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

STATEMENT OF DEFENCE

1. 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.

2. The Defendant denies the allegations contained in paragraphs 7, 9, 13, 14, 15, 20, 21, 24, 27, 29, 30, 31, 34, 35, 37, 38, and 44 of the Amended Statement of Claim.

3. The Defendant has no knowledge of the allegations contained in paragraph 2, 3, 5, 36, 39, 40 (2nd sentence), 41, 42, 43, 45, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 59 of the Amended Statement of Claim.

The Parties

Neil Allard

4. The Plaintiff Neil Allard has held a Personal-Use Production Licence (PUPL) for dried marihuana for medical purposes and an Authorization to Possess (ATP) dried marihuana for medical purposes since July 9, 2004.

5. From July 9, 2004 to July 9, 2005 Mr. Allard was authorized to produce 19 plants indoors or 5 plants outdoors and to use a proposed daily amount of dried marihuana of less than or equal to 5 grams.

6. From July 9, 2005 to July 9, 2006 Mr. Allard was authorized to produce 25 plants indoors and to use a proposed daily amount of dried marihuana of less than or equal to 5 grams.

7. From July 9, 2006 to October 7, 2012 Mr. Allard was authorized to produce 37 plants indoors or 10 plants outdoors and to use a proposed daily amount of dried marihuana of less than or equal to 10 grams.

8. From October 8, 2012 to March 31, 2014 Mr. Allard is authorized to produce 98 plants indoors and to use a proposed daily amount of dried marihuana of less than or equal to 20 grams of marihuana per day.

9. Mr. Allard's ATP continues to be valid from April 1, 2014 to July 15, 2014 for the purpose of registering with a licenced producer to purchase marihuana for medical purposes.

Tanya Beemish

10. From January 4, 2013 to January 4, 2014 the Plaintiff Tanya Beemish was authorized to use a proposed daily amount of dried marihuana of less than or equal to 5 grams.

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

David Hebert

12. The Plaintiff David Hebert was issued a Designated Person Production Licence (DPPL) for dried marihuana for medical purposes on January 4, 2013, with an expiry date of January 4, 2014. The DPPL authorized Mr. Hebert to produce 25 plants indoors for use by Tanya Beemish, in accordance with her ATP.

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

Shawn Davey

14. The Plaintiff Shawn Davey was first issued an ATP on July 16, 2010. His ATP authorized him to use a proposed daily amount of dried marihuana of less than or equal to 10 grams. A designated person was authorized to produce 49 plants indoors for his use.

15. On July 19, 2011, a PUPL and an ATP were issued to Mr. Davey authorizing him to produce 59 plants indoors and to use a proposed daily amount of dried marihuana of less than or equal to 12 grams.

16. On July 19, 2012, a PUPL and an ATP were issued to Mr. Davey authorizing him to produce 69 plants indoors and to use a proposed daily amount of dried marihuana of less than or equal to 14 grams.

17. Mr. Davey applied to revoke his PUPL on or about December 22, 2012. As a result, a new ATP was issued to him on February 18, 2013. At that time, a designated person was authorized to produce 69 plants indoors for his use.

18. 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 proposed daily amount of dried marihuana of less than or equal to 25 grams. His PUPL and ATP expire on March 31, 2014.

19. Mr. Davey's ATP continues to be valid from April 1, 2014 to September 26, 2014 for the purpose of registering with a licenced producer to purchase marihuana for medical purposes.

This is Not a Class Action

20. In response to paragraphs 6 and 7 of the Amended Statement of Claim which imply that all individuals presently holding an ATP are "parties" to this proceeding, the Defendant says this is not a class action. The Defendant nevertheless acknowledges that any declarations made with respect to the constitutionality of the impugned legislation will impact not only the Plaintiffs, but also all individuals who are presently authorized to possess or produce marihuana for medical purposes, any individuals who may wish to be authorized in the future as well as current and future licensed producers, first responders (police, fire, ambulance), neighbours of residential properties where marihuana is presently grown for medical purposes, as well as the public at large.

