

Examination No. 14-0231.1

Court File No. T-2030-13

FEDERAL COURT OF JUSTICE

B E T W E E N:

NEIL ALLARD, TANYA BEEMISH, DAVID HERBERT, SHAWN DAVEY

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

CROSS-EXAMINATION OF TODD CAIN on his Affidavit
Sworn on February 7, 2014 pursuant to an
appointment made on consent of the parties to be
reported by Catana Reporting Services, on February
20, 2014, commencing at the hour of 12:00 in the
afternoon.

APPEARANCES:

John Conroy (via videoconference)

for the Plaintiff

Jan Brongers)

Kate Murton)

for the Defendant

ALSO PRESENT:

B.J. Wray

Maria Molloy

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NAME OF WITNESS: **TODD CAIN**

EXAMINATION BY: MR. CONROY

NUMBER OF PAGES: 56

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

O 7, 38, 47

NO EXHIBITS

DATE TRANSCRIPT ORDERED: February 28, 2014

DATE TRANSCRIPT COMPLETED: March 3, 2014

1 **TODD CAIN, SWORN:**

2 **EXAMINATION BY: MR CONROY**

3 1. Q. Mr. Cain, I have your Affidavit in front of
4 me. As you indicate in paragraphs 3 and 4, your primary
5 responsibilities and role in this matter was to try and
6 ensure that everything is essentially in place by April
7 1st, 2014 as far as supply. Is that fair?

8 A. Yes.

9 2. Q. Okay. So, I'm going to ask you -- I think
10 we'll just -- well, let's go through your Affidavit
11 quickly and then I've got some other things that I need
12 to update you on. In -- well, I take it you have not
13 been involved in -- as of paragraph 7 of your Affidavit
14 talks about risks of public health, security and safety
15 and so on. That's just information you've been given
16 from others. You haven't been involved in that aspect of
17 things at all. Your role again is simply to try and
18 ensure that there's enough licensed producers and enough
19 supply available April 1st, 2014. Again, is that fair?

20 A. That is fair.

21 3. Q. Okay. At paragraph 8 you say that you're
22 informed by Jacinthe David, Manager of Licensing and
23 Permits Division of the Controlled Substances Office
24 that the majority of the new licensed producers have
25 availed themselves of this option. The option you're

1 talking about is their ability to have individuals sell
2 their seeds and plants, that's personal production
3 people, sell them to the licensed producers. When you
4 say they've availed themselves of this option, are you
5 saying the licensed producers have, many of them
6 purchased plants and seeds from personal producers?

7 A. From personal producers and from designated
8 persons as well.

9 4. Q. They have done so?

10 A. That is correct.

11 5. Q. Do you have any details or up to date
12 information on what each of them has done in that
13 regard?

14 A. So, I'm aware that more than half of
15 licensed producers to date have made at least one
16 purchase ---

17 MS. WRAY: I'm sorry, we're going to have to go
18 get our technical people. We're not able to hear the
19 answers at all. It's cutting in and out repeatedly. If
20 you just bare with us please?

21 MR. BRONGERS: Thank you.

22 (OFF RECORD DISCUSSION)

23 BY MR. CONROY:

24 6. Q. At paragraph 24 of your Affidavit, Mr. Cain,
25 set out a progress up to February 4, 2014. Can you

1 update us on that, please?

2 A. Certainly. The applications have continued
3 to come in. I did check before coming over this morning
4 and the latest number is 491 applications have been
5 received, 131 are at the screening stage, 186 are in the
6 review stage, 79 have been returned as incomplete, 29
7 have the ready to build letter, 14 are pending the pre-
8 license inspection, 5 are at final review, 9 have been
9 issued, 25 have been refused, and 13 have been
10 withdrawn.

11 7. Q. Okay. So, we have nine that have been issued
12 you said?

13 A. That's correct.

14 8. Q. So on your next page, you indicate there
15 were six of the eight ready to register. So, you've
16 listed six there. Please give me the name of the other
17 three.

18 A. I don't know that I have the names of all
19 three of the other companies that have been licensed.

20 9. Q. All right. Well let's do this then, you say
21 at paragraph 25 -- or 26 rather, that six of the eight
22 are ready to resister clients. What's the situation with
23 respect to the nine?

24 A. So the delta between the two -- the
25 difference between the two is, in one case the Prairie

1 Plant Systems is licensed to cultivate only and then
2 they have a corporate relationship with CanniMed. So
3 CanniMed is the legal entity, the company that will
4 actually register the patients, deal with the medical
5 records, et cetera. So that's the nature of that
6 relationship. The other two that are licensed but not
7 yet public are in a production phase. They've been
8 licensed to start producing and their license will be
9 reviewed for a full licensure within the next few weeks
10 as they continue their construction and get ready for a
11 final pre-license inspection. So ---

12 10. Q. They're not ready to register?

13 A. That's right. They're in production but not
14 quite ready to register clients yet.

15 11. Q. Okay. So, are the six -- do we only have the
16 six ready to register as indicated in paragraph 22?

17 A. That is my understanding.

18 12. Q. So nothing changed between February 14th, I
19 think is the date of your Affidavit, and today on the
20 ready to register aspect of things?

21 A. Correct.

22 13. Q. February 7th is your Affidavit. So over the
23 last three weeks we have no new licensed producers ready
24 to register. Is that right?

25 A. That is my understanding.

1 14. Q. Okay. All right, now in paragraph 27 you
2 talk about the projected annual production capacity of
3 the eight licensed. Are you able to produce
4 documentation for each of these to show exactly what
5 their current ability to produce is?

6 MR. BRONGERS: Mr. Conroy, this is a Cross-
7 Examination on an Affidavit, we have no obligation to
8 produce documents pursuant to it. So we will not be
9 undertaking to provide more material other than what is
10 already been attached to these affidavits.

O

11 BY MR. CONROY:

12 15. Q. Do you have access then to documents from
13 the companies that show exactly what their current
14 status is?

15 MR. BRONGERS: Mr. Conroy, what's the point of
16 asking that question when I've just told you we are not
17 going to be providing any further paper. The affidavit
18 speaks for itself.

O

19 BY MR. CONROY:

20 16. Q. All right. Well, the Affidavit does not --
21 well, tell me this, what is the projected yield per
22 square foot of production space per month for Canna
23 Farms currently?

24 A. I don't know.

25 17. Q. Do you know that for any of the six?

1 A. No.

2 18. Q. How many square feet is built out and in
3 production right now for Canna Farms?

4 A. I don't know.

5 19. Q. Do you know the answer to that question for
6 any of the other licensed producers?

7 A. I wouldn't -- I would know the approximate
8 number for two or three of the people that are licensed
9 to date.

10 20. Q. Who are they?

11 A. Peace Naturals and Tweed.

12 21. Q. I'm told that Tweed has only got 1,700
13 square feet built out right now. Is that correct?

14 A. That is not my understanding.

15 22. Q. What is your understanding?

16 A. That they have over 10,000 square feet built
17 out at this point.

18 23. Q. That's information they've supplied to you?

19 A. Correct.

20 24. Q. I'm told that Peace Naturals currently only
21 has 3,000 square feet built out right now. Is that
22 correct?

