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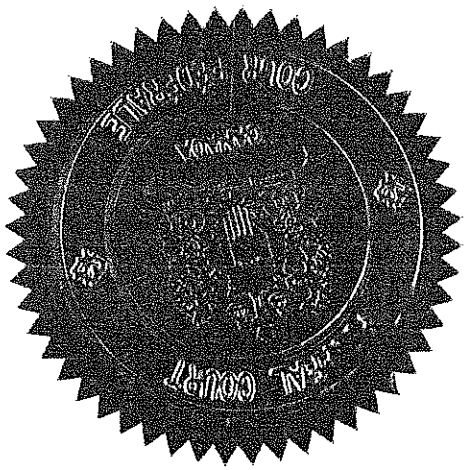

No. T-2030-13

FEDERAL COURT

NEIL ALLARD
TANYA BEEMISH
DAVID HEBERT
J.M.
SHAWN DAVEY

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANTS

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Vancouver, December 10, 2013

Issued by:

AMANDA DUNN
REGISTRY OFFICER
AGENT DU GREFFE

(Registry Officer)

Pacific Centre, 3rd Floor
701 West Georgia Street
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TO: The Attorney General of Canada
Attention: Mr. William F. Pentney, Deputy Attorney General of Canada

THE CLAIMS OF THE PLAINTIFFS

1. The Plaintiffs claim as follows:

    a. A Declaration pursuant to s.52 (1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") that 'a constitutionally viable exemption' from the provisions of the *Controlled Drugs and Substances Act must* exist to enable the medical use of Cannabis, by medically approved persons, in any of its effective forms. This constitutional right includes the right of the patient (or a person designated by the patient as a caregiver 'person responsible for the patient' where the patient is unable to exercise this right), to both possess and use Cannabis in any forms and also to cultivate or produce and possess Cannabis in any form, for the treatment of the patient's medical condition.

    b. A Declaration, pursuant to s.52 (1) of the *Charter*, that the *Marihuana for Medical Purposes Regulations* (*MMPR*) that came into force on June 19, 2013, (and run concurrently with the *Medical Marihuana Access*

Regulations (*MMAR*) until March 31, 2014 when the *MMAR* will be repealed by the *MMPR)* are unconstitutional to the extent that:

i. They fail to provide for the continued personal production of their medicine by the patient or a designated caregiver 'person responsible for the patient' where the patient is unable to exercise this right, as provided for currently in the *MMAR;*

ii. The *MMPR* unreasonably restricts the s. 7 *Charter* constitutional right of a medically approved patient to reasonable access to their medicine by way of a safe and continuous supply and,

and are inconsistent with the s.7 *Charter* right and are not saved by s. 1 of the *Charter.*

c. A Declaration, pursuant to s.52 (1) of the *Charter*, that the limits in the *Narcotic Control Regulations (NCR), MMAR* and in the *MMPR*, to possessing, selling or providing only "dried marihuana" are arbitrary and constitute an unreasonable restriction on the s. 7 *Charter* rights of these patients and are inconsistent therewith and in violation thereof and not saved by s. 1 of the *Charter,* in accordance with the principles and findings underlying the judicial decision in ***R. v. Smith*** 2012 BCSC 544.

d. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *MMPR* that specifically limit production by a 'Licenced Producer' of Cannabis to "indoors", prohibiting any, even temporary, outdoor production and prohibiting production in "a dwelling house," are unconstitutional, to the extent that they might be found to be applicable to a patient generally, a patient personal producer or his or her designated caregiver as such limits and restrictions amount to arbitrary unreasonable restrictions on the patients s.7 *Charter* right to possess, produce and store for their medical purposes, and are inconsistent therewith and these limitations are not saved by section 1 of the *Charter*;

e. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *MMPR* that specifically restrict the amounts relating to possession and storage by patients, including the "30 x the daily quantity authorized or 150 gram maximum, whichever is the lesser", and other limitations applicable or imposed upon 'Licenced Producers' in relation to their registered clients

/ patients are unconstitutional, to the extent that they are applicable to a patient generally, a patient personal producer or his or her designated caregiver as such limits in the *MMPR* amount to arbitrary unreasonable restrictions on the patients s.7 *Charter* right to possess, produce and store for their medical purposes, and are inconsistent therewith and these limitations are not saved by section 1 of the *Charter*.

f. An Order pursuant to s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just interim remedy, in the nature of:

    i. An interim constitutional exemption from ss.4,5 and 7 of the *Controlled Drugs and Substances Act* for all persons medically approved under the *Narcotic Control Regulations* C.R.C., c.1041 (*NCR*), the *MMAR* or the *MMPR*, including those patients who have a caregiver 'person responsible' for them designated to produce for them, including an exemption for that caregiver 'person responsible' designated producer, pending trial of the merits of the action or such further Order of the court as may be necessary;

    or, alternatively

    ii. an interlocutory exemption/injunction preserving the provisions of the *MMAR* relating to personal production, possession, production location and storage, by a patient or designated caregiver 'person responsible for the patient' and related ancillary provisions, and if necessary, limiting the applicability of certain provisions of the *MMPR* to such patients or designated caregivers that are inconsistent with their s. 7 constitutional right under the *Charter* pending the decision of this Court on the merits of this action.

