping the rug out from under me," Hewer told *The Times* in an interview.

"I've been thrown in jail all over the world. I'm so sick of this." Hewer is one of the more than 500 individuals in Chilliwack who are legally licensed to grow marijuana for personal medical use.

According to figures obtained through an Access to Information request early last year, there were 238 Chilliwack residents licensed to possess marijuana for medical reasons and 193 licensed to produce marijuana for medical purposes.

Last month there were 666 people in Chilliwack possession licences, 513 with personal use production licences (PUPIL) and 77 with designated person production licences (DPPIL).

For critics such as Mayor Sharon Gaez, the near tripling of legal grow-



Submitted photo
Some of local medical marijuana personal use production licence holder Doug Hewer's "garden" in his Chilliwack home.

\$2,800 Hydro?"

Hewer said he used to be an "out-law" and has been spent time in jail for possession of his high-quality "honey" oil in India, Germany and Holland.

He claims he even spent 10 years in the Himalayas running from German authorities. But it was in jail in Holland that he says a dirty needle was used on him against his will and he contracted hepatitis C.

"I lost a lot of hair and my skin was falling out but I survived it and without cannabis I don't know if I could have," he said.

Hewer is aware of the irony in the fact that he uses cannabis to treat an illness he says he contracted while in prison for possession of cannabis.

"All due to this stupid law," he said. "This is one of the biggest cash crops in this province. The only dangers of marijuana are if you get busted."

Hewer wanted to tell his story of (mostly) adhering to the regulations and running a safe, responsible MMAR grow in his home after reading a series of *Times* stories where critics of the program were heard.

The first, from Feb. 21, talked about the huge growth in the program over 12 months. The second, a Feb. 26 story centred around local business owners who feel their hands are tied despite operating adjacent to a 2,000-square-foot MMAR garden in a light industrial zone in a strata building.

The third story, on Feb. 28, focused on issues with a large medical mari-

jjuana grow operation in a rural area that neighbours says is set to expand and is nothing more than a front for illegal activity.

Then there was the March 14 story about a medical marijuana growing operation in the Eastern Hillside that was recently busted by the Chilliwack RCMP for stealing electricity, and found to be growing 15 times more than allowed by Health Canada.

Hewer says the media makes sweeping judgments about all growers when doing stories about the few who break the rules or are unsafe.

"Most of us are doing it right," he said, adding that the best growers are in a catch-22 when it comes to becoming a potential target for a grower for Health Canada.

"I'd like to grow for others. They won't let me because I have a criminal record for marijuana. I'm an expert and they don't want an expert."

After a near lifetime of marijuana growing and use, and fighting prohibition laws all over the world, Hewer finally thought he could relax, grow his cannabis in his home and enjoy his hobbies, such as playing music, in peace. But a year from now his growing licence will be taken away by Health Canada and he will lose the legal access to his medicine.

"I'm ashamed our government is pulling the rug out from under us."

Hewer has joined up with the MMAR Coalition Against Repeal, an organization fighting Health Canada's planned changes.