23 A. That is not my understanding.

24 25. Q. What is your understanding?

25 A. Closer to 10,000 square feet.

1 26. Q. Again, information supplied by them to you?

2 A. Correct.

3 27. Q. Do you know the answer to the question for
4 Bedrocan?

5 A. Bedrocan is importing at this point.

6 28. Q. So is Bedrocan going to be importing 100
7 kilograms per month or is it just the 100 kilograms
8 that's been imported?

9 A. We are aware of a plan on their part to
10 import over a couple of month period, over 100 kilos.

11 29. Q. So when you say over 100 kilos, how much
12 over?

13 A. My understanding is the total will be in the
14 range of 130 to 140 kilos.

15 30. Q. Over two months you said?

16 A. Between now and May.

17 31. Q. Okay. Have any of the licensed producers
18 managed to produce dry cannabis product to date?

19 A. Yes.

20 32. Q. Which ones?

21 A. The latest information I have is that there
22 is production at Tweed, Peace Naturals, Mettrum, Prairie
23 Plant Systems which as I indicated earlier is the
24 cultivation arm associated with CanniMed. Sorry, can you
25 just repeat the precise question, whether they have

1 produced ---

2 33. Q. Dry cannabis product to date?

3 A. So that would -- those are the ones that I
4 am aware of that have finished product available.

5 34. Q. When you say available, have they passed the
6 microbiological for example? Let's take Mettrum as an
7 example. Has Mettrum passed its biological testing?

8 A. As far as I'm aware, they are in compliance
9 with the regulations.

10 35. Q. Well, my question's more specific. Have they
11 -- has their product failed the tests or not at this
12 point?

13 A. I don't know the results or their specific
14 testing. I know that they do have finished product in
15 inventory.

16 36. Q. But is it available for purchase by
17 consumers because it's completed all the tests? Or do
18 you know?

19 A. I know that they have product available for
20 sale.

21 37. Q. Do you know how much?

22 A. I don't have the precise numbers with me.

23 38. Q. Well, I need to know what is the -- how much
24 dried cannabis product is available to date?

25 A. So the last information I have is that

1 collectively, the licensed producers have just over 100
2 kilograms of finished dry marijuana in inventory
3 available for sale.

4 39. Q. That's all of the licensed producers
5 combined?

6 A. Correct.

7 40. Q. That's as of today's date?

8 A. That's the last information that I have and
9 I believe it is as of January 30th.

10 41. Q. So that -- when you say 100 kilograms,
11 you're saying that -- so this is 100 kilograms that has
12 gone through all of the testing and procedures and
13 available for the consumer to purchase from them?

14 A. That's my understanding.

15 42. Q. Okay. Are you able to say that they have
16 managed to produce in accordance with the projected
17 yield per square foot of production space per month to
18 date?

19 A. No, I'm not.

20 43. Q. So you can't tell us of any variations
21 either then?

22 A. No.

23 44. Q. Are you able to tell us how many of the
24 currently licensed LPs that have produced dried cannabis
25 product have tested that product to ensure that it

1 passes Health Canada's tolerance limits for heavy metals
2 and biologicals?

3 A. I have no specific knowledge of the tests
4 that the product and inventory has undergone. All of
5 those licensed producers have demonstrated through the
6 licensing process the protocols, the testing procedures
7 to comply with the regulations.

8 45. Q. But you don't know if their product has
9 passed the tests?

10 A. I have not specifically verified that their
11 products have passed the tests.

12 46. Q. See I'm told that at least three of the
13 eight have not even tested their product yet and that
14 Mettrum's failed the tests. Is that correct?

15 A. That is -- I have no knowledge of product
16 having failed tests that is finished product in
17 inventory. I am aware that a number of these growers
18 have attempted to purchase marijuana from existing
19 growers and that some of that marijuana has failed the
20 tests under the new regulations.

21 47. Q. Are you able to say how much?

22 A. No.

23 48. Q. Any details? No details? Just that some of
24 it has failed?

25 A. Yeah.

1 49. Q. You can't tell us how much?

2 A. I couldn't qualify or quantify the
3 percentages. That is information that is provided to me
4 by the licensed producers themselves.

5 50. Q. But do we know how much then has been
6 purchased from personal producers or designated growers
7 on the issue you were speaking about in paragraph 8 of
8 your Affidavit? Do we know how much of that -- what
9 volume has been purchased and is available through that
10 method?

11 A. Well precise numbers, no. As I was starting
12 to answer, the majority of the producers, the new
13 licensed producers have availed themselves of the option
14 of acquiring seeds or starting the materials in the form
15 of immature plants from existing growers. Those
16 transactions of limited by the licenses of the
17 designated or personal grower.

18 51. Q. I know, but I'm trying to get an idea of how
19 much volume that will be available by April 1st.

20 A. Right. Well, as clear in the Affidavit based
21 on the production forecast of the licensed producers in
22 paragraph -- oh, sorry 29. That is what we expect they
23 will produce in April. What we are monitoring and don't
24 have an up to date number is what the level of inventory
25 will be between now and then. We do know that as of

1 January 30th, 100 kilos have been grown and placed into
2 inventory and that the producers own forecast for April
3 itself are for 850 kilos.

4 52. Q. So you're not in a position to tell me how
5 many of the currently licensed LPs that have produced
6 dried cannabis product, have tested their dried cannabis
7 product to ensure that it passes Health Canada's
8 tolerance limits for heavy metals and biologicals. Is
9 that correct?

10 A. I have not personally verified their
11 compliance with that aspect of the regulations.

12 53. Q. You can't tell me -- or tell us that of
13 those LPs that have produced to date to what extent
14 their product has passed or failed to pass Health
15 Canada's tolerance limits for heavy metals and
16 biologicals?

17 A. I can tell you that a number of kilos have
18 been destroyed by the licensed producers based on their
19 information provided to us because they have not met
20 those testing standards. I don't remember the precise
21 number, but it would be in the single digits of
22 kilograms which have failed the testing protocols and
23 been destroyed.

24 54. Q. Are you able to give us a percentage
25 expressed as a current total of the built up production

1 space?

2 A. No.

3 55. Q. So, is what I understand it, you take the
4 position, or say in your Affidavit that the LPs have a
5 proven 35,000 kilogram per year production capacity. Is
6 that correct?

7 A. That is the collective amount that they are
8 licensed to produce.

9 56. Q. So it's not that they have a proven
10 capacity, they're just licensed to produce that. Is that
11 right?

12 A. As part of our licensing procedure we do
13 confirm that they have the testing protocols, the other
14 controls that are clear in the regulations including the
15 vault or storage capacity that lines up with the amount
16 of annual production in their license.

17 57. Q. All right. So, you're not saying that that
18 exists right now, are you?

19 A. Not necessarily.

20 58. Q. At paragraph 27 you discuss -- you say the
21 collective projected annual production capacity of the
22 eight is over 31,000 kilograms. Do you know how much
23 over?

24 A. Well it was rounded to 31,000 so it would --
25 over would only be in the hundreds.

1 59. Q. You predict that another 12 applicants will
2 be licensed to produce by March 31st. So I think you
3 said we're up to nine now. We've got 40 days to go. Is
4 that still your prediction?