The Defendant

21. In response to paragraph 8 of the Amended Statement of Claim, the Defendant admits that Her Majesty the Queen in Right of Canada, as represented by the

Attorney General of Canada, is properly named as the defendant to this action as it implicates the Government of Canada and the Minister of Health.

22. The Minister of Health is statutorily responsible for the promotion and preservation of the physical, mental and social well-being of the people of Canada and for the administration of legislation and regulations that relate to the health of the people of Canada. The Minister of Health presides over the Department of Health, which is also known as Health Canada.

Annual Renewal

23. In response to paragraph 20 of the Amended Statement of Claim, a medical practitioner may specify a period of usage of less than 12 months. The medical declaration under the MMAR requires a medical practitioner to indicate if the period of usage is less than 12 months.

Background Facts

Regulation of Drugs in Canada

24. In Canada, drugs and controlled substances are regulated through the *Food and Drugs Act* (FDA), the *Controlled Drugs and Substances Act* (CDSA) and the regulations made under those Acts. These two Acts and their regulations form the legislative and regulatory framework for access to and control of drugs in Canada. Together the FDA and the CDSA help to ensure that drugs sold in Canada are safe, effective and of high quality and that appropriate regulatory means are in place to limit the potential for abuse and diversion, particularly for drugs and substances listed under the CDSA.

25. The FDA and its regulations provide a framework to regulate the safety, efficacy and quality of drugs. The *Food and Drug Regulations* (FDR) set out a framework for the authorization of drugs for sale in Canada. Drug manufacturers submit evidence on the efficacy, dosage, route of administration, contraindications, side

effects and quality of drugs proposed for sale. Health Canada drug reviewers must have reached a conclusion where the overall benefits of a drug outweigh its risks before a drug can be authorized for sale in Canada.

26. The overall objective of the FDA is to protect the health and safety of Canadians by regulating drugs, medical devices, foods and cosmetics through a series of prohibitions and requirements, including establishing standards for manufacturing, labelling, licencing and advertising.

27. The FDA establishes rigorous processes to ensure that drugs made available for therapeutic use meet appropriate safety, efficacy and quality standards. The FDA contains offences and penalties for contraventions of the provisions of the FDA and FDR.

28. The overall objectives of the CDSA are the maintenance and promotion of public health and safety. The CDSA provides the legislative framework for the control of substances that can alter mental processes and that, though they may have therapeutic benefits, also may produce harm to health and to society when diverted or misused. These controls include regulation of the production, distribution and storage of controlled substances as well as their records and reporting requirements.

29. The CDSA imposes strict controls on access to substances that have a potential for misuse and/or diversion by prohibiting possession, production, and distribution of controlled substances, except as authorized by regulations. The CDSA also contains offences and penalties for possession, trafficking and production of scheduled substances and their precursors.

30. The CDSA is one of the means by which Canada fulfills its international obligations under the three United Nations international drug control conventions: the *Single Convention on Narcotic Drugs*, 1961 (as amended by the 1972

Protocol); the *Convention on Psychotropic Substances, 1971*; and, the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (Drug Conventions).

Regulation of Marihuana in Canada

31. Marihuana is the common name for *Cannabis sativa* (i.e., cannabis). Marihuana is an annual plant that starts out as a seed and completes its lifecycle within a one-year period. By using fertilizers and growing marihuana indoors in a controlled environment of high powered lights, a marihuana cultivator can get marihuana plants to complete their lifecycle in a two or three-month period.

32. Female marihuana plants develop flowers, known as buds, which contain a psychoactive ingredient called delta-9-tetrahydrocannabinol (THC) one of the main active components of cannabis. The buds are harvested, dried and consumed.

33. The CDSA, the FDA and their respective regulations apply to marihuana. Marihuana, THC and cannabidiol (CBD) and resin are considered drugs under the FDA and controlled substances under the CDSA.

34. Two cannabis-based drugs, other than dried marihuana, have been authorized for sale under the FDR and are available by prescription in Canada: Sativex ® and Cesamet ®.

