No. T-2030-13

FEDERAL COURT

BETWEEN:

NEIL ALLARD
TANYA BEEMISH
DAVID HEBERT
SHAWN DAVEY

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

DEFENDANT

PLAINTIFFS' PRE-TRIAL CONFERENCE MEMORANDUM

Solicitor for the Applicant:

John W. Conroy, Q.C.
Conroy & Company
Barristers & Solicitors
2459 Pauline Street
Abbotsford, BC V2S 3S1

Telephone: (604) 852-5110
Facsimile: (604) 859-3361

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(A) A concise statement of the nature of the proceeding

1. The Plaintiffs have been medically approved by their medical practitioner under the provisions of the *Narcotic Control Regulations (NCR)* or the *Medical Marihuana Access Regulations (MMAR)* or the *Marihuana for Medical Purposes Regulations (MMPR)* pursuant to the *Controlled Drugs and Substances Act (CDSA)* to possess and (under the *MMAR)* to produce Cannabis (marihuana) for themselves as their medicine for their particular illnesses or to have the Cannabis (marihuana) grown for them by a designated grower/caregiver.

2. By way of statement of claim filed on December 10, 2013, the Plaintiffs commenced an action against the Defendant with respect to aspects of its proposed repeal of the *MMAR* on the grounds of the unconstitutionality of the *MMPR* in that regard.

3. The Plaintiffs plead and rely on *sections 7, 24(1) and 52(1)* of the *Charter*, Part 1 of the *Constitution Act*, 1982 and say that the *MMPR*, only to the extent specifically challenged, are not saved under s. 1 of the *Charter* as reasonable limits that are demonstrably justified in a free and Democratic society.

4. The Plaintiffs seeks declarations, pursuant to *sections 7, 24(1) and 52(1)* of the *Charter*, Part 1 of the *Constitution Act*, 1982:

    1. that a "constitutionally viable exemption" from the provisions of the *CDSA* 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 to also cultivate or produce and possess Cannabis in any form that is effective for the treatment of the patient's medical condition;

    2. that the *MMPR (*which came into force on June 19, 2013) are unconstitutional only to the extent that they unreasonably restrict 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 are inconsistent therewith 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* in violation or that will result in the violation of the constitutional rights of such patients to liberty and the security of their persons, pursuant to s. 7 of the *Canadian Charter of Rights and Freedoms* and cannot be saved by s. 1 thereof;

3. that the limits in the *NCR,* and *MMPR,* as in the *MMAR*, to possessing, selling or providing only "dried marihuana" are arbitrary, overbroad and result in grossly disproportionate effects and constitute an unreasonable restriction on the s. 7 *Charter* rights of these patients and producers and are 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 (since affirmed by the BC Court of Appeal in *R. v. Smith* 2014 BCCA 322 except as to remedy).

4. that the provisions in the *MMPR* (ss.12 – 15) 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. Such limits and restrictions amount to arbitrary, and overbroad limitations and result in grossly disproportionate effects 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*.

5. that the provision in the *MMPR* (s.5 and in particular paragraph (c)) that specifically restrict the amounts relating to possession and storage by patients, to the "30 x the daily quantity authorized or 150 gram maximum,

whichever is the lesser", and other similar related 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. Such limits, whether in the *NCR* and/or 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.*

5. In addition, the Plaintiffs seek an Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just final remedy, declaring the full ambit and scope of the medically approved patient's constitutional rights to produce, possess and store their medicine, pursuant to **s. 7 of the *Charter***, without any unreasonable and unnecessary restrictions.

6. In the alternative to (5) above, the Plaintiffs seek a permanent constitutional exemption from s.4,5 and 7 of the *CDSA* for all persons holding an authorization to possess and a personal production license as well as all persons holding an authorization to possess and who have a person designated to produce for them under the *MMAR*, including the designated producer, until such further Order of the court

7. In the further alternative to (5) and (6) above, the Plaintiffs seek an order in the nature of 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, until such time as the Defendant makes appropriate amendments to the *MMPR* to comply with any decision of this Court with respect to the unconstitutionality thereof.

8. The Defendant does not admit the Plaintiffs' claims and the substantive facts on which it is brought as set out in its defence dated February 14, 2014.

(B) Any admissions of the party

9. The Defendants have advised that they will not be requesting any admissions. The Defendants have admitted in paragraph 1 of the Statement of Defence the allegations contained in the Amended Statement of Claim at paragraphs 10-12, 16-19, 22-28, 32-33 and 40 (first sentence). The Plaintiffs anticipate requesting further admissions from the Defendants in accordance with the Order of Manson J. requiring such requests to admit and the responses thereto to be completed by October 17th, 2014.

(C) The factual and legal contentions of the party

10. The Plaintiffs have been medically approved by their medical practitioner under the provisions of the *NCR*, C.R.C., c.1041 or *MMAR* SOR/2001-227 or the *MMPR* SOR/2013-119, pursuant to the *CDSA* S.C.1996, c.19, to possess, and under the *MMAR*, to produce Cannabis (marihuana) for themselves as their medicine for their particular illnesses or to have the Cannabis (marihuana) grown for them by a designated grower/caregiver;

11. As a result of the decision of the Ontario Court of Appeal in *R. v. Parker* (2000) 49 O.R. (3d) 481 (Ont.C.A.) (leave to appeal to the Supreme Court of Canada dismissed) recently reaffirmed by that Court in *Her Majesty the Queen and Matthew Mernagh* (2013) Ont.C.A 67 (February 1, 2013) (leave to appeal to the Supreme Court of Canada dismissed July 25, 2013), the Government of Canada was required, in order to ensure that the *CDSA* 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. 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". The court found that patients were being forced to choose between their "liberty" and their "health". This ultimately led at first to

exemptions pursuant to s. 56 of the *CDSA* and then to the promulgation of the *MMAR* pursuant to section 55 of the *CDSA*.