5 A. Yes, it is.

6 60. Q. Then you say these applicants projected
7 annual production capacities will increase to 31,000 to
8 45,000 kilograms, correct?

9 A. Correct.

10 61. Q. But you're not saying that that product will
11 be available by March 31st, are you?

12 A. No.

13 62. Q. So in the Affidavit -- have you had a chance
14 to look at the materials that were filed by the
15 Applicant?

16 A. Which materials?

17 63. Q. Well for example, the Affidavit of Danielle
18 Lukiv?

19 A. No.

20 64. Q. Okay. Did you know that a Freedom of
21 Information request was made back in July of 2013, and
22 it's attached as an Exhibit A to the Affidavit of
23 Danielle Lukiv, and the information provided was that,

24 "The total annual dried cannabis dosage or
25 consumption expressed in kilograms per year of

1 authorizations to possess licenses under the
2 MMAR with the dosage between 1 to 149 grams per
3 day."

4 But the total based on daily amount authorized was
5 188,189 kilograms as of April, 2013. Did you know that?

6 MR. BRONGERS: Mr. Conroy, we have Mr. Lukiv's
7 Affidavit with us. It might make it easier if you could
8 point to the paragraph or Exhibit where that's stated.

9 MR. CONROY: Her Affidavit and it's Exhibit A.

10 MR. BRONGERS: Perhaps you could ask the
11 question again, Mr. Conroy? What are you asking the
12 witness specifically?

13 BY MR. CONROY:

14 65. Q. You'll see at Exhibit A, there's an Access
15 to Information Request filed July 19th, 2013 that asks
16 the three questions that are posed there. The first one
17 being,

18 "The total annual dried cannabis dosage or
19 consumption expressed in kilograms per year of
20 authorizations to possess licenses under the
21 MMAR with the dosage between 1 to 149 grams to
22 day."

23 If you flip the page, the answer is set out at the top
24 of the next page which is what I've read to you a little
25 earlier. Do you see that?

1 A. Yes.

2 66. Q. My understanding is that is then the figure
3 of what -- how much marijuana was authorized to be
4 produced last year by all authorized to possess and
5 personal producers and designated growers. Is that
6 correct?

7 A. I have not seen these specific numbers
8 before but that number is generally familiar to me in
9 terms of the total authorized production under the old
10 regulations, yes.

11 67. Q. So in other words, based on the various
12 patients and so on, that was the amount that was
13 produced for consumption by the patients last year,
14 correct?

15 A. That is the amount that was authorized.

16 68. Q. Authorized pursuant to the specific
17 authorizations to possess and personal production
18 licenses and designated grow licenses that were in
19 effect last year?

20 A. Well as of the date when this document was
21 prepared, yes.

22 69. Q. The second question was,
23 "The total number of authorizations to possess
24 licenses under the MMAR with the dosage of 150
25 grams or more per day?"

1 The answer on the next page appears to be 89 as of
2 April, 2013?

3 MR. BRONGERS: Mr. Conroy, are you asking him
4 just to confirm that's what the document says?

5 BY MR. CONROY:

6 70. Q. Did you know that or is this information
7 that has just come to your attention by reading the
8 documents?

9 A. I was aware of the number of authorizations
10 over 150 grams per day, yes.

11 71. Q. The next question set out there is,
12 "At the time of the repeal of licenses issued
13 under the MMAR on March 31st, 2014 based on the
14 actual applications received by Health Canada as
15 well as the licenses Health Canada anticipates
16 to issue for production of cannabis, the
17 anticipated total annual production capacity of
18 dried cannabis expressed in kilograms per year
19 of all anticipated licensed producers under the
20 MMPR estimated to be as of April 1st, 2014
21 provide us with your estimate in this regard on
22 a monthly basis commencing August, 2013 to March
23 2014."

24 The answer on the next page appears to be nil from BMC.
25 Do you know what that means?

1 A. That there were no documents that
2 corresponded to the Access to Information Request would
3 be my understanding.

4 72. Q. BMC being the Bureau of Medical Cannabis?

5 A. Correct.

6 73. Q. Okay. So as of that date though, they
7 weren't able to estimate the production by April 1st,
8 2014. Is that fair?

9 A. That would be my understanding.

10 74. Q. If you go then to the next Exhibit, Exhibit
11 B, you'll see a further Access to Information Request,
12 October 9th, 2013, that's ---

13 MR. BRONGERS: Mr. Conroy, is there a page
14 number perhaps that you could reference for us? We don't
15 have tabs here.

16 MR. CONROY: Oh you don't? Okay. Well, it's
17 immediately following the last one.

18 THE WITNESS: This is the correspondence with
19 the Secretary of the International Narcotic Control
20 Board?

21 MR. CONROY: No, you should have -- before that
22 there should be the October 9th, 2013 request -- or
23 response.

24 MR. BRONGERS: We've found that. Exhibit B,
25 October 9th, 2013 letter to Ron Marzel, yes.

1 BY MR. CONROY:

2 75. Q. So you've got a series of questions there
3 that are broken down in relations to the grams per day.

4 "Total current annual dried cannabis dosage or
5 consumption for 2012 calendar year expressed in
6 kilograms per year of authorization to possess
7 licenses under the MMAR."

8 The first one is 1 to 5 grams and then 6 to 10 grams, 11
9 to 20 grams, 21 to 50, 51 to 100 and 101 to 150 grams.

10 Do you see those -- where the questions?

11 A. Yes.

12 76. Q. Then if you go a couple of pages, you'll see
13 the answers.

14 MR. BRONGERS: Is it, Mr. Conroy, a page which
15 starts with A-2013-00583 bottom of the page has a number
16 one on it?

17 MR. CONROY: That's correct.

18 THE WITNESS: Okay.

19 MR. BRONGERS: Yes, we have it.

20 MR. CONROY: If you go then to the next page,
21 you'll see -- on that first page it's got 1, 2, 3 and
22 then over to the next page, B, C, and D.

23 MR. BRONGERS: We have a form B, annual
24 estimates.

25 MR. CONROY: Well do you have page two? Page one

1 you've indicated you have. There's page two to the
2 answer that has a little box at the bottom with a
3 diagram that sets out the kilograms authorized in east
4 category.

5 MR. BRONGERS: It appears, Mr. Conroy that we
6 may have a wrong copy. I'm going to look on my iPad
7 where I also have your Affidavit. So if you could just
8 bare with me, I'll see if I can find it?

9 MR. CONROY: All right.

10 MR. BRONGERS: Yes, we now have it on my iPad.

11 BY MR. CONROY:

12 77. Q. All right. So the diagram or the schematic
13 at the bottom of page two gives us the breakdown in
14 daily grams and the corresponding kilograms authorized
15 in each category, doesn't it?

16 A. Yes.

17 78. Q. The largest group appears to be in the
18 category of 11 to 20 grams. Isn't that correct?

19 A. Yes.

20 79. Q. The second largest is 6 to 10 grams,
21 correct?

22 A. Correct.

23 80. Q. So the -- we know, I take it from these
24 figures, that the grams per day being authorized by
25 physicians across the country, the greatest numbers fall

1 into those two categories. Fair enough?