35. To sell these products in Canada, the manufacturers are required to meet the rigorous requirements prescribed by the FDA and FDR. Accordingly, these products are of consistent content and chemical composition, have been manufactured in accordance with the Good Manufacturing Practices Guidelines and are subject to adverse event reporting and recall, should these drugs have unexpected negative impacts. There are also regulations pertaining to their

labelling and packaging to prevent these products from being distributed and sold in a manner that is false, misleading, deceptive or likely to create an erroneous impression regarding their character, value, merit or safety.

36. There has been no application to Health Canada to approve dried marihuana as a drug for sale under the FDA. As such, dried marihuana has never been approved for sale as a therapeutic drug in Canada and the safety and efficacy standards applied to other drugs for therapeutic use have not been met.

Development of the *Medical Marihuana Access Regulations*

37. Under Health Canada's Marihuana Medical Access Program, Canadians have been able to access marihuana for medical purposes since 1999. At that time, individuals could be authorized to possess dried marihuana or to produce a limited number of marihuana plants for medical purposes via 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.

38. In response to the decision of the Ontario Court of Appeal in *R. v. Parker*, Canada promulgated *Marihuana Medical Access Regulations* (MMAR) in 2001. The MMAR were created to provide access to dried marihuana for medical purposes in a more regulated environment, rather than via a discretionary exemption from the application of s. 56 of the CDSA.

39. Though the MMAR were amended on numerous occasions, in their final form they permit individuals who have the support of an authorized medical practitioner to obtain lawful access to marihuana in one of three ways:

    (a) through a Personal-Use Production License (PUPL), pursuant to which the individual is permitted to grow a designated quantity of marihuana for his or her own use;

(b) through a Designated Person Production License (DPPL), pursuant to which the individual may designate another person to grow his or her marihuana; or

(c) by purchasing dried marihuana directly from Health Canada, which contracts with a private company to produce and distribute marihuana.

The Expansion of the Marihuana Medical Access Program under the MMAR

40. From their inception in 2001, the MMAR attempted to achieve three goals:

(a) to strike a balance between providing legal access to dried marihuana for medical purposes, while controlling access to a controlled substance and unapproved drugs with limited benefit and risk information;

(b) to respect existing federal legislation, including the FDA and CDSA, as well as Canada's international obligations under the United Nations Drug Conventions; and

(c) to protect the individual and public health, safety and security of all Canadians.

41. These goals have been seriously compromised by the rapid unanticipated expansion of the Marihuana Medical Access Program, which was originally intended to provide legal access to dried marihuana to a relatively small number of seriously ill Canadians.

42. Since 2001, the number of individuals who have received medical authorization to possess marihuana for medical purposes, the quantities of dried marihuana that such individuals have been authorized to produce, and the size of residential marihuana growing operations that have been authorized under the MMAR have grown exponentially.

43. Between 2001 and 2013, the number of individuals authorized to possess marihuana under the MMAR increased from less than 100 in 2001 to over 29,000 in April 2013, and to more than 37,000 by January 2014. At its current rate of

growth, more than 50,000 individuals would likely be authorized to possess marihuana for medical purposes by the end of 2014. By 2022 it is anticipated that number would likely increase to 300,000 – 400,000 individuals.

44. The vast majority of users authorized to possess marihuana for medical purposes under the MMAR obtain their marihuana either by growing it themselves under a PUPL or by designating someone else to do so on their behalf through a DPPL. Of the 37,884 individuals who held valid ATPs as of January 8, 2014, approximately 66% produced their own marihuana for medical purposes under a PUPL, and 12% designated another person to do so on their behalf.

45. The daily amount of dried marihuana that individuals are authorized to possess under the MMAR is determined by the amount indicated on the medical declaration signed by their medical practitioner. This average daily amount has increased significantly since 2001, and as of December 12, 2013, was 17.7 grams of dried marihuana per day.

46. On average, one gram of marihuana produces between three and five marihuana cigarettes (joints). As such, a daily average of almost 18 grams translates into the consumption of between 54 and 90 joints every day. By contrast, individuals who purchased their dried marihuana from Health Canada have on average purchased between one and three grams per day.