12. Thereafter, various successful constitutional challenges took place to the unreasonable restrictions on the s. 7 *Charter* rights of patients or their designate, in the *MMAR*, limiting the number of patients a designated grower could produce for, limiting how many licences could exist at any one location, and limiting possession to 'dried marihuana'. The ambit and scope of the constitutional right to safe, continuous, reasonable access to cannabis (marihuana) as medicine, including the personal production thereof or production by a designate, was continued, notwithstanding the advent of a government supply, as another option. The ambit and scope of the program was considered by the Federal Court Trial Division and the Federal Court of Appeal in striking down a provision of the Regulations as a negative restriction on the section 7, liberty and the security of the person constitutional rights in *Sfetkopoulos* (infra); See also *Wakeford v. Canada*, [1998] O.J. 3522; [2000] O.J.1479; [2002] O.J. No. 85, (Ont. C.A.); *R. v. Krieger*, 2000 ABQB 1012, 2003 ABCA 85, 2008, ABCA 394; *Hitzig v. Canada* (2003), 177 OAC 321; *Sfetkopoulos v. AG Canada*, 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA) and *R v. Smith*, 2012 BCSC 544 and affirmed in 2014 BCCA 322 except as to remedy, and *R. v. Beren and Swallow* 2009 BCSC 429.)

13. The Plaintiffs plead and rely on ss. 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") and say that the *MMPR*, only to the extent specifically challenged, are not saved under s. 1 of the *Charter* as reasonable limits that are demonstrably justified in a free and Democratic society.

14. In addition to the specific judicial decisions considering the issue of medical marihuana and the specific *MMAR* program, referred to above , the Plaintiffs also rely upon the decisions of the Supreme Court of Canada in R. *v. Malmo Levine; R. v. Caine*, 2003 SCC 74, with respect to the evidence of harm at that time (paras 40 – 61), pointing out the distinction between the recreational and medical use cannabis

(marihuana) arising under s.7 of the Charter(para.88), and the propriety of balancing societal and individual interests in s.7 (para's 94 – 99) and the decisions of that court in *Canada (Atty. Gen.) v. PHS Community Services Society*, 2011 SCC 44, and *Canada (Atty. Gen.) v. Bedford*, 2013 SCC 72, on the issues of s. 7 *Charter* analysis where "liberty" and "the security of the person" are engaged, and the applicable "principles of fundamental justice" such as "arbitrariness, overbreadth and gross disproportionality in effects", and as setting out a recent consideration of the proper procedure in *Charter* analysis, including matters pertaining to section 1 thereof.

15. The Plaintiffs seek 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. Memagh*, 2013 ONCA 67; and the decisions of this Court and the Federal Court of Appeal in *Sfetkopoulos v. AG Canada* 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA), supra; 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.

16. The Plaintiffs seek a declaration under s.52(1) of the *Charter* that the *Marihuana for Medical Purposes Regulations* (*MMPR*) that came into force on June 19, 2013, and which 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 only 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, and are inconsistent therewith 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 cannot be saved by s. 1 thereof;

17. The Plaintiffs also seek other various declarations pursuant to s.52(1) of the *Charter* that are set out in detail in the prayer for relief in the Statement of Claim as set out above. They include declarations with respect to the limitation of "dried marihuana", the limitations on "Licenced Producers" in relation to producing "indoors" and preventing even temporary indoor production and prohibiting production in a dwelling house. They also seek declarations with respect to the 150 gram maximum that a Licenced Producer can ship and a patient possess at any time.

18. The Plaintiffs intend to seek an Order under s. 24(1) of the *Charter*, as the appropriate and just final remedy, for a constitutional exemption from s.4, 5 and 7 of the *Controlled Drugs and Substances Act* for all medically approved patients/persons, including those holding an authorization to possess and a personal production licence, and those persons holding an authorization to possess and who have a person designated to produce for them under the *MMAR*, including that designated grower. The Plaintiffs further sought 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, or such further Order of the court as may be necessary.

19. Or, in the further alternative, the Plaintiffs seek an order in the nature of 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, until such time as the Defendants makes appropriate amendments to the *MMPR* to comply with any decision of this Court with respect to the unconstitutionality thereof.

20. The *Narcotic Control Regulation (NCR)* pursuant to the former *Narcotic Control Act,* but carried forward under the *CDSA,* provides in s.53(2) that a practitioner may administer a narcotic to a person or animal or prescribe, sell or provide a narcotic for a person or animal if the person is a patient under his or her professional treatment and the narcotic is required for a condition for which the person is receiving treatment. Subsection (5) has been added by the *MMPR* effective March 31, 2014 to limit the administration by a health care practitioner to "dried marihuana" to a person, or to prescribe or transfer it for a person that is a patient under their professional treatment, and that the "dried marihuana" is required for the condition for which the person is receiving treatment.

21. The Plaintiffs are all medically approved patients ordinarily resident in Canada, as patients approved under the *NCR*, the *MMAR* or under the *MMPR.* More specifically, they are patients holding either an authorization in writing from a practitioner under the *NCR*, or an authorization to possess (ATP) together with a personal production licence (PPL) under the *MMAR,* or are having a caregiver person responsible for them designated as the grower for them (DG) under the *MMAR.* They seek to be able to continue to personally produce or have a caregiver produce their medicine for them in that regard once they have a "medical document" under the *MMPR.*

22. The *MMAR* Regulations authorize in Part 2 (ss.24-33) the personal production or by a designated person (ss.34-42) a certain number of cannabis (marihuana) plants if the person is ordinarily resident in Canada and has reached the age of 18 years (s.25). The maximum number of plants to be produced is calculated depending upon the daily amount of the dried marihuana authorized in grams and the formula is set out in s.30 of the Regulations. The maximum amount that can be stored depends upon the amount one is authorized to produce and is set out in s.31 of the *Regulations.* There are no limitations on the location of the production facility insofar as a "dwelling house" is concerned as long as it is not adjacent to a school, public playground, daycare facility or other public place frequented mainly by persons under 18 years of age (s.28(g)) if the production is entirely outdoor or partly indoors and outdoors.

23. The holder of the licence to produce may produce marihuana only at the production site and production area authorized and is not permitted to simultaneously produce marihuana partly indoors and partly outdoors and if the production area for a licence is partly indoors and partly outdoors the holder is not permitted to produce outdoors if the production site is adjacent to a school, public playground, daycare facility or other public place frequented mainly by persons under the age of 18 years (ss.52-53).

