Court File No.: T-962-22

FEDERAL COURT

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN C. TURMEL

Respondent

APPLICANT'S RECORD

VOLUME 2 of 8

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Court File No.: T-962-22

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Applicant

and

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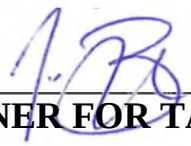
Respondent

VOLUME 3

VOLUME 7

THIS IS EXHIBIT "17" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.



A COMMISSIONER FOR TAKING AFFIDAVITS

Hitzig v. Canada, [2003] O.J. No. 12

Ontario Judgments

Ontario Superior Court of Justice

Lederman J.

Heard: September 19-20 and October 18, 2002.

Judgment: January 9, 2003.

Court File Nos. 02-CV-230401CM1, 02-CV-226629CM1 and 573/2002

[2003] O.J. No. 12 | [2003] O.T.C. 10 | 171 C.C.C. (3d) 18 | 10 C.R. (6th) 122 | 101 C.R.R. (2d) 320 | 119 A.C.W.S. (3d) 422 | 56 W.C.B. (2d) 387

Between Warren Hitzig, Alison Myrden, Mary-Lynne Chamney, Catherine Devries, Jari Dvorak, Stephen Van De Kemp, Deborah Anne Stultz-Giffin and Marco Renda, applicants, and Her Majesty the Queen, respondent And between Terrance Parker, applicant, and Her Majesty the Queen, respondent And between John C. Turmel and J.J. Marc Paquette, applicants, and Her Majesty the Queen, respondent

(191 paras.)

Case Summary

Civil rights — Liberty — Limitations on — Cultivation of marijuana — Security of person — Right to personal autonomy — Canadian Charter of Rights and Freedoms — Denial of rights — Remedies, declaration of invalidity.

The applicants, Hitzig and others, sought a declaration that the Marijuana Medical Access Regulations violated their right to liberty and security of person guaranteed under s. 7 of the Charter and were unconstitutional. The Regulations, made pursuant to the Controlled Drugs and Substances Act, established guidelines for the use of marijuana for medical purposes. Exemptions could be granted to people with serious illnesses where conventional treatment was inappropriate or inadequate and the expected medical benefit outweighed the risk of use. The applicants claimed the Regulations contained so many barriers to gaining access to marijuana for medical use that it effectively remained unavailable to many seriously ill people. The Regulations did not provide those who obtained exemptions with access to a legal supply. The applicants claimed that the offences under the Act in conjunction with the Regulations exposed them to imprisonment and deprived them of their right to make medical decisions of fundamental importance and autonomous decisions regarding their bodily integrity.

HELD: Application allowed.

The Regulations violated s. 7 of the Charter, were not saved by s. 1 and were declared to be of no force and effect. The declaration of unconstitutionality was suspended for six months. The application process, the requirement that a specialist recommend marijuana use, and the daily dosage provisions were not arbitrary or unrelated to the objectives of the Regulations and did not create an illusory remedy. However, the failure to provide a legal source of marijuana did infringe the applicants' s. 7 Charter rights in a manner inconsistent with the principles of fundamental justice. They applicants had a constitutional right from which they could not benefit. The means chosen to achieve legislative goals were not rationally connected to these objectives and the lack of legal source did not minimally impair the applicants' rights.

Statutes, Regulations and Rules Cited:

Canada Act, 1982 (U.K.), 1982, c. 11.
Canadian Charter of Rights and Freedoms, 1982, s. 1, 7, 24(1).
Constitution Act, 1982, s. 52.
Controlled Drugs and Substances Act, S.C. 1996, c. 19, ss. 4, 4(1), 5(1), 6(1), 56.
Food and Drugs Act, R.S.C. 1985, c. F-27.
Food and Drug Regulations, C.R.C. c. 870
Marihuana Medical Access Regulations, S.O.R./2001-227, ss. 4, 4(2)(c), 5, 6, 6(2), 6(3), 6(4)(b), 7, 7(c), 7(d), 8, 9, 10, 23, 25, 35, 51, 53, 54, 56, 69(a)(ii)(A), 69(a)(ii)(C)
Narcotics Control Act, R.S.C. 1985, c. N-1.
Narcotic Control Regulations C.R.C. c. 1041.

Counsel

Alan N. Young, for the applicants, Hitzig and Myrden. Paul Burstein, for the applicant, Renda. Joseph Neuberger, for the applicants, Stultz-Giffin and Van De Kemp. Leora R. Shemesh, for the applicants, Devries, Dvorak and Chamney. Harvey Frankel, Q.C. and Lara Speirs, for the respondent, Her Majesty the Queen. Terrance Parker, in person. Alain Préfontaine, for the respondent, Her Majesty the Queen. John C. Turmel and J.J. Marc Paquette, in person.

LEDERMAN J.

INTRODUCTION

1 This is yet another legal proceeding arising from the tension that presently exists in Canada between the criminal and the medicinal use of marijuana. Although the Minister of Justice has recently announced his intention to introduce legislation to decriminalize the simple possession of less than 30 grams of marijuana, its continuing criminal status plays an important part in this case.

2 These applications concern the constitutionality of the Marihuana Medical Access Regulations, S.O.R./2001-227, made by the Governor in Council on 14 June 2001 pursuant to subsection 55(1) of Controlled Drugs and Substances Act, S.C. 1996, c. 19. More particularly, at issue is whether these regulations, in conjunction with prohibitions specified in the Controlled Drugs and Substances Act [CDSA], violate some or all of the applicants' rights to liberty and security of the person as guaranteed by s. 7 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 [Charter]. These applications follow very much in the footsteps of the Ontario Court of Appeal's 31 July 2000 decision in R. v. Parker (2000), 49 O.R. (3d) 481 [Parker]. Indeed, the accused in the Parker case is one of the applicants presently before this court.

3 In Parker, the Court of Appeal held that a legislative prohibition on the possession of marijuana without an exception for medical use violated Terrance Parker's right to liberty and security of the person. Mr. Parker's liberty rights were infringed because he faced imprisonment upon conviction for possession. The prohibition also denied him the right to make decisions of fundamental personal importance, namely to choose a medicine which alleviated the effects of

his epilepsy. His security of the person was also violated because the marijuana prohibition forced him to choose between committing a crime to obtain effective medical treatment and inadequate medical treatment.

4 The Court held that this s. 7 infringement was not consistent with the principles of fundamental justice because the state's interests in regulating marijuana use (namely protecting against the harmful effects of use of the drug, fulfilling Canada's international treaty obligations, and controlling the trade in illicit drugs) were not enhanced by an overbroad prohibition. Although defences to prosecution were theoretically available through Health Canada's approval of new drugs, medical prescription, and the Emergency Drug Release (Compassionate Use) Programme, the court found these defences to be practically unavailable to Mr. Parker.

5 Section 56 of the CDSA also permitted the Minister to grant a medical exemption from prosecution, but the court found this process to violate s. 7 because it was based on criteria unrelated to Mr. Parker's own medical priorities. The exemption lacked an adequate legislated standard for medical necessity (i.e. it was too vague) and relied on unfettered ministerial discretion, thus compromising his security of the person in a manner inconsistent with the principles of fundamental justice. Concern was also expressed about the s. 56 process comprising unnecessary rules which would result in delay and additional risks to Mr. Parker's health.

6 By way of remedy, the Court of Appeal declared that the prohibition on the possession of marijuana in s. 4 of the CDSA was of no force or effect. The Court also stated that if the cultivation offence had been before it, it would have held that provision invalid as well. This declaration of invalidity was suspended for one year to provide Parliament with the opportunity to craft a medical exemption with adequate guidelines that would pass constitutional muster.

7 The Marihuana Medical Access Regulations [MMAR or Regulations] came into force on July 30, 2001, one year less a day after the Parker decision was released. While the respondent claims that these Regulations establish a framework which addresses the prior regime's constitutional infirmities, the applicants contend that the MMAR are no more constitutionally satisfactory than s. 56 of the CDSA. None of the parties argued the issue which was recently before the Ontario Court of Justice in The Queen v. J.P., [2003] O.J. No. 1, (2 January 2003), Windsor 02-Y11520. In that case, Justice Douglas W. Phillips held that s. 4(1) of the CDSA was still invalid with respect to marijuana possession pursuant to Parker because Parliament had not addressed the problem of ministerial discretion with a statutory amendment. This ruling is currently under appeal, and is not considered in this decision.

8 For the reasons given below, I find the MMAR to violate the applicants' s. 7 rights to liberty and security of the person in a manner inconsistent with the principles of fundamental justice. The Regulations fail to provide individuals who have a serious medical need to use marijuana with a legal source and safe supply of their medicine. This violation is not saved by s. 1 of the Charter. By way of remedy, the MMAR are declared to be of no force and effect. This declaration of unconstitutionality is suspended for six months.

THE MARIHUANA MEDICAL ACCESS REGULATIONS (MMAR)

Background: Policy Context

9 While the federal government's introduction of the MMAR was clearly designed to fill the regulatory lacuna left by the Court of Appeal's July 2000 decision in Parker, the evidence indicates that Health Canada has actually been developing its policies relating to medical cannabis use for several years.

10 Most of these efforts have been focused on establishing a research plan to provide Health Canada with scientific evidence on the safety and efficacy of cannabis as a therapeutic product. Given the insufficient research to date, Health Canada maintained that such data is essential if marijuana is ever to be developed as a mainstream medicine and approved under the Food and Drugs Act, R.S.C. 1985, c. F-27 [FDA].