Annex DD



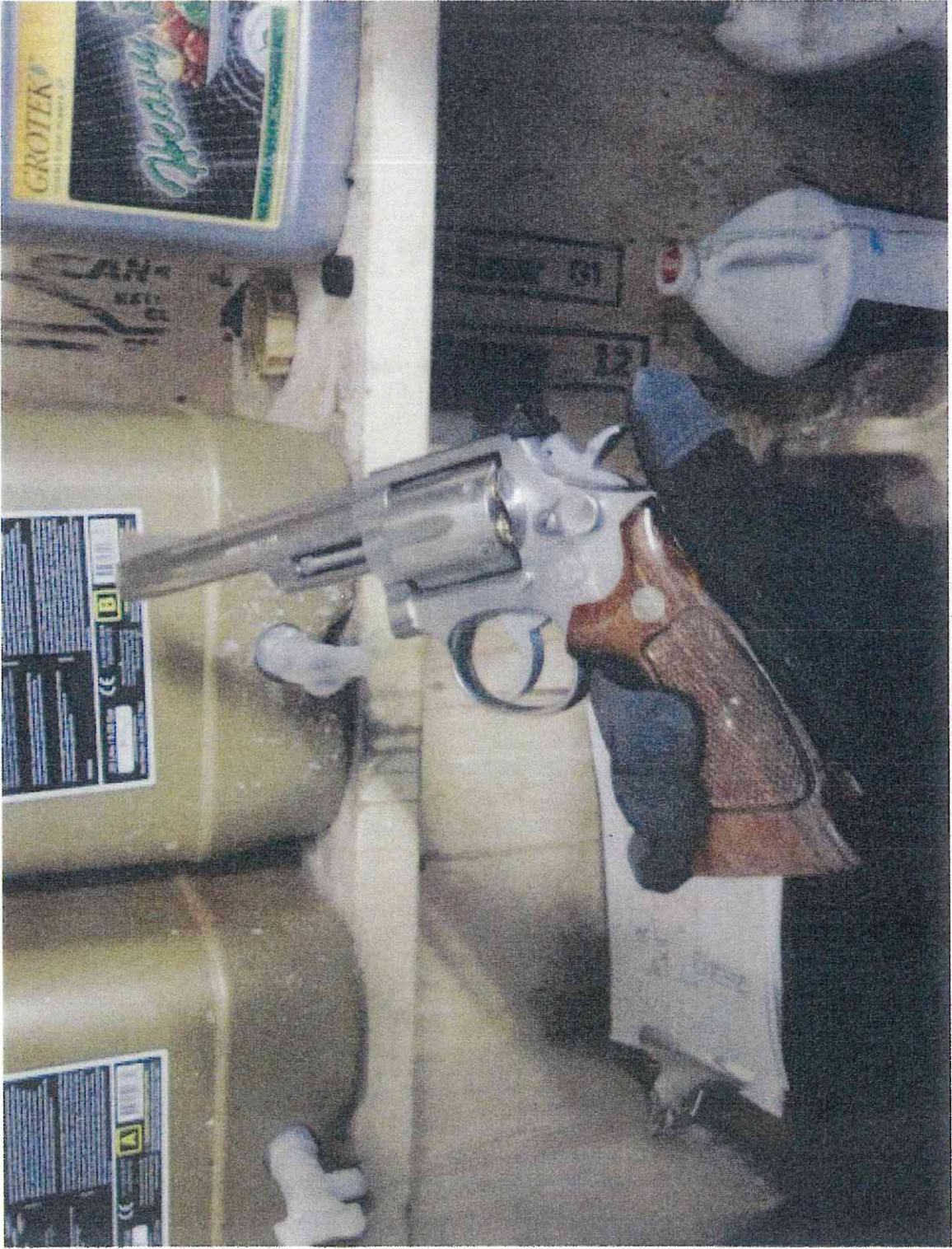
On March 5, 2013 Police officers from the Chilliwack RCMP executed a search warrant at this MMAR production site for theft of electricity. This site was authorized for 4 production licenses. The property was covered in garbage as well as waste material from marihuana production (black garbage bags contain soil and marihuana root balls).



It appears as though garbage was just being tossed out the back door of the MIMAR production site which creates unsanitary conditions.



Access to the MMAR production site was through the closet floor. A makeshift ladder went down to the production area that was associated to 4 MMAR production licenses.

