

FEDERAL COURT

BETWEEN:

COURT FÉDÉRALE
FEDERAL COURT
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NEIL ALLARD
TANYA BEEMISH
DAVID HEBERT
SHAWN DAVEY

SERVICE OF A TRUE COPY
HEREOF ADMITTED

THIS...3...20...DAY OF

January... 2014...
W. [Signature]... F. [Signature] / es

Solicitor for
A.G.C.
PLAINTIFFS

JAN 31 2014
[Signature]

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANTS

AFFIDAVIT OF DAVID HEBERT

I, DAVID HEBERT, Environmental Protection Officer, c/o Conroy & Company, 2459 Pauline Street, Abbotsford, British Columbia, MAKE OATH AND SAY AS FOLLOWS, THAT:

1. I am one of the Plaintiffs herein and as such I have personal knowledge of the matters and facts hereinafter deposed to save and except where same are stated to be made on information and belief in which case I verily believe them to be true.
2. I am 32 years old, born in 1981 in Surrey, British Columbia, Canada and I am the common law partner and primary caregiver and Health Canada approved designated grower for Tanya Beemish, a patient approved by her health care practitioner and Health Canada to possess and use cannabis (marihuana) for her medical condition. Now produced and marked as Exhibit "A" to this my affidavit is a copy of my designated person production licence issued January 4th, 2013 and expiring January 4th, 2014

authorizing the production of 25 plants indoors and the storage of 1,125 grams. I have deleted the addresses, including that of the production and storage sites for reasons of privacy and security and can provide them if necessary and required to do so.

3. I reside in Surrey, British Columbia with my wife Tanya Beemish who is also a Plaintiff and I do not have a criminal record.

4. It is my understanding that Tanya Beemish has nerve damage in her stomach due to complications from Type 1 diabetes which has resulted in a condition called "gastroparesis" or "delayed gastric emptying". She vomits continuously for days some times and has terrible pain and nausea. She has been on disability leave since June 2012. For most of the last 24 months she has been unable to work due to her disability and has been spending more than 50% of her time in the emergency ward of the Royal Columbian and Surrey Memorial hospitals. For most of 2013 she has been feeding through a tube bypassing her stomach and she is on dozens of medications that do not appear to assist her, including opiates such as Hydromorphone (dilaudid). She is extremely weak and bed ridden most days. If I take her to the emergency department her average stay is a week and is sent home with a bag of food for her tube and a week long prescription for hydromorphone. When she is in hospital they keep her on dozens of medications, including opiates, but after she is sent home no follow up occurs any longer, this is extremely difficult for her with no family doctor.

5. She has found that cannabis marihuana is an effective relief to her nausea and discomfort from bloated stomach and in addition it helps her with anxiety and depression and stimulates her appetite when she has good days. She has also been trying to ingest CBD (cannabidiol) and THC (tetrahydrocannabinol) as extracts having heard that there is some research indicating it may help regeneration of nerves and help with the management of her diabetes.

6. She has cried and pleaded with her doctors to help her deal with her pain as she does not want to use opiates any longer as their side effects often exacerbate her gastroparesis condition (nausea and vomiting) while only temporarily aiding her pain. When she raises the question of cannabis with some doctors they often become

uncomfortable and silent avoiding conversation or become hostile and tell her that cannabis is poison and imply that she is a drug addict or that is causing her condition. This is most definitely not true as Tanya almost never has access to cannabis within hospital and often exhibits worse symptoms. The only physician that continues to support her is her endocrinologist, she currently has no family doctor.

7. Tanya's pain management is primarily through hydromorphone, as she has about 100 grams of dry stored cannabis remaining and has none left for juicing or attempting other extracts. We are concerned financially about her future ability to get the cannabis that helps her. Currently she is looking into other options to reduce or control pain such as the Pain Management Clinic that helps wean people off narcotics and deal with pain but there is a 19 month waiting list to get into that program.