    or alternatively, and together with

    iii. an interim/interlocutory order in the nature of *mandamus* to compel the Defendant to process all applications, renewals and modifications to any licences pursuant to the *MMAR* in accordance with all of its provisions (other than those challenged as unconstitutional herein), notwithstanding ss.230, 233-234, 237-238, 240-243 of the *MMPR* relating to applications under the *MMAR*

after September 30th, 2013 as reflected in the amended *MMAR* sections 41-48.

g. An Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just final remedy, in the nature of:

   i. a permanent constitutional exemption from ss.4,5 and 7 of the *Controlled Drugs and Substances Act* for all persons medically approved under the *Narcotic Control Regulations* (*NCR*), the *MMAR* or the *MMPR*, including those patients who have a caregiver 'person responsible' for them designated to produce for them, including that designated producer, until such further Order of the court;

   or, in the alternative

   ii. a permanent exemption/ injunction preserving the provisions of the *MMAR* relating to personal production, possession, production location and storage by a patient or designated caregiver 'person responsible' and related ancillary provisions, and if necessary, limiting the applicability of certain provisions of the *MMPR* to such patients or designated caregivers 'person responsible' that are inconsistent with their s.7 *Charter* Rights. Such order to continue until such time as the Defendant makes appropriate amendments to the *MMPR* or otherwise to comply with any decision of this Court to ensure the full ambit and scope of the patient's constitutional rights pursuant to s. 7 of the *Charter*, without any unreasonable, inconsistent and unnecessary restrictions thereon.

h. Costs, including special costs and the Goods and Services Tax and Provincial Services Tax, on those costs, if appropriate; and

i. Such further and other relief as this Honourable Court deems appropriate and just in all of the circumstances.

THE PARTIES

2. The Plaintiff Neil Allard, is a resident of British Columbia and has been medically retired since 1999 and has an address for service, care of Conroy and Company, 2459 Pauline St., Abbotsford, BC.

3. The Plaintiff Tanya Beemish is a resident of British Columbia, unemployed, disabled and on a disability pension and the Plaintiff David Hebert is a resident of British Columbia, is Tanya Beemish's common-law husband and the person responsible for her as her caregiver and designated producer under the *MMAR* of her medicine. They have an address for delivery care of Conroy and Company 2459 Pauline St., Abbotsford, BC.

4. The Plaintiff J.M., is a resident of British Columbia, is unemployed and has been permanently disabled and on pension since 1979 and has an address for delivery care of Conroy and Company, 2459 Pauline St., Abbotsford, BC.

5. The Plaintiff Shawn Davey is a resident of British Columbia and is unemployed surviving off of settlement funds and a pension since 2000 and has an address for deliver care of Conroy and Company, 2459 Pauline St., Abbotsford, BC.

6. The Plaintiffs bring these claims for declaratory relief and interlocutory and permanent relief pursuant the *Federal Court Act* and *Rules* and ss.7 and 24(1) of the *Charter of Rights and Freedoms*, on behalf of themselves as persons ordinarily resident in Canada who have been medically approved to use cannabis as medicine as a patient under professional treatment for a condition for which the person is receiving treatment either under:

> All persons ordinarily resident in Canada who have been medically approved to use cannabis as medicine as a patient under professional treatment for a condition for which the person is receiving treatment, either under the *Narcotic Control Regulations,* C.R.C., c. 1041, the *Medical Marihuana Access Regulations (MMAR)* SOR/2001-227 since July 30th, 2001 or the *Marihuana for Medical Purposes Regulations (MMPR)* since June 19th, 2013 and in particular since September 30th, 2013.

7. The number of patients approved under the *NCR* and under the *MMPR* since June 19th, 2013 or in particular since September 30th, 2013, when no further amendments could be made to existing *MMAR* licences, are unknown. There are approximately 35,000 to 40,000 patients currently holding Authorizations to Possess (ATPs) under

the *MMAR*, of which some 24,000 – 30,000 hold Personal Production Licences (PPLs). Some 4,250 of those patients have Authorizations to Possess (ATPs) and rely upon a person responsible for them as a Designated Grower (DG) to produce their medicine for them. Some 6,000 of those patients obtain their medicine through the government supply. The specific details with respect to the Class are within the knowledge and possession of the Defendant.

8. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, is named as the representative of the Federal Government of Canada and the Minister of Health for Canada who is the Minister responsible for Health Canada and certain aspects of the *Controlled Drugs and Substances Act* including the *Narcotic Control Regulations,* the *Marihuana Medical Access Regulations* and program and the *Marihuana for Medical Purposes Regulations* and program.

BACKGROUND

The *Controlled Drugs and Substances Act*

9. Cannabis, its preparations, derivatives and similar synthetic preparations are listed in Schedule II to the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, and amendments thereto (the "*CDSA*"). Its production, possession, possession for the purposes of distribution or trafficking, and trafficking, as well as importing and exporting are prohibited by this Statute as a "controlled substance", formerly known as "narcotics".