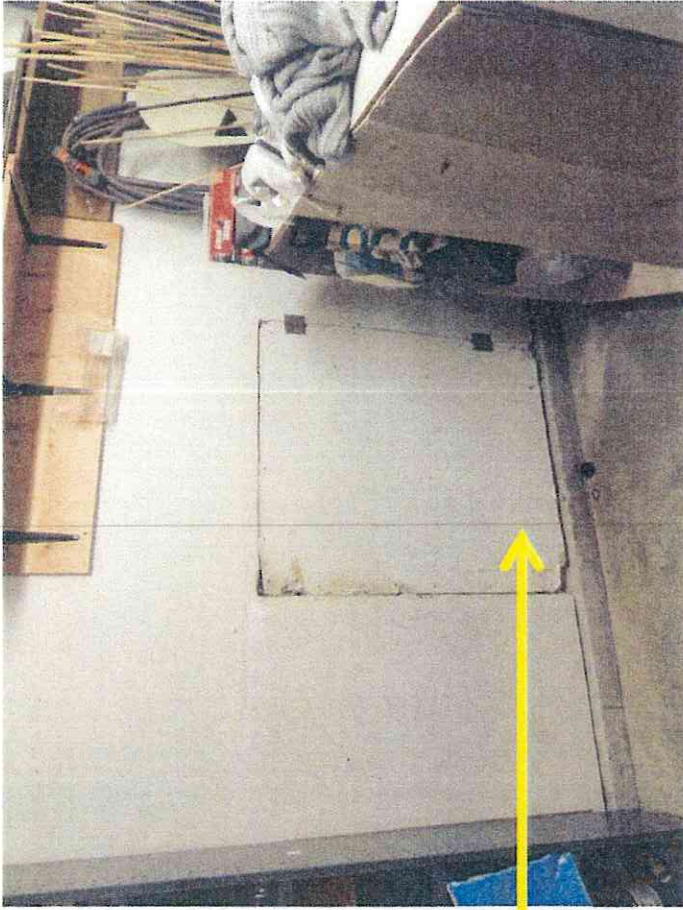
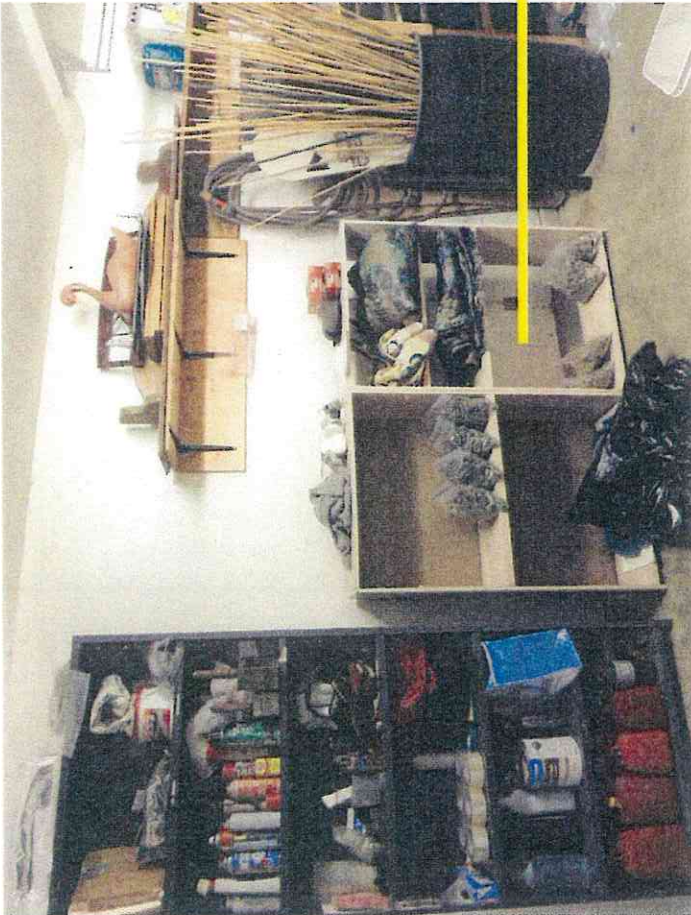


In the MMAR production site was a loaded .357 magnum handgun that had been stolen from a break and enter. The presence of loaded firearms at MMAR production sites has the potential to create significant risks to police officers.



Some of the medical marijuana plants were displaying signs of a severe spider mite infestation.

Annex EE



Photograph on the left: A cabinet with 8 Ziploc bags of marijuana each containing approximately ½ pound in the garage of the residence.

Photograph on the right: Behind the cabinet was access to the MMAR production area.



Photograph on the left: Immediately entering the grow room was a CO2 burner.

Photograph on the right: A second MMAR production license was only accessed through this small opening with no other exit options available. The grower would have to crawl around on hands and knees to tend the marijuana plants. .



Photograph on the left: depicts packages of marihuana that the MMAR (PUPL) producer committed to the mail system on May 23, 2012. The 1.71 pounds of total medical marihuana was sold for \$5,109.48.

Photograph on the right: depicts packages of marihuana that the MMAR (PUPL) producer committed to the mail on May 24, 2013. The 4.32 pounds of total medical marihuana was sold for \$6,473.77.

Annex FF



RCMP Criminal Intelligence

CRIMINAL INTELLIGENCE BRIEF A REVIEW OF CASES RELATED TO THE MEDICAL MARIHUANA ACCESS REGULATIONS

APRIL, 2009

Criminal Intelligence

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CRIMINAL INTELLIGENCE BRIEF
A REVIEW OF CASES RELATED TO THE MEDICAL
MARIHUANA ACCESS REGULATIONS

APRIL, 2009

Designation/Classification Legend

(U) - Unclassified
(A) - Protected "A"
(B) - Protected "B"