24. The *MMAR* in s.1 defines "dried marihuana" as harvested marihuana that's been subjected to any drying process and in s.2 the authorization to possess is limited to "dried marihuana" and consequently various other provisions of the Regulations refer to the amounts in storage of "dried marihuana" only. This limitation to "dried marihuana" only in the legislation has been successfully challenged in *R. v. Smith*, 2012 BCSC 544, (affirmed by the BCCA, except as to remedy 2014 BCCA 322), in British Columbia only, as unreasonable and too restrictive on the constitutional right of reasonable access for medical purposes arising under s. 7 of the *Canadian Charter of Rights and Freedoms* and found not to be saved under section 1 thereof. Consequently that limitation no longer applies to those patients located in British Columbia, but continues to apply elsewhere in Canada. The appeal by the Crown in *R. v. Smith* was heard December 6, 2013 and on August 14th, 2014 the majority (written reasons of Garson, J.A. concurred in by Levine, J.A., Chiasson, J.A. dissenting), allowed the appeal but only to the extent of varying the remedy ordered by the Trial Judge of striking out the word "dried" in the legislation and upheld that the restriction to dried marihuana in the *MMAR* breached the s.7 rights of individuals who had been issued authorizations to possess but required other forms of cannabis to treat the symptoms of their serious illness, as being arbitrary and unjustifiable in a free and democratic society. The majority suspended the effect of its judgment for one year in order to allow Parliament time to determine how best to amend "the regulatory scheme" to ensure its constitutionality.

25. The Plaintiffs produce their medicine either indoors in their dwelling house or residence and/or an outbuilding on the same property and some produce outdoors on their property or other property, and some produce both indoors and outdoors, depending upon the time of the year and what is most effective for the production of their plant medicine. Consent of the owner of the property is required if the patient is not "ordinarily resident" at that property (s.27(1)(b)). Some of the Plaintiffs, who are all from British Columbia, use "dried marihuana" in various forms, including by way of smoking, vaporizing, or edibles, and some use other forms of marihuana other than "dried marihuana" that are effective for the particular individual. Some of them find that "raw marihuana", which has not been dried or had heat applied to it, for example raw marihuana juice extracted by a juicer machine, to be a more effective treatment for their particular ailment. Other effective forms of treatment derived from raw marihuana include the use of extracts such as oils, salves, creams. Individual prescribers have developed these treatment techniques after much trial and error, and as a result have determined that the use of raw marihuana in various forms is a more effective for the treatment of the prescriber's particular illness. Some of the Plaintiffs have been producing their own medicine under the *MMAR* for a considerable period of time, and as such have invested in and constructed appropriate facilities and equipment to do so, including equipment to limit the impact of such production on others and for security purposes, and have gone to considerable lengths to ensure a safe, uncontaminated, production site to the need to avoid a negative impact on their weakened immune systems cause by their various illnesses. They have not had any fires, nor suffered from any toxic mold, nor been subjected to any attempted thefts. Most of the Plaintiffs found that they could not afford to purchase a safe, continuous and consistent quality supply of their medical marihuana from the black market, including the grey market of compassion clubs and dispensaries, nor could they acquire what they need through the government supply provided by Prairie Plant Systems. As a result of the inadequacies of supply of medical marihuana just described, the Plaintiffs produce their own marihuana, and have taken substantial steps to control their production of marihuana to ensure the safety, quality and regularity of the marihuana produced, at an affordable cost, and they have made sure that their medical marihuana is grown in a safe and

healthy location using advance safety-compliant techniques of production.

26. On June 19, 2013 the Federal Government promulgated the *Marihuana for Medical Purposes Regulations* (*MMPR*) to run concurrently with the *MMAR* until March 31, 2014 at which time the *MMAR* will be repealed (s. 209 (3) of the *MMPR*).

27. While an ATP under the *MMAR* will continue to be valid for purposes of registration with a licenced producer under the *MMPR* until March 31, 2015, all PPL's and DG's end on March 31, 2014 by the repeal of Part 2 (ss. 24 through 57) and Part 3 (ss. 58 through 68.1) of the *MMAR*. Also, after September 30, 2013, no new applications for medical marihuana licences that allowed for production of marihuana, or renewals and modifications of existing licences, were permitted and consequently some patients have been unable to continue to produce and have therefore been compelled to either resort to the illicit market, or one of the few new licenced producers.

28. The Plaintiffs sought unsuccessfully to have the Defendants compelled to process patient applications, including new applications by medically approved persons, pending a decision of this court on the merits of this action.

29. The *MMPR* makes no provision whatsoever for a patient to be able to personally produce marihuana or to have a caregiver produce for personal medical uses. The sole source of supply under the *MMPR* is through a new entity created called a "Licenced Producer" (Part 1 *MMPR*), who by ss.3 and 6 of the Regulations is limited to providing "dried marihuana" to patients ("registered clients").

30. Section 5 of the Regulations limits the patient to possessing a quantity of dried marihuana that is 30 times the daily authorized quantity or 150 grams, whichever is lower, regardless of the nature of their illness or individual circumstances. The *MMAR* did not contain the 150 gram maximum limitation.

31. Further, the *MMPR* prohibits a 'licenced producer' from growing marihuana at a "dwelling place" (s. 13), and prohibits outdoor production (s. 14).

32. As submitted in paragraphs 10 – 14 (supra) setting out the provisions of the *Charter* relied upon and the principal cases involved and the specific remedies sought, it is the submission of the Plaintiffs that as a result of the Ontario Court of Appeal in *R. v. Parker (supra)* (leave to appeal to the Supreme Court of Canada dismissed) recently re-affirmed by that Court in *Her Majesty the Queen and Mathew Memagh (supra)* (leave to appeal to the Supreme Court of Canada dismissed), the government, to avoid violating the s.7 *Charter* rights of medically approved patients, is required to provide a "constitutionally viable medical exemption" to the prohibition against the possession and cultivation of marihuana. The Government's response after the initial use of s.56 of the *CDSA* was the promulgation pursuant to s.55 of the *CDSA* of the *Medical Marihuana Access Regulations.* Various challenges to the *MMAR* were taken and all of them related to specific provisions of the *MMAR* and were analyzed and determined on the basis of s.1 of the *Charter* as to whether or not they were "reasonable limits prescribed by law that were demonstrably justified in a free and democratic society".