47. The MMAR authorize production of a particular number of plants under a PUPL or DPPL based on the individual's daily dosage and an estimated yield of medical marihuana plants. However, in practice, growers are known to grow very large marihuana plants that yield significantly greater amounts of dried marihuana than that which is estimated in the MMAR.

48. As the amounts of marihuana for medical purposes that individuals are authorized to possess has increased, so too have the corresponding amounts that they are authorized to produce through PUPLs and DPPLs.

49. For example, the total number of indoor plants authorized to be grown under PUPLs and DPPLs in 2012 was more than 1.4 million. In 2013, this figure more than doubled to more than 3.2 million indoor plants, which includes more than 2 million plants in British Columbia alone.

50. The vast majority of marihuana plants that are grown pursuant to PUPLs or DPPLs are grown indoors. For example, on December 3, 2013, there were 30,271 production locations authorized under either a DPPL or PUPL, of which 26,294 were indoor only, 709 were outdoor only and 2,768 were indoor and outdoor.

51. The number of marihuana plants that can be grown in any particular location has also increased as court decisions have resulted in the MMAR being amended to allow authorization of up to four production licences to operate at a single location.

52. The MMAR permit the production of marihuana inside residential dwellings designed and built for human occupancy. As a result, many of the authorized production facilities are located in residential properties in urban and suburban communities, some of which are multi-unit dwellings with shared walls, foundations, hallways and other infrastructure systems.

Unanticipated Consequences of the MMAR

53. The rapid expansion of uptake under the MMAR has had significant unintended consequences. Exponential growth in the number of persons seeking to possess and to produce marihuana for medical purposes, the increase in amounts produced and possessed, and the increase in the number of people who could grow in one

location, when combined with the fact that the production of marihuana was taking place in private dwellings that are not constructed for large-scale horticultural production, have resulted in risks to the health, safety and security of individuals licensed to produce marihuana for medical purposes, their neighbours and for the public in general.

54. Residential marihuana production sites are linked to the presence of excess moisture in homes creating a risk of mould (particularly associated with drying of marihuana), fire and electrical hazards, the presence of toxic chemicals like pesticides and fertilizers, the emission of noxious odours and various risks to children living in or near the residential growing operations.

55. Large scale residential marihuana production has led to production and possession of amounts greater than that authorized by Health Canada and diversion to the illicit market, which is particularly attractive given the street value of dried marihuana (approximately $10 to $15 per gram) and the high costs of constructing and operating marihuana production facilities.

56. It is impossible for Health Canada to conduct effective inspection of the tens of thousands of production sites across the country, particularly given the legal requirement to either obtain permission, or a warrant, to enter a private dwelling.

57. Production of marihuana in homes exposes residents and their neighbours to the risk of violent home invasion by criminals who become aware that valuable marihuana is being produced and stored in the home.

58. There are also practical difficulties in imposing quality and safety standards on production by personal producers of marihuana for medical purposes that may lack the capacity, knowledge or motivation to implement them. This situation poses individual health and safety risks for those seriously ill persons who consume marihuana, not knowing what kind or level of microbial or chemical

contaminants it may contain, or what standards should be or have been used for products such as fertilizers or pesticides.

59. All of the foregoing harms have impacted individual producers as well as others living at the same address, in adjacent residential units, and/or surrounding communities.

60. The MMAR were never intended to permit such widespread, residential, large-scale marihuana production and, as a result, they do not adequately address the public health, safety and security concerns that accompany such production.

61. Grave concern about the harms associated with personal production under the MMAR have been expressed to Health Canada by stakeholders including municipalities, fire and police authorities, homeowners, neighbours and program participants.

Development of the *Marihuana for Medical Purposes Regulations*

62. Following extensive public consultation, the *Marihuana for Medical Purposes Regulations* (MMPR) came into force on June 7, 2013. The MMPR created a framework that replaces the MMAR, which will be repealed on March 31, 2014.