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IN BRIEF

- 70 RCMP cases of Marihuana Medical Access Regulations (MMAR) license violations were submitted and reviewed. (A)
- 40 of these cases involved the production and trafficking of marihuana that exceeded the terms of the permit. (A)
- Six (6) cases involved a licensee with prior drug convictions or charges. Many licensees surfaced in criminal intelligence records while holding a MMAR license. (A)
- A single marihuana plant grown with seeds provided under the MMAR can produce 30 times more dried marihuana than estimated by Health Canada (HC). (A)
- The current ratio of Health Canada inspectors to licensees across Canada is 1 to 257. (A)
- Public safety issues such as increased risk for home invasions and break-ins are serious concerns regarding the MMAR. (A)



BACKGROUND

In 2001, Health Canada (HC) implemented the Marihuana Medical Access Regulations (MMAR) to allow the access and use of marihuana for medical purposes. Under these regulations, persons suffering from terminal illnesses, illnesses causing extreme pain or debilitating symptoms can have access to marihuana for medical use through HC.¹ A prescription by a medical practitioner² is necessary to apply for a marihuana possession and/or production permit. (U)

There are three (3) types of permits available:

- Authorization to possess marihuana;
- License to produce marihuana by applicant;
- License to produce marihuana by a designated person. (U)

Depending on the patient's needs, the license will outline the terms and conditions such as the daily amount allowed for medical use, the amount of dried marihuana stored per month, and the number of growing plants allowed at any moment. (U)

As of March 2009, a total of 3,611 Canadians held an authorization to possess dried marihuana and 2,568 could produce marihuana under the regulations, most of whom were producing for personal use (2,164). Over 400 individuals have a designated person license and are producing on behalf of an applicant. (U)

1 The patient can access marihuana supply from Health Canada, produce marihuana for personal use or designate a third party to produce marihuana on their behalf.
 2 As of July 2008, over 1,400 physicians had referred two patients or more under the MMAR.

CURRENT ISSUES

Serious issues regarding the MMAR have surfaced over the last several years and are cause for concern. A recent review of RCMP cases (70) by Criminal Intelligence between 2005 and 2009 revealed criminal activity involving MMAR license holders, public safety issues and a general lack of control under the regulations. (A)

Production and Trafficking for Personal Gain

The majority of cases reviewed (40) involved marihuana production and trafficking violations under the Controlled Drugs and Substances Act (CDSA). Basically, permit holders grow marihuana for medicinal purposes and sell the excess for personal gain. The cases involved both personal-use and designated person production licenses. (A)

A resident of Alberta had a designated person license to grow marihuana for a patient living in another city. He was producing marihuana over the limit allowed by his permit and trafficking the drug from his residence. He was charged with the production and trafficking of a controlled substance. (A)

A resident of Saskatchewan is allegedly operating a marihuana grow operation using her MMAR personal-use production license. Her son is suspected of trafficking the drug at school. (A)

There are a number of factors contributing to this problem: the excess marihuana produced by the plant; the potential high profits generated from marihuana trafficking; and, the relatively low risk of getting caught under the current system. (A)

The amount of dried marihuana yield per plant can vary from 28 grams to 1,400 grams.³ According to HC, one indoor plant can produce approximately 45 grams of dried marihuana; in reality, a plant can produce 30 times more than this estimate. Cases reviewed demonstrate that licensed marihuana producers are aware of this fact and are exploiting the system. The following case is an example of how licensed growers are trafficking the excess marihuana produced. (A)

Between 2005 and 2007, a resident of Saskatchewan was suspected of operating a grow house for production and trafficking marihuana using a MMAR license. The subject allegedly bragged about his \$6,000 monthly earnings from his operation and admitted that the government is "stupid" to not realize how much marihuana plants can produce. (A)

The amount of dried marihuana yield per plant is clearly underestimated by HC. In fact, it is impossible to know exactly how much dried marihuana a plant will produce. A number of factors can influence the yield, such as the cultivation method and the genetic species of the plant. Growing techniques, such as hydroponics (which allows the plants to mature faster and be harvested earlier), are available to anyone with access to the Internet and can help the license holder increase the yield of marihuana and surpass the terms of the license. (A)

³ Project SERRE II, Criminal Intelligence, RCMP (2002).