2 A. Under the old program, yes.

3 81. Q. But I mean -- so we know that in the past
4 under the MMAR or even up to date under the MMAR that in
5 2012 up to the -- for the year of 2012, those were the
6 types of authorizations that doctors were giving to
7 patients under the MMAR. Fair enough?

8 A. Yes.

9 82. Q. That the total authorized there was
10 167,780.33 kilograms?

11 A. Yes.

12 83. Q. Fair enough? So that figure and the earlier
13 figure we looked at a moment ago, the 188,819 as of
14 April, 2013, are those not figures that give us an idea
15 of how much cannabis is being consumed as medicine by
16 patients in Canada during those years?

17 A. Those figures are authorizations. I'm not
18 aware of any systematic study that would give us any
19 real insights into how much of that authorization was
20 actually being consumed for medical purposes.

21 84. Q. Whether you have that information or not,
22 that's what was authorized to be consumed, wasn't it?

23 A. Yes.

24 85. Q. That was the demand made in terms of what
25 quantity was required to fulfil what was authorized.

1 Fair enough?

2 A. That's what was authorized.

3 86. Q. Yeah, on the basis of requests by patients
4 authorized by their physicians, correct?

5 A. The authorizations to possess yes, were
6 based on the medical documents signed by the ---

7 87. Q. It gives us some idea of what the demand has
8 been in each of those years, doesn't it?

9 A. Well as I said, we have not seen or been
10 made aware of any study that actually links the level of
11 the authorizations to the level of actual consumption by
12 patients for medical purposes.

13 88. Q. So I take it, you're -- well, we'll go to
14 the Affidavit. Let's just, while we're at this
15 Affidavit, if you then go past the letter from the
16 international drug people to the next Freedom of
17 Information Request, you should be right in sequence.
18 It's a document dated December 16th, 2013.

19 A. Yes.

20 89. Q. Another Freedom of Information Request
21 basically asking, and I'll put it to you,

22 "At the time of the repeal of licenses issued
23 under the MMAR on March 31, 2014, based on the
24 actual applications received by Health Canada as
25 well as the licenses Health Canada anticipates

1 to issue for production of cannabis, the
2 anticipated total annual production capacity of
3 dried cannabis expressed in kilograms per year of
4 all anticipated license producers under the MMAR
5 estimated to be as of April 1st, 2014. Would you
6 be kind enough to provide us with your estimate
7 in this regard on a monthly basis commencing
8 August, 2013 and ongoing to March, 2014?"

9 If you go to the next page, there is a reporting
10 dashboard. Do you see that?

11 A. I do, yeah.

12 90. Q. If you go to the page following that,
13 there's a figure,

14 "As of October 2nd, 2013 current risk weighted
15 production forecast, 3,055 kilograms in April of
16 2014."

17 Is that correct?

18 A. Correct.

19 91. Q. Is that -- do you agree with that figure?

20 A. Do I agree with it now? No.

21 92. Q. Yeah. What do you say it is now?

22 A. Well it's the figure that's provided in the
23 Affidavit in paragraph ---

24 93. Q. Which figure is that?

25 A. Paragraph 29.

1 94. Q. Eight hundred and fifty kilograms. So,
2 you're saying that as of April, 2014 there will only be
3 850 kilograms available?

4 A. No. As the Affidavit states, that is what
5 licensed producers have indicated to us they will be
6 producing in April. The total amount available will be
7 that amount plus the accumulated inventory leading into
8 the month of April. As I said already, producers to date
9 have accumulated 100 kilograms.

10 95. Q. All right. So the accumulated inventory.
11 That's what you're talking about, is the 100 kilograms?

12 A. So far, that's right.

13 96. Q. Okay. That, you're saying, will be available
14 for acquisition by patients on April 1st, 2014. Is that
15 right?

16 A. So, what will be available in April will be
17 the amount produced in the month itself as well as the
18 available inventory from the licensed producers coming
19 into the month. The amount we are aware of today is an
20 accumulated inventory of 100 kilos. What that number
21 will precisely be on April 1st or March 31st, we don't
22 have the exact number, but the projection is, is that
23 the licensed producers will continue to accumulate
24 inventory leading into the month of April.

25 97. Q. So, you're calculations to determine whether

1 or not there will be enough available for patients come
2 April 1st, I take it you agree there's no relationship
3 to what was authorized in these prior years? You've
4 calculated on a totally different basis as to what will
5 be -- what the demand will be. Is that correct?

6 A. There are quite a number of factors that
7 we've looked at. The biggest one is the number of
8 patients as well as what the consumption patterns will
9 be moving forward. There's four key data points that I
10 would point to in thinking about what consumption will
11 be on a go forward basis. What we've seen
12 internationally in countries that have national programs
13 of scale in Israel and in The Netherlands, those numbers
14 are cited I believe in some of the documentation
15 provided. The Dutch program has a daily consumption on
16 average of less than a gram -- actually, less than 0.7
17 of a gram a day. The Israeli program has consumption of
18 about a gram and a half a day. Our own experience in
19 supplying patients in the MMAR, the older regulations,
20 on average those patients consumed 1.2 grams per day.
21 Under the new regulations, the licensed producers that
22 we've been discussing, they've registered almost 1000
23 patients and made almost 1000 shipments. The average
24 shipment is a gram a day. So, we're seeing a fairly
25 consistent pattern of what consumption will start to

1 look like under the new regulatory regime. So that was a
2 very important consideration and remains one that we're
3 monitoring closely as we move into the new regulatory
4 regime.

5 98. Q. So, if I'm understanding you, you're saying
6 that rather than do the calculations based on, for
7 example the figures we looked at in the Freedom of
8 Information Requests as to grams per day authorized in
9 Canada, instead of relying on those figures you rely on
10 figures from The Netherlands and Israel indicating 1.5
11 grams per day as being the standard. Is that correct?

12 A. Well in addition, the figure we have from
13 our own experience in supplying patients. We've been
14 supplying patients under the MMAR for almost eight years
15 and we have production records, we have sales records
16 based on the thousands of patients that we've supplied
17 over that extended period of time. The average
18 consumption that we've seen from patients in that
19 circumstance was as I said, about 1.2 grams per day.
20 Under the new program with, as I said, just under 1000
21 patients registered, just under 1000 shipments made to
22 date, the average shipment has been a gram a day.

23 99. Q. I'm sorry, I'm not -- I don't know if I'm
24 understanding you. You say shipments to date, are you
25 talking about shipments by the licensed producers?

1 A. Correct.

2 100. Q. So can you give me that again? How much can
3 the licensed producers supply or have they supplied to
4 date -- sold to date?

5 A. The total amount in kilos that they've
6 supplied to date, I do not have that number. I do know
7 that they have made under -- just under 1000 shipments
8 to date as of -- sorry, as of January 30th.

9 101. Q. I see.

10 A. And that the average shipment is right
11 around a gram a day.

12 102. Q. Are you able to break down which of the
13 licensed producers was able to do that?

14 A. Well, as of January 30th, I believe there
15 were four of the licensed producers that are mentioned
16 in paragraph 26 who have actually made shipments to
17 clients.