11 The Canadian government's plan was announced in March 1999 by the former Minister of Health, Allan Rock, and outlined in Health Canada's June 1999 Research Plan for Marijuana for Medical Purposes. It included funding clinical trials, developing appropriate guidelines for medical use of marijuana, and creating a secure domestic supply of research-grade marijuana - because there are so few licit sources of marijuana in the world.

12 One major result of these initiatives has been the establishment of a Medical Marihuana Research Program. This five-year, $7.5 million program is being operated by Health Canada in conjunction with the Canadian Institutes of Health Research (CIHR). It is designed to facilitate research and fund clinical trials. To date, two such clinical trials have been approved. One is at the Community Research Initiative of Toronto, and deals with appetite loss, while the other is being conducted by researchers at the McGill Pain Centre. CIHR also supported the February 2000 creation of the Canadian Consortium for the Investigation of Cannabinoids in Human Therapeutics, a research network of scientists pursuing research on the medical uses of marijuana.

13 Perhaps the most dramatic announcement under Health Canada's medical marijuana plan was Minister Rock's December 2000 announcement that a five-year contract to produce a domestic supply of marijuana at a mine in Flin Flon, Manitoba had been awarded to Prairie Plant Systems (PPS). The respondent in this case argued that the several hundred kilograms of marijuana that have been harvested by PPS to date are intended for research purposes only. Minister Rock, however, is quoted as stating in Health Canada's December 21, 2000 "News Release" that:

> This marijuana will be made available to people participating in structured research programs, and to authorized Canadians using it for medical purposes who agree to provide information to my department for monitoring and research purposes. A Canadian source of research-grade marijuana is essential to move forward on our research plan.

14 Whatever Health Canada's intentions might have been regarding the PPS cannabis and the supply issue more generally, it is clear that early plans on how to exempt medical users from criminal prosecution focused on a refined s. 56 process which included obtaining a legal source of marijuana for s. 56 exemptees. But both a multi-stakeholder consultation workshop on February 28, 2000 and the release of the Parker decision shortly thereafter indicated that a new approach was necessary.

15 Comments were received by Health Canada after a Notice of Intent to develop new medical marijuana access regulations was published in the Canada Gazette, Part I, on January 6, 2001, and stakeholder meetings were also held. Following pre-publication in the Canada Gazette, Part I, on April 7, 2001, further comments from various interested parties (including patients and patient advocacy organizations, medical associations and licensing authorities, law enforcement agencies, and members of the BC Marijuana Party) were received on the proposed regulations. (See Regulatory Impact Analysis Statement 2001-227, C.Gaz.2001.II.1362-1364 (Marihuana Medical Access Regulations)).

Purpose of the MMAR

16 The purpose of the resulting MMAR is described in Health Canada's July 2001 information sheet "Medical Access to Marijuana - How the Regulations Work" and in the affidavit of Ms. Cripps-Prawak, the Director of the Office of Cannabis Medical Access, as follows:

> The regulations establish a compassionate framework to allow the use of marijuana by people who are suffering from serious illnesses, where conventional treatments are inappropriate or are not providing adequate relief of the symptoms related to the medical condition or its treatment, and where the use of marijuana is expected to have some medical benefit that outweigh the risk of its use.

17 The Regulations do not amend CDSA provisions criminalizing the possession, trafficking and production of cannabis, nor do they significantly alter the Narcotic Control Regulations, C.R.C., c. 1041 [NCR] which regulate the legal distribution of narcotic drugs in Canada. The MMAR also do not purport to modify Canada's existing drug

approval process, laid down in the FDA and Food and Drug Regulations, C.R.C., c. 870 [FDR]. As the MMAR's "Regulatory Impact Analysis Statement," supra, notes at 1350:

> The Marihuana Medical Access Regulations (Regulations) provide seriously ill Canadian patients with access to marihuana while it is being researched as a possible medicine. These Regulations have been developed in recognition of a need for a more defined process than the one currently used under section 56 of the Controlled Drugs and Substances Act (CDSA) for these Canadian patients.

18 The MMAR have thus been designed to respond to the Court of Appeal's main criticism of the s. 56 process by providing some ground rules relating to medical necessity and restricting the Minister's discretion in granting medical exemptions. At the same time, however, the state's interests in controlling illicit access to marijuana and ensuring that potential benefits from cannabis use outweigh potential harm to a person's health are also evident in the MMAR. The respondent has submitted that the policy rationale for imposing certain restrictions under the MMAR reflects:

a) the treatment of certain severe illnesses by unapproved narcotic drugs is properly monitored and supervised;

* the availability of such untested therapies reflects each individual patient's illness and weighs the potential risks against the possible benefits of their use;

(17) the medical use of any controlled substance is made available in such a way as to avoid abuse or misuses of the substance;

(4) access is facilitated to experimental or emerging therapeutic products; and

* the concerns of the medical community are taken into account when allowing for access to controlled substances as experimental therapeutic products.

19 The government also argued that its policy choice in enacting the MMAR to exempt medically qualified individuals from criminal sanction balances a number of significant yet competing societal goals, including:

* the desire to introduce a regulatory scheme for access to marijuana for medical purposes pending research concerning its use as a possible medicine;

* protecting individuals from the known and unknown harms associated with marijuana, which is a substance for which there is limited scientific evidence of its safety and efficacy;

* ensuring the safety and efficacy of any therapeutic drugs prior to allowing their general distribution to the public;

* respecting the traditional roles of the government as regulator and of the private sector as investigator, manufacturer and marketer of therapeutic drugs;

* compliance with existing federal legislation and United Nations Drug Conventions, and

* limiting the risk of diversion of controlled substances to illicit uses or the illicit market.

20 To sum up, there is some tension between the different purposes of the MMAR, especially as they relate to interlocking drug control and drug approval laws. On the one hand, the MMAR aim to facilitate access to marijuana for seriously ill individuals where its medical benefits to them outweigh its potential harm. On the other hand, the MMAR still treat marijuana as an unapproved drug associated with significant illicit use and criminal activity which should only be used as a medicine in extremis - i.e. where conventional treatments are not providing adequate symptomatic relief.

21 Ultimately, however, the government has stated that the MMAR "must [...] not unduly restrict the availability of

marijuana to patients who may receive health benefits from its use." (See the MMAR's "Regulatory Impact Analysis Statement," supra at 1359).

22 In conjunction with the CDSA, NCR, FDA and FDR, the four parts of the MMAR operationalize these different purposes in several different ways.

Part 1: Authorization to Possess

23 Part 1 of the MMAR creates a regulatory framework for seriously ill people to possess marijuana for therapeutic use. It addresses the Court of Appeal's main concerns regarding s. 56 of the CDSA (inadequate legislated standard for medical necessity and unfettered ministerial discretion) in two ways.

24 First, the Regulations designate three categories of applicants for obtaining an authorization to possess marijuana (ATP). These categories are defined in relation to the individual's symptoms as follows:

> Category 1 patients are those diagnosed with a terminal illness for which the prognosis is death within 12 months.
>
> Category 2 patients suffer from specific symptoms associated with serious chronic conditions. These symptoms and their associated medical conditions are set out in the schedule to the Regulations as follows:

Medical Condition	Symptom
Cancer, AIDS, HIV infection	Severe nausea
Cancer, AIDS, HIV infection	Cachexia, anorexia, weight loss
Multiple sclerosis, spinal cord injury or disease	Persistent muscle spasms
Epilepsy	Seizures
Cancer, AIDS, HIV infection, multiple sclerosis, spinal cord injury or disease, severe form of arthritis	Severe pain

Category 3 patients include those with symptoms associated with medical conditions other than those in the other two categories.

25 Secondly, Part 1 of the MMAR requires applicants to obtain declarations from physicians when applying for an ATP. Each of the three categories requires its own form of medical corroboration, with the degree of physician support required increasing from Category 1 to Category 3.

26 Once a physician has made the appropriate declarations, however, and the other administrative requirements of sections 4 to 10 of the MMAR have been met (properly filled out application, photos), subsection 11(1) requires the Minister to issue an ATP. Physicians are thus the designated "gatekeepers" for access to medical marijuana under the Regulations, a role formerly performed by the Minister.

27 For Category 1 applications, subsection 6(2) of the MMAR requires a physician to declare that:

a) the applicant suffers from a terminal illness;

b) all conventional treatment(s) for the symptom have been tried, or have at least been considered;

c) the recommended use of marihuana would mitigate the symptom(s);

d) the benefits to the applicant from the recommended use of marihuana would outweigh any risks associated with that use; and

e) the medical practitioner is aware that no notice of compliance has been issued under the FDR concerning the safety and effectiveness of marihuana as a drug.

28 The physician then has to indicate the recommended daily dosage of dried marijuana, as well as the route and form of administration. If that dose is greater than 5 grams, s. 9 of the Regulations requires that he or she also declare that:

a) the risks associated with an elevated daily dosage of marihuana have been considered, including risks with respect to the effect on the applicant's cardio-vascular, pulmonary and immune systems and psychomotor performance, as well as potential drug dependency; and

b) the benefits from the applicant's use of marihuana according to the recommended daily dosage would outweigh the risks associated with that dosage, including risks associated with the long-term use of marijuana.

29 The government submits that the long-term health risks associated with marijuana use are not a major policy concern for Category 1 patients because they face imminent death. As a result, it is reasonable that (1) they be excused from what Ms. Cripps-Prawak calls the "general rule" requiring the support of a specialist physician, and (2) that the Category 1 application form be less thorough than the forms for the other two categories. This is eminently reasonable as this approach is consistent with the aims of palliative care, namely reducing suffering and improving the quality of life of the terminally ill.

30 For non-terminal Category 2 and Category 3 applicants, the bar is set somewhat higher. The patient must obtain the medical support of one or two specialists certified by the Royal College of Physicians and Surgeons of Canada.