A license holder from Nova Scotia, living with a convicted drug offender, is suspected of producing more than double the amount of dried marihuana than the HC estimate. With a potential of five crops per year, the subjects could make over \$100,000 in illicit profits annually. (A)

Lack of Monitoring

Permit holders are allowed to grow a certain number of plants and possess a limited amount of dried marihuana for daily use; they are expected to destroy the excess marihuana as per HC policy. The regulation relies on the good faith of the license holder, which is clearly not effective, judging by the number of cases (40) where an excess of marihuana is produced by license holders. The current regulations combined with a lack of oversight open the door for potential misuse and production of marihuana for personal gain. (A)

"It is incumbent upon persons who are authorized by Health Canada to produce marihuana for medical purposes to ensure that they do not, at any given time, have more marihuana plants in their possession than they have authorization to produce". (MMAR policy) (U)

A very limited number of HC inspectors monitor permit holders to ensure that the terms of the licenses are respected. For example, in the Atlantic Provinces and Quebec, where there are over 600⁴ authorizations to possess issued by HC, there are only four inspectors available; one inspector overseeing the Atlantic region is currently dedicated to precursor chemical issues. In Ontario, where the largest number of license holders are located (1144)⁵, there are only six inspectors. Across the country, the current ratio of HC inspectors to licensees is 1 to 257. (A)

Furthermore, the powers of HC inspectors are limited. Inspectors only have the authority to inspect the building that the license holder has indicated as the growing area, not the dwelling houses.⁶ Police officers do not have the authority to inspect license holders in their jurisdiction without the suspicion of criminal activity and a search warrant. Consequently, there is little monitoring and control over the activities of MMAR licensees from both HC and law enforcement. (A)

Criminal Background of Licensees

There are no criminal record checks for medicinal marihuana possession/production licenses for patients, only for designated producers. The designated person must provide HC with a "clean record" proof as part of the application process. An official document from a Canadian police agency will show a person's past convictions and will allow HC to decide whether or not to issue the permit. (U)

Some cases (6) in this review identified permit holders, both patients and designated persons, with prior drug convictions or charges. Drug convictions and charges included possession, production, trafficking, importing and exporting a controlled substance in Canada. It is unclear how a designated person with a prior drug conviction could obtain a license issued by HC. Nonetheless, this is a serious concern as individuals previously involved in drug activity can obtain a MMAR license and could misuse the regulations. (A)

4 Health Canada Statistics for total Authorization to Possess as of July, 2008.

5 Health Canada Statistics for total Authorization to Possess as of July, 2008.

6 Information Brief to CISNS Operations Manager received on 2008-06-17

A license holder from Saskatchewan with prior convictions for production is known to police for using and dealing marihuana. Between 2005 and 2008, he surfaced in 14 police files regarding marihuana production and trafficking. He is suspected of operating a marihuana grow house, violating the terms of his permit, even producing hash oil. He is associated with other licensed growers in his area. (A)

A Saskatchewan resident with a prior drug conviction for marihuana trafficking and charges for production successfully obtained a MMAR license. He is suspected of operating a marihuana grow house and misusing the terms of his permit. (A)

Many license holders identified in this review did not have past convictions but had an extensive police record. Past charges and criminal intelligence do not appear on the official police document supplied to HC; however, they should be considered in the issuance of MMAR licenses as they can indicate a person's criminal involvement. (A)

In 2006, a license holder was charged and convicted of production and retained his permit. Three years later, he was again operating a marihuana grow again with an expired permit. (A)

MMAR licenses are not easily revoked, as HC will not revoke a license unless the person is convicted of drug production or trafficking. Even with a conviction, HC can allow the license holder to keep the authorization to possess marihuana for medical purposes. This shows the importance of conducting a thorough background check on all individuals applying for a MMAR license as well as conducting inspections of their residences. (A)

Public Safety and Risks for the Community

MMAR policy specifies that security measures against loss or theft of growing or stored marihuana are left to the applicant. This means that licensed users and growers must secure their medical marihuana supply so it does not fall into the "wrong hands". Cases reviewed identified community safety issues regarding medical marihuana grow houses such as increased risk of break-ins and home invasions because of the potential profits associated with the illicit sale of marihuana. (A)

In March 2009, police responded to a home invasion call in Port Coquitlam, BC. The perpetrators attacked the residents and demanded drugs and money. A marihuana grow was located behind the house while a drying room was located inside the home. The owner, a MMAR license holder, was found to have three times the number of plants permitted by HC. This was the second home invasion at this location in five months. At the time of the first home invasion, the owner had five times the allowed number of plants and was arrested for excess production. (A)

"(...) the current process for medicinal marihuana (...) puts law abiding medicinal marihuana growers at risk as victims of crime. Criminals are likely to find it tempting to rob someone's medicinal marihuana grow operation, because not only are the drugs themselves a desirable target, but so is the enormous profit that could be made from them." (Information Brief to CISNS Operations Manager received on 2008-06-17) (A)