10. Section 56 of the *CDSA* permits the Minister for Health for Canada (the "Minister") or his designate, to exempt any person, class of persons, controlled substance or precursor of an a controlled substance from the application of the *CDSA* or its Regulations if, in the Minister's or the designates opinion, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

11. While no viable constitutional medical exemption to the prohibition against the possession, possession for the purpose of trafficking, trafficking and cultivation or production of cannabis, or other offences, existed prior to July 30th, 2001, the *Narcotic Control Regulations* C.R.C., c.1041, and specifically s.53, continued pursuant to the *Controlled Drugs and Substances Act* provided as follows:

53. (1) No practitioner shall administer a narcotic to a person or animal, or prescribe, sell or provide a narcotic for a person or animal, except as authorized under this section.

(2) Subject to subsections (3) and (4), a practitioner may administer a narcotic to a person or animal, or prescribe, sell or provide a narcotic for a person or animal, if

(a) the person or animal is a patient under his professional treatment; and

(b) the narcotic is required for the condition for which the person or animal is receiving treatment.

(3) No practitioner shall administer methadone to a person or animal, or prescribe, sell or provide methadone for a person or animal, unless the practitioner is exempted under section 56 of the Act with respect to methadone.

(4) A practitioner of medicine, dentistry or veterinary medicine shall not administer diacetylmorphine (heroin) to an animal or to a person who is not an in-patient or out-patient of a hospital providing care or treatment to persons, and shall not prescribe, sell or provide diacetylmorphine (heroin) for an animal or such a person.

12. This Regulation was amended by the *MMAR* in July, 2001 to add at the end of s.53(1) the words "or the Marihuana Medical Access Regulations". On June 19th, 2013, by virtue of s.127(1) of the *MMPR*, s.53(1) was further amended to include the words at the end after the word "section", "the Marihuana Medical Access Regulations or the Marihuana for Medical Purposes Regulations." The words "Marihuana Medical Access Regulations" are to be deleted upon the repeal of the *MMAR* on March 31st, 2014 by the *MMPR*. In addition the *MMPR* adds the following as sub-section (5):

(5) A health care practitioner may administer **dried marihuana** to a person or prescribe or transfer it for a person if

(a) the person is a patient under their professional treatment; and

(b) the **dried marihuana** is required for the condition for which the person is receiving treatment. (emphasis added)

13. As a result of the decision of the Ontario Court of Appeal in ***R. v. Parker*** (2000) 49 O.R. (3d) 481 (leave to appeal to the Supreme Court of Canada dismissed) recently reaffirmed in ***Her Majesty the Queen and Matthew Mernagh*** (2013) O.C.A 67 (February 1st, 2013) (leave to appeal to SCC dismissed July 25th, 2013), the Government of Canada was required, in order to ensure that the *Controlled Drugs and Substances Act* was in compliance with the Canadian Constitution and in particular s.7 of the *Canadian Charter of Rights and Freedoms*, to put in place a "constitutionally viable medical exemption to the prohibition against the possession and cultivation of marihuana, that requires medical oversight".

14. The failure on the part of the government 'to provide reasonable access for medical purposes' as an exemption to the general prohibition violated s.7 of the *Canadian Charter of Rights and Freedoms* in that the 'liberty' and 'security of the person' of the patient was affected in a manner that was inconsistent with the "principles of fundamental justice".

15. Initially the government, pursuant to s.56 of the *CDSA* issued an "Interim Guidance" document and processed exemptions under that section until ultimately on July 30th, 2001 the *Medical Marihuana Access Regulations* (*MMAR*) came into effect.

<u>The *Medical Marihuana Access Regulations (MMAR)* SOR / 2001-227</u>

16. The *MMAR* established a framework or scheme where an individual could apply to Health Canada with the support of their medical practitioner for an "Authorization to Possess" (ATP) "dried marihuana" in accordance with an authorization for medical purposes. The Regulations set out various categories 1 – 3 relating to symptoms of various medical conditions with the latter categories requiring the involvement of one or two specialists. The ATP was subject to annual renewal.

17. There being no lawful supply of seeds or plants, the *Regulations* provided for the individual to obtain a Personal Use Production Licence (PUPL) to produce for them an amount of cannabis and to store and possess certain amounts depending upon a calculation derived from the medical practitioner's authorization of grams per day for the particular ailment.

18. A "Personal Production Licence" (PPL) pursuant to the *Medical Marihuana Access Regulations*, enables the patient to produce and store their own medicine at chosen location in amounts determined according to a formula under the regulations that is dependent upon the number of grams per day authorized by the physician.

19. In addition the *Regulations* provide for a "Designated Person Production Licence" (DPPL) authorizing someone to produce dried marihuana for the patient.

20. All licences are subject to annual renewal and specify not only the number of plants permitted to be produced, but also the amount to be stored and the location of the storage and the specific amount that the patient could possess on his or her person at any time(30 times the daily limit with no maximum).

21. The licence provides for production entirely indoors or partly indoors and partly outdoors subject to some restrictions, including a prohibition against the simultaneous production of marihuana partly indoors and partly outdoors.

22. There is no prohibition against production at one's ordinary place of residence or in any 'dwelling place' and if the production site is not owned by the producer and is not the applicant's ordinary place of residence then the consent of the owner is required.