18 103. Q. Can you identify which ones those are?

19 A. That have made shipments as of January 30th,
20 CanniMed, Mettrum and Peace Naturals for sure. From
21 memory, I am -- maybe just those three who've made
22 shipments as of that date.

23 104. Q. So Mettrum has been able to actually sell
24 some product to the public. Is that what you're saying?

25 A. Yes.

1 105. Q. In order to do that it obviously has to pass
2 all of the tests and everything, correct?

3 A. Correct.

4 106. Q. Okay. See, I'm told that Tweed for example,
5 that is supposed to have your biggest production
6 capacity only has about 1,700 square feet production
7 available now and is planning to have about 150,000
8 square feet in the future. Do you know whether that's
9 accurate or not?

10 A. The estimates that are contained in
11 paragraph 29 are based on discussions with the licensed
12 producers about where they think they will be on
13 production as of April.

14 107. Q. So we don't have an actual timeline, say
15 from Tweed, do we?

16 A. They have given us an indication of how they
17 will ramp up their production, yes.

18 108. Q. What's that? How will they do that?

19 A. I'm sorry, can you re-ask the question?

20 109. Q. How will they ramp up their production for
21 April 1st?

22 A. They have a large number of plants already
23 under cultivation. They've been licensed for the
24 footprint they need to make the production numbers that
25 they have already provided to us and are included in

1 these estimates.

2 110. Q. But they haven't sold any product yet, have
3 they?

4 A. That is not my understanding -- my
5 understanding is that they have not yet sold a product,
6 but they have begun to register patients.

7 111. Q. Your understanding though is that Mettrum
8 has been able to sell product, so if you recall, I've
9 been told that they were having trouble passing
10 biological tests. But that's not your understanding.
11 Your understanding is that they have actually been
12 authorized to sell product and have in fact sold
13 product. Is that right? Mettrum.

14 A. Correct, yes.

15 112. Q. What about CanniMed? Let me just clarify,
16 CanniMed is a wholly own subsidiary of Prairie Plant,
17 correct?

18 A. I'm not sure of the nature of which is the
19 parent and which is the subsidiary, but they are owned -
20 ---

21 113. Q. Related?

22 A. --- they are the same company, yes.

23 114. Q. Yeah, okay. Now, at paragraph 33 you refer
24 to arrangements with Prairie Plant to purchase overstock
25 as a reserve in case of a supply short fall during the

1 transition period and you say that Health Canada secured
2 four to five hundred kilograms of dried marijuana
3 available for sale now to Canadians and that you haven't
4 had to rely on it. So is this the Prairie Plant System
5 product that according to statistics approximately 20
6 percent of the patients were accessing or to access?

7 A. That's the ---

8 115. Q. Is that the old Prairie Plant product?

9 A. That is right.

10 116. Q. The stuff that wasn't very popular with the
11 patients?

12 A. It is the product that we purchased under
13 contract to meet the needs of patients under the
14 Marijuana Medical Access Regulations.

15 117. Q. But it's the same product that was,
16 according to some of the material, not very popular
17 amongst the patients. They didn't like, they had some
18 complaints about it. It's that same product?

19 A. It's the strain they've been producing for
20 years.

21 118. Q. Okay. So, it's a particular strain? It's not
22 any of the new strains or anything that they have been
23 producing as CanniMed?

24 A. That's right.

25 119. Q. Okay. Bedrocan is the import from The

1 Netherlands, correct?

2 A. Yes.

3 120. Q. Did you know that its product was similarly
4 unpopular in The Netherlands?

5 A. I'm aware of the sales figures under the
6 Dutch program but not of any kind of qualitative
7 assessment of the Bedrocan product in The Netherlands.

8 121. Q. You weren't aware -- you've been told about
9 patient not liking their product or any of that
10 information was not -- you weren't aware of that?

11 A. No.

12 122. Q. You're shaking -- okay. Peace Naturals, I'm
13 told has 800 patient registered and is not taking any
14 more at the moment. Did you know that?

15 A. I know that they are close to the production
16 capacity. I don't know the specific numbers of how many
17 patients they have registered to date.

18 123. Q. Well, I'm told that they aren't taking any
19 new ones because they're at their current production
20 capacity which is 800. You're unaware of that?

21 A. I don't recall the specific numbers of
22 registrations with Peace Naturals.

23 124. Q. Well, are you able to give us the production
24 capacity for each one of those that are ready to go at
25 this point besides the 850 estimate? Can you give us

1 anything more specific for each one currently?

2 A. I don't have those numbers here with me, but
3 these calculations are based on the summation of the
4 individual company production estimates.

5 125. Q. Is what you're being told, what the
6 companies are hoping they will be able to do as opposed
7 to what we know they have in fact done to date. Fair
8 enough?

9 A. Yes.

10 126. Q. Are you able to tell us how many patients
11 have registered with the licensed producers? Each one of
12 them.

13 A. So the figure I cited earlier of just under
14 1000 is the collective total for the licensed producers
15 to date. But yes, that's based on individual numbers
16 from those licensed producers. I do not ---

17 127. Q. If I understand that ---

18 A. --- have those figures.

19 128. Q. Sorry?

20 A. I don't have the breakdown of the just under
21 1000 patients by the licensed producers but it's based
22 on the total provided -- total of the individuals
23 registrations of the six licensed to date.

24 129. Q. So, roughly 1000 patients total registered
25 so far. Is that right?

1 A. That's right.

2 130. Q. Under the MMPR?

3 A. As of January 30th, yeah.

4 131. Q. As of January 30th. You don't have any
5 updates since then?

6 A. No.

7 132. Q. So if we're looking at your Affidavit and
8 the paragraphs 26 through 29, you indicate 31,000 --
9 projected annual production of 31,000 kilograms in
10 paragraph 27, correct?

11 A. Yes.

12 133. Q. You predicted another 12 will be licensed by
13 March 31st. Is that still the case?

14 A. It is.

15 134. Q. You say that with the additional 12, that
16 that will increase it by 31,000 to 45,000, correct?

17 A. Correct, an addition 14,000 kilos to take us
18 to a total of 45,000.

19 135. Q. Okay. So, if we -- you add to that, as I
20 understand it, this 400 to 500 kilos that's the
21 shortfall that's at paragraph 33 to come up with a total
22 available?

23 A. No, the paragraph -- if you are referring to
24 paragraph 29, that is based on the production forecast
25 of the licensed producers it does not include ---

1 136. Q. Six of them. At paragraph 28, you talk about
2 licensed producer's websites and what's available and so
3 on. If you've got your Affidavit in front of you, let's
4 go to those websites. Just before we do, you say 60
5 strains available at prices \$5.00 to \$12.00 offering
6 discounts -- you say licensed producers, plural,
7 offering discounts as low as \$3.00 a gram for low income
8 users. My understanding is that it -- was Peace Naturals
9 that was offering that \$3.00 a gram?

10 A. Peace Naturals has a discount program that
11 will go as low as \$3.00. Tweed also has a discount
12 program. It's in the website. I believe it's 20 percent
13 off of their lowest price strain which would take us to
14 around the \$4.00 or the -- just below \$4.00 a gram
15 range.