The activities of medical marihuana growers can also have negative effects on the perception of security and safety in a neighbourhood. Crime tips were placed to local police by concerned citizens who suspected a neighbour of being involved in an illegal activity and drug trafficking. Only when the police officers responded to the call and confirmed with HC did they realize the grower had a legitimate license. (A)

The activities of licensed growers cause worries to unsuspecting citizens and the current regulations do not give police the necessary tools to ensure the safety, security and trust in the protection it provides for citizens. (A)

"Often, police receive Source and Crime Stoppers information concerning individuals that have a license to grow marihuana for medical purposes and that they are suspected of trafficking(...)" (Correspondence to Drug Branch, RCMP Headquarters received on 2009-03-24) (A)

The HC regulations do not permit a license holder to produce marihuana outdoors adjacent to public property frequented by persons under 18 years old. However, children can live in a residence where a license holder is growing and storing marihuana. A child living with a licensed user or grower has increased access to marihuana, which has potential negative ramifications. In British Columbia, a recent examination⁷ of the health of children living in houses where marihuana is grown raised serious concerns. Most of these children were found to have respiratory problems in reaction to mould and pesticides used to grow marihuana. These children are also at risk of residential fires and violence due to "grow-rips". (A)

A license holder in Alberta was producing an excessive amount of marihuana with an expired license. A child living at the residence told a teacher at school that the father was growing "special cigarettes on green trees". The license holder was arrested for marihuana production and possession, possession of child pornography as well as resisting arrest. (A)

Other public safety concerns associated with medical marihuana grows include growing techniques, the use of chemicals and destruction methods. Licensed growers can choose whatever technique they want to grow the plants. Certain techniques used by licensed growers reviewed for this report required special lighting, chemicals and irrigation systems. The same techniques are used by illicit marihuana growers to increase plant growth. These techniques are potentially hazardous and can result in residential fires, spilling of chemicals in sewer systems and injuries to growers and their families. (A)

Additionally, HC expects licensed growers to destroy excess marihuana; however, there are no guidelines as to how they should go about it. Are growers supposed to burn the drug, or should simply throw it away as garbage. Again, this increases the risks of the drugs falling into the "wrong hands". (A)

Challenge to Police Investigations

MMAR issues have presented obstacles in RCMP investigations for many years. The main problem occurs when police officer respond to a call for suspected marihuana-related activities. If police officers find marihuana (dried or plants) in a residence, they can ask to see the HC permit to confirm the legitimacy of the drug. Although the

⁷ When children get caught up in grow-op busts, CTVBC, 2009-04-07.

permit states how much the licensee is allowed to possess, it is impossible to know if more marihuana was produced and sold prior to police intervention. Essentially, police officers find themselves in a situation where they cannot properly assess if the licensee is upholding the terms of the permit; therefore, they are unable to detect and charge persons who misuse the regulations. (A)

Moreover in some cases, individuals obtained a MMAR license while under investigation for the production and trafficking of marihuana. In an ongoing indoor production of marihuana case, a suspect obtained a license before a search warrant could be executed. In this type of case, individuals are attempting to gain immunity from their criminal activity and undermine the police investigation. (A)

After being sentenced, an individual obtained a license to grow marihuana and indicated that he would be using it once released from jail in 2005. The individual has since surfaced in multiple police files and has been suspected of operating a marihuana grow house. (A)

A search warrant was executed at a New Brunswick residence. Marihuana and grow equipment were seized from the residence. The individual claimed he needed the marihuana for medical purposes, but did not have a license. He was charged for production and successfully obtained a MMAR license to grow marihuana shortly thereafter. (A)

The Privacy Act does not allow HC to make a list of license holders available to police agencies. Police investigating possible marihuana production or trafficking cases can contact HC and request information on a specific individual and the terms of their license. If police do not contact HC, valuable resources and manpower can be spent processing files, executing search warrants and, conducting seizures and arrests needlessly. (A)

FINAL CONSIDERATIONS

- In the majority of the cases involving production and/or trafficking of marihuana that exceeded the terms of the permit, the license holder was not arrested, charged or convicted. This is due, in part, to the above-mentioned issues regarding the regulations and the inability for police to proceed with a criminal case. (A)
- Although some files mentioned prior convictions and charges of license holders, there is no way to unequivocally establish that fact without comparing the date HC issued the license, and the date of conviction/charges in the criminal records. (A)
- Thirteen (13) individuals were mentioned in two or more files, representing 70% of cases reviewed. This fact supports the recommendation for HC to revoke licenses for certain individuals who continuously abuse the terms of their permits. (A)
- This assessment does not represent an exhaustive review of all MMAR-related police cases. Most of the cases reviewed originated in the Prairies and the Atlantic region, where the RCMP is the police service of jurisdiction. There are many other potential cases in Ontario, British Columbia and Quebec, where a large portion of MMAR licenses are issued. (A)