33. The Defendant has since replaced the *Medical Marihuana Access Regulations (supra)* with the *Marihuana for Medical Purposes Regulations (supra)* as the purported new "viable Constitutional exemption to the *CDSA"* and purportedly to provide "reasonable access" by patients to this medication. However, these new Regulations take away the ability of the patient to produce cannabis for themselves or to have a caregiver do so for them and compel the medically approved patient to purchase from a Licenced Producer under the new Regulations whether they want to or not and whether they cannot afford it or not thereby placing them, once again in a position of having to choose between their "liberty" and their "health".

34. It is submitted that the supplanting of the *MMAR* by the *MMPR* only raises the ambit and scope of the s.7 *Charter* right to the extent that the *MMPR* is designed to replace the *MMAR* to prevent the general s.7 breach. However, it is submitted that it is nevertheless an attempt to impose "reasonable limits" by these new Regulations on the patients' constitutionally viable medical exemption and the provision of reasonable access for medical purposes to the medicine. It is submitted that this is a s.1 issue and therefore the burden falls on the Defendants to demonstrably justify the

reasonableness of this limitation in accordance with the cases. This case is not a re-litigation of *Parker* or *Mernagh*. It is about limits on the ability of the patient to access their medicine by taking away their ability to do it for themselves or have a caregiver do it for them and by compelling them to go to a Licenced Producer. It is submitted that these are section 1 issues where the burden is on the Defendant Crown.

35. In *R. v. Malmo Levine (supra)* at paragraphs 96-99 under the heading "(a) The Propriety of Balancing Societal and Individual Interests in s.7" the Court addressed the issue as follows:

> "96 We do not think that these authorities should be taken as suggesting that courts engage in a free-standing inquiry under s. 7 into whether a particular legislative measure "strikes the right balance" between individual and societal interests in general, or that achieving the right balance is itself an overarching principle of fundamental justice. Such a general undertaking to balance individual and societal interests, independent of any identified principle of fundamental justice, would entirely collapse the s. 1 inquiry into s. 7. The procedural implications of such a collapse are significant. Counsel for the appellant Caine, for example, urges that the appellants having identified a threat to the liberty or security of the person, the evidentiary onus should switch at once to the Crown within s. 7 "to provide evidence of the significant harm that it relies upon to justify the use of criminal sanctions"
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> 97 We do not agree. In R. v. Mills, 1999 CanLII 637 (SCC), [1999] 3 S.C.R. 668, a majority of this Court pointed out that, despite certain similarities between the balancing of interests in ss. 7 and 1, there are important differences. Firstly, the issue under s. 7 is the delineation of the boundaries of the rights and principles in question whereas under s. 1 the question is whether an infringement may be justified (para. 66). Secondly, it was affirmed that under s. 7 it is the claimant who bears the onus of proof throughout. It is only if an infringement of s. 7 is established that the onus switches to the Crown to justify the infringement under s. 1. Thirdly, the range of interests to be taken into account under s. 1 is much broader than those relevant to s. 7. The Court said in Mills, at para. 67:
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> > Because of these differences, the nature of the issues and interests to be balanced is not the same under the two sections. As Lamer J. (as he then was) stated in Re B.C. Motor Vehicle Act, supra, at p. 503: "the principles of fundamental justice are to be found in the basic tenets of our legal system". In contrast, s. 1 is concerned with the values underlying a free and democratic society, which are broader in nature. In R. v. Oakes, 1986 CanLII 46 (SCC), [1986] 1 S.C.R. 103, Dickson C.J. stated, at p. 136, that these values and principles "embody, to name but a few,

> respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society". In R. v. Keegstra, 1990 CanLII 24 (SCC), [1990] 3 S.C.R. 697, at p. 737, Dickson C.J. described such values and principles as "numerous, covering the guarantees enumerated in the *Charter* and more".

98 The balancing of individual and societal interests within s. 7 is only relevant when elucidating a particular principle of fundamental justice. As Sopinka J. explained in Rodriguez, supra, "in arriving at these principles [of fundamental justice], a balancing of the interest of the state and the individual is required" (pp. 592-93 (emphasis added)). Once the principle of fundamental justice has been elucidated, however, it is not within the ambit of s. 7 to bring into account such "societal interests" as health care costs. Those considerations will be looked at, if at all, under s. 1. As Lamer C.J. commented in R. v. Swain, 1991 CanLII 104 (SCC), [1991] 1 S.C.R. 933, at p. 977:

> It is not appropriate for the state to thwart the exercise of the accused's right by attempting to bring societal interests into the principles of fundamental justice and to thereby limit an accused's s. 7 rights. Societal interests are to be dealt with under s. 1 of the *Charter*, where the Crown has the burden of proving that the impugned law is demonstrably justified in a free and democratic society.

99 The principles of fundamental justice asserted by the appellants include the contentions that their conduct should only be the subject of criminal sanction to the extent it harms others, that the state cannot infringe their interests in an arbitrary or irrational manner, or impose criminal sanctions that are disproportionate to the importance of the state interest sought to be protected. Implicit in each of these principles is, of course, the recognition that the appellants do not live in isolation but are part of a larger society. The delineation of the principles of fundamental justice must inevitably take into account the social nature of our collective existence. To that limited extent, societal values play a role in the delineation of the boundaries of the rights and principles in question.

36. The Court more recently in *Charkaoui v. Canada (Citizenship and Immigration)* [2007] 1 SCR 350 stated the following at page 371:

> 21. Unlike s. 1, s. 7 is not concerned with whether a limit on life, liberty or security of the person is justified, but with whether the limit has been imposed in a way that respects the principles of fundamental justice. Hence, it has been held that s. 7 does not permit "a free-standing inquiry . . . into whether a particular legislative measure 'strikes the right balance' between individual and

> societal interests in general" (Malmo-Levine, at para. 96). Nor is "achieving the right balance . . . itself an overarching principle of fundamental justice" (ibid.). As the majority in Malmo-Levine noted, to hold otherwise "would entirely collapse the s. 1 inquiry into s. 7" (ibid.). This in turn would relieve the state from its burden of justifying intrusive measures, and require the *Charter* complainant to show that the measures are not justified.
>
> 22. The question at the s. 7 stage is whether the principles of fundamental justice relevant to the case have been observed in substance, having regard to the context and the seriousness of the violation. The issue is whether the process is fundamentally unfair to the affected person. If so, the deprivation of life, liberty or security of the person simply does not conform to the requirements of s. 7. The inquiry then shifts to s. 1 of the *Charter*, at which point the government has an opportunity to establish that the flawed process is nevertheless justified having regard, notably, to the public interest.