16 137. Q. So we have -- we don't have anybody able to
17 supply under \$4.00 -- well, under \$3.00 a gram, do we?

18 A. Not that I'm aware of.

19 138. Q. See I'm told that the Plaintiffs indicate
20 that they've been able to produce -- they've learned how
21 to produce because they couldn't afford black market
22 prices so they've learned how to produce it between
23 \$0.50 and \$4.00 a gram. So there aren't any licensed
24 producers able to supply those patients who are
25 accessing it between \$0.50 and \$3.00, are there?

1 MR. BRONGERS: Mr. Conroy, so the question is,
2 is the witness aware of any producers or selling the
3 product for between \$0.50 and \$3.00 a gram. Is that the
4 question?

5 BY MR. CONROY:

6 139. Q. Well, are they able to supply people at that
7 amount? There aren't any that are able to supply people
8 at that amount, are there?

9 A. Well at that ----

10 140. Q. At that price?

11 A. The pricing that's available on the market
12 is what's reflected in the appendix or the Exhibit.

13 141. Q. But the point is, is that those people who
14 say they can't afford those prices, there isn't any
15 provision made for them anywhere is there? Other than
16 the two items we talked about, Peace going down to
17 \$3.00. I think with Peace, it's \$3.00 if you're on the
18 disability pension, correct?

19 MR. BRONGERS: Mr. Conroy, what concerns me is
20 the way you're asking the question. It's in the form of
21 an argument you're putting to the witness. If you want
22 to ask him specifically about his knowledge of what the
23 prices are or are anticipated to be, that's perfectly
24 fair. But I have trouble with the preface to the
25 question which is in the form of argument. I don't want

1 you to ask the witness and then him to agree to it and
2 make it appear that there's been some sort of a
3 concession on the Record that your legal argument is
4 founded. So, if we could confine the questions to facts
5 instead of argument it would be appreciated.

O

6 BY MR. CONROY:

7 142. Q. All right. Well, your evidence sir is that
8 Peace Naturals is offering at \$3.00 a gram and it's --
9 is it only for people on disability pensions or is it to
10 all potential patients or do you know?

11 A. The information I'm aware of is what's
12 reflected in the Exhibit.

13 143. Q. All right. Well, let's go to your Exhibits
14 then. Start with the web pages. The first one is
15 Bedrocan, do you have that? It's offering patients at a
16 flat rate of \$7.50 per gram including shipping, correct?

17 A. Yes.

18 144. Q. That's on the first page. Bedrocan, because
19 it's coming from The Netherlands in that 100 kilogram
20 amount, that's available now. Is that right?

21 A. They have inventory available for sale now,
22 yes.

23 145. Q. The patients could start registering and
24 purchasing from Bedrocan at \$7.50 a gram as indicated
25 now?

1 A. That is my understanding, yes.

2 146. Q. To your knowledge, at no lesser amount than
3 \$7.50 a gram, correct?

4 A. Correct.

5 147. Q. They indicate at page 4 of 5, they're saying
6 they're taking orders starting February, 2014. You see
7 that? "Can I buy your cannabis now?" Under that heading.
8 Do you get a -- is it true that they've only just then
9 this month indicated they're ready to sell?

10 A. That is my understanding, yes. From what I
11 understand, they made their first shipment to a patient
12 late last week or early this week.

13 148. Q. All right. Then if we go to -- the next one
14 is Canna Farms and it's here in BC, correct?

15 A. Yes.

16 149. Q. If you go to their page 2, and it goes right
17 through from page 2 to page 5, none of their product is
18 available until ---

19 A. Mid April.

20 150. Q. --- well one -- Mid April is one but most of
21 it's May 30th, May 15th and May 30th as I glance through
22 them. Isn't that right?

23 A. Yes.

24 151. Q. So they won't have any product available on
25 or before March the 1st then?

1 A. That's my understanding.

2 152. Q. Okay. Then -- I don't know if we have a
3 price? Canna Farms doesn't give us a price do they?

4 A. They don't.

5 153. Q. Do you know what their price range is?

6 A. I don't have specific knowledge of Canna
7 Farms pricing.

8 154. Q. Okay. The next one is CanniMed and this is
9 the Prairie Plant related company, correct?

10 A. Correct.

11 155. Q. If we go to their -- flip to page 3, their
12 price indicates 10 and 30 -- sorry, product prices range
13 from \$7.50 to \$12.00 a gram, top of page three, right?

14 A. Yes.

15 156. Q. As far as you know that's their price and
16 there's nothing lower than that, correct?

17 A. Well on two pages on ---

18 157. Q. Yes.

19 A. --- they have been offering a discount
20 reflected in the top -- it's page 2 of 2.

21 158. Q. Yeah, so there's the one for \$4.88 a gram?

22 A. Correct.

23 159. Q. So that's their lowest price, is it?

24 A. The lowest that I'm aware of, yes.

25 160. Q. Go back to page 3 where the first prices

1 were set out. It references Veteran Affairs Canada
2 giving continued coverage. You see that?

3 A. Yes.

4 161. Q. As I understand it, that means that veterans
5 who qualify will be able to have their -- cost of their
6 medicine covered under that program. Is that right?

7 A. I don't know all of the details of the
8 Veterans Affairs Program, but there are a small number
9 of veterans who have had reimbursement for medical
10 cannabis.

11 162. Q. There are no other programs like that in
12 Canada for any others at this time, are there?

13 A. I've been informed that there may be some
14 Provincial Workers Compensation, Workers Safety and
15 Insurance Board plans that have offered some level of
16 coverage but I don't have any more specific knowledge of
17 the details of what that is.

18 163. Q. Provincial Workers Compensation Plans, any
19 particular provinces?

20 A. I don't know the specific provinces where
21 they have coverage.

22 164. Q. All right. The next web page then is Mettrum
23 and their prices -- this page doesn't seem to have page
24 numbers. The third page in has some prices, \$7.60 per
25 gram. Do you see that?

1 A. Yes, I do. Mettrum Red.

2 165. Q. They don't -- sorry?

3 A. Where it says ---

4 166. Q. They don't need to ---

5 A. That's okay. Sorry, I just wanted to confirm
6 that you were referring to the entry under Mettrum Red
7 number one and then price ---

8 167. Q. Yeah.

9 A. Yeah, okay.

10 168. Q. Those are the only prices they indicate,
11 aren't they?

12 A. Correct.

13 169. Q. No indication that they have any program to
14 sell for less than that, correct?

15 A. None that I'm aware of.

16 170. Q. The next one then is Peace Naturals. The
17 first page of their web page indicates their medicine
18 will cost \$6.00 a gram and a minimum order of 15 grams.
19 You see that?

20 A. I do.

21 171. Q. They discuss the medical plan issue at the
22 next page and again, refer to the Veteran's Affairs and
23 then the income tax aspect, correct?

24 A. Correct.

25 172. Q. Then if we -- there's no other, at least in

1 these documents, indication of this \$3.00 offer. Does
2 that appear anywhere or am ---

3 A. No, it's not included in these documents.
4 There is a reference to compassionate pricing on their
5 website though not on one of these pages that's been
6 reproduced.