31 To put it succinctly, Health Canada believes that specialists' more advanced education and expertise regarding innovative treatments put them in a better position than other physicians to evaluate the potential risks and benefits of an applicant's therapeutic use of marijuana. This is important, the respondent argues, citing a report from the Institute of Medicine entitled "Marihuana and Medicine: Assessing the Science Base" (Washington: National Academy Press, 1999), because the applicants in question do not face imminent death and may rely on marijuana for a longer

period of time than Category 1 applicants. As a result, there is a greater potential for negative side effects as well as for dependency and abuse.

32 For Category 2 applicants, then, a specialist must indicate which of the eligible Category 2 medical conditions and symptoms the applicant suffers from. This list comprises chronic medical conditions for which scientific studies suggest marijuana may provide some symptomatic relief.

33 Subsection 6(3) of the MMAR then requires the specialist to exercise his or her "gatekeeping" authority by making (or not making) the following mandatory declarations for Category 2 applicants:

a) the specialist practices in an area of medicine, to be named by the specialist in the declaration, that is relevant to the treatment of the applicant's medical condition;

b) all conventional treatments for the symptom have been tried, or have at least been considered, and that each of them is medically inappropriate because

(i) the treatment was ineffective,

(ii) the applicant has experienced an allergic reaction to the drug used as a treatment, or there is a risk that the applicant would experience cross-sensitivity to a drug of that class,

(iii) the applicant has experienced an adverse drug reaction to the drug used as a treatment, or there is a risk that the applicant would experience an adverse drug reaction based on a previous adverse drug reaction to a drug of the same class,

(iv) the drug used as a treatment has resulted in an undesirable interaction with another medication being used by the applicant, or there is a risk that this would occur,

(v) the drug used as a treatment is contra-indicated, or

(vi) the drug under consideration as a treatment has a similar chemical structure and pharmacological activity to a drug that has been ineffective for the applicant;

c) the recommended use of marihuana would mitigate the symptom;

d) the benefits from the applicant's recommended use of marihuana would outweigh any risks associated with that use, including risks associated with the long-term use of marihuana; and

e) the specialist is aware that no notice of compliance has been issued under the FDR concerning the safety and effectiveness of marihuana as a drug.

34 As with Category 1 applications, the specialist also has to write down the recommended dose, method of administration, and make a specific risk/benefit declaration for doses over 5 grams per day.

35 Category 3 applications require two specialists' declarations because the scientific evidence relating to marijuana's therapeutic merit for other conditions is inconclusive and highly controversial. The first declaration includes all matters referred to in subsection 6(3) for the Category 2 declaration. Subsection 6(4)(b), however, further requires specialists to indicate:

> all conventional treatments that have been tried or considered for the symptom and the reasons, from among those mentioned in paragraph (3)(b), why the specialist considers that those treatments are medically inappropriate.

36 The second specialist's declaration for a Category 3 application is required by s. 4(2)(c) to support the first specialist's declaration. Beyond the aforementioned declarations that the specialist practices in an area of medicine relevant to treating the applicant and is aware that marijuana has not been approved as a drug under the FDR, s. 7

of the MMAR requires a declaration:

c) that the specialist is aware that the application is in relation to the mitigation of the symptom identified under paragraph 6(1)(b) and that the symptom is associated with the medical condition identified under that paragraph or its treatment;

d) that the specialist has reviewed the applicant's medical file and the information provided under paragraph 6(4)(b) and has discussed the applicant's case with the specialist providing that information and agrees with the statements referred to in paragraphs 6(3)(c) and (d).

37 It is also worth noting that s. 23 of the MMAR allows a person to assist the holder of an ATP with the administration of the daily dosage of marijuana. This "caregiver" cannot help a seriously ill person with an ATP to secure a supply of marijuana or help a person with a licence to produce (see below) to cultivate the plants.

Part 2: Licence to Produce

38 The MMAR provide two ways for adult holders of ATPs to obtain marijuana for their medical needs. Either the holder of an ATP can apply for a Personal-use Production Licence (PPL) to grow his or her own marijuana, or he or she can apply for a Designated-person Production Licence (DPL) to authorize someone else to grow for his or her therapeutic needs.

39 The application process appears to be relatively straightforward. Applicants fill out a form providing Health Canada with personal information and an explanation of how they will secure their supply of marijuana. (Section 53 also specifies that marijuana shall not be grown outdoors next to schools or other public places frequented mainly by minors). Then, provided the application raises no grounds for refusing to issue a production licence, the MMAR require the Minister to issue the appropriate licence. This licence is valid up to 12 months.

40 To be eligible for a production licence, a person must meet the requirements set out in sections 25 (for a PPL) and 35 (for a DPL). These include being 18 years old, and, for a designated person, not having been found guilty of a drug offence specified in the MMAR. There is no exception allowing spouses to be designated growers if they have been found guilty of drug offences, even if these crimes were related to medical use.

41 Grounds for refusing to issue a licence, meanwhile, are outlined in s. 32 (PPL) and s. 41 (DPL). Among these are having had a production licence revoked under s. 63(2)(b), not having been granted an ATP, making false or misleading statements in the PPL application, proposing a production site for which three production licences have been issued, and holding more than one licence to produce. Although s. 54 permits the holder of a licence to produce marijuana in common with up to two other licence holders, larger scale "compassion club" type arrangements remain illegal under the MMAR.

42 The MMAR also specify the maximum number of plants and maximum quantity of dried marijuana a licence holder is authorized to possess. These amounts are calculated as a function of the applicant's prescribed daily dosage. DPL holders must keep records of their marijuana crop and its harvest, and may, at any reasonable time and upon consent, be subject to inspection to ensure that production is in conformity with the MMAR.

Part 3: Obligations Concerning Documents and Revocation

43 ATP, PPL, and DPL holders must show proof of their authority to possess or licence to grow marijuana upon demand. The Regulations also specify under what circumstances an authorization or licence will be revoked by the Minister, notably upon discovery of a grounds of ineligibility, receipt of a request for revocation from a licence holder, written advice from a physician that the use of marijuana is no longer recommended, a designated grower's commission of a specified narcotics offence, or discovery that the ATP, PPL, or DPL was issued on the basis of false or misleading information. Upon expiration of an ATP or licence to produce, holders are required to destroy all marijuana in their possession.

Part 4: Supply of Medical Marijuana

44 Part 4 of the MMAR deals with a hypothetical situation under current laws, namely the possibility of a physician receiving marijuana from a licensed dealer (as defined by the NCR) and supplying it to the holder of an ATP. This situation is theoretical because under the CDSA, MMAR, NCR, FDA, and FDR there is currently no legal supply of marijuana in Canada and there are no licensed marijuana dealers. The marijuana being produced by PPS under its contract with Health Canada has not been released and, as noted above, the respondent maintains that this cannabis is for research purposes only.

45 The supply issue is a crucial aspect of the MMAR. Although Health Canada's description of "How the Regulations Work" assures holders of ATPs that they can obtain their medicinal marijuana by growing it themselves, having a designated person grow it for them, or possibly acquiring it from a licensed supplier in the future, the reality is somewhat different.

46 In order to grow or obtain marijuana, licensed users and growers ultimately have no choice but to turn to the black market to get seeds, plants, or dried marijuana.

47 While s. 51 of the MMAR permits the Minister (or a designated person) to import and possess marijuana seed "for the purpose of selling, providing, transporting, sending or delivering" it to licensed dealers or the holders of a licence to produce, the Minister is not required to do so and has not exercised her discretion in this respect. The result is something of an "absurdity," as Madame Justice Acton noted of the old s. 56 exemption process in R. v. Krieger, [2000] A.J. No. 1683, 2000 ABQB 1012 (Q.B.) at para. 36:

> [I]n order to obtain the product, that individual is required to participate in an illegal act, since whoever sells the exempted person either the raw cannabis marihuana or the seeds to grow their own, does so in breach of s. 5(2) of the CDSA.

48 In the absence of a government supply, those who have been authorized to use marijuana or have been granted licences to produce it are forced to seek it on the street and rely on criminal drug dealers. The truth of this assertion is borne out by the testimony of the applicants, as described below. This sad state of affairs is at odds with both drug control and compassionate access objectives underlying the MMAR, and has significant ramifications for the legal analysis below.

RESPONSE OF THE MEDICAL PROFESSION TO THE MMAR

49 The medical profession has expressed serious reservations about the gatekeeping role of physicians under the MMAR. These concerns appear to flow mainly from the uncomfortable novelty of physicians being responsible for prescribing an unapproved drug. Several medical associations, licensing authorities and the Canadian Medical Protective Association ("CMPA") do not think physicians should have to attest to the relative risks and benefits of marijuana (to say nothing of recommended dosages and administration), because the information required to make such a declaration is not available. The safety, quality and efficacy of marijuana as a medicine are unknown because there has not been enough research done in the area.

50 This medical uncertainty means that physicians face significant professional peril in endorsing their patients' MMAR applications. Besides the potential liability inherent in prescribing an unapproved medicine, subsection 69(a)(ii)(C) of the MMAR authorizes the Minister to report physicians to their licensing authority if she has reasonable grounds to believe they have made a false statement under the Regulations. The CMPA fears that physicians may "unknowingly make a false statement because they are being asked to attest to matters that may go beyond the scope of their expertise." (CMPA, "What to do when your patients apply for a licence to possess marijuana for medical purposes," October 2001 Information Sheet).

51 Physicians can also be reported under subsection 69(a)(ii)(A) for contravening professional conduct rules. In this respect, supporting marijuana use may place doctors in conflict with provisions relating to the use of unapproved or "alternative" medicines.

