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Our File: 4387565

September 29, 2014

**Via Email**

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

Dear Mr. Conroy:

**Re: ALLARD, Neil et al. v. Her Majesty the Queen in Right of Canada**
**Federal Court File No. T-2030-13**

Please find enclosed for service the following documents:

1. Requisition for Pre-Trial Conference; and
2. Defendant's Pre-Trial Conference Memorandum.

Kindly acknowledge service via email at your earliest convenience.

Yours sincerely,

Jan Brongers
Senior General Counsel,
B.C. Regional Office

/sb
Encls.

Court File No.: T-2030-13

**FEDERAL COURT**

BETWEEN:

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

Plaintiffs

and

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

Defendant

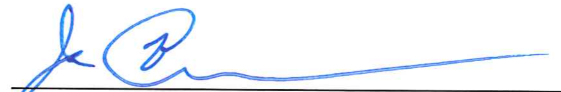
## REQUISITION FOR PRE-TRIAL CONFERENCE

THE DEFENDANT REQUESTS that a date be set for a pre-trial conference in this action.

THE DEFENDANT CERTIFIES:

1. All examinations for discovery which the defendant intends to conduct are complete.
2. A settlement discussion under Rule 257 of the *Federal Courts Rules* was held on September 26, 2014.
3. The pre-trial conference should be held at Vancouver.
4. The defendant is available at any time except October 7 to 10, 2014.
5. The pre-trial conference will be in English.

Date: September 29, 2014

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Solicitor for the Defendant

TO: Conroy & Company
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**Per : John W. Conroy, Q.C.**
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Solicitor for the Plaintiffs

Court File No.: T-2030-13

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

Defendant

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# DEFENDANT'S PRE-TRIAL CONFERENCE MEMORANDUM

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## PART I – NATURE OF PROCEEDING

1. This proceeding is an action brought by four individuals, Neil Allard, Tanya Beemish, David Hebert, and Shawn Davey (the "Plaintiffs"), who challenge the constitutionality of certain aspects of Canada's new medical marijuana regulatory regime. They say that it violates their s. 7 *Charter* rights to liberty and security of the person.

2. The four aspects of the regime with which the Plaintiffs take issue are the following:

> (a) the replacement of a regulatory regime which once permitted home cultivation of marijuana with one that provides access to marijuana through licensed producers;
>
> (b) the prohibition on cultivation of marijuana in dwelling places and outdoor areas;
>
> (c) the limits on the amount of marijuana for medical purposes that can be possessed by an authorized individual; and
>
> (d) the prohibition of production and possession of marijuana in non-dried form (e.g., cannabis oils, salves, tinctures, edibles, etc.).

3. The Defendant Canada asserts that the new regime is constitutionality sound as it provides for reasonable access to a lawful supply of marijuana for those with a demonstrated medical need, while addressing the significant public health, safety and security concerns that arose under the former regime that permitted home cultivation. There is no constitutional right of unlimited access to marijuana from any source, in any amount, and in any form.

## PART II – ADMISSIONS

4. As is set out at paragraph 1 of its statement of defence, the Defendant admits the allegations contained in paragraphs 10, 11, 12, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 32, 33, and 40 (1st sentence) of the amended statement of claim.

## PART III – FACTUAL AND LEGAL CONTENTIONS

5. The Defendant makes the following factual contentions:

### Marijuana is a Harmful Recreational Drug

i. When consumed, marijuana can have negative consequences on the physical, psychological and social well-being of the user.

ii. Marijuana is one of the most trafficked illicit drugs in Canada. Indeed Canada is also among the top producers of illicit marijuana in the world. Organized crime is involved in all levels of the marijuana trade. Canadian criminal producers have developed the capacity and sophistication to produce on a commercial scale some of the most potent marijuana in the world.

iii. Canada is a signatory to three United Nations conventions that address the production, manufacture, import, export, distribution, use and possession of narcotic drugs, including marijuana: *Single Convention on Narcotic Drugs, 1961*, as amended by the *1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961*; *United Nations Convention on Psychotropic Substances, 1971*; and, *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*. The aim of the conventions is to combat drug addiction, the abuse and illicit trade of narcotic and psychotropic drugs like marijuana, and to limit their use to medical and scientific purposes.