37. It is submitted that as a result of *Parker* and more recently *Mernagh*, the constitutionally viable exemption to provide reasonable access to medically approved patients was determined to include the right to produce for oneself and in order to avoid a violation of s.7 and this was carried forward into the *MMAR* to enable personal production or production by a designated grower. Some 10 years later or more, the government has moved to supplant the existing Regulations with new Regulations but in so doing to deprive the individual medically approved patient from producing his own medicine or having a caregiver do so. If these new Regulations do go to the ambit and scope of the s.7 right, as opposed to simply being efforts to "reasonably limit" that right in the circumstances, it is then submitted that these Regulations are obviously "arbitrary", "overbroad" and can result in "grossly disproportionate effects" in violation of s.7 in particular on those patients who will no longer be able to afford their medicine on a reasonable and continuous basis resulting in an effective denial of reasonable access and therefore clearly involve a limitation upon the individual's ability to exercise their rights without having their s.7 rights violated. Consequently it is an attempt by government to limit the ability of the medically approved patient to exercise his rights without a violation of s.7 and it is submitted therefore involves the onus being on the government to demonstrably justify the reasonableness of any such limits under s.1.

38. It is therefore the Plaintiffs' submission that once the Plaintiffs establish that they are medically approved, that *Parker (supra)* and *Mernagh (supra)* apply and they are

entitled to a constitutionally viable exemption from the *CDSA* that provides them with reasonable access to their medicine. Under the existing case law involving the ambit and scope of s.7 in this context a right to produce for oneself was included. The Government proposes to take that away completely. It is submitted that that is at least 'arbitrary' as contrary to the purposes of the *CDSA*, 'overbroad' in going beyond what is necessary and will result in 'grossly disproportionate effects' at least upon those who will no longer be able to afford a reasonable effective continuous supply, violating some s.7 patients rights and that in order to do so the onus is on the Government to establish that the *MMPR* is a reasonable limit to that extent under s.1 of the *Charter*.

39. Section 1 of the *Charter* guarantees the rights and freedoms set out in the *Charter* and sets out the explicit criteria against which limitations on those rights and freedoms may be measured. The onus of proving that a limitation on a *Charter* right is reasonable and demonstrably justified in a free and democratic society rests upon the party seeking to uphold limitation. The standard of proof is on a balance of probabilities. (1) the objective to be served by the measure limiting a *Charter* right must be sufficiently important, at least relating to societal concerns that are pressing and substantial in a free and democratic society, to warrant overriding a constitutionally protected right or freedom; and (2) the means must be reasonable and demonstrably justified, in proportion to the importance of the objective. The proportionality test involves 3 components – (i) the measure must be fair and not arbitrary, carefully designed to achieve the objective in question, and rationally connected to that objective; (ii) the means should impair the *Charter* right as little as possible; and (iii) they must be a proportionality between the effects of the limiting measure and the objective.

The Plaintiffs

Neil Allard

40. The Plaintiff, Neil Allard ("Mr. Allard") has been unable to work for Veterans Affairs Canada since 1995 and Health Canada declared him on permanent medical retirement in 1999. He suffers from "*Myalgic Encephalomyelitis*", a serious neurimmune

disorder, as well as clinical depression.

41. Mr. Allard currently receives pension and wage loss replacement payments totaling approximately $2,700 net per month. When the Mr. Allard turns 65 his income will decrease to $24,000 per year.

42. Mr. Allard suffers a sensitivity to pharmaceutical medications which caused his doctors to recommend medical marihuana as a treatment. . The results have been very positive.

43. Mr. Allard initially obtained his medical marihuana through the BC Compassion Club Society in Vancouver, but found that he could not afford the costs of approximately $500 per month, and he was not satisfied with the quality and types of marihuana that were available. He realized that to obtain the types of marihuana he needed to treat his illness, and at a cost he could afford, he would have to produce for himself. He did his own research, took a course on medical marihuana, and then obtained the appropriate licences. He has been able to produce outdoors in the summer and in a greenhouse part of the year. He produces indoors in the winter months.

44. Mr. Allard's indoor site was built by professional certified tradespeople, in the basement of his home, to ensure safety and building standards were met. An inspection was conducted by BC Hydro. He ensures all precautions are taken, to avoid any contaminations such as mold. He has installed significant security features.

45. The Mr. Allard is currently authorized by his Doctor under the *MMAR* to use 20 g per day and is able to provide for all his needs by producing for himself at a cost of approximately $200-300 per month. He grows organically and each plant often yields less than an ounce. He uses dried cannabis, as well as oils and tinctures, which effectively treats his illness. He fears that he will no longer be able to acquire safe, high-quality marihuana if he cannot produce his own. Based on illicit market and estimated licenced producer prices, which range from $5-12 per gram, his costs would increase to between $100 and $200 per day, or $2000 to $3000 per month, which

exceeds his total pension income.

46. The Mr. Allard fears that he will be charged criminally and possibly imprisoned if he continues to produce marihuana, after his permit expires, which causes him significant stress and anxiety about his future. He will also no longer be able to use raw marihuana treatments that have proved effective for illness and fears that his health will suffer.

Tanya Beemish and David Hebert

47. The Plaintiff, Tanya Beemish ("Ms. Beemish") is 27 years old and married to the Plaintiff, David Hebert, aged 32 ("Mr. Herbert"). They live in Surrey B.C. and have no children. She suffers from Type I Diabetes and a related complication of gastroparesis. She suffers from extreme nausea, continuous vomiting, pain, lack of appetite and sleep. She requires a GJ tube which by-passes her stomach, and is on dozens of medications that she does not find helpful and cause significant negative side effects.