52 As a result, the CMPA is advising physicians to verify their college's policy on alternative medicines. It is also recommending that "any physician who does not feel qualified to make any of the declarations required by the regulations should not feel compelled to do so."

THE APPLICANTS

53 There are three applications before the court, and eleven applicants in all. Eight applicants are represented by counsel, while three are self-represented. I will deal with the former before turning to the latter.

Warren Hitzig

54 One of the represented applicants, Warren Hitzig, is a caregiver who produces and distributes marijuana to individuals suffering from major illnesses, such as his co-applicants. Although he does not require marijuana for his own medical purposes, he seeks to be free from the CDSA and MMAR's continued prohibition of compassion clubs.

55 Until he was recently charged with trafficking and related offences, Mr. Hitzig operated the Toronto Compassion Centre. He established this not-for-profit organization in 1998 to provide seriously ill people with a safe and reliable supply of cannabis and to provide the general public with information on the therapeutic use of marijuana.

Mary-Lynne Chamney, Jari Dvorak, Alison Myrden and Deborah Anne Stultz-Giffin

56 The other seven applicants represented by counsel suffer from serious medical conditions and have found relief from their symptoms through the use of marijuana. Four of these applicants have ATPs under the MMAR, namely Ms. Chamney (who suffers from epilepsy), Mr. Dvorak (HIV), Ms. Myrden (chronic multiple sclerosis and trigeminal neuroalgia), and Ms. Stultz-Giffin (progressive multiple sclerosis).

57 These four applicants' affidavits attest primarily to the difficulties they have experienced in attempting to obtain a safe, licit and continuous supply of the drug they have been authorized to take under the MMAR. Ms. Chamney, Mr. Dvorak, and Ms. Stultz-Giffin state that they are either too ill or lack the expertise required to successfully grow their own cannabis; nor can Ms. Stultz-Giffin's husband be her designated grower as he was convicted of producing marijuana for her in 1999. All four affidavits also attest to the high cost of purchasing black market marijuana and the risks associated with it.

Catherine Devries, Marco Renda and Stephen Van de Kemp

58 Applicants Devries, Renda and Van de Kemp do not have ATPs, although Ms. Devries formerly had a s. 56 exemption for Arachnoiditis, a disease which affects the nerve endings in her spinal column. Ms. Devries uses cannabis to reduce nausea, stimulate her appetite, and lessen her reliance on several other drugs used to treat her condition. Although Health Canada attests that nine other individuals suffering from spinal cord disease have received the support of a specialist in obtaining an ATP for their Category 2 conditions, Ms. Devries has been unable to book

an appointment with her neurosurgeon for several months. After discussing the MMAR with her doctor, she also fears her specialist will not endorse her application due to cautions issued by the Canadian Medical Association and because of the requirement that he declare all conventional treatments to be medically inappropriate.

59 Like Ms. Devries, Mr. Renda and Mr. Van de Kemp have been unable to obtain ATPs. Unlike Ms. Devries, their conditions have not been deemed by Health Canada to constitute chronic illnesses for which scientific studies suggest marijuana may provide some symptomatic relief. While Mr. Renda suffers from chronic liver disease and Hepatitis C, Mr. Van de Kemp uses marijuana to treat symptoms of depression and bi-polar disorder. They are thus both required to make a Category 3 application under the MMAR.

60 Although both have been treated by specialists, neither Mr. Renda nor Mr. Van de Kemp has been able to secure the medical support required by the MMAR. Both attest to their frustration with the specialist requirement. Mr. Van de Kemp's affidavit describes his experience with long waiting lists (8-10 months) to see specialists. Mr. Renda, on the other hand, explains that his specialist was unwilling to endorse his application upon advice from a lawyer and the CMPA. The position of the CMPA on MMAR applications has been described above, and was distributed to Canadian physicians in a memorandum.

Marc Paquette and Terrance Parker

61 The final three applicants (J.J. Marc Paquette, Terrance Parker and John C. Turmel) are self-represented. Their applications were joined with the application of the others by court order, as they present similar factual and legal issues.

62 Like most of the other applicants, Messrs. Paquette and Parker are both seriously ill and use marijuana for therapeutic purposes. As mentioned above, Mr. Parker suffers from epilepsy, while Mr. Paquette has been diagnosed with chronic pain, hepatitis, and various secondary conditions. Both Messrs. Paquette and Parker have received exemptions under s. 56 of the CDSA to possess and produce marijuana for their medical use. Neither, however, has applied for an ATP under the MMAR, and both claim that they have been unable to obtain the requisite specialist support. The respondent contests these assertions concerning securing specialist support, as will be discussed below.

John Turmel

63 John Turmel, unlike the other applicants, is physically healthy. He smokes marijuana because he believes this protects him from becoming sick. He simply states that he believes, without any supporting medical evidence, that marijuana has preventative qualities which have ensured his good health to date. He also claims that the government is perpetrating genocide on Canadians by not allowing them to use marijuana preventively.

THE PARTIES' POSITIONS

The Applicants' Position

64 The applicants assert that the MMAR throw up so many barriers to gaining access to marijuana for medicinal use that this medicine effectively remains unavailable to many seriously ill people. Furthermore, they contend that the MMAR do not provide those who successfully gain exemptions with access to a legal supply of the marijuana medicine.

65 As a result, the applicants argue that the interplay of CDSA offences and MMAR exempting regime exposes them to imprisonment and deprives them of their Charter right to make medical decisions of fundamental personal importance (the "liberty interest"), and infringes their right to make autonomous decisions with respect to their bodily integrity (the "security of the person interest").

66 The applicants also submit that these s. 7 deprivations do not accord with the principles of fundamental justice

because the MMAR's restrictions on access to cannabis-based medical treatment are arbitrary and do not advance any compelling state interest. The argument is also made that the MMAR establish an illusory exemption regime. Not only do many seriously ill Canadians still face the risk of prosecution for their therapeutic use of cannabis, even those who gain authorizations to possess marijuana under the MMAR are denied access to a legal supply of that medicine.

67 The applicants thus seek the invalidation of the MMAR under s. 52 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, and a revival of the Court of Appeal's order in the Parker case, namely, the constitutional invalidation of the marijuana prohibition in s. 4 of the CDSA.

68 In the alternative, the applicants submit that if the MMAR violate s. 7 of the Charter only in respect of a failure to provide access to a legal supply of marijuana, then the appropriate remedy would be a mandatory order under s. 24(1) of the Charter, compelling the government to distribute medical marijuana in its possession (through its contract with PPS) to authorized persons under the MMAR.

The Respondent's Position

69 The respondent submits that the federal government introduced the MMAR specifically to comply with the constitutional requirements laid down by the Court of Appeal in Parker. It submits that the MMAR establish a framework which permits seriously ill individuals who have received the support of their physicians to legally possess and produce cannabis for their medical treatment.

70 The respondent believes the applicants can be divided into several categories. First, there are those whom it argues have no standing or whose constitutional challenges are premature. Warren Hitzig and John Turmel come under the former heading, while Marc Paquette and Terrance Parker fall under the latter. In short, there are other applicants among those before the court who are better situated to challenge the MMAR.

71 Second, there are those applicants who have not applied for ATPs because they have not been able to obtain the requisite medical support. They include applicants Devries, Renda, Van de Kemp (and Parker, if he has standing). The respondent argues that their rights have not been violated because they have not established that cannabis is the only effective treatment for their respective conditions or even a reasonable form of treatment. In short, the respondent submits that these applicants have established no medical need, and this explains specialists' unwillingness to endorse their applications. There is no untrammelled s. 7 right to choose one's medical treatment.

72 Finally, some of the applicants have obtained ATPs, including Mary-Lynne Chamney, Jari Dvorak, Alison Myrden and Deborah Anne Stultz-Giffin. The respondent asserts that their rights have not been infringed. They do not face criminal prosecution for possession, and there is no s. 7 Charter right to be supplied with marijuana for therapeutic use. If there is such a right, the MMAR do not infringe it because they provide a means for individuals to have access to a supply of cannabis via production licences. It is argued that the applicants simply have not availed themselves of this option. Section 7, the respondent submits, cannot be understood to include a positive right forcing the government to provide the applicants with unrestricted quantities of marijuana.

73 The respondent also submits that any infringement of the applicants' rights to liberty and security of the person is consistent with the principles of fundamental justice because the MMAR strike a reasonable balance between competing individual and societal interests.

74 The MMAR permit individuals to use and produce cannabis for medical purposes. In conjunction with other laws, the MMAR also aim to protect individuals against potential harm from marijuana use, to ensure drugs are safe and effective prior to regulatory approval, to uphold the distinction between government (regulatory) and private sector (drug production) roles, and to support domestic and international drug control efforts.

75 The respondent submits that these societal aims are achieved by the MMAR's specialist requirement, its three categories of medical conditions, its requirement of prescribed dosages, and its limits on the quantities of cannabis authorized individuals may possess. Ensuring that drugs like marijuana are approved through the usual regulatory

channels is consistent with public safety. And from a comparative perspective, Canada is a world leader in granting medical access to cannabis. No other countries supply patients with marijuana outside the research context.

76 Should the court find a breach of the applicants' s. 7 rights, the respondent submits that this infringement can be justified under s. 1 of the Charter. The s. 1 justification test is broader than the principles of fundamental justice, and comprises values underlying a free and democratic society. Ensuring the health and safety of Canadians is a pressing and substantial legislative aim of the marijuana regulatory regime, and the MMAR constitute a rational and proportional means of achieving this goal.

77 If the court further finds that a violation of the applicants' s. 7 rights is not saved under s. 1, the respondent argues that ordering the government to supply marijuana is not an appropriate and just remedy. Instead, a less intrusive and more fitting remedy would be declaratory in nature.