7 173. Q. What's your understanding of the
8 compassionate pricing? Is it essentially providing it to
9 the patients at less than their cost?

10 A. I'm not aware of whether it's related to
11 their cost structure. But it is a program where they
12 have established some conditions on which they'll offer
13 this discounted cost per gram.

14 174. Q. Okay. Then Tweed is the next one. At page 4
15 of 5 indicates under \$5.00 per gram. Do we have any
16 other information as to how much under or anything like
17 that?

18 A. So they've indicated on their website that
19 they will have pricing between \$5.00 and \$12.00 a gram
20 and they've committed to a certain percentage of
21 production being under \$5.00 a gram. And then ---

22 175. Q. If we go to further on their ---

23 A. --- Compassionate program.

24 176. Q. --- page 1 of 3 I think is the -- that's the
25 compassionate program?

1 A. Correct.

2 177. Q. So then they indicate 10 percent of their
3 product will be 5 grams of less including shipping. Fair
4 enough?

5 A. Yes.

6 178. Q. Then they say, 20 percent discount and if I
7 understand it correctly, upon proof of being in a
8 Federal or Provincial Program such as a pension program.
9 Fair enough?

10 A. That is my understanding as well.

11 179. Q. So anybody with an income under \$29,000 per
12 year would appear to qualify for that program?

13 A. Well as the conditions indicate on the web
14 page, they have two conditions for eligibility.

15 180. Q. I'm looking at the next page following that
16 and I'm wondering -- at page 2 of 3, British Columbia
17 appears, but is there something blocked out by that
18 Tweed banner in the next -- that relates to British
19 Columbia or is it just ---

20 A. I believe there is. There's some text, some
21 additional provincial programs that are covered up by
22 the banner of the webpage just did not render properly
23 when it was printed.

24 181. Q. Then the last one that I have is just a one
25 page Delta nine Bio-tech?

1 A. Yes.

2 182. Q. Can you tell us anything about them in terms
3 of pricing?

4 A. I can't as of yet. They're one of the
5 companies that have had this graduated license to begin
6 production as they finish out the rest of their
7 facility. But they have not as yet, to my knowledge,
8 established their pricing.

9 183. Q. So do you have any additional information,
10 any update since you've filed this Affidavit in relation
11 to these or any other of the licensed producers as far
12 as pricing ---

13 A. I don't.

14 184. Q. --- and discounts?

15 A. No.

16 185. Q. But that pertinent information remains
17 what's here in your affidavit essentially?

18 A. Yes.

19 186. Q. Okay. So if I understand the plan for
20 transition that is indicated at paragraph 30 and over on
21 31, you're basically saying that based on the literature
22 from The Netherlands and Israel in terms of the usual
23 consumption in grams per day and Health Canada as
24 indicated at the end of 31, you took those grams per day
25 figures and using those gram per day figures, made the

1 calculations to determine what the demand would be on an
2 annual basis. Is that right?

3 A. That's one approach that we've used, yes.

4 187. Q. You agree though that those gram per day
5 amounts appear to be substantially less than what was
6 actually authorized in Canada under the MMAR as
7 indicated in that earlier Freedom of Information
8 document we looked at. Fair enough? Grams per day I
9 should ---

10 A. These are the number that are available that
11 show actual consumption as opposed to those other
12 numbers which are authorizations.

13 188. Q. So when you say, actual consumption, the
14 Health Canada actual consumption figure -- do we have
15 that? The indication is 1.5 is Israel, correct?

16 A. Correct.

17 189. Q. Point six eight is The Netherlands, correct?

18 A. Correct.

19 190. Q. Where is Health Canada's?

20 A. It's not included in the Affidavit, but that
21 figure based on our analysis of the book -- the
22 purchasing records from our Health Canada clients under
23 the MMAR is that 1.2 grams per day was the average
24 purchase.

25 191. Q. The average purchase. Well, are you able to

1 tell us that there will definitely be enough product
2 available for all registered -- by registered patients
3 in Canada on April 1st, 2014, you would treat the
4 registered patients as currently 1000? Is that right?

5 MR. BRONGERS: Mr. Conroy, again, I'm concerned
6 with the preface to the question. If we could just focus
7 on facts that might be within the knowledge of the
8 witness. You're asking him to definitely guarantee
9 something that will happen in the future. I think that's
10 unreasonable to ask anybody. But if we could just ask
11 him about his understanding of what the situation is
12 likely to be then that of course is fair game.

O

13 BY MR. CONROY:

14 192. Q. Well you see, going back to your paragraph
15 13, you indicate that you're the person presently
16 charged with developing and implementing the strategy
17 and ordered to try and make sure that there is going to
18 be enough product in place so that the patients will be
19 able to get it on April 1st, correct?

20 A. Yes.

21 193. Q. So you then indicated sub E that you've
22 devised a contingency plan in the event that there isn't
23 going to be enough, correct?

24 A. Correct.

25 194. Q. So are we into the contingency plan or not?

1 A. We are not into the contingency plan.

2 195. Q. So your view remains that you think there's
3 going to be enough product available come April 1st
4 without having to resort to the contingency plan. Is
5 that right?

6 A. Correct.

7 196. Q. That's based though on the 1 to 3 or 1 to
8 1.5 gram a day consumption data, correct?

9 A. In part. The other considerations are
10 obviously the production levels, the conversion of
11 patients under the old program to the new, the growth
12 rate of new patients coming in to either the old program
13 or the new program. There are quite a number of
14 variables that will drive what actually happens on the
15 ground after April 1st.

16 197. Q. Because 1000 registered patients is
17 substantially less than the number of people who have
18 been applying under then MMAR over the last year. Isn't
19 that right? We're up to something like 38,000 applicant
20 or patients now?

21 A. The number of authorizations to possess to
22 the best of my knowledge is around 38,000 under the old
23 program guidelines, yes.

24 198. Q. So, 38,000 approximately under the old, or a
25 program that continues until March 31st, but only 1000

1 registered under the new program. Is that right?

2 A. As of January 30th.

3 199. Q. So your projections are simply limited to
4 the 1000 and that they'll be enough produced for people
5 who've registered?

6 A. No.

7 200. Q. That's your position?

8 A. No. No, obviously we have looked at the
9 38,000 and how they will convert over to the new program
10 after April 1st. Within the 1000 patients that have
11 registered under the new program so far, there is a mix
12 of people who have obtained the new medical document and
13 a number who have an authorization to possess and have
14 chosen to convert over to the new method of supply
15 before March 31st. I don't have the exact breakdown of
16 those, but hundreds of the patients who have registered
17 to date under the MMPR with our licensed producers are
18 people who have come over from the regulation which will
19 be repealed on March 31st.

20 201. Q. But there's only 1000 of them. Is that
21 right?

22 A. So far, yes.

23 202. Q. We know there were as many as 38,000 that
24 have authorization to possess?

25 A. Yes.

1 203. Q. And personal production -- I think the
2 personal production figure was about 25,000 or 26,000.
3 Is that right? We have the actual figures somewhere ---

4 A. Yeah, they're in the documents.

5 204. Q. --- it appears that a lot of people who are
6 registered under the MMAR with authorizations to possess
7 and personal production licenses have not registered
8 under the MMPR. Is that right?