48. Marihuana is an effective treatment for Ms. Beemish's for her nausea and discomfort, stimulates her appetite, and helps with her anxiety and depression. She uses 2 to 10 g of medical marihuana per day to treat her illness. . She was authorized to possess 150 g on her person and to store 1125 g at her production site, which she will no longer be able to do.

49. Ms. Beemish has been receiving a disability pension of $596 per month since December 2012, and cannot afford the estimated licenced producer prices. Her husband Plaintiff Mr. Hebert is her primary caregiver and designated medical marihuana grower. The marihuana he grows costs the affordable price of $0.50 per gram.

50. In October 2013, Ms. Beemish and Mr. Hebert had to move to another location due to the previous locations being unaffordable. While they notified Health Canada prior to September 30, 2013of their need to relocate by the time they found a new location the September 30, 2013 deadline had passed. Their medical marihuana production licence has expired on or about October 20, 2013, and as a result the

Plaintiff Tanya Beemish has not had access to her prescribed medical marihuana since that time.

51. Ms. Beemish's only alternative to her husband producing for her is to seek out a lower price by way of the illicit market. They cannot risk her husband being criminally charged and possibly imprisoned for continuing to produce for her at a cost that they can afford. Consequently, she has had to return to pharmaceutical treatments, which has side effects that exacerbate her illness.

52. Mr. Hebert took the necessary steps to ensure that the marihuana production facility was secure, safe and healthy, and would not impact on their neighbours. They have never had any complaints despite in the marihuana production facility being located in a garage in a townhouse connected to neighbouring townhouses. All electrical work was approved by a certified electrician.

53. Mr. Hebert is an agricultural technician, biologist, and environmental professional. He utilized integrated pest management to grow two specific types of organic marihuana for his wife that are most effective for treating her illness, and he does not trust others to provide his wife with a safe continuous supply of the particular medical marihuana she needs.

54. If Mr. Hebert were to continue producing marihuana without a permit and were charged criminally, he would lose his job and he has concerns about accessing the medicine through the illicit market.

Shawn Davey

55. The Plaintiff Shawn Davey ("Mr. Davey") is 37 years old and lives in Maple Ridge, BC. He suffered a substantial brain injury as a result of a motor vehicle accident in 2000. He receives an income from settlement funds and from a disability pension that totals approximately $5,000 per month.

56. Mr. Davey's brain injury causes him constant major pain. He was initially prescribed various pharmaceutical medications that cost approximately $3000 per

month. After six years of pharmaceutical medications, his doctors recommend he try marihuana, and he found that relieved his pain and did not have the significant side effects caused by the pharmaceutical drugs.

57. Mr. Davey produces his own medical marihuana to control the quality and to reduce costs. He is authorized to consume 25 g per day, which he usually consumes orally by way of baked goods, tea and juice. Mr. Davey produces medical marihuana with Mr. Alexander, who is also a *MMAR* licenced producer, who suffers chronic pain from traumatic injuries and suffers from significant osteoarthritis and sciatica. Mr. Alexander also cannot afford licenced producer prices and fears he will have to resort to the illicit market to obtain his medicine.

58. Mr. Davey took necessary steps to ensure that their production facility was properly constructed, safe, and secure. There is an extensive fire suppression, alarm and security system.

59. Mr. Davey estimates that he is able to produce his medical marihuana at a $1 - 2per gram, for a total of $750-1500 per month, less than half of what his previous narcotic medications cost him. He is very concerned about the quality and effectiveness of his medical marihuana, as he requires a very strong dose to reduce his pain to tolerable levels. At $5 per gram through a Licenced Producer it would cost the unaffordable amount of $125 per day or $3,750 per month.

60. Mr. Davey fears and is very stressed about having to go back to the narcotics and other medications that caused significant negative side effects instead of being able to continue to use a medicine with the approval of his doctor that is more effective for him.

Additional Relevant Facts

61. According to University of British Columbia, Department of Psychology, Assistant Professor Zachary Walsh, PhD., R. Psych ("Professor Walsh"), "affordability" is as a significant problem for medical marihuana users across all income groups, but in particular for the lowest income groups. Professor Walsh comes to this conclusion

as a result of his work in the "Cannabis Access for Medical Purposes Survey" study ("The CAMPS Study"). This investigation indicated that in the lowest income groups, which comprise between 50 and 70% of medical marihuana patients, there was considerable difficulty affording their medicine and a large number of them would have to choose between obtaining their necessary medicine (marihuana) and other basic necessities.

62. The CAMPS Study determined that it was the actual cost of the cannabis that was the major barrier to access in terms of affordability. The median amount spent by participants in the study was $200 a month and 54% of them reported that they were sometimes or never able to buy a sufficient quantity of cannabis to relieve their symptoms, and approximately one third of those surveyed reported they often or always had to choose between cannabis and other necessities (e.g., food, rent and other medicines) because of lack of money. Over 50% of the respondents indicated that financial considerations interfered with their ability to treat symptoms of cannabis. Affordability disproportionately impacts the most seriously ill patients, who were twice as likely as healthier patients to have to choose between cannabis and other necessities. The Study concluded that the financial strain across all income groups, and in particular the poor and the most sick, demonstrated the need to integrate marihuana therapy within a subsidized medicine framework.

63. The Health Canada Regulatory Impact Analysis Statement regarding the Marihuana for Medical Purposes, including the Delsys Research Group, Inc. Cost-Benefit Analysis of December 2012 adds support to the CAMPS Study findings by suggesting that removing personal production of medical marihuana as an option for patients will aggravate the problem of affordability.

64. The CAMPS Study also looked at the question of "availability" and determined that almost a one third of the respondents were self-producing and that the most important reason for doing so was quality (39%), followed by price (36%), avoiding the black market (29%), selection of a specific strain of cannabis (24%) and safety (12%). The major reasons for not producing for oneself were lack of space, expense or legal

concerns.

65. Most medical marihuana users continue to obtain their marihuana from illicit sources. Some have licences to produce and some had designated growers, but fewer than 2% were purchasing from Health Canada's supply.