ISSUES

1) Do any of the applicants not have standing to bring this application, or do any of the applicants bring a premature constitutional challenge?
2) Do the MMAR, in conjunction with marijuana prohibitions in the CDSA, violate some or all of the applicants' rights to life, liberty and security of the person?
3) If so, has the deprivation of rights been made in accordance with the principles of fundamental justice?
4) If not, can the s. 7 violation be justified under s. 1 of the Charter?
5) If not, what is the appropriate constitutional remedy?

ANALYSIS

STANDING OR PREMATURITY

John Turmel: Standing For Non-Medical Use

78 Mr. Préfontaine, counsel for the respondent in the Turmel application, argues that Mr. Turmel does not have standing to challenge the constitutionality of the legislative scheme created by the CDSA and MMAR. Mr. Turmel does not claim to have a serious medical condition, nor has he ever applied for a medical exemption under s. 56 of the CDSA or the MMAR.

79 I have decided that his application should be dismissed for several reasons. First, Mr. Turmel does not have standing to bring this application. He has not demonstrated that he has been directly affected by the MMAR. Nor, in light of his position, does he qualify for discretionary constitutional standing (described in greater detail below). Mr. Turmel is not sick, and cannot claim to have a genuine interest in the validity of the MMAR. To my mind, the constitutional dimension of his "preventive" use argument was decided by the Court of Appeal in R. v. Clay (2000), 49 O.R. (3d) 577 [Clay]. In contrast to the Parker decision, which dealt with the use of marijuana to treat serious medical conditions, Justice Rosenberg held in Clay that other uses of marijuana may be legitimately prohibited by the government.

80 If Mr. Turmel's argument is construed more broadly, I believe any submissions he might make regarding the constitutionality of the MMAR will be amply covered by the ten other applicants involved in these proceedings. Thus,

there is an alternate, reasonable and more effective manner to bring the general issue of the constitutionality of the MMAR before the court.

81 Finally, Mr. Turmel's "statistical" arguments are weak and unsubstantiated. While he might personally believe that smoking marijuana has prevented him from becoming sick, and that the Government of Canada is committing "genocide" by prohibiting healthy Canadians from using cannabis, Mr. Turmel has presented no medical evidence to support his bald assertions. As such, they cannot stand.

Warren Hitzig: Caregiver Standing

82 Mr. Frankel and Ms. Speirs, counsel for the respondent in relation to the represented applicants, also argue that Mr. Hitzig has no standing to seek a remedy in this application. Mr. Hitzig has neither a personal medical need for marijuana nor is he engaged in making decisions of fundamental personal importance or relating to his bodily integrity. Because his Charter rights have not been infringed, counsel submit that Mr. Hitzig has no standing to obtain a remedy under s. 24(1) of the Charter.

83 As Mr. Young pointed out, however, this submission appears to misconstrue the nature of the relief being sought by Mr. Hitzig and the other applicants. Granted, one of the remedies they are requesting is injunctive relief pursuant to s. 24(1) of the Charter, namely "an Order directing the Government of Canada to provide them with some of the medical marijuana currently being grown and harvested in Manitoba under federal license." This order, however, is only sought in the alternative. The primary thrust of their argument is that the MMAR (in conjunction with s. 4 of the CDSA as it applies to cannabis) are unconstitutional and should be declared invalid under s. 52 of the Constitution Act, 1982.

84 This case must be distinguished from the Court of Appeal's treatment of caregivers in Wakeford v. Canada (2001), 209 D.L.R. (4th) 124 (Ont. C.A.) [Wakeford]. In Wakeford, an HIV positive man applied for an order under s. 24(1) of the Charter to exempt his caregivers from liability under ss. 5 and 7 of the CDSA. His bid failed, the Court of Appeal held, because Mr. Wakeford had not shown his own rights to be violated and because he had not directly challenged the constitutionality of the provisions. As the Supreme Court of Canada has remarked, "[i]t now appears to be settled law that a party cannot generally rely upon the violation of a third party's rights" to obtain a personal remedy under s. 24(1) of the Charter: Benner v. Canada (Secretary of State) (1997), 143 D.L.R. (4th) 577 at 604 (S.C.C.).

85 In the case at bar, however, Mr. Hitzig is directly challenging the constitutionality of the MMAR and CDSA as they apply to caregivers. His counsel has given notice of constitutional question as required by s. 109 of the Courts of Justice Act, R.S.O. 1990, c. C.43, and implicitly relies on a string of Supreme Court of Canada standing cases.

86 Beginning with Thorson v. A.G. Canada, [1975] 1 S.C.R. 138, Canada's highest court has held that discretionary standing will be granted in constitutional cases when (1) a party raises a serious, substantial and justiciable constitutional issue; (2) the party has a direct or genuine interest in the impugned law's validity; and (3) there is no other reasonable and effective way to bring the matter before the court. See also Nova Scotia Board of Censors v. McNeil, [1976] 2 S.C.R. 265; Minister of Justice of Canada v. Borowski, [1981] 2 S.C.R. 575; Finlay v. Canada (Minister of Finance), [1986] 2 S.C.R. 607; Conseil du Patronat du Québec v. A.G. (Qc), [1991] 3 S.C.R. 685; and Hy and Zel's Inc. v. Ontario, [1993] 3 S.C.R. 675.

87 While there are other applicants before the court whose interests are arguably more directly affected by the MMAR and CDSA regime than Mr. Hitzig, a purposive approach to constitutional standing suggests that he should not be precluded from being heard. Mr. Hitzig has extensive knowledge regarding marijuana production, and his sworn testimony helps shed light on some of the paradoxes inherent in the current medical access regime - especially those relating to supply difficulties. There is no other reasonable and effective way of bringing these aspects of the applicants' constitutional challenge before the court.

88 Whether this testimony will be determinative or not is not at issue at this stage. In a constitutional challenge comprising numerous applicants like this one, there are bound to be some evidentiary overlaps and redundancies. In the final analysis, however, only the most compelling scenarios will be considered. The government must rebut the strongest arguments the applicants can make, which will be based on the most persuasive facts. In this respect, I believe Mr. Hitzig's testimony is necessary.

89 Although this proceeding is not a criminal trial, it is worth pointing out that Mr. Hitzig also faces criminal charges for running the Toronto Compassion Centre. Pursuant to the Supreme Court's decisions in R. v. Big M. Drug Mart Ltd., [1985] 1 S.C.R. 295 [Big M] and R. v. Morgentaler, [1988] 1 S.C.R. 30 [Morgentaler], he would also have standing as of right at trial to challenge the constitutionality of the legislative regime under which he was being prosecuted, "even though the unconstitutional effects are not directed at [him] per se": Morgentaler, supra at 63.

90 To my mind, a purposive interpretation of the Big M and Morgentaler standing rules allows Mr. Hitzig to challenge the MMAR. While cannabis-related offences are only contained in the CDSA, the objectives of the MMAR and the nature of Mr. Hitzig's offences both imply a constitutional shortcoming in the access Regulations. The thrust of his argument is that the MMAR are underinclusive in not legally permitting him to supply medically qualified individuals with marijuana.

91 For all of these reasons, I find Mr. Hitzig to have standing to bring this application.

Paquette and Parker: Premature Constitutional Challenges?

92 The respondent argues that applicants must demonstrate that an impugned enactment has an adverse impact on them before they can challenge its validity. It relies on the Court of Appeal's decision in Wakeford, supra, for this proposition.

93 While both Mr. Paquette and Mr. Parker argued in court that the Regulations make it exceedingly difficult to obtain access to marijuana, the respondent argues that both have had ample time and opportunity to meet the MMAR's requirements. Health Canada has shown sensitivity in granting both of them several extensions of their s. 56 exemptions. Yet neither has attempted to apply for an authorization under the MMAR.

94 The respondent also suggests that Mr. Paquette's claim of having great difficulty obtaining specialist support rings hollow, because he has the support of his psychiatrist (a specialist) and an infectious disease specialist at the Ottawa Hospital. The respondent thus submits that Mr. Paquette has simply not bothered to obtain declarations from them.

95 Likewise, the respondent argues that there is no evidence before the court regarding Mr. Parker's difficulty in seeing a specialist; nor is there any evidence suggesting that applying under the MMAR is futile. Health Canada has approved nine applications from individuals with epilepsy who obtained the requisite medical declarations from specialists.

96 It is obviously in Messrs. Paquette and Parker's interest to make reasonable, good faith efforts to apply for ATPs under the MMAR. And indeed there is no sworn evidence before the court showing that they have tried to do so, although they argued that this was the case in their oral submissions.

97 Nonetheless, I do not find the government's "prematurity" argument to be determinative of Messrs. Paquette and Parker's standing for reasons similar to those argued above with respect to Mr. Hitzig. They deserve discretionary standing in this constitutional application because they have a serious issue to raise, an obvious interest in the validity of the MMAR, and there was no other reasonable way the matter would come before the court than for them to challenge the Regulations.

98 The facts of the current application must be distinguished from those present in Wakeford, supra. A thorough reading of that appeal reveals that the applicant's challenge was found premature because the Regulations had not been in existence for a long enough time to determine whether they were working or not, and not just because the appellant had not yet applied for an ATP. (See Wakeford, supra at para. 48). The applicant had also not given requisite notice of constitutional question to directly challenge the CDSA.

99 For these reasons, I find Messrs. Paquette and Parker's application not to be premature.

SECTION 7: The Right to Life, Liberty & Security of the Person

100 Section 7 of the Canadian Charter of Rights and Freedoms states:

> 7. Everyone 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.