RECOMMENDATIONS

- Tighter regulatory clauses for criminal background checks prior to the issuance of a permit should be implemented, considering the number of cases involving license holders with prior convictions or drug-related charges. (A)
- More inspectors should be dedicated to overseeing the MMAR and have increased authority to ensure that license holders are respecting the terms of their permits. (A)
- HC, in collaboration with the RCMP, should consider revoking licenses for individuals involved in criminal activity identified in this review. (A)
- Increased collaboration between police agencies and HC is necessary to prevent the misuse of the regulations and the potential harm to the community, especially children. (A)
- Inspection capabilities for law enforcement to conduct site visits (unannounced) should be seriously considered. (A)

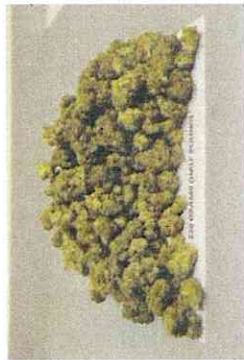
RELEVANT COURT DECISIONS

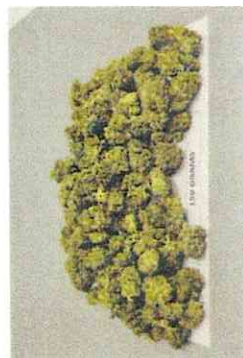
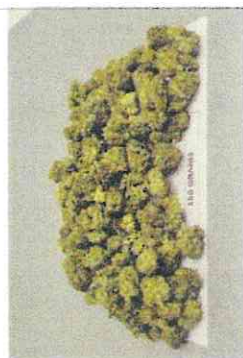
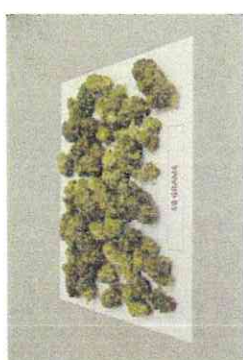
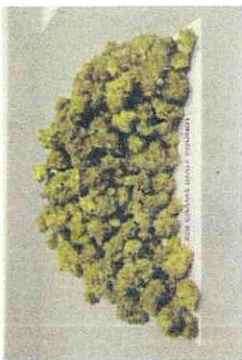
Since its establishment in 2001, the MMAR has been challenged in Canada's courts. As a result, rulings have weakened HC's control over the access to medical marihuana. (U)

- In 2000, R v. PARKER was the first court decision in which the prohibition of marihuana in Canada was found to be unconstitutional. (U)
- In 2003, the Ontario Superior Court removed multiple restrictions to the MMAR such as the need for endorsement from two physicians and the one-to-one ratio for licensed growers. Growers are now allowed to produce medical marihuana for more than one person and in common with two or more other growers. (HITZIG v. Canada) (U)
- In 2008, a Federal Court ruling granted medical marihuana users more freedom to pick their grower and allowed growers to supply marihuana to more than one patient. (SFETKOPOULOS v. Canada) (U)