8. I produced cannabis marihuana for her in our dwelling house garage in a secure, safe and healthy environment. The production site was the second last row townhouse on a dead end private street and the house was wired for security although there never once was a security incident. All growing was done in a 8'x4'x6.5' growing tent which was properly ducted to circulate fresh air from outside into the tent and vent humid hot air outside, no different than a clothes dryer. I ensured the use of carbon filters, air scrubbers and dehumidifiers to prevent offensive odours and mold issues. We never experienced any problems. We were directly between two large families on either side of us, with shared walls and never had any complaints, in fact we were quite friendly and even had them over without anyone knowing of our garden. The garage has a securely locked door with a dead bolt to an outside inaccessible backyard patio. The room itself was separate from the garage and had bars across the single small window, the garage door was also locked and disconnected from power as an added security. An additional smoke detector was put above the growing tent as well as a electrical/chemical rated fire extinguisher. All the hot components of the grow system such as the light ballasts were kept cool and away from any potential flammable materials. Once the production facility was constructed I had a certified electrician review it to make sure that I had done everything correctly.

9. I ensured that the cannabis (marihuana) was safe and organic and I lack confidence in others being able to meet my level of standard. I have gardened since childhood and find great joy in growing any plant, I take great care in this as well and for the most part kept my garden tidy like a lab. I have worked as an environmental professional, biologist, lab and agricultural technician over the last 10 years and feel confident in my knowledge of botany how to grow mold free produce. I utilized integrated pest management to deal with mites and other pests. I have two strains that provide Tanya consistent relief to nausea and some pain. One grown from seed and another provided by clone from a compassionate source. As we had to destroy these "mother" plants I fear having to try and find something similar from a licenced producer or the black market as I am unable to continue to provide for her.

10. Tanya consumes 2-10 grams a day of dried cannabis buds via smoking and vapourizing. Since we moved she has no longer been able to juice as we have not had any fresh plant material since. I estimate that, not including the cost of the initial set up equipment, that the electricity and fertilizer we currently use costs an average of about .50c per gram to produce. While I am authorized to produce 25 plants, I have never come near to producing that many, but would like to start doing so to be able to manufacture more edibles and extracts for her. Tanya would like to consume more by way of juicing, oils and other extracts as well as smoking and wishes to continue to do so.

11. If the cost of this medicine from Licenced Producers is between \$8-\$12 a gram we will simply not be able to afford to purchase the medicine for her. Even at \$5 a gram that would be a 10 times increase that we cannot afford. I understand if one continues to produce after one's licence expires that one may be subject to being charged with unlawful production and face the threat of imprisonment and possibly a mandatory minimum if I am doing it for her as they will say I am doing it for distribution. Consequently if I am no longer able to produce for Tanya at a reasonable cost, we will have no alternative but to try and seek out alternative medicine through the black market or illicit market to assist her. This is something we have always tried to avoid

and concerns me insofar as our safety and security is concerned. This could also negatively impact my career.

12. I estimate it cost us approximately \$4,225.97 after taxes to build the growing room and I would break down those costs as follows:

- a. Tables 8'x4'x6.5' tent \$425.00
- b. 2 x 600 watt ballast 499.98
- c. 2 reflectors 186.98
- d. Temp/climate control 680.00
- e. Blower fans to outside 169.99
- f. Soil over 3 crops 180.00
- g. Ducting and y connections 100.00
- h. Charcoal filter 131.74
- i. Pots and saucers 100.00
- j. Seeds 256.00
- k. Fertilizers 600.00
- l. Additional Fertilizer 200.00
- m. CO2 solenoid 144.49
- n. CO2 tank fill 99.00
- o. 12% tax 452.78

TOTAL: \$4,225.97

13. I estimate that after purchase of the equipment and set up as indicated in the paragraph above, the production process costs us about \$150 bimonthly in electricity and between \$25-\$50 a month in miscellaneous purchases such as fertilizer, pH probe buffer solution, CO2 refills, new pots, soil mixes, gloves and other gardening items. We have produced 3 crops so far and we purchased the equipment and built the room expecting to be self sufficient in the future and to not have to go to the illicit market or to anyone else for her medicine. We are both upset about being suddenly criminalized or be forced into purchasing from a private company with vastly inflated prices and losing our anonymity and self sufficiency.

14. Prior to September 30th, 2013, we resided in the townhouse with the garage room production facility, but due to Tanya's health and limited ability to contribute to rent due to reduced income of a disability pension, we simply could not afford to remain there at that rent cost and had to downsize and move to another location. This of course involved moving the production licence as well. Therefore on or about September 27th, 2013 I telephoned Health Canada and told them that we were going to have to move but we did not have a place yet and the person who I spoke to on the phone simply advised that they were unable to help until I had a new address at which time I would have to get the new forms in as soon as possible before the September 30th deadline.