23. Initially, these Regulations provided that a designated producer could only produce for one patient holding an ATP and there could only be three licences in one place. Furthermore the Regulations are limited to the production and supply of "dried marihuana" and no other form.

24. Subsequent to ***Parker (supra)*** as a result of further litigation, in both civil and criminal cases, including, ***Wakeford v. Canada*** [1998] O.J. 3522; [2000] O.J.1479; [2002] O.J. No. 85, Ont.CA ***R. v. Krieger*** 2000 ABQB 1012, 2003 ABCA, 2008 ABCA 394, ***Hitzig v. Canada*** (2003) 177 OAC 321, issues were raised with respect to the lack of a legal source and safe supply thereof, and the government of Canada on July 8th, 2003 announced an "Interim Policy" whereby marihuana seeds and dried marihuana grown by Prairie Plant Systems (PPS) under contract for the government for research purposes would become available to individuals having an exemption under the *MMAR* or under s.56 of the *CDSA*. This policy was to be in place until further clarification was made by the courts.

25. As a result of the Ontario Court of Appeal decision in ***Hitzig (supra)*** the Government of Canada on December 3rd, 2003 amended the *MMAR* to comply with that decision to some extent but re-enacted the provision permitting a designated producer to only produce for one patient in virtually identical terms. Consequently, while a government supply of cannabis became available to authorized permit holders who did not have a Personal Production Licence or a Designated Grower, the Designated Grower was once again still limited to producing for only one person.

26. On June 29th, 2005 the Government of Canada made further amendments to the *MMAR* re-defining the types of applicants by merging categories 1 and 2 into category 1, requiring the declaration of only one physician, and merging category 3 into 2 and eliminating the requirement of a declaration from a specialist but still requiring a consultation with one.

27. On October 3rd, 2007 further amendments were made to the *MMAR* but still leaving the designated producer's ability to produce for only one person in place. However, as a result of the decision of the Federal Court of Appeal in ***Sfetkopoulos v. AG Canada*** 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA),essentially following ***Parker*** and ***Hitzig (supra)*** that provision was struck down again as being a negative restriction violating s.7 of the *Charter* in that it was arbitrary and not in accordance with the principles of fundamental justice.

28. In response, the Government of Canada on May 14th, 2009 enacted a new ratio allowing a designated producer to produce for two authorized persons.

29. The *MMAR* also provided that there could only be three production licences at one location and no more. This section was also challenged in the courts and found to be too restrictive in the case of ***R. v. Beren and Swallow*** (2009) BCSC 429 and the government's response to the striking down of that section was simply to amend the *MMAR* and allow up to four licences at one location.

<u>The *Marihuana for Medical Purposes Regulations (MMPR)*</u>

30. On June 19th, 2013 the *Marihuana for Medical Purposes Regulations (MMPR)* SOR/2013-119 came into effect. These Regulations run concurrently with the *MMAR* until March 31st, 2014 when, by virtue of s. 267 of the *MMPR*, the *MMAR* will be repealed and all personal use production licences and designated producer licences

will be terminated effective that date regardless of the dates specified on the actual licences previously issued. While "access" is increased slightly by the definition of a "Health care practitioner" being expanded to include "nurse practitioners", the question of "supply" is dealt with by providing for "licenced producers" as the sole source of supply to registered patients, doctors or hospitals for patients.

31. The *MMPR* puts in place a transitional scheme to be implemented between now and March 31st, 2014 whereby persons holding an Authorization to Possess and a Personal Production Licence or a Designated Producer will obtain a notice of authorization from the Minister to sell their plants or seeds to a licenced producer. While the ATP continues to be valid for purposes of registration with a licenced producer up until March 31st, 2015, no more applications under the *MMAR* or renewals or amendments to existing licences are permitted after September 30th, 2013. After that date the patient with an 'Authorization to Possess' is to obtain cannabis by registering as a client with a licenced producer or attending on their health care practitioner and obtaining from them a "medical document" that sets out the authorized grams per day and that authorization can only be filled by a licenced producer directly or indirectly through the doctor or a hospital obtaining it from a licenced producer. ATP's can also continue to access the government PPS supply

32. The *MMPR* continues to limit possession by a patient to "dried marihuana" and the patient cannot possess any more than 30 times the daily quantity authorized or 150 grams whichever is the lesser amount(ss.3-6). The "licenced producers" are not permitted to conduct any activity at a 'dwelling place' and production and related activities can only take place 'indoors' and not 'outdoors'(ss.12 – 15).

33. In the Government of Canada produced "Regulatory impact analysis statement" about the *Marihuana for the Medical Purposes Regulations* in the Canada Gazette, Volume 146, #50 on December 15th, 2012 it is indicated that the main economic cost associated with the proposed *MMPR* would arise from the loss to consumers who may have to pay a higher price for dry marihuana estimated to be $1.80 per gram to $5.00 a gram in the status quo to about $7.60 per gram in 2014 rising to $8.80 per gram thereafter.

34. As of November 1st, 2013 there were three approved licenced producers(LP's) and one of them is a wholly owned subsidiary of Prairie Plants Systems the former government sole contractor, and goes by the name of 'CanniMed Ltd.' It has

indicated that the price of its product will be between $8.00 and $12.00 a gram. The others are called "The Peace Naturals Project Inc' and 'Mettrum Ltd.' and their estimated prices are currently unknown to the Plaintiffs.