101 The wording of this section implies a two-stage analysis. First, the applicants must demonstrate that the MMAR and interlocking marijuana prohibitions impose a threshold violation of their right to liberty or security of the person. Second, if there is a threshold violation of rights, the applicants must further show that this infringement does not accord with the principles of fundamental justice. The onus only shifts to the respondent at the s. 1 justification stage. I will deal with the first step of the s. 7 analysis (the "threshold" violation) in this section, before turning to the principles of fundamental justice below.

102 As noted above, Parker is the leading case regarding the constitutionality of restricting a seriously ill person's access to marijuana for medical treatment. In many respects, the s. 7 rights at issue in this application reflect those ruled on by the Court of Appeal in Parker, supra. Some of the applicants (namely those without ATPs) still face the prospect of criminal prosecution under the CDSA; they also claim that they have been denied the right to choose a medicine which provides effective relief from their serious symptoms.

103 On the other hand, this challenge is somewhat distinct from Parker, supra, in that the government has recently attempted to respond to the constitutional deficiencies of the CDSA's general prohibition of marijuana and its ill-defined s. 56 exemption. The CDSA now includes a comprehensive set of regulations, the MMAR, which specify how medical authorizations to possess and grow cannabis may be obtained. Several of the applicants are also challenging the lack of a legal source and supply of marijuana under the MMAR.

104 Thus, whereas the Court of Appeal focused most of its attention on the CDSA's cannabis prohibition in finding a threshold s. 7 violation of Mr. Parker's rights, the focus in this case is on whether the MMAR deprive the applicants of their s. 7 rights by not granting them constitutionally acceptable access to marijuana.

The Liberty Interest

105 While the question of whether s. 7 includes substantive as well as procedural guarantees was decided early on by the Supreme Court in Reference re s. 94(2) of the Motor Vehicle Act (British Columbia), [1985] 2 S.C.R. 486, 24 D.L.R (4th) 536, there has been a great deal of debate since then over just how far s. 7 goes beyond upholding freedom from imprisonment or physical restraint by the state.

106 The Supreme Court has endorsed a broader understanding of liberty in several important decisions, finding s. 7 to protect individual autonomy over decisions involving "basic choices going to the core of what it means to enjoy individual dignity and independence:" see Godbout v. Longueuil (City), [1997] 3 S.C.R. 844 at para. 66. As Justice

La Forest also noted in B.(R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 at 368 [B.(R.)]:

> [L]iberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance.

107 But the Supreme Court has also expressed concern over loosening the definition of liberty too much, to protect against all state measures that might in some way impinge individual freedom. In B.(R.), supra, La Forest J. underscored at 389 that liberty "is limited to those essentially personal rights that are inherent to the individual."

108 What seems clear in considering the jurisprudence is that the Charter's liberty guarantee does protect a range of interests, and contextual analysis will be important in determining whether the applicants' s. 7 interests have been infringed.

109 In Parker, supra, at para. 92, the Court of Appeal held that Terrance Parker's liberty interest was engaged in two ways. First, he faced criminal prosecution and possible imprisonment. Second, his right to choose how to treat his serious medical condition was restricted by criminal sanction. The latter violation of liberty also overlapped to some extent with an infringement of Mr. Parker's security of the person, as I will discuss below.

110 In considering whether the availability of the s. 56 exemption process affected this threshold violation of Mr. Parker's liberty, Rosenberg J.A. stated at para. 188:

> [I]n my view, s. 56 is no answer to the deprivation of Parker's right to liberty. The right to make decisions that are of fundamental personal importance includes the choice of medication to alleviate the effects of an illness with life-threatening consequences.

111 Subjecting Mr. Parker's choice to unfettered ministerial discretion still amounted to a s. 7 violation that was not consistent with the principles of fundamental justice.

112 The Supreme Court of Canada's very recent decision in Gosselin v. Quebec (Attorney General), [2002] S.C.C. 84, must also be considered. While Gosselin did not overturn cases reflecting the broader view of s. 7 relied on in Parker, McLachlin C.J.C.'s discussion of s. 7 for the majority suggests that this understanding may operate within certain constraints. As she states at para. 77:

> As emphasized by my colleague Bastarache J., the dominant strand of jurisprudence on s. 7 sees its purpose as guarding against certain kinds of deprivation of life, liberty and security of the person, namely, those "that occur as a result of an individual's interaction with the justice system and its administration": New Brunswick (Minister of Health and Community Services) v. G.(J.), [1999] 3 S.C.R. 46, at para. 65. "[T]he justice system and its administration" refers to "the state's conduct in the course of enforcing and securing compliance with the law", (G.(J.), at para. 65). This view limits the potential scope of "life, liberty and security of person" by asking whom or what s. 7 protects against. Under this narrow interpretation, s. 7 does not protect against all measures that might in some way impinge on life, liberty or security, but only against those that can be attributed to state action implicating the administration of justice: see Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), [1990] 1 S.C.R. 1123 (the "Prostitution Reference"), at pp. 1173-74, per Lamer J. (as he then was), writing for himself; B.(R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315, at paras. 21-23, per Lamer C.J., again writing for himself alone; and G.(J.), supra, for the majority. This approach was affirmed in Blencoe v. British Columbia (Human Rights Commission), [2000] 2 S.C.R. 307, 2000 S.C.C. 44, per Bastarache J. for the majority [emphasis added].

113 However, McLachlin C.J.C. also noted at para. 78 that "the administration of justice does not refer exclusively to processes operating in the criminal law." Nor is an "adjudicative context" required for s. 7 to be implicated. And the question of whether s. 7 applies "to protect rights or interests wholly unconnected to the administration of justice"

remains unanswered. In short, the Chief Justice adopted an incremental approach to defining both the administration of justice and the scope of s. 7, suggesting that the nature of the right will evolve over time as "unforeseen issues arise for consideration."

114 In the case at bar, all of the applicants save Mr. Hitzig wish to use marijuana to treat illnesses with varying degrees of seriousness. Most of them have tried traditional treatments and found them to be unsuccessful or less successful than cannabis. Due to the inability of some of the applicants to obtain ATPs under the MMAR, they still face the prospect of imprisonment for drug offences under the CDSA.

115 The respondent, however, argues that the applicants without authorizations to possess cannot claim their rights have been violated by the MMAR. They simply have not tried to apply for an ATP or have been unsuccessful in obtaining the requisite medical support because they have not demonstrated a real, serious medical need to use marijuana. There is thus no rights infringement under the MMAR, according to the respondent.

116 I am wary of this argument for reasons similar to those noted above in considering the premature nature of Messrs. Paquette and Parker's constitutional challenge. Governments cannot insulate their laws from constitutional scrutiny by claiming that individuals have not "engaged" a regulatory regime when it is the regulations themselves which limit how those individuals exercise their rights.

117 Under the MMAR, for instance, the Minister has delegated deciding whether an applicant has a bona fide medical need to use marijuana to physicians. It is thus up to physicians to make substantive decisions about who can apply to Health Canada for an ATP. But it is still the MMAR which specify this requirement, which amounts to a constraint on the individual's right to legally use marijuana to treat a serious medical condition. Individuals' s. 7 rights are engaged with respect to the MMAR as soon as they wish to use marijuana for therapeutic purposes.

118 The MMAR restrict individuals' broader liberty right to make decisions of fundamental personal importance and, in conjunction with the CDSA, expose them to prosecution and imprisonment - thus engaging their narrower liberty rights. The MMAR engage the applicants' broader liberty interest because they specify an exemption process which is known to involve significant delay (i.e. the specialist requirement) and which has put most physicians in a position of professional peril. I find this to be the case for at least Ms. Devries, who is on a waiting list to see her specialist. Her liberty interest is engaged by the MMAR and CDSA.

119 On the other hand, there is something that resonates in the respondent's submissions when considering the evidence as it relates to Messrs. Renda and Van de Kemp, who cannot get physicians to sign off on their Category 3 applications. I agree that their cases are less medically compelling than Ms. Devries's condition. It does seem reasonable to imagine that some people will not be able to obtain the requisite medical support to proceed with an ATP application.

120 By reason of the holding in Parker, individuals in Canada have a s. 7 right to use marijuana as a medicine to treat serious or life-threatening illnesses. On the question of just how serious a person's condition must be before this right manifests itself, Justice Rosenberg had this to say in Parker, supra at paras. 103-104:

> To intrude into that decision-making process through the threat of criminal prosecution is a serious deprivation of liberty. For the purposes of this appeal, it is unnecessary to decide whether the decision-making must meet some objective standard to fall within this aspect of liberty. The evidence established that Parker's choice was a reasonable one. He has lived with this illness for many years. He has tried to treat the illness through highly invasive surgery and continues to take conventional medication notwithstanding the significant side effects. He has studied his illness, he has studied the effects of marijuana, and he has produced a reasonable explanation for why Marinol is not an effective form of treatment. He has found relief from some of the debilitating effects of the illness through smoking marijuana, a drug that, aside from the psychotropic effect, has limited proven side effects in a mature adult. That drug helps protect him from the serious consequences of seizures -- consequences that could

> threaten his life and health. In those circumstances, a court should not be too quick to stigmatize his choice as unreasonable.
>
> In view of my conclusion with respect to Parker's liberty rights, it is not strictly necessary to consider the situation of other persons seeking to use marijuana to alleviate their symptoms from other serious, even terminal, disease. Suffice it to say that Parker presented sufficient evidence that marijuana is a reasonable choice for those persons that I would have found that their liberty interests are infringed by the marijuana prohibition [emphasis added].

121 Without explicitly stating that the right to use marijuana requires an objective determination of medical necessity, Justice Rosenberg's analysis suggests that such use must indeed be reasonable to be constitutionally protected by s. 7 of the Charter.