9 A. Correct.

10 205. Q. To date.

11 A. To date.

12 206. Q. There's only 40 days, roughly, to go. Fair
13 enough?

14 A. Yes.

15 MR. BRONGERS: Mr. Conroy, just in terms of time
16 management, I see it's now 10:30 and as you know, we
17 have to complete this by 1:00PM. I'm just wondering in
18 terms of timing. You have another witness to examine and
19 I think people here might be ready for a break. I don't
20 want to interrupt up you in mid-stream, but maybe we
21 should plan some timing here in terms of when we stop
22 for a short break.

23 MR. CONROY: Okay.

24 BY MR. CONROY:

25 207. Q. So, even if we took 3 grams a day as the

1 dosage standard, I put to you that they will not be able
2 to produce enough for 40,000 patients if they all
3 register by March 31st. Would you agree?

4 MR. BRONGERS: Mr. Conroy, I'm having trouble
5 understanding the question. So instead of using the 1
6 gram figure, you want to make the calculation based on a
7 3 gram figure. Is that the hypothesis?

8 MR. CONROY: Well, no. What's I'm getting at I
9 guess is this, if we've got 38,000 patients under the
10 MMAR and if they were all at 3 grams per day and you
11 multiplied that by 365 for the year and you divide that
12 by the 1000 you get 40,000 kilograms a year, don't you?

13 MR. BRONGERS: Are you asking the witness to do
14 some math? I don't understand.

15 BY MR. CONROY:

16 208. Q. Well, I'm asking him -- you see I'm saying,
17 wouldn't that be the amount that would be -- have to be
18 available for 40,000 people?

19 A. There's a number of assumptions built into
20 that particular calculation. Historically, what we've
21 seen with authorizations to possess, particularly for
22 those who said that Health Canada was going to be their
23 source of supply, many of them never placed an order
24 under the program even those they had the proper
25 documentation to do so. A number of them placed a one-

1 time order and then never placed a second order. As you
2 may be aware, a number of patients would get an
3 authorization to possess and wouldn't be clear on what
4 basis they were managing their supply. So, it's a big
5 assumption to say that all 38,000 patients will
6 immediately convert over to the new method of supply
7 because they weren't obviously served by one of the old
8 methods of supply under the MMAR. Then as I've said
9 repeatedly, the trend that we're seeing for actually
10 purchasing, actual consumption under conditions more
11 like this MMPR mode of supply seems to line up around
12 that gram per day figure.

13 209. Q. At paragraph 36 you talk about a possibility
14 of a collaborative approach. Has that gone any further?

15 A. Not as of yet.

16 210. Q. At paragraph 37 you say that Health Canada
17 has made a significant effort to provide reasonable
18 access and will continue to monitor supply and demand
19 for this purpose. So, I take it you agree that you can't
20 be sure at this point that there's going to be enough
21 supply for the patients come April 1st, 2014. Is that
22 fair?

23 A. That's correct. This is an unprecedented
24 system to transition over to so there are any number of
25 things that could change that would result in either a

1 significant surplus or possibly some level of supply
2 gap.

3 211. Q. In paragraph 39 you talk about the principle
4 that a legal supply of dried marijuana for medical
5 purposes must be reasonably accessible, that a market of
6 dried marijuana purchases must exist to support the
7 newly licensed producers industry. Would you agree with
8 me that your role and focus has been to try and ensure
9 that this market is created and supported? That's your
10 focus?

11 A. It has been to try and support licensed
12 producers in achieving licensure and being able to start
13 up their production to serve the legal needs of patients
14 for medical cannabis.

15 212. Q. So you didn't look at all at the problem of
16 those who will not be able to afford the licensed
17 producers prices, did you?

18 MR. BRONGERS: Mr. Conroy, so you're asking Mr.
19 Cain in terms of his individual capacity whether that
20 was his task or are you asking -- because the paragraph
21 refers to Health Canada's approach. So that's why I'm a
22 bit confused with what -- are you asking ---

23 BY MR. CONROY:

24 213. Q. He was assigned certain tasks, so I'm asking
25 if that was included in part of his tasks to look at

1 also those people who won't be able to afford these
2 licensed producers prices.

3 A. It was not specifically one of the tasks
4 that I was given. It's been the subject of a number of
5 discussions with licensed producers and prospective
6 licensed producers and in part, the results that we've
7 seen with Tweed and with Peace Naturals, those are a
8 result of discussions around serving the needs of some
9 segments of the patient population who may have
10 additional challenges under the program.

11 214. Q. Is there documentation that is made
12 available by the LPs on a regular basis that would be
13 able to update people as to the production availability
14 as we approach April 1st?

15 A. As a regular ---

16 215. Q. Documents from them?

17 A. As a regulated party, condition of licenses
18 is that they provide us with regular information so that
19 we can conduct ourselves around the compliance and
20 enforcement of the regulations.

21 216. Q. So there is documentation that could be made
22 available to the court to show the current status of
23 production and so on that say as of March 18th, 2014?

24 MR. BRONGERS: Again, I'm concerned with the way
25 that you asked the question, Mr. Conroy, and the

1 assumption that there will be more evidence perhaps
2 presented to the court prior to the hearing of our
3 Motion. I think it is perfectly fair to ask whether more
4 documents will be coming from these licensed producers,
5 but I'm going to object if the question is asked in
6 terms of will we be providing more material to the
7 court.

8 BY MR. CONROY:

9 217. Q. I didn't ask if you'd be providing it. I'm
10 asking if it's available. Is that information available?
11 I think the witness said that they do have to file with
12 you regular updates. That's what I'm get -- are regular
13 updates provided so that you have an indication of
14 exactly what the situation will be as far as
15 availability of product, March 18th for example?

16 A. So regular updates are -- regular reports
17 are filed by the licensed producers as per the
18 conditions of their license. Those are typically
19 provided at the end of each calendar month.

20 218. Q. So, if there's a problem in terms of a
21 production amount, as of April 1st, is that then when
22 this Prairie Plant overstock kicks in? Paragraph 33. Or
23 is that taken into account already?

24 A. Could you clarify the question for me?

25 219. Q. I was trying to determine if we're going to

1 have -- be able to get current information right up to
2 April 1st in terms of what's available from the licensed
3 producers. If there's a shortfall, the plan then is to
4 use the Prairie Plant product as indicated in paragraph
5 33 to make up the difference? To try and make up the
6 difference?

7 A. So that is -- it is a possibility that that
8 could be made available if some sort of a supply gap
9 does emerge.

10 220. Q. All right. Subject to -- well, let's go off
11 the Record for a minute.

12 (OFF RECORD DISCUSSION)

13 MR. CONROY: Those are all the questions I have
14 for Mr. Cain, thank you.

15 THE WITNESS: Thank you.

16 --- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR OF
17 1:42 IN THE AFTERNOON.

18
19 THIS IS TO CERTIFY THAT the foregoing is a
20 true and accurate transcription from the
21 Record made by sound recording apparatus
22 to the best of my skill and ability.

23
24

25 Leigh Gordon, Court Reporter