35. Whereas persons can be approved for the use of cannabis (marihuana) under the *Narcotic Control Regulations* or since September 30th, 2013 under the *Marihuana for Medical Purposes Regulations,* the bulk of the Class of the persons affected were approved under the *Medical Marihuana Access Regulations* since July 31st, 2001 and continuing until its repeal on March 31st, 2014. According to Health Canada statistics there are:

- 24,185 of those persons held personal use production licences ("PPLs").
- 4,251 persons held designated grower production licences (DGs).
- 6,027 persons had access to Health Canada's supply of dried marihuana (presumably through the government contractor Prairie Plant Systems).
- 27,015 licences were issued to produce entirely indoors
- 3,334 licences were issued to produce entirely outdoors.
- 2,670 licences were issued to individuals producing indoors in the winter and outdoors in the summer.

36. A research survey, supported by the UBC Institute for Healthy Living and Chronic Disease Prevention, of patient characteristics under the MMAR disclosed that some 60 to 70% of those persons authorized to possess cannabis (marihuana) for medicine are on disability pensions and that affordability was a substantial barrier to access by all income groups.

37. As of April, 2013, Health Canada authorized the production of 188,189 kg of Cannabis (marihuana) to be produced under the *MMAR* under the various licences during 2012 broken down as follows:

- 15,752.88 kg : for patients needing to use 1 to 5 g per day;
- 42,054.31kg: for patients needing to use 6 to 10 g per day;

- 89,127.44 kg: for patients needing to use 11 to 20 g per day;
- 12,795.62 kg: for patients needing to use 21 to 50 g per day;
- 3195.21 kg: for patients needing to use 51 to 100 kg per day; and
- 4,854.87 kg: for patients needing to use 101 to 150 g per day.
- Apparently there are 89 persons in Canada with authorizations to possess with dosage levels of 150 g or more per day.

38. The Plaintiffs hold the following licence/s issued by Health Canada, pursuant to the *Medical Marihuana Access Regulations (MMAR)* under the *Controlled Drugs and Substances Act* (CDSA):

- Neil Allard: personal production licence & authorization to possess as medicine
- J.M.: personal production licence & authorization to possess as medicine;
- Tanya Beemish: authorization to possess as medicine;
- David Hebert: designated grower licence (for patient Tanya Beemish); and
- Shawn Davey: authorization to possess and personal production licence.

39. The Plaintiff, Neil Allard, age 59, resides in British Colombia. He became severely ill in 1995 and unable to continue work as an Area Counselor at Veterans Affairs Canada, and by 1999 was placed on permanent medical retirement. He suffers from 'Myalgic Encephalomyelitis' and 'clinical depression'.

40. Mr. Allard currently holds an Authorization to Possess (ATP) and a Personal Production Licence ("PPL"), under the *MMAR,* and he has been so authorized on an annual basis since 2004. He is authorized to produce at his residence/dwelling house and constructed a facility for that purpose, at considerable cost and took a course through Malaspina College on how and what to do with respect to marihuana production.

41. Mr. Allard produces indoors and has produced outdoors and in a greenhouse. He is authorized to consume a daily dose of medical marihuana of 20 grams a day and uses the marihuana in various forms. These include edibles, where the dried marihuana is baked into another product for consumption ("Edibles"), juiced, where the leaves from the raw marihuana plant are blended together to form a juice for

consumption ("Juiced"), vapourized, where the active ingredients of the dried marihuana are inhaled when comingled with water particles in a vaporizer device ("Vapourized"), and in topical oils, which contain the extracted active ingredients in marihuana and are then applied directly to the skin ("Oils"). He does not smoke dried cannabis (marihuana) in cigarettes/joint form.

42. Additionally, Mr. Allard works with 13 different specific strains of marihuana that he grows organically to help manage his medical condition and says that certain strains do not work for him and are problematic and he is very concerned about quality control. He also asserts that he derives therapeutic benefit from the production of his own Cannabis plants.

43. The Plaintiff, Tanya Beemish, age 27, resides in British Colombia with her common-law spouse, the Plaintiff David Hebert. Ms. Beemish suffers from 'Type One Diabetes' and from a complication thereof called "Gastroparesis" or "delayed gastric emptying" which causes frequent vomiting and causes significant pain and nausea. She has to regularly attend the Emergency department at the Royal Columbian Hospital. She is unemployed and receives a monthly permanent disability pension.

44. Ms. Beemish has held an ATP since 2012 and her common-law spouse, the Plaintiff David Hebert also acts as the person responsible for her as her caregiver Designated Grower ("DG") as she cannot produce her medicine for herself due to her illness and they cannot afford to purchase her medicine from the illicit market. She is unemployed, disabled and on disability pension. They have constructed a safe and secure production facility in their dwelling house, having invested in appropriate equipment for production and related purposes, including safety and security.

45. Ms. Beemish presently consumes between 2-10 grams per day, usually by smoking, and vapourizing, as well as edibles by way of baked goods, juicing, and oils. She relies on two unique "blueberry cross" strains to help manage the pain of her illness. Both Ms. Beemish and Mr. Hebert are concerned about losing control over the production of her medicine in a secure and safe manner at reasonable cost.