63. The regulatory changes set out in the MMPR are intended to address the significant unintended negative consequences that resulted from the MMAR. At the same time, the MMPR are intended to improve access to quality dried marihuana for medical purposes, which, like other drugs used for medical purposes, will be required by regulation to be produced using Good Production Practices under secure and sanitary conditions. Furthermore, the FDA will apply to licensed producers.

64. Under the MMPR, three key activities are authorized: (a) the possession of dried marihuana for medical purposes by individuals who have the support of an authorized health care practitioner; (b) the production of dried marihuana by licensed producers; and (c) the sale and distribution of dried marihuana by licensed producers and hospitals to individuals who may possess it.

65. Like manufacturers of drugs under the FDA and FDR, licensed producers under the MMPR will be subject to regulatory requirements related to security, Good Production Practices, packaging, labeling and shipping, record keeping, reporting and distribution. The MMPR provide for adverse reaction reporting and recall of dried marihuana by the licensed producer.

66. Unlike the situation that prevailed under the MMAR, individuals authorized to possess marihuana under the MMPR will no longer be permitted to grow their own marihuana through a PUPL or to designate another person to grow it for them through a DPPL. Such persons will be permitted to obtain their supply of marihuana for medical purposes from a licensed producer only.

Transition from the MMAR to the MMPR

67. During the period between June 7, 2013 and March 31, 2014, both regulatory regimes run together, creating a transition period for the new dried marihuana supply and distribution system.

68. Individuals who hold an ATP under the MMAR may transition to the new framework using their ATP for up to one year after its date of issue unless a period of less than 12 months has been indicated in their medical declaration.

69. Individuals can also transition to obtaining their legal supply of dried marihuana for medical purposes under the MMPR by using a medical declaration issued

under the MMAR to register with a licensed producer that can then provide them with dried marihuana for medical purposes.

70. Under the MMPR, personal and designated licenses to produce dried marihuana for medical purposes issued under the MMAR will be phased out, until March 31, 2014 when the MMAR will be repealed and all such licenses will become invalid.

71. On repeal of the MMAR, Health Canada will no longer receive, process or issue applications for ATPs, PUPLs or DPPLs. The MMPR will return Health Canada to its traditional role of regulator, as with other drugs, rather than producer and service provider.

72. The MMPR do not limit the number of strains of marihuana that licensed producers may make available to registered clients.

73. The MMPR provide that until March 31, 2014, with specific authorizations from Health Canada, persons holding a valid PUPL or a valid DPPL may sell or provide marihuana seeds or plants to licensed producers. This makes it possible for a licensed producer to cultivate and sell an individual's preferred strain of marihuana. Licensed producers may also conduct research and development on cannabis if they wish under their licence.

74. Health Canada has taken a number of steps to provide for reasonable access to a legal, continuous, stable and adequate supply of dried marihuana for medical purposes is available during the transition period from the MMAR to the MMPR and thereafter.

75. These steps have included developing models to estimate demand and supply, encouraging applications from potential licensed producers, streamlining the application process for production licenses and devising contingency plans for

accessing a supply of dried marihuana to meet demand in the event that licensed producers are not able to do so.

76. Health Canada has purchased a significant quantity of overstock marihuana from a private company, Prairie Plant Systems, as a reserve in case of a supply shortfall during the transition period. As of this date, it has not yet needed to be used.

77. To date, Health Canada has received more than 400 applications from prospective licensed producers, of which 8 have been issued. Health Canada estimates that by March 31, 2014, over 20 producers will be licensed to produce marihuana for medical purposes with an annual production capacity of 45,000 kilograms of dried marihuana.

78. As of January 30, 2014, approximately 60 strains of marihuana for medical purposes are available for sale by licensed producers at prices ranging from approximately $5 to $12 per gram, with a number of licensed producers offering discounts for low income individuals.

Anticipated Benefits of the MMPR

79. The MMPR are intended to improve the way in which those who use marihuana for medical purposes may access quality products in a number of ways, while at the same time reducing negative impacts created by the MMAR.