66. Dr. David Pate addresses the detailed effects of marihuana in forms other than dried flowers. The trial judge in *R v. Smith (supra)* accepted Dr. Pate's conclusion as findings of fact in *R. v. Smith (supra)*, which findings were not challenged on appeal by the Crown. The active medicinal compounds of marihuana are found in structures called glandular trichomes, which contain resin that contain THC and CBD, the primary active medicinal ingredients. There are different mechanisms for getting the therapeutic medicinal components, whether THC or CBD, into the body. Oral ingestion is one method that has a benefit of prolonging the medicinal effects, though therapeutic levels of the compounds take longer to build up to effective concentration than with smoking. Oral ingestion is a preferred method for persons with chronic pain or glaucoma because of the continuous therapeutic dose. Smoking, by contrast, may be preferred for acute pain or conditions requiring rapid onset of effect. Oral ingestion does not produce the potential harms associated with smoking plant material. Oral ingestion can also be of additional benefit to those suffering from gastro-intestinal conditions, as the dose is delivered directly to the site of pathology. Other methods of ingestion are possible, such as topical and sublingual sprays applied to the skin. These methods require separation of the active compounds from the inert plant material.

67. The Plaintiffs say that there is in existence an industry that provides various types of equipment to ensure the absence of mold and ensuring fire and electrical safety as well as security systems if necessary, designed to enable individuals to produce indoors food, flowers, herbal natural health care products, that can also be used for the production of cannabis (marihuana) and that substantially reduce or eliminate any risks of mold, fire and electrical safety and security. The production of such plants indoors can take place in an apartment, residence, including the basement of a residence or separate room, or in an outbuilding or even in an industrial or

agricultural area by way of a collective garden with any such risks being ameliorated or completely eliminated. While reasonable regulations and limitations may be required depending upon individual circumstances in relation to dwelling places as an example, this does not justify the complete prohibition on the freedom or liberty of a medical patient to participate in the production of their own medicine where feasible to do so, much like growing their own food or herbs or flowers but for their own use and not for sale or distribution to the public.

68. Professor Susan Boyd, a rebuttal expert for the Plaintiffs on the issue of Public Safety has examined these types of 'problems', as they are often stated by the Defendant, and has found the citation of such problems to be lacking any real scientific basis, indeed, to be mere assumptions that in turn rest on other assumptions gleaned from mere anecdotes and having little or no basis in statistics or a broader analysis, nevertheless gradually taking shape as an espoused and accepted myth. Referencing published material and scientific studies, Professor Boyd points out that, for example, studies which indicate firearms to be more present at grow-operations are actually overstated, with firearms present in almost the same proportion as there might be in households without grow operations that otherwise have valid firearms licences. Similarly, in reviewing the work of Darrel Plecas and Len Garis relied upon by the Defendants, who state there are increased risks of fire from grow operations, Professor Boyd found that there was little or no evidence to actually substantiate this claim, and that in fact the statistics relating to same were overstated. It was also found that concerns relating to "mold" were not cross-referenced with other factors that could cause the phenomenon outside of grow operations. Finally, Professor Boyd points out that irrespective of whether there was a basis to state that there are safety risks associated with legal grow operations, there was nothing indicating that such risks could not be addressed with monitoring, training, or education, something which the Defendant has only engaged on a limited basis or not at all. Finally, notwithstanding the alleged outcry regarding health and public safety risks associated with licenced grow operations, Professor Boyd could not discern any peer reviewed or scholarly research that could serve as a basis for such a position.

69. The concerns raised by Professor Boyd would appear to be borne out in the evidence contained in the "Cost Benefit Analysis of Regulatory Changes for Access to Marihuana for Medical Purposes" (December 20102) prepared for Health Canada as part of the Regulatory Impact Analysis (the "Delsys Report"), cited by Health Canada at the time of the announcement of the proposed changes and posted on its website., This report appears to take as a given certain costs associated with maintaining the licenced grow operation regime, which costs include public safety and health risks, including risks of fire, relying primarily on the RCMP authored Report for the Association of Police Chiefs that contains very limited and mostly anecdotal information regarding a very minor number of abuses relative to the total number of licence holders during the period. At pages 64-82 of the Report, there is an outline of fire risks associated with grow operations, however, it is unclear how the statistics relate to licenced and non-"misusing" licenced operations, as opposed to fully clandestine operations. Furthermore, it does not appear that there is an analysis regarding the risk of fire as between licenced and legitimate operations and illicit grow operations within homes; the study further states that much of the risk is associated with "faulty wiring" but, again, there is no analysis as between that and "faulty wiring" associated with any other kind of electrical operations within homes. The overall risk of fire is estimated to be very low overall. The Report declines to assess other risks such as mould, toxic chemicals and risks to children given the lack of evidence to support any reasonable calculations.

70. Overall, the Delsys report appears to take several leaps of faith to reach a hoped-for conclusion about greater costs associated with grow operations: "possible" misuse, "possible" fire and other "possibilities" are placed one on top of each other, with the extrapolated result being that there "will be" heavy social, safety, and economic costs associated with grows, but at no point are studies or statistics provided regarding what actually *is*, i.e. how many fires there have been and how many public safety concerns have actually accrued as a result of licenced grows. The one RCMP Report from 2007 to 2010 referred to above appears to be the major source relied upon by authors and the Government despite its major limitations and minor sample. This is particularly important given that Medical Marihuana production facilities have

been operating across Canada for several years (almost 14 years the *MMAR* Program has existed) and actual raw data on fire, misuse, and other aspects of public safety should be readily available. The 2007 Fire Report covering fires across Canada do not mention such production facilities as a significant risk of fires. Most house fires arise in kitchens from leaving a pot, not some 'pot', on the stove. Significantly, the Delsys report concludes that after their analysis there is no clearly superior result that supports the status quo or the proposed new policy and the sum of benefit and cost changes across all stakeholders is negative. In particular, the one class of stakeholder bears a cost in terms of the price increases, namely the users of marihuana for medical purposes, whereas others, such as the general public, the government and license producers are estimated to be better off. The patients are predictably, the ones who are going to suffer, apparently based on flimsy evidence in relation to the risk of the general public, major cost savings to the government, some of which will occur in any event by getting out of production and not having to approve patients.