46. The Plaintiff, J.M., age 54 resides in British Columbia. He is an unemployed, paraplegic, suffering a permanent injury at the sixth thoracic vertebra of the spine from a cliff diving accident in August 1979 and is wheelchair-bound. He suffers from

chronic and severe muscle spasms, and severe pain in his back and torso. He is on a CPP permanent disability pension.

47. J.M. received his ATP and PPL in 2001 and currently consumes 20 grams per day by way of edibles, teas and juicing (smoothies). He makes infused butter using fresh raw leaves. He does not smoke dried marihuana.

48. J.M. produces both indoors and outdoors. He constructed his own personal wheelchair accessible growing facility in which he safely and securely produces his own medicine through a clean organic process without any pesticides, fungicides, or other chemicals additives. He produces outdoors for part of the year, enabling him to reduce his costs even further and derives therapeutic benefit from the production of this medicine over the last 12 years. He cannot afford to purchase from the illicit market, including Compassion Clubs or dispensaries. He relies on a specific strain to help manage his disability.

49. The Plaintiff Shawn Davey, age 37, resides in British Columbia. He is unemployed due to a brain injury suffered in a motor vehicle accident on June 16th, 2000 and survives off of funds from a settlement in relation to the motor vehicle accident and a CPP disability pension.

50. Mr. Davey has and ATP and PPL having discontinued the use of a Designated Grower who held the Designated Person Production Licence because that grower could not produce his medicine to a satisfactory standard for him. He is currently authorized to use 25 grams per day that he consumes by way of smoking, edibles and various other forms. He produces indoors in a separate outbuilding on a 5 acre piece of property and has invested heavily in security measures and fire protection measures and has never had a toxic mold problem.

51. Mr. Davey says that he will not be able to afford to purchase from licenced producers at the estimated price of $8 to $12 a gram, nor from the illicit market or compassion clubs or dispensaries at similar prices. Cannabis (marihuana) is the only medication that he now uses having stopped the use of all other narcotics and if he is compelled to stop producing for himself at an estimated $1 to $4 a gram he

would have to return to the narcotics at a cost of approximately $3,000.00 per month, a portion of which would be defrayed by Pharmacare/insurance coverage. The cost estimated for cannabis (marihuana) from a licenced producer for a month would be more than that and not covered by any Pharmacare/insurance program.

52. Mr. Davey is also very concerned to ensure quality control over his production by way of organics and sanitation to ensure safety and cleanliness and the lack of contamination of any kind.

53. All of the Plaintiffs, except David Hebert, are unemployed and on disability pensions. Some of them have experienced purchasing their medicine from Compassion Clubs/Dispensaries and other aspects of the illicit market or from the government supply but determined that they could not afford to continue to do so for economic and other reasons.

54. Consequently, they each invested substantially in creating their own production facility/room in a dwelling house, or outbuilding, including investing in appropriate indoor production equipment and other related equipment to prevent the escape of odors and for safety and security purposes.

55. Some have also produced in greenhouses and outdoors, at substantial electrical costs savings, as well as indoors. Some have also invested considerable time educating themselves on how to produce, how to produce safely for their medical condition, including organic production, and how to produce certain strains of Cannabis (Marihuana) that are most effective for their medical condition.

56. All of them fear the loss of control over the safe continuous production of their own medicine at reasonable cost, including use of their developed specific effective strains, by the production by others who will be producing for many others, and fear that they will not be able to afford the cost of the medicine to be sold by the new Licence Producers, estimated to be similar to illicit market prices.

57. All of the Plaintiffs reside in British Columbia, and are therefore not limited to using only "dried marihuana" as provided in the *NCR, MMAR* and *MMPR* due to the decision in ***R v. Smith*** 2012 BCSC 544, which is on appeal, and is only applicable in British Columbia and in relation to the *MMAR*. The Plaintiffs use Cannabis in its various forms, including in its raw form for juicing, and making butter, as well as

using oils and tinctures, using it in teas, and as salves and creams for topical applications, or by making edibles and by smoking in cigarettes/joints or using a vaporizer or atomizer. Medically approved patients outside British Columbia offend against the Controlled Drugs and Substances Act if they exceed the terms of their license limiting them to "dried marihuana". It is an offense to separate or extract the resin glands from the dead plant material and a further offense to possess those resin glands, whether as resin or "hashish, or when infused into derivative products such as foods, oils or even tea. It is an offence to possess cannabis juice derived from the natural undried plant as it is not "dried marihuana".

58. The Plaintiff Allard is medically retired and the Plaintiffs Tanya Beemish and J.M. are on permanent disability pensions. They rely on specific strains and exercise particular control over their production environments due to "immune system" concerns and usually produce in their dwelling house or in an outbuilding on their property adjacent to their dwelling house. JM produces partly indoors and partly outdoors and the Plaintiff Allard has produced partly outdoors but primarily indoors and the Plaintiff Hebert on behalf of Beemish produces indoors. The Plaintiffs not only use cannabis as "dried marihuana" by smoking or vapourizing, but also use it in its natural form through cold press juicing, as well as various other methods of vaporizing and atomizing and some use extractions such as topical oils for skin conditions and many use edibles or baked goods.