**The Regulation of Drugs in Canada**

iv. In Canada, drugs and controlled substances are regulated through the *Food and Drugs Act* (FDA) and the *Controlled Drugs and Substances Act* (CDSA). The purpose of the former is to ensure that drugs sold in Canada are safe, effective and of high quality. The purpose of the latter is to protect health and safety while reducing the potential for controlled substances and precursors from being diverted to the illicit market.

v. The FDA and its regulations are designed to protect the health and safety of Canadians by establishing standards for drug manufacturing, labeling, licensing and advertising. In particular, they require drug manufacturers to submit evidence regarding the safety, efficacy and quality of all drug products intended for sale in Canada to Health Canada. Drug products are only authorized for sale if their clinical benefits outweigh the risks associated with their use.

vi. The CDSA provides a legislative framework for the control of substances that impact mental processes and which, notwithstanding any therapeutic value they may have, can harm health and society when diverted or misused. These controls include prohibiting the possession, production and distribution of controlled substances except as authorized by regulation or via an exemption under s. 56 of the CDSA.

**The *Medical Marihuana Access Regulations* (MMAR)**

vii. Historically, individuals could be authorized to possess dried marijuana or to produce a limited number of marijuana plants for medical purposes pursuant to exemptions issued under s. 56 of the CDSA. This provision allows the Minister to exempt any person or class of persons from the application of the CDSA or its regulations if necessary for a medical or scientific purpose or if it is otherwise in the public interest.

viii. In response to the decision of the Ontario Court of Appeal in *R. v. Parker*, Canada promulgated the *Medical Marihuana Access Regulations* (MMAR) in 2001. The MMAR were designed to provide access to dried marijuana for medical purposes in an expressly regulated environment, as opposed to discretionary exemptions issued pursuant to s. 56 of the CDSA.

ix. Under the MMAR, authorized persons who had the support of a medical practitioner could obtain lawful access to marijuana in one of three ways: (1) through a Personal-Use Production License (PUPL), pursuant to which the individual was permitted to grow a designated quantity of marijuana for his or her own use; (2) through a Designated Person Production License (DPPL), pursuant to which the individual could designate another person to grow a determined number of marijuana plants for him or her; or (3) by

purchasing dried marijuana directly from Health Canada, which contracted with a private company to produce and distribute marijuana on its behalf.

**Undesirable Consequences of the MMAR**

x. Since 2001, the number of persons authorized to possess marijuana for medical purposes and the volume of marijuana such persons were authorized to produce under the MMAR has grown exponentially. This rapid expansion of marijuana production in residential dwellings has resulted in a number of undesirable consequences, namely, increases in risks to the health, safety and security of individuals producing marijuana for medical purposes at home, their neighbours, and the public in general.

xi. In particular, residential marijuana production poses various risks such as fire, electric hazards, mould, noxious odours and exposure to toxic chemicals. Such risks are borne by the occupants and neighbours of homes where marijuana is produced, including children.

xii. Furthermore, the exponential growth of marijuana production under the MMAR has increased the risk of diversion of marijuana to the illicit recreational market. Residential production also exposes residents and their neighbours to the risk of violent home invasion by criminals seeking illicit access to marijuana.

xiii. It is not possible to reasonably mitigate these risks through a system of home inspections, both because of the large numbers of residences involved and because of the heightened level of constitutionally protected privacy interests in private dwellings..

xiv. Similarly, it would not be practicable to attempt to impose quality or safety standards on home marijuana cultivators who may lack the capacity, knowledge or motivation to implement them. This situation poses a particular risk for seriously ill persons who may then consume non-standardized marijuana that could contain dangerous microbial or chemical contaminants.

xv. These grave concerns about the harms associated with residential production of marijuana under the MMAR were expressed to Health Canada by various stakeholders, including municipalities, fire and police authorities, homeowners, health care professionals, neighbours and program participants.