122 Under the MMAR, this determination of reasonableness is to be made by the relevant physician(s) acting in accordance with the categorical requirements laid down by the MMAR. While this approach may be consistent with the principles of fundamental justice, there is little doubt that the MMAR's specialist requirements amount to a threshold violation of the liberty of at least Ms. Devries. Based on the evidence, and independent of the "reasonableness" of her decision to use marijuana according to the MMAR's criteria, I find that she has demonstrated that marijuana is a reasonable choice of medicine for her condition.

123 Ms. Devries' freedom from prosecution and potential imprisonment is conditional upon obtaining the medical support required by the MMAR. She has tried to see the requisite specialists, and has not succeeded. She faces long waiting lists. In short, despite her reasonable efforts to comply with the MMAR, the seriousness of her medical conditions, and the therapeutic effectiveness of marijuana for her symptoms, she still faces criminal prosecution under the CDSA for using cannabis.

124 In this instance, the administration of justice is sufficiently engaged for me to find a threshold violation of liberty rights based on either a narrow or broader understanding of that right. The fact that this particular violation nonetheless complies with the principles of fundamental justice will be discussed below.

125 Mr. Hitzig, on the other hand, faces criminal charges for possessing, producing, and trafficking marijuana as a caregiver. His s. 7 liberty interest is engaged because he faces imprisonment for growing and distributing cannabis to medicinal marijuana users. Neither the MMAR nor the CDSA allow for this. Whether this violation is consistent with the principles of fundamental justice will be taken up below.

126 The applicants who have obtained authorizations to possess marijuana under the MMAR - namely Mary-Lynne Chamney, Jari Dvorak, Alison Myrden and Deborah Anne Stultz-Giffin - do not face criminal sanction for having or using marijuana. The argument that their liberty interest has been infringed is based on a broader understanding of liberty, i.e. the MMAR restrict how the applicants make medical decisions of fundamental personal importance. While the MMAR permit the applicants to grow marijuana, they argue that in effect the requirements surrounding the use of PPLs and DPLs deny them the ability to obtain marijuana for medical use.

127 I think that arguments relating to applicants' medical well-being and their supply of marijuana are best examined in considering security of the person. The "personal autonomy and bodily integrity" notion of liberty overlaps with the protected interest in security of the person. For this reason, I will deal with it in the next section.

The Security of the Person Interest

128 The leading cases to consider with respect to access to medical treatment in the context of a general criminal prohibition are Morgentaler, Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 [Rodriguez], and Parker.

129 In Morgentaler, supra Dickson C.J.C. held at 56 that "state interference with bodily integrity and serious state-

imposed psychological stress, at least in the criminal law context, constitute a breach of security of the person". Beetz J. also explained in the same case at 90 that security of the person "must include a right of access to medical treatment for a condition representing a danger to life or health without fear of criminal sanction" [emphasis added]. Wilson J., meanwhile, found security of the person to protect "both the physical and psychological integrity of the individual" (at 173).

130 In Rodriguez, supra, Justice Sopinka, writing for the majority at 587, elaborated that "the judgments of this Court in Morgentaler can be seen to encompass a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress." This notion was picked up on in Parker, supra, where the Court of Appeal found the accused's security of the person to be violated notwithstanding that s. 56 of the CDSA presented a lawful means to possess marijuana. The exemption process "involved criteria unrelated to Parker's own priorities and aspirations" and was "concerned with much larger questions of drug policy and controls unrelated to Parker's own needs." Mr. Parker was still constrained by criminal sanction in accessing medication "reasonably necessary for the treatment of a medical condition that threatens life or health" (Parker, supra at paras. 109 and 97).

131 In the case at bar, the applicants argue that the cannabis prohibition in the CDSA combined with the restrictions on gaining access to marijuana in the MMAR infringe their security of the person. All of them (except Mr. Hitzig) wish to treat their various medical conditions with marijuana. Some of them, as described above, have obtained the support of their physicians and succeeded in applying for an ATP under the MMAR. Others have not been successful at either trying to see a specialist or in having a specialist sign off on their application.

132 For applicants without ATPs, the security of the person interest engaged by the MMAR overlaps with the liberty interest described above. For those applicants with a reasonable medical need to use marijuana, the MMAR establish requirements which restrict their ability to legally access this medicine.

133 As in Parker, these applicants still face prosecution under the CDSA because of the delay and impediments to access inherent in the MMAR. Despite their health being in danger, they must choose between legal but inadequate treatment or face imprisonment in using an effective medical treatment. To force such a choice on seriously ill people is to violate their security of the person, as Justice Beetz explained in Morgentaler, supra at 90 and Justice Sopinka held in Rodriguez, supra at 587.

134 These applicants are forced to make medical decisions based on criteria unrelated to their own priorities and aspirations, interfering with their bodily integrity in both a physical and emotional sense. This is sufficient to find a s. 7 breach, as Justice Rosenberg noted in Parker, supra at para. 109. As explained above, the MMAR are concerned with larger narcotics control and drug approval policy issues as well as facilitating access to marijuana for medical use. While this approach might be justifiable and consistent with the principles of fundamental justice, I have little difficulty accepting that the applicants' access has been compromised under the MMAR in a manner which amounts to a threshold s. 7 violation.

135 For the applicants with ATPs, the infringement of their security of the person is somewhat different. As noted above, Ms. Chamney, Mr. Dvorak, Ms. Myrden and Ms. Stultz-Giffin do not face criminal sanction for having or using marijuana. They do not have to make the untenable choice between effective therapy at the risk of imprisonment and ineffective medicine.

136 They do, however, face difficulties under the MMAR in obtaining the medicine they have been authorized to possess. Despite having medical conditions which qualify them to possess cannabis for therapeutic purposes, the MMAR throw up significant barriers to actually obtaining a safe, licit and continuous supply of this medicine. Several of them are either too ill or lack the skill required to successfully cultivate their own cannabis with a PPL. Ms. Stultz-Giffin also claims that a designated production licence is not a viable option for her as she lives in on an isolated farm and her husband has been convicted of growing marijuana for her in 1999 and is, therefore, not eligible for a DPL.

137 Despite having licences to produce, all four applicants with ATPs rely on the black market to purchase cannabis.

They are simply having an exceedingly difficult time using the method of licensed growing to obtain a continuous supply of their marijuana medicine.

138 The respondent's answer to this argument is that it is misleading to suggest the MMAR are responsible for restricting the applicants in exercising their choice to use marijuana when they have not availed themselves of the full process under the Regulations. In particular, they have not applied for DPLs, which would allow them to obtain the marijuana they are allowed to possess under the MMAR.

139 This response is not convincing for several reasons.

140 The respondent overlooks that there is actually no legal way for the applicants or anyone possessing a production licence to obtain marijuana, because there is no legal source of marijuana in Canada. Cannabis is a controlled substance under the Schedule II of the CDSA, as are cannabis seeds (see R. v. Hunter (2000), 145 C.C.C. (3d) 528 (B.C.C.A.), leave to appeal to S.C.C. refused, [2000] S.C.C.A. No. 451 [Hunter]), which individuals are prohibited from trafficking in and importing under ss. 5(1) and 6(1) of the CDSA. As a result, individuals who are authorized to possess or grow marijuana under the MMAR have no legal way of obtaining their cannabis, which is tantamount to prohibiting them from possessing it. Any potential suppliers are liable to conviction, or at least they would be if those laws were properly enforced.

141 It is obviously no answer to this argument for the respondent to state that it does not care how the applicants and others obtain their marijuana, marijuana plants, or marijuana seeds to grow marijuana. As I will discuss below in considering the principles of fundamental justice, the state obviously has an interest in upholding drug control laws. Even if the state could make this argument, though, there are still some serious problems with forcing individuals authorized to possess or grow marijuana to turn to black market drug dealers for their supply.

142 Laws which put seriously ill, vulnerable people in a position where they have to deal with the criminal underworld to obtain medicine they have been authorized to take, violate the constitutional right to security of the person. The MMAR expose the applicants, who all have serious medical conditions, to further risk to their personal safety. Not only do they face the risks associated with consorting with criminals, and the possibility of prosecution should they breach the terms of their ATP or production licence, but they have to deal with the uncertain quality of the product they are getting on the street.

143 The source issue with relation to marijuana for medical use is hardly new. In discussing viable medical exemption regimes, for instance, Justice Rosenberg noted the following at para. 204 of Parker, supra:

> There is, in my view, no question that a medical exemption with adequate guidelines is possible. The fact that such exemptions exist in some states in the United States is testament to that. However, there are many options to consider and this is a matter within the legislative sphere. There is also a particular problem in the case of marijuana because of a lack of a legal source for the drug. This raises issues that can only be adequately addressed by Parliament [emphasis added].

144 Despite this warning and another comment in passing at para. 97 and note 6, the government has declined to adequately address this issue. As noted above, s. 51 of the MMAR actually permits the Minister (or a designated person) to import and possess marijuana seed "for the purpose of selling, providing, transporting, sending or delivering" it to licensed dealers or the holders of a licence to produce. But the Minister is not required to act under this provision, and she has not done so.

145 As a result, the applicants' security of the person has been infringed. I have grave reservations about a regime which is supposed to grant legal access to marijuana while controlling its illicit use, but instead grants legal access by relying on drug dealers to supply and distribute the required medicine.