59. The Plaintiffs say that they are able to produce their cannabis at between $1.00 and $4.00 a gram or less and that they will not be able to afford the estimated Licenced Producer prices which are comparable to illicit market prices and that affordability is a barrier to access across all income levels.

60. There are questions of law and fact common to the class. The claims of the Plaintiffs are typical of the claims for the class and the Plaintiffs herein will adequately represent and protect the interests of the said class.

The Constitutional Violations Alleged – Section 7 of the *Charter*

61. The Plaintiffs plead and rely on ss.1, 7, 24(1) and 52(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), Part 1 of the *Constitution Act*, 1982 being Schedule B to the *Canada Act*, 1982 (U.K.) 1982, c.11 (the "*Constitution Act 1982*").

62. The Plaintiffs say that they are entitled to a Constitutionally viable exemption from the provisions of the *Controlled Drugs and Substances Act, supra*, to enable their medically approved use of cannabis, in any or all of its effective forms. This includes the right of the patient (or a person responsible for the patient) to produce and possess the cannabis for themselves (or the patient) for medical purposes in order:

- to ensure a safe, quality controlled supply;
- at a reasonable cost that is within their economic means; and
- to do so inside or outside of their dwelling house, subject only to reasonable regulations regarding safety and security.

MMPR – The Omission to Include Personal Production

63. The Plaintiffs say that any unreasonable restriction on their constitutional right of reasonable access, including precluding them from:

- producing for themselves or if unable having somebody produce for them;
- growing in their dwelling house or outside their dwelling house;
- consuming cannabis that is other than "dried marihuana,

will cause the Plaintiffs to have to choose between their liberty and their health. Consequently, this will impact the liberty and security of their person and in a manner that is not in accordance with the principles of fundamental justice, namely, precluding arbitrariness in the deprivation of rights, that does little or nothing to advance the governments interest, gross disproportionality in effects, and an administrative structure made up of unnecessary rules that result in an additional risk to the health of the person and that are manifestly unfair, thereby violating their right to life, liberty and the security of their person and the right not to be deprived thereof except in accordance with the principles of fundamental justice as preserved

by s.7 of the *Canadian Charter of Rights and Freedoms* and these provisions are not saved under s.1 of the *Charter.*

NCR/MMAR/MMPR – The Limitation to Dried Marihuana Only

64. The Plaintiffs say that the restriction with respect to "dried marihuana only" in the *MMPR* that also exist in the *MMAR* and *NCR* is an unconstitutional violation of s.7 of the *Charter* as an unreasonable restriction. In British Columbia that provision of the *MMAR* was struck down as unconstitutionally restrictive as that limitation did little or nothing to enhance the government's interest including the government's interest in preventing diversion of the drug, or controlling false and misleading claims of medical benefit and that it was arbitrary and violated s.7 of the *Charter* (***R. v. Smith*** 2012 BCSC 544 (currently on appeal to the BCCA). The Plaintiffs say that the decision in *Smith (supra)* should be followed federally and applied across Canada to the putative class to enable medically approved patients to consume their medicine in whatever form is most effective for them and to avoid a form that may be harmful to them, and that such a limitation in the *NCR*, *MMAR* and *MMPR* is unconstitutional as being in violation of s.7 and inconsistent therewith and is not saved by s.1.

MMPR – Other Limitations – Dwelling House, Outdoor and Possession Limits

65. The Plaintiffs say that the proposed *MMPR* restrictions preventing production in a dwelling house and preventing any production outdoors in particular, as well as other restrictions applicable to licenced producers, should not be applicable to the patient or personal producer or designated caregiver because they amount to unnecessary restrictions in relation to the patient producer or his or her designate and would be unconstitutionally too restrictive. As the patient producer or his designate would not be involved in selling any of their product to any members of the public, none of the provisions of the *MMPR* relating thereto, such as packaging and labeling and the costs thereof, including packaging arbitrary maximum amounts in containers that a person can possess on their person at any one time, such as the maximum of 150 g, regardless of one's authorized dosage, should not apply to the patient, producer or designate, and if any such limits are held to apply they should not be less than 30 times the daily dosage with no maximum, as provided in the MMAR

THE RELIEF

66. The plaintiffs claim as follows:

a. A Declaration, pursuant to s.52 (1) of the *Canadian Charter Of Rights and Freedoms* that 'a constitutionally viable exemption' from the provisions of the *Controlled Drugs and Substances Act (CDSA)*, in accordance with the principles and findings underlying the judicial decisions in ***R v. Parker***, (2000), 49 O. R. (3d) 481, ***Hitzig v. Canada*** (2003) 231 D.L.R. (4th) 104 and ***R v. Mernagh***, 2013 ONCA 67,to enable the medical use, by medically approved persons, of Cannabis, in any of its effective forms, includes the right of the patient (or a person designated as responsible for the patient), to not only possess and use Cannabis in any of its forms, but also to cultivate or produce and possess Cannabis in any form, that is effective for the treatment of the patient's medical condition;