71. In response to Examination for Discovery questions with respect to the status of Licenced Producers under the *MMPR* currently, the Defendants provided the following information:

> "Although there are presently 21 licensed producers, only 13 of these are licensed to sell to clients. Of these 13, 8 had actually made sales to clients by June 30, 2014. These 8 licensed producers had collectively sold a total of 537 kg by that date.
>
> As of June 30, 2014, licensed producers that produced domestically (i.e. as opposed to importation) had 1134 kg of dried marijuana in inventory, out of the 1795 kg that they had collectively produced to date. "...as of July 28, 2014, Health Canada had received 955 license applications, of which 21 have been granted and 183 have been refused.
>
> The "ready to build" letter is not a mandatory step in the application process and applicants with such a letter are not guaranteed a license. Ready to build letters are requested occasionally by applicants under both the *Narcotics Control Regulations* and the *Marihuana for Medical Purposes Regulations* for project management purposes. The letter attests that the physical security requirements, as presented in an applicant's proposal, would meet Health Canada's requirements as of the date of the issuance of the letter. That said, a total of 34 applicants have obtained a ready to build letter. 13 of these 34 became licensed producers.

72. Detailed information as to the production of dried marihuana in kilograms as of June 30th, 2014 was provided with respect to 10 of the Licenced Producers and noted that LP#1 had produced 24 kilograms but had no sales of that date and while it had produced dried marihuana did not have any registered clients as of yet. LP#2 had also produced 24 kilograms of dried marihuana as of June 30th, 2014 but had sales. No details were given. LP#3 had produced 36 kilograms of dried marihuana as of June 30th, 2014 but had no sales because it had produced dried marihuana but had its licence to sell suspended due to issues with good production practices. LP#4 had produced 43 kilograms of dried marihuana as of June 30th, 2014 and was selling to the public. LP#5 had produced 50 kilograms of dried marihuana as of June 30th, 2014 but was not selling to the public because it was required to conduct a recall and had it's licence to sell suspended due to issues with good production practices. LPs#6 - #10 produced 72, 163, 175, 266, and 942 kilograms of dried marihuana respectively as of June 30th, 2014 and all were selling to registered patients.

73. It is understood that somewhere between 6,500 and 10,000 patients have registered with Licenced Producers compared to the 38,000 persons with authorizations to possess as of March 31, 2014.

74. The appeal and cross-appeal from the injunctive relief granted March 21st, 2014 by Manson, J. is to be heard in the Federal Court of Appeal on November 24th, 2014 and at that time in relation to the cross appeal the Plaintiff/Respondents (Appellants by way of cross-appeal) will seek to adduce new evidence before that Court to update the Court with respect to the multitude of problems experienced by persons with ATPs under the *MMAR* with respect to the need to change their production sites and other variables as well as an update with respect to the problems experienced by individual patients in relation to their access to medical marihuana from Licenced Producers under the *MMPR* and that information will be available for the Pretrial Conference.

(D) A statement of the issues to be determined at trial

75. Plaintiffs say that the issues to be determined at trial are:

a. Whether the *MMPR* provide a "constitutionally viable medical exemption" to the *CDSA* by providing a 'reasonable continuous safe supply' of cannabis as medicine for all medically approved patients and/or their caregivers or do they leave, at least some medically approved patients, in a position of having to choose between their liberty and their health in violation of s.7 of the *Charter*?

b. Whether limitations on the production of cannabis to indoors only, and not in a dwelling place, or anywhere else, by a medically approved patient, are reasonable limits demonstrably justified in a free and democratic society under s.1 of the *Charter*?

c. Whether the maximum limit of 150 grams that a medically approved patient can possess at any time is a reasonable limit demonstrably justified in a free and democratic society under s.1 of the *Charter*?

d. Whether limiting possession of cannabis (marihuana) to its dried form only is a reasonable limit demonstrably justified in a free and democratic society under s.1 of the *Charter*?

(E) Documents

76. The plaintiff relies on the documents in his list of documents and will make sure they are assessable digitally for the purposes of the pretrial conference, including any prior affidavits of statements of expert witnesses.

(F) Rule 263 Issues

Possibility of Settlement

77. There does not appear to be any possibility of a negotiated settlement because this is a constitutional challenge to federal legislation.

Simplification of Issues

78. The Plaintiffs are of the view that there are no additional measures that ought to be taken to simplify the issues to be determined by the Court at trial.

Expert Witnesses

79. As per the Direction of the Court (Manson, J.) dated May 2, 2014, the parties must file any expert reports by November 1, 2014 and any rebuttal expert reports by December 12, 2014.

80. The Plaintiffs do not expect any objection to Defendants proposed expert witnesses that could disqualify that witness from testifying and if there are will advise once the expert witnesses are known or confirmed.

81. It is anticipated that there will be a need for rebuttal witness evidence.

The Possibility of Obtaining Admissions

82. As per the Direction of the Court (Manson, J.) dated May 2, 2014, any notices to admit and responses thereto must be completed by October 17, 2014.

The Issue of Liability

N/A

Damages

N/A

Duration and Date of Trial

83. As per the Direction of the Court (Manson, J.) dated May 2, 2014, the trial of this matter is scheduled for a duration of three weeks, commencing on February 23, 2015.

Advisability of an Assessor

84. The Plaintiffs do not believe an assessor would be appropriate.

Interpreters

85. The Plaintiffs do not believe that interpreters will be needed as there is no indication that any of the witnesses will be testifying in a language other than English.

Notice of Constitutional Question

86. The Plaintiffs have served a Notice of Constitutional Question in accordance with s.57 of the *Federal Courts Act*.

Trial Record

87. The Trial Record should consist of the documents listed under Rule 269.

Any other Matter

88. The Plaintiffs will advise of any other matters during the course of the pre-trial conference.

All of which is respectfully submitted.

DATED: September 30, 2014

John W. Conroy, QC
Counsel for the Plaintiffs
CONROY & COMPANY
Barristers and Solicitors

Tel: (604) 852-5110
Fax: (604) 859-3361

To: Jan Brongers
Senior General Counsel
BC Regional Office
900- 840 Howe St.
Vancouver, BC V6Z 2S9