80. A number of provisions in the MMPR are intended to make the administrative process of obtaining marihuana for medical purposes significantly quicker and easier than under the MMAR.

81. The MMPR is intended to increase the accessibility of marihuana for medical purposes for many individuals. The MMAR impeded access for those individuals who:

(a) could not afford the significant investment of capital required to set up and operate a marihuana production facility;

(b) did not live in homes where the setting up of a marihuana production facility was permitted or was practically feasible;

(c) did not have the knowledge or ability to construct and maintain a marihuana production facility;

(d) did not have access to a reliable designated grower; and

(e) were not satisfied by the strain of marihuana that was offered for sale by Health Canada under the MMAR.

82. While the cost of marihuana for medical purposes may initially increase for those who have already invested in marihuana production facilities, that cost is likely to decrease significantly over time as a result of factors such as competition among licensed producers, economies of scale, lower costs for skilled labour and technological innovation.

83. The MMPR are also likely to increase the availability of various strains of marihuana for medical purposes. As noted above at paragraphs 70-71, the MMPR place no limit on the number of strains that may be made available by licensed producers and provide a mechanism whereby individuals may sell the seeds or plants of their preferred strains of marihuana to licensed producers. Unlike under the MMAR, licensed producers are now required to test their marihuana and label it with the percentage of THC and CBD.

MMPR's Possession Limits

84. The MMPR limits the amount of marihuana for medical purposes that individuals with medical support may possess at any time to either 30 times the daily quantity of dried marihuana indicated by the individual's health care practitioner, or 150 grams of dried marihuana, whichever is less.

85. This limit is intended to decrease the risk of diversion to the illicit market and the extent to which individuals possessing marihuana for medical purposes become targets for theft and violence.

MMPR's Production Location Restrictions

86. Under the MMPR, licensed producers will not be permitted to grow marihuana in residential dwelling places or outdoors.

87. With respect to 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 marihuana production facilities in private dwellings that are not constructed for large scale horticultural production.

88. With regard to the restriction on outdoor production of marihuana for medical purposes, this is intended to decrease the risk of diversion as well as cross-contamination with other nearby crops, particularly industrial hemp.

The Restriction on Non-Dried Marihuana

89. Like marihuana itself, the possession, production and distribution of cannabis preparations and derivatives (e.g. oils, salves, edible products, creams made with extracts, etc.) are prohibited by the CDSA. The MMAR, the MMPR and the *Narcotic Control Regulations* (NCR) provide for access to dried marihuana only and not cannabis derivatives and preparations. This is so for several reasons.

90. First, the *Parker* decision, which precipitated the promulgation of the MMAR, was based on the fact that the Court found that the claimant demonstrated a medical need for access to dried marihuana (as opposed to cannabis derivatives or preparations).

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

92. Third, unlike approved therapeutic products, which are of consistent content and chemical composition, have been manufactured using regulated manufacturing practices, and are subject to adverse event reporting and recall capacity, the production, possession and distribution of unapproved cannabis derivatives and preparations present serious threats to health and public safety.

93. In particular, the extraction of cannabis active components and preparations from marihuana plant material through chemical processes involves the use of volatile solvents that can trigger health problems and can cause explosion and fire. This poses serious health and safety hazards, including severe life threatening burns. The carrying out of such potentially dangerous processes is of particular concern in clandestine residential laboratories.

94. Finally, if cannabis preparations and derivatives were permitted under the MMAR, MMPR or NCR, it would be difficult for law enforcement officials to determine that a marihuana product had been produced from a legally-obtained source of dried marihuana.

The Defendant's Legal Position

Section 7 of the *Charter*

95. Section 7 of the *Charter* provides that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

96. In response to paragraphs 61-65 of the Amended Statement of Claim, the Defendant says that the impugned provisions do not deprive the Plaintiffs of life, or the security of the person. While the Defendant acknowledges that the potential sanction of imprisonment, should the Plaintiffs engage in criminal conduct prohibited by the impugned legislation, does engage their liberty interests, any such deprivation would not violate any principles of fundamental justice, including arbitrariness, gross disproportionality or overbreadth.