b. A Declaration pursuant s.52(1) of the *Canadian Charter of Rights and Freedoms* that the *Marihuana for Medical Purposes Regulations* (*MMPR*) that came into force on June 19, 2013, and that run together or concurrently with the *Medical Marihuana Access Regulations* (*MMAR*) until March 31, 2014, when the *MMAR* will be repealed by the *MMPR*, are unconstitutional to the extent that the *MMPR* unreasonably restricts the s. 7 *Charter* constitutional right of a medically approved patient to reasonable access to their medicine by way of a safe and continuous supply, by failing to provide for the continued personal production of their medicine by the patient or a designated caregiver of the patient, as provided for currently in the *MMAR*, and as such violates the constitutional rights of such patients pursuant to s. 7 of the *Canadian Charter of Rights and Freedoms* and is inconsistent there with and not saved by section 1 thereof;

c. A Declaration pursuant to s.52 (1) of the *Canadian Charter of Rights and Freedoms* that the limits in *NCR, MMAR* and in the *MMPR*, to possessing, selling or providing only "dried marihuana" are arbitrary and constitute an unreasonable restriction on the s. 7 *Charter* rights of these patients and are inconsistent there with and not saved by s. 1 of the *Charter*, in accordance with the principles and findings underlying the judicial decision in ***R v. Smith***, 2012 BCSC 544;

d. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *MMPR* that specifically limit production by a 'Licenced Producer' of Cannabis to "indoors", prohibiting any, even temporary, outdoor production and prohibiting production in "a dwelling house," are unconstitutional, to the extent

that they might be found to be applicable to a patient generally, a patient personal producer or his or her designated caregiver as such limits and restrictions amount to arbitrary and unreasonable restrictions on the patients s. 7 *Charter* right to possess, produce and store for their medical purposes, and are inconsistent therewith and these limitations are not saved by section 1 of the *Charter*;

e. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *MMPR* that specifically restrict the amounts relating to possession and storage by patients, including the "30 x the daily quantity authorized or 150 gram maximum, whichever is the lesser", and other limitations applicable or imposed upon 'Licenced Producers' in relation to their registered clients / patients are unconstitutional, to the extent that they are applicable to a patient generally, a patient personal producer or his or her designated caregiver as such limits in the *Narcotic Control Regulations* (*NCR*) and in the *MMPR* amount to arbitrary unreasonable restrictions on the patients s.7 *Charter* right to possess, produce and store for their medical purposes, and are inconsistent therewith and these limitations are not saved by section 1 of the *Charter*.

f. An Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just interim remedy, in the nature of :

    i. a constitutional exemption from s.4,5 and 7 of the *Controlled Drugs and Substances Act* for all persons medically approved under the *Narcotic Control Regulations* (*NCR*), the *MMAR* or the *MMPR*, and/or those patients who have a person responsible for them designated to produce for them, including that designated producer, pending trial of the merits of the action or such further Order of the court as may be necessary

    or in the alternative,

    ii. an interlocutory exemption/injunction preserving the provisions of the *MMAR* relating to personal production, possession, production location and storage, by a patient or designated caregiver and related ancillary provisions, and if necessary, limiting the applicability of certain provisions of the *MMPR* to such patients or designated caregivers that are inconsistent with their s. 7 constitutional right under the *Charter* pending the decision of this Court on the merits of this action;

or alternatively, and together with

iii. an interim/interlocutory order in the nature of *mandamus* to compel the Defendant to process all applications, renewals and modifications to any licences pursuant to the *MMAR* in accordance with all of its provisions (other than those challenged as unconstitutional herein), notwithstanding ss.230, 233-234, 237-238, 240-243 of the *MMPR* relating to applications under the *MMAR* after September 30th, 2013 as reflected in the amended *MMAR* sections 41-48.

g. An Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just final remedy, in the nature of:

i. a permanent constitutional exemption from s.4,5 and 7 of the *Controlled Drugs and Substances Act* for all persons medically approved under the Narcotic Control Regulations(NCR),the MMAR or the MMPR, and/or those patients who have a person responsible for them designated to produce for them, including that designated producer , until such further Order of the court;

or, in the alternative

ii. a permanent exemption/ injunction preserving the provisions of the *MMAR* relating to personal production, possession, production location and storage by a patient or designated caregiver and related ancillary provisions, and if necessary, limiting the applicability of certain provisions of the *MMPR* to such patients or designated caregivers that are inconsistent with their s.7 *Charter* Rights. Such order to continue until such time as the Defendant makes appropriate amendments to the *MMPR* or otherwise to comply with any decision of this Court to ensure the full ambit and scope of the patient's constitutional rights pursuant to s. 7 of the *Charter*, without any unreasonable, inconsistent and unnecessary restrictions thereon

h. Costs, including special costs and the Goods and Services Tax and Provincial Services Tax, on those costs, if appropriate; and

i. Such further and other relief as this Honourable Court deems appropriate and just in all of the circumstances.

The Plaintiffs propose that this action be tried in the City of Vancouver, Province of British Columbia.

DATED this 9th day of December 2013 at the City of Abbotsford, in the Province of British Columbia

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I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the DEC 10 2013 day of DEC 10 2013 A.D. 20 20

Dated this day of

AMANDA DUNN
REGISTRY OFFICER
AGENT DU GREFFE