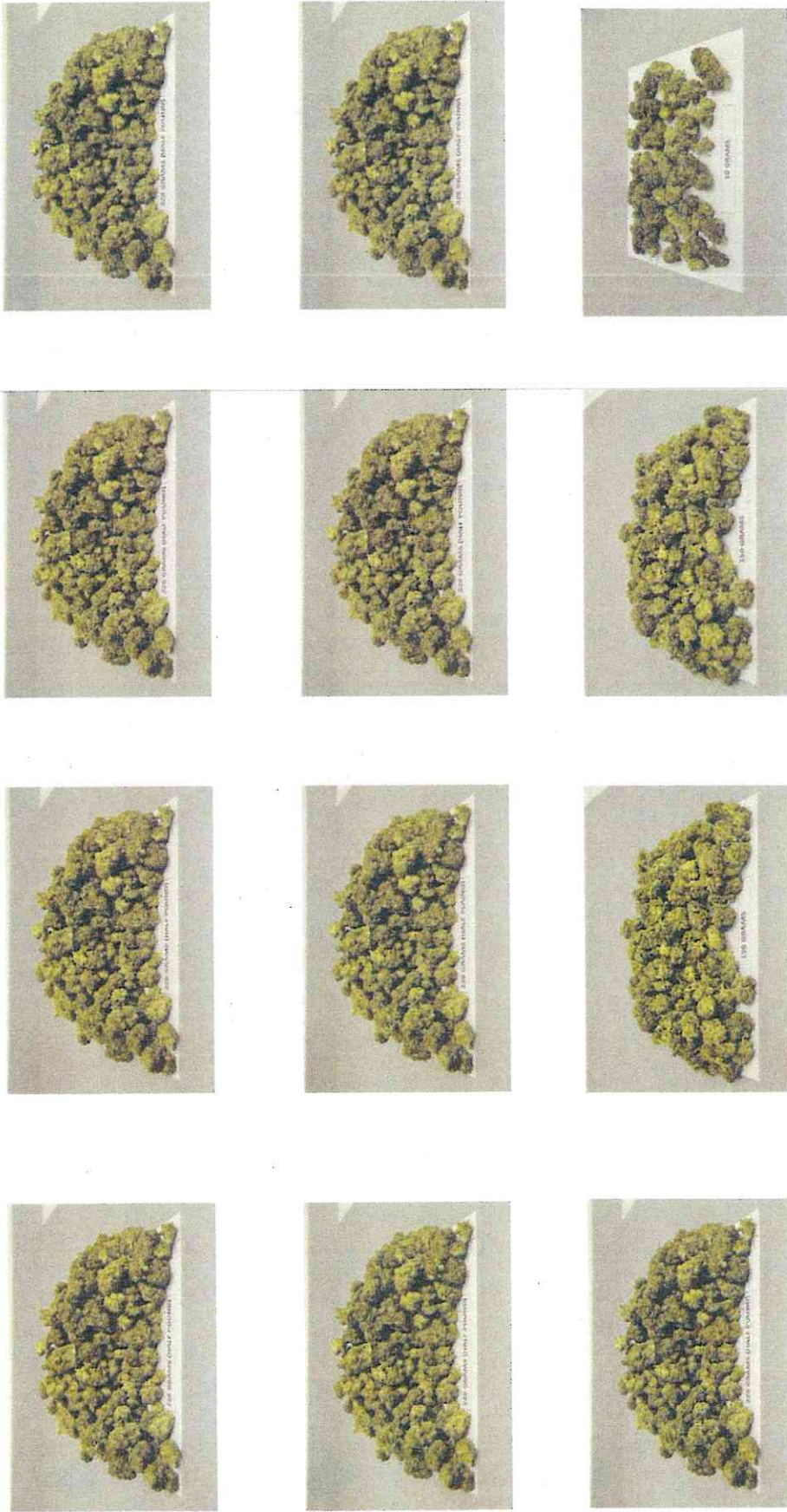
Annex GG

I'm aware of a person under the MMAR who had been authorized to possess 6,000 grams (13.2 pounds) based on his 200 gram a day consumption. The value of his possession would be approximately \$26,000 and make him a target for a robbery or theft. The below 2 pages depict the volume of marihuana associated to this authorized possession amount.





The above photographs depict the volume of marijuana a person could carry around under the MMAR (13.2 pounds) with a physician's endorsement to consume 200 gram a day. The first 25 photographs represent ½ pound Ziploc bags = 12.5 pounds + 2 photographs of 150 grams + 1 photograph of 50 grams = 6,000 grams.



The above photographs depict the volume of marijuana a person could carry around under the MMAR (13.2 pounds) with a physician's endorsement to consume 200 gram a day license. The first 25 photographs represent ½ pound Ziploc bags = 12.5 pounds + 2 photographs of 150 grams + 1 photograph of 50 grams = 6,000 grams.

Annex HH



On May 5, 2013 the Fraser Valley RCMP Traffic Section stopped a vehicle for erratic driving. The driver was a MMAR producer authorized to grow 98 marihuana plants for personal use with a possession limit of 600 grams. The driver was found in possession of 3,597 grams which is 2,997 grams over her authorized possession amount. The medical marihuana was packaged in 1/2 pound Ziploc bags.

Annex II



The driver of this vehicle had a MMAR production license to grow 195 marihuana plants and possess up to 1,200 grams. Inside the back of the vehicle were 54 full garbage bags of marihuana with an estimated dried weight of 160 pounds. This represents a possession of approximately 60 times over his authorization possession amount.



The MMAR producer was transporting 54 garbage bags of mature harvested marijuana plants full of buds.