97. In the further alternative, the Defendant says that any breach of s. 7 of the *Charter* is justifiable as a reasonable limit under s. 1.

The Elimination of Personal Production does not violate section 7 of the *Charter*

98. The Plaintiffs' life and security of the person interests are not engaged by elimination of personal production in the MMPR.

99. The rights to life and security of the person do not encompass a right to produce one's own medication in order to avoid the cost of purchasing commercially available equivalents. This is an economic interest which is not protected by s. 7 of the *Charter*. Further, the rights to life and security of the person do not encompass the right to a particular drug of choice where reasonable alternatives are available. As the plaintiffs may lawfully purchase any commercially available strain of dried marihuana from a licensed producer, the prohibition on personal production does not engage the Plaintiffs' security of the person or life interests. 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.

100. While the Defendant acknowledges that the potential sanction of imprisonment should the Plaintiffs personally produce marihuana 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 or overbreadth.

101. The restriction on personal production furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marihuana under the CDSA, the particulars of which are set out at paragraphs 24 to 30.

102. 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*

103. Limits on medical marihuana production locations do not engage the Plaintiffs' life or security of the person interests.

104. The rights to life and security of the person do not encompass a right to produce controlled substances in the location of one's choosing. As the plaintiffs may lawfully purchase any commercially available strain of dried marihuana from a licensed producer, the limits on production location do not engage the Plaintiffs' security of the person or life interests. 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.

105. While the Defendant acknowledges that 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 or overbreadth.

106. 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 marihuana under the CDSA, the particulars of which are set out at paragraphs 24 to 30.

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

Limits on Possession Amounts do not violate section 7 of the *Charter*

108. The MMPR's limits on the amount of marihuana for medical purposes that the Plaintiffs may possess do not engage the Plaintiffs' life or security of the person interests.

109. The rights to life and security of the person do not encompass a right to possess unlimited quantities of controlled substances. The fact that the Plaintiffs are limited at any time to possessing 30 times the daily quantity of dried marihuana indicated by their health care practitioner or 150 grams of dried marihuana, whichever is less, does not prevent them from obtaining their prescribed dosages. It simply means that, in some cases, certain individuals may have to increase the frequency of deliveries of marihuana as compared to individuals whose prescribed dosages are lower.

110. While the defendant acknowledges that 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 or overbreadth.

111. In the alternative, if the MMPR's possession limits do engage the Plaintiffs' liberty or security interests, any such deprivation is consistent with the principles of fundamental justice.

112. The restriction on possession amounts furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marihuana under the CDSA, the particulars of which are set out at paragraph 85.

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

Prohibition on Non-Dried Marihuana does not violate s. 7 of the *Charter*

114. The fact that the MMPR only makes dried marihuana available does not engage the Plaintiffs' life or security of the person interests.

115. The right to life and security of the person do 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.

116. While the Defendant acknowledges that the potential sanction of imprisonment should the Plaintiffs produce or possess non-dried marihuana 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 or overbreadth.

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

118. This restriction furthers pressing goals that are consistent with the goals of health and public safety that underlie the regulation of marihuana under the CDSA, the particulars of which are set out at paragraphs 89 to 94.

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

Section 1of the *Charter*

120. 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*.

Judgment and Relief Sought

121. The Defendant says that the Plaintiffs are not entitled to the relief that is sought at paragraph 66 of the Amended Statement of Claim, including the request for interim injunctive relief.

122. The Defendant says that the claim should be dismissed with costs.

123. The Defendant consents to the hearing of this matter in Vancouver.

DATE: February 14, 2014

William F. Pentney
Deputy Attorney General of Canada
Per: **Jan Brongers**
Department of Justice
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9
Tel: 604-666-0110
Fax: 604-666-1585

Solicitor for the Defendant

TO: Conroy & Company
Barristers and Solicitors
Per: **John W. Conroy, Q.C.**
2459 Pauline Street
Abbotsford, British Columbia
V2S 3S1

Solicitor for the Plaintiffs