SECTION 7: THE PRINCIPLES OF FUNDAMENTAL JUSTICE

146 I now turn to whether the threshold s. 7 violations discussed above are consistent with the principles of fundamental justice. These principles provide the rules which any state infringement of an individual's "life, liberty and security of the person" must adhere to. Although different principles of fundamental justice will be relevant in analyzing different breaches of s. 7 (see R. v. White, [1999] 2 S.C.R. 417 at para. 38), Lamer J. stated in the Prostitution Reference, supra at para. 30, that "the principles of fundamental justice are to be found in the basic tenets of our legal system." The inquiry is thus narrower than the proportionality and justification analysis conducted under s. 1 of the Charter, where a broader set of values (those underlying a free and democratic society) must be considered. (See R. v. Mills, [1999] 3 S.C.R. 668 [Mills] at para. 66). Also, the onus is still on the applicants to make their case at this point, unlike at the s. 1 stage.

Past Inconsistency of Exemptions Under s. 56 With the Principles of Fundamental Justice

147 In considering s. 7 and the principles of fundamental justice, the Court of Appeal in the Parker case focused on both the outright prohibition on possession of marijuana contained in the CDSA and its predecessor, the Narcotics Control Act, R.S.C. 1985, c. N-1, repealed S.C. 1996, c. 19, and the s. 56 exemption process under the CDSA. The blanket prohibition was easily disposed of as overbroad when the state's interests in regulating marijuana use were considered. It banned a drug which had considerable therapeutic value and was far less harmful than many other medicines.

148 The s. 56 exemption, on the other hand, required more careful consideration before the Court of Appeal found it inconsistent with the principles of fundamental justice. In his analysis, Justice Rosenberg followed up on Justice LaForme's May 1999 decision in Wakeford v. The Queen (1999), 173 D.L.R. (4th) 726 (Ont. S.C.J.). In that case, the court agreed to re-open a September 1999 application in which it had originally found the applicant's s. 7 rights not to be infringed because he had not demonstrated that he could not obtain an exemption under s. 56. The court did so because new evidence showed that the s. 56 exemption in place at the time of the original application was illusory with respect to medical marijuana use. Such an exemption was not a real or intended objective of s. 56, nor was there a process in place under which Mr. Wakeford could apply to obtain immunity from prosecution. This illusory exemption was found to be inconsistent with the principles of fundamental justice. Health Canada's new "Interim Guidance Document" for granting s. 56 exemptions did not change Justice LaForme's decision to grant Mr. Wakeford a constitutional exemption pending consideration of his application, because it was uncertain the new process would work in an effective and timely fashion.

149 This "Interim Guidance Document" s. 56 regime was still in place when the Court of Appeal heard Parker, supra. This document governed applications for exemptions pending the development of a more comprehensive and considered framework, namely the MMAR. The interim process, however, was found by the court to be no more constitutionally satisfactory than what had existed before. As Justice Rosenberg stated at paras. 184 and 188, with respect to the security of the person interest and liberty interest:

> In view of the lack of an adequate legislated standard for medical necessity and the vesting of an unfettered discretion in the Minister, the deprivation of Parker's right to security of the person does not accord with the principles of fundamental justice.
>
> [...]
>
> The right to make decisions that are of fundamental personal importance includes the choice of medication to alleviate the effects of an illness with life-threatening consequences. It does not comport with the principles of fundamental justice to subject that decision to unfettered ministerial discretion. It might well be consistent with the principles of fundamental justice to require the patient to obtain the approval of a physician, the traditional way in which such decisions are made. It might also be consistent with the principles of fundamental justice to legislate certain safeguards to ensure that the marijuana does not enter the illicit market [emphasis added].

150 Justice Rosenberg also relied on Morgentaler, supra, to suggest that administrative delay might amount to a violation of the principles of fundamental justice. As he stated at para. 189, "an administrative structure made up of unnecessary rules that results in an additional risk to the health of the person is manifestly unfair and does not conform to the principles of fundamental justice." But the court did not hold that this principle was engaged based on the facts of the case, which were inconclusive on this issue.

Do the MMAR Accord With the Principles of Fundamental Justice?

151 The applicants argue that the MMAR offer a bad-faith, illusory exemption to criminal liability that is no better than the former s. 56 exempting regime. They submit that although the MMAR lay down criteria to structure the Minister's discretion in granting ATPs and licences to produce, and add greater transparency to the process, these improvements have only been achieved at the cost of efficiency, effectiveness and accessibility. The applicants argue that the MMAR throw up so many barriers to access that they offer only an illusory exemption to criminal liability based on arbitrary considerations. It is their position that the Regulations offer no remedy to those applicants whose rights have been violated. In short, they contend that the structure must be invalidated because it is "so manifestly unfair, having regard to the decisions it is called upon to make, as to violate the principles of fundamental justice." (See Morgentaler, supra at 72, per Dickson C.J.C.).

152 With respect, I do not find these aspects of the applicants' argument to have demonstrated a rights violation inconsistent with the principles of fundamental justice. The MMAR have responded to the constitutional infirmities of the s. 56 exempting regime identified in Parker by establishing both a means of determining medical necessity and criteria upon which the Minister will grant permission to possess and produce cannabis. The MMAR do so by defining a three-category framework for determining medical necessity, and requiring physician approval of all applications. While the three categories of conditions may need to be refined over time, as new evidence of the therapeutic effectiveness of cannabis emerges, I find the approach to be satisfactory for several reasons. Not only is marijuana a novel, relatively untested medicine, but the state's interest in restricting diversion to the illicit drug trade is legitimate. Moreover, the Court of Appeal suggested in Parker, supra at para. 188 that:

> It might well be consistent with the principles of fundamental justice to require the patient to obtain the approval of a physician, the traditional way in which such decisions are made. It might also be consistent with the principles of fundamental justice to legislate certain safeguards to ensure that the marijuana does not enter the illicit market.

153 The dosage and specialist requirements in the Regulations are also consistent with the principles of fundamental justice. While self-titration might be a viable means of administering marijuana, I agree with the government's submission that limiting diversion and upholding domestic and international drug control laws may require there to be some minimum degree of certainty about the quantities of marijuana that individuals are authorized to possess, produce and store. Should marijuana users require a higher daily dosage of marijuana than they have been authorized to use, they can always return and discuss this with their physician(s), as is the case for other prescribed medicines.

154 Likewise, it is not inconsistent with the principles of fundamental justice for Health Canada to require the intervention of highly educated specialist physicians in authorizing the use of novel, unapproved treatments, despite the delay this might add to the application process. The medical use of marijuana in this case is distinguishable from the medical procedure at issue in Morgentaler because of the unapproved and relatively untested nature of this drug. Furthermore, as noted above, the degree of medical support required to obtain an authorization (physician, specialist or two specialists) is proportional to the gravity of the applicant's condition.

155 After considering the evidence before me, I do not find the application process, specialist requirement and daily dosage provisions to be either arbitrary or unrelated to the objectives of the MMAR. Nor are these requirements creating an illusory remedy in the sense that ATPs, PPLs and DPLs are "practically unavailable" to medically qualified applicants. Despite the concerns of medical and physicians' associations, it is clear that individual physicians who feel comfortable authorizing therapeutic use of marijuana are doing so. That not all physicians will feel comfortable

with signing off on an unapproved medicine is obvious. But physician involvement, as the Court of Appeal noted above, is the traditional way such decisions are made, and it is also the way these decisions are made under the Special Access Program. This Health Canada program permits physicians to access unapproved drugs for patients with serious or life-threatening conditions when conventional remedies have failed, are unsuitable, or unavailable.

156 Health Canada's figures on the number of authorizations granted also demonstrate that many applicants, suffering from a variety of Category 1, 2, and 3 ailments, are in fact succeeding in obtaining ATPs. And once an applicant has obtained an ATP, there are few restrictions on applying for a PPL or DPL.

157 The principles of fundamental justice do not hold Parliament or the government to a standard of perfection. While the application process specified by the MMAR might be cumbersome, and the specialist requirements onerous for many seriously ill applicants, especially in light of the medical associations' stance, I do not find these aspects of the MMAR to be inconsistent with the principles of fundamental justice. As Chief Justice Dickson noted in the Prostitution Reference, supra at 1142:

> The issue is not whether the legislative scheme is frustrating or unwise but whether the scheme offends the basic tenets of our legal system. [...] The principles of fundamental justice are not designed to ensure that the optimal legislation is enacted.

The Source and Supply Problem

158 On the question of how ATP and production licence holders are supposed to obtain a licit source of cannabis under the MMAR, however, I find the applicants' s. 7 rights to be infringed in a manner inconsistent with the principles of fundamental justice. They have a constitutional right which they cannot benefit from because the Regulations do not provide for a legal source of dried marijuana, marijuana plants or marijuana seeds, and these forms of cannabis are all prohibited substances under the CDSA and NCR (See Hunter, supra). This is highly problematic, and inconsistent with the principles of fundamental justice for several reasons.

159 First, and most fundamentally, there is the problem of the "first seed." To put matters simply, the prohibition on cannabis and cannabis seeds means that individuals who obtain production licences have nowhere to turn to start growing their own marijuana. There is simply no way for individuals to obtain marijuana seeds in Canada under existing laws, given the Minister's inaction under s. 51 of the MMAR. As a result, the regulatory system set in place by the MMAR to allow people with a demonstrated medical need to obtain marijuana simply cannot work without relying on criminal conduct and lax law enforcement. While individuals with the ATPs or production licences may not be charged with trafficking, because they have regulatory permission to possess cannabis, the "absurdity" of their situation is clear:

> [I]n order to obtain the product, that individual is required to participate in an illegal act, since whoever sells the exempted person either the raw cannabis marihuana or the seeds to grow their own, does so in breach of s. 5(2) of the CDSA. (Krieger, supra at para. 29).

160 To my mind, this aspect of the scheme offends the basic tenets of our legal system. It is inconsistent with the principles of fundamental justice to deny a legal source of marijuana to people who have been granted ATPs and licences to produce. Quite simply, it