**Access to Marijuana under the MMAR**

xvi. Access to medical marijuana under the MMAR was not optimal for those individuals who: (1) could not afford the significant capital costs required to grow marijuana; (2) did not live in homes where growing marijuana was permitted or practically feasible; (3) did not have the knowledge or ability to grow marijuana; (4) did not have access to a reliable designated grower; and/or (5) were not satisfied with the strain of marijuana that was offered for sale by Health Canada under the MMAR.

**The *Marihuana for Medical Purposes Regulations* (MMPR)**

xvii. Following public consultation, the *Marihuana for Medical Purposes Regulations* (MMPR) came into force on June 7, 2013. The MMPR created a regulatory framework designed to replace the MMAR, which was repealed on March 31, 2014.

xviii. The MMPR permitted the following: (1) possession of dried marijuana for medical purposes by individuals who have the support of an authorized health care practitioner; (2) production of dried marijuana by licensed producers; and (3) sale and distribution of dried marijuana by licensed producers to individuals medically authorized to possess it.

xix. Like manufacturers of drugs under the FDA and FDR, licensed producers under the MMPR are subject to stringent regulatory requirements related to security, Good Production Practices, packaging, labeling, shipping, record keeping and reporting. The MMPR also provide for adverse reaction reporting and recalls of non-compliant marijuana by licensed producers, if necessary.

xx. Unlike the situation that prevailed under the MMAR, individuals authorized to possess marijuana for medical purposes must now purchase it exclusively from these regulated licensed producers, thereby ensuring the availability of good quality marijuana for medical purposes that is safely produced.

xxi. The MMPR limit the amount of marijuana for medical purposes that individuals with medical support may possess at any time to either 30 times the daily quantity of dried marijuana indicated by the individual's health care practitioner, or 150 grams of dried marijuana, whichever is less. This limit is intended to decrease the risk of diversion to the illicit market and to prevent individuals who possess marijuana for medical purposes from becoming targets for theft and violence.

xxii. Under the MMPR, licensed producers are not permitted to grow marijuana in residential dwelling places. This restriction is designed to mitigate the numerous public health and safety concerns that have arisen in respect of

the proliferation of increasingly large marijuana production facilities in private dwellings that are not designed for horticultural production.

xxiii. Under the MMPR, licensed producers are not permitted to grow marijuana outdoors. This restriction is designed to decrease the risk of diversion as well as cross-contamination with other nearby crops, particularly industrial hemp.

xxiv. The regulatory changes set out in the MMPR are intended both to address the significant unintended negative consequences that resulted from the MMAR, and to provide all medically authorized patients with access to quality dried marijuana for medical purposes.

**The Restriction on Non-Dried Marijuana**

xxv. Like marijuana itself, the possession, production and distribution of cannabis preparations and derivatives (e.g., oils, tinctures, salves, edible products, creams made with extracts, etc.) are prohibited by the CDSA. The MMPR (and, prior to its repeal, the MMAR) and the *Narcotic Control Regulations* (NCR) only provide for lawful access to marijuana for medical purposes in dried form.

xxvi. This effective prohibition on "non-dried marijuana" stemmed initially from the fact that the *Parker* decision that precipitated development of the MMAR was based solely on judicial acceptance of a right to accessible marijuana in dried form. However, the policy justification for maintenance of this prohibition is threefold.

xxvii. First, although only limited clinical evidence exists regarding the use of marijuana for medical purposes, the evidence that does exist is limited to either dried marijuana or formulated therapeutic products that have been approved under the rigorous process prescribed by the FDR (e.g., Sativex ® and Cesamet ®). The risks and benefits of unapproved cannabis derivatives and preparations are not sufficiently known.

xxviii. Second, the production, possession and distribution of unapproved cannabis derivatives and preparations present serious threats to health and public safety. In particular, the extraction of cannabis' active components and preparations from marijuana plant material through chemical processes can involve the use of volatile chemicals that can cause explosions and fire.

xxix. Third, it would be difficult for law enforcement officials to determine with any confidence that cannabis preparations and derivatives were in fact produced from a legally-obtained source of dried marijuana and constitute a quantity of marijuana that does not exceed an individual's possession limit.

**Licensed Producers**

xxx. To date, Health Canada has received more than 1000 applications from prospective licensed producers, of which 22 have been licensed so far.

xxxi. These licensed producers are selling dozens of different strains of marijuana at prices ranging from approximately $5-$12 per gram. Several of the licensed producers offer "compassionate pricing" discounts for low income customers.

**Strains of Marijuana**

xxxii. The MMPR place no limit on the number of strains that may be made available by licensed producers. The MMPR also provided a mechanism whereby individuals previously authorized to possess marijuana under the MMAR could sell the seeds or plants of their preferred strains of marijuana to licensed producers.

xxxiii. Other than differences in the relative proportions of various cannabinoids (particularly THC and CBD), there is virtually no scientific basis for the claim that different strains of marijuana have differing effectiveness as treatments for particular symptoms.

**Compliance with International Conventions**

xxxiv. The International Narcotics Control Board (INCB) is the independent and quasi-judicial control organ for the implementation of the United Nations drug conventions.

xxxv. While the INCB has repeatedly criticized Canada for the regime set up by the MMAR, the Board recently characterized the changes brought about by the MMPR as positive, particularly in relation to the phasing out of personal cultivation and the adoption of other measures aimed at preventing diversion.

**Medical Marijuana Regulation in Other Jurisdictions**

xxxvi. Canada's MMPR is consistent with the approaches taken to the regulation of access to marijuana for medical purposes in other jurisdictions such as the Netherlands, Israel and the United States, particularly with respect to promoting commercial production by licensed producers over residential production by consumers.

**Appropriate Doses of Marijuana for Medical Purposes**

xxxvii. While marijuana has not been approved as a drug under the FDA and the FDR, the applicable scientific literature as well as the experience of patients in the Netherlands and Israel indicate that an appropriate dosage to be employed when marijuana is used for medical purposes is in the range of up to three grams per day, regardless of the method of administration (i.e. smoked, vaporized or consumed orally).

xxxviii. By contrast, there is scant medical justification for the consumption of marijuana for medical purposes above 5 grams per day.

**The Plaintiffs**

Neil Allard

xxxix. Under the MMAR, the Plaintiff Neil Allard held a PUPL and an ATP since July 9, 2004.

xl. Mr. Allard is currently authorized to produce 98 plants indoors and to use a daily amount of dried marijuana of less than or equal to 20 grams of marijuana.

xli. Mr. Allard has never had his marijuana tested for mould or other contaminants. He has never had his marijuana tested to determine the concentration of cannabinoids such as THC or CBD.

xlii. Mr. Allard is retired. His pension and disability benefits total approximately $33,049.61 per year, after taxes. He has no debt. He owns his home, whose worth was recently assessed at $241,300. He owns a car worth $3,000. He has approximately $23,000 in savings.

Tanya Beemish

xliii. From January 4, 2013 to January 4, 2014 the Plaintiff Tanya Beemish had an ATP under the MMAR that authorized her to possess a daily amount of dried marijuana of less than or equal to 5 grams.

xliv. Ms. Beemish no longer holds a valid ATP.

xlv. Ms. Beemish now purchases marijuana on the black market at a cost of $4 per gram.

xlvi. Ms. Beemish receives approximately $619 per month in Canada Pension Plan benefits and has no debt.

David Hebert

xlvii. The Plaintiff David Hebert is Ms. Beemish's common law spouse.

xlviii. Under the MMAR, Mr. Hebert was issued a DPPL on January 4, 2013, with an expiry date of January 4, 2014. The DPPL authorized Mr. Hebert to grow 25 plants indoors for use by Ms. Beemish, in accordance with her ATP.

xlix. Mr. Hebert no longer holds a valid DPPL.

l. When he was doing so, Mr. Hebert spent between 50-100 hours per month cultivating marijuana for Ms. Beemish.

li. Mr. Hebert is employed as an Environmental Protection Officer with the British Columbia Ministry of the Environment. He earns approximately $58,000 per year.

lii. Neither Mr. Hebert nor Ms. Beemish has ever had the marijuana grown by Mr. Hebert tested for mould or other contaminants. Nor have they ever had the marijuana tested to determine its concentration of cannabinoids such as THC or CBD.

Shawn Davey

liii. Under the MMAR, the Plaintiff Shawn Davey was first issued an ATP on July 16, 2010.

liv. On September 26, 2013, a PUPL and an ATP were issued to Mr. Davey authorizing him to produce 112 plants indoors and to use a daily amount of dried marijuana of less than or equal to 25 grams.

lv. Mr. Davey presently receives $4,500 per month from an annuity as well as $530 per month from a disability pension. He owns a truck which is worth approximately $2,000, an ATV which is worth approximately $3,000, a camper which is worth approximately $1,000, and has approximately $10,000 in savings.

lvi. Mr. Davey has never had his marijuana tested for mould or other contaminants. Nor has he ever had his marijuana tested to determine its concentration of cannabinoids such as THC or CBD.

**Affordability of Purchasing from a Licensed Producer**

lvii. The Plaintiffs all have the financial means to purchase medically justifiable quantities of marijuana from licensed producers. As such, they all have reasonable access to a lawful supply of medical marijuana.

lviii. While the marginal per gram cost of obtaining marijuana from a licensed producer as opposed to cultivating at home may initially be higher for some individuals who have already invested in marijuana production facilities, it is possible that that cost will decrease over time as a result of factors such as competition among licensed producers, economies of scale, lower costs for skilled labour and technological innovation.

6. The Defendant makes the following legal contentions:

i. The impugned provisions of the medical marijuana regulatory regime do not violate s. 7 of the Charter.

ii. In the alternative, any breach of s. 7 of the Charter is justifiable as a reasonable limit under s. 1.

**The Provision of Access to Medical Marijuana Exclusively Through Licensed Producers Does Not Violate Section 7 of the *Charter***

iii. The Plaintiffs assert that the replacement of a medical marijuana access regime that permitted home cultivation with one founded upon supply being assured by licensed producers engages their s. 7 Charter interests for two main reasons. First, they say that they cannot afford to purchase a sufficient quantity of marijuana from licensed producers to meet their medical needs. Second they say that they will not be able to obtain the strains of marijuana from licensed producers that they require for their medical needs. As is set out above, both of these contentions are factually unfounded.

iv. Furthermore, even if a hypothetical plaintiff could demonstrate that, notwithstanding his or her financial capacity to cultivate marijuana at home, that plaintiff is incapable of purchasing marijuana from licensed producers, no breach of s. 7 of the Charter would arise. This is because the rights to life, liberty and security of the person under s. 7 of the Charter do not encompass a right to produce one's own medication in order to avoid the cost of purchasing commercially available equivalents.

v. Such economic interests are not protected by s. 7 of the Charter. Nor does s. 7 include the right to access a particular drug of choice where reasonable alternatives are available.

vi. For the same reasons, requiring medical marijuana to be obtained from licensed producers does not fall within the s. 7 liberty interest that protects the ability to make fundamentally personal decisions that go to the core of what it means to enjoy individual dignity and independence.

vii. The Plaintiffs' assertion that their inability to cultivate marijuana at home under the MMPR will deprive them of access to the strains of marijuana that they require in order to manage their medical symptoms (and thus engage their s. 7 Charter interests) is also unfounded.

viii. The MMPR place no limit on the number of strains that may be made available by licensed producers, and there are currently more than 80 different strains available for purchase from licensed producers. The MMPR also provided a mechanism whereby individuals were permitted to sell the seeds or plants of their preferred strains of marijuana to licensed producers in order to have them produce a specific strain that they can then purchase.

ix. Furthermore, other than differences in the relative proportions of various cannabinoids (particularly THC and CBD), there is little scientific basis for the claim that different strains of marijuana have differing effectiveness as treatments for particular symptoms.

x. In the alternative, if the restriction on personal production does engage the Plaintiffs' life or security interests, any such deprivation is consistent with the principles of fundamental justice.

xi. While the potential sanction of imprisonment should the Plaintiffs personally produce marijuana in contravention of the impugned legislation does engage their liberty interests, any such deprivation would not violate any principles of fundamental justice, including arbitrariness, gross disproportionality and overbreadth.

xii. The restriction on personal production furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marijuana under the CDSA. The MMPR furthers these goals in a manner that is neither grossly disproportionate, overbroad nor arbitrary.

**Limits on Production Locations Do Not Violate Section 7 of the Charter**

xiii. The MMPR's limits on outdoor and residential cultivation do not engage the Plaintiffs interests under s. 7 of the Charter.

xiv. This is so because the right to life, liberty and security of the person does not encompass a right to produce controlled substances in the location of one's choosing.

xv. Nor do the MMPR's limits on production locations fall within the s. 7 liberty interest that protects the ability to make fundamentally personal decisions that go to the core of what it means to enjoy individual dignity and independence.

xvi. In the alternative, if the restriction on production locations engages the Plaintiffs' life or security interests, any such deprivation is consistent with the principles of fundamental justice.

xvii. The restriction on residential and outdoor production furthers pressing goals that are consistent with the promotion of health and public safety that underlie the regulation of controlled substances such as marijuana under the CDSA, including the prevention of their diversion and abuse. The MMPR furthers these goals in a manner that is neither grossly disproportionate, overbroad nor arbitrary.

xviii. Similarly, while the potential sanction of imprisonment, should the Plaintiffs contravene the limits on production locations established by the impugned legislation, does engage their liberty interests, any such deprivation would not violate any principles of fundamental justice, including arbitrariness, gross disproportionality and overbreadth.

**Limits on Possession Amounts Do Not Violate Section 7 of the Charter**

xix. The MMPR's limit on the amount of marijuana that may be possessed at any time by authorized persons does not violate the Plaintiffs' s. 7 Charter rights.

xx. This is so because the right to life, liberty and security of the person does not encompass a right to possess unlimited quantities of controlled substances.

xxi. The Plaintiffs' assertion that the MMPR's possession limit engages their liberty interests because it interferes with their ability to travel is unfounded. If the Plaintiffs were to choose to travel while possessing marijuana in their current authorized amounts, they would simply have to

return to their homes every few days or weeks to replenish their supply. This period would be even longer (6 weeks to 5 months) if they consumed a quantity of marijuana more in line with what international experience has shown is medically justifiable (i.e., up to 3 grams per day).

xxii. A limit on marijuana possession which reduces an individual's range of convenient travel destinations does not engage s. 7 of the Charter as the choice of how far to go on a voyage is not a fundamentally personal decision that goes to the core of what it means to enjoy individual dignity and independence. In other words, there is no right to lengthy travel protected by s. 7 of the Charter.

xxiii. In the alternative, if the MMPR's possession limit does engage the Plaintiffs' life, liberty or security interests, any such deprivation is consistent with the principles of fundamental justice.

xxiv. While the potential sanction of imprisonment should the Plaintiffs contravene the limits on possession amounts established by the impugned legislation does engage their liberty interests, any such deprivation would not violate any principles of fundamental justice, including arbitrariness, gross disproportionality and overbreadth.

xxv. The restriction on possession furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marijuana under the CDSA.

xxvi. The MMPR furthers these goals in a manner that is neither grossly disproportionate, overbroad nor arbitrary.

**Prohibition on Non-Dried Marijuana Does Not Violate s. 7 of the Charter**

xxvii. The prohibition on non-dried marijuana does not violate s. 7 of the Charter.

xxviii. The right to life, liberty and security of the person does not encompass the right to produce and possess controlled substances in a form or manner of one's choosing, regardless of medical need or the availability of reasonable alternative treatments.

xxix. Nor does this limit fall within the s. 7 liberty interest that protects the ability to make fundamentally personal decisions that "go to the core of what it means to enjoy individual dignity and independence."

xxx. While the potential sanction of imprisonment should the Plaintiffs produce or possess non-dried marijuana in contravention of the impugned legislation does engage their liberty interests, any such deprivation would

not violate any principles of fundamental justice, including arbitrariness, gross disproportionality and overbreadth.

xxxi. In the alternative, if the restriction on the availability of non-dried marijuana does engage the Plaintiffs' liberty or security interests, any such deprivation is consistent with the principles of fundamental justice.

xxxii. This restriction furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marijuana under the CDSA.

xxxiii. The MMPR furthers these goals in a manner that is neither grossly disproportionate, overbroad nor arbitrary.

**Section 1 of the Charter**

xxxiv. In the further alternative, if the MMPR do violate s. 7 of the Charter, any such violation represents a reasonable limit under s. 1 of the Charter.

## PART IV – ISSUES TO BE DETERMINED AT TRIAL

7. The issues to be determined at trial are:

i. whether a regulatory regime that provides for access to medical marijuana exclusively through licensed producers violates s. 7 of the Charter;

ii. whether the requirement that medical marijuana be grown indoors and in buildings other than dwelling places violates s. 7 of the Charter;

iii. whether limiting the amount of marijuana that can be possessed to the lesser of 150g or 30 times what has been authorized by a medical practitioner violates s. 7 of the Charter;

iv. whether limiting production and possession of medical marijuana to its dried form violates s. 7 of the Charter; and

v. if any of the above aspects of the MMPR are found to constitute violations of s. 7 of the Charter, whether they are reasonably justifiable under s. 1.

## PART V – RULE 263 ISSUES

**Possibility of Settlement**

8. The Defendant is of the view that there is no possibility of a negotiated settlement of this constitutional challenge to federal legislation.

**Simplification of Issues**

9. The Defendant is 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**

10. 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.

11. The Defendant is of the view that there are no issues that will arise from the affidavits of Defendant's expert witnesses.

**Lay Witness Affidavits**

12. As per the Direction of the Court (Manson J.) dated May 2, 2014, the Plaintiffs must file their affidavits by January 9, 2015 and the Defendant must file its affidavits by January 23, 2015.

13. The Defendant is of the view that there are no issues that will arise from the affidavits of Defendant's lay witnesses.

**The Possibility of Obtaining Admissions**

14. 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**

15. 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**

16. The Defendant does not believe an assessor would be appropriate.

**Interpreters**

17. The Defendant does 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**

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

**Trial Record**

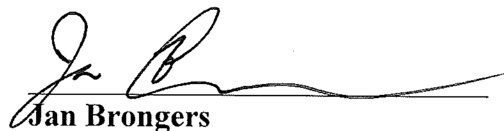
19. The Trial Record should consist of the documents listed under Rule 269.

**Any Other Matter**

20. The Defendant will advise of any other matters during the course of the pre-trial conference.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 29th day of September, 2014.



**Jan Brongers**
Counsel for the Defendant