15. By the time we found a place, the September 30th, 2013 deadline was passed and on or about October 20th, 2013 I again telephoned Health Canada to see what we could do given Tanya's health and our desire not to go to the black market and there not being any other sources available, but the representative from Health Canada told me that there was simply nothing that could be done, that I had passed the deadline and therefore the production would have to end upon the expiry of the licence, namely January 4th, 2014 and that it had to be at the specified location not elsewhere.

16. We moved to our new premises on October 30th, 2013 and are therefore are no longer producing because we could not move the production site to be lawful at the new premises, but we still have all our equipment and therefore have the ability to set back up if permitted to do so. The amount of cannabis left from production is now very low and I have looked at the cannabis (marihuana) available from the licenced producers online and can simply say that we cannot afford the prices. She has only been using dried and manicured cannabis and has no access to fresh plant material. Consequently I am going to have to go back to try and find some friendly sources on the street to obtain at a price that we can afford.

17. I swear this Affidavit in support of an Application for an Order under s.24(1) of the *Canadian Charter of Rights and Freedoms* as the appropriate and just interim remedy, in the nature of:

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

or, alternatively

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

or alternatively, and together with

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

and such further and other relief as the court deems appropriate and just in all of the circumstances.

SWORN BEFORE ME at the City)
of ~~Abbotsford~~ ^{Langley}, in the Province of British)
Columbia, this 13th day of January,)
2014)



A Commissioner for Taking Affidavits in)
and for the Province of British Columbia)



DAVID HEBERT

JOHN W. CONROY, Q.C.
Barrister & Solicitor
Conroy & Company
2459 Pauline Street
Abbotsford, BC V2S 3S1
Telephone: 604-852-5110
Facsimile: 604-859-3361

DESIGNATED PERSON PRODUCTION LICENCE
DRIED MARIHUANA FOR MEDICAL PURPOSES

You have met the requirements to be issued a licence pursuant to section 40 of the *Marihuana Medical Access Regulations* (MMAR). You are hereby licenced to produce dried marihuana. This document and/or ID card will serve as proof of your authority to produce marihuana for a medical purpose. You should have at least one of these documents with you at all times in case you are required to show proof to the police.

<u>HOLDER OF LICENCE INFORMATION</u>	<u>AUTHORIZED PERSON INFORMATION</u>
NAME: David Wesley Hebert	NAME: Tanya Louise Beemish
D.O.B: 26-Jul-1981	D.O.B: 02-Jul-1986
GENDER: Male	GENDER: Female
ADDRESS: [REDACTED] Canada	ADDRESS: [REDACTED] Canada
MAILING ADDRESS: [REDACTED] Canada	MAILING ADDRESS: [REDACTED] Canada

TERMS AND CONDITIONS

PRODUCTION SITE: [REDACTED]

MODE OF PRODUCTION: Indoor

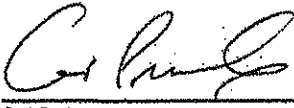
PRODUCTION QUANTITIES: The maximum number of marihuana plants that you may have under production at the production site at any time under this *Designated Person Production Licence* is **25 PLANTS** (indoor) or **0 PLANTS** (outdoor).

STORAGE SITE: [REDACTED]

STORAGE QUANTITIES: The maximum quantity of dried marihuana that you may keep at the storage site at any time under this *Designated Person Production Licence* is:
1125 grams and it must be stored indoors.

EXPIRY DATE

Please note this *Designated Person Production Licence* expires on **04-Jan-2014**.
Should you wish to renew your *Designated Person Production Licence*, please submit your renewal application at least **8 weeks** prior to your expiry date.

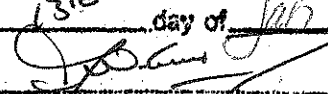
ISSUED BY:  <small>Louis Provit A Directeur, Bureau du cannabis médical / A Director, Bureau of Medical Cannabis Contrôlé Substances de Tabac Direction / Direction des substances contrôlées et de la lutte au tabagisme Health Canada / Santé Canada</small>	DATE OF ISSUE: 04-Jan-2013
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PLEASE READ ALL ENCLOSED DOCUMENTS

ENCLOSED DOCUMENTS:
Information you should know about your
Designated Person Production Licence

c.c.: Tanya Louise Beemish

ID CARD AFFIXED HERE

This is Exhibit "A" referred to in
the affidavit of David Hebert
sworn before me at Abbotsford, B.C.
this 13th day of Jan, 2014

A Commissioner for taking Affidavits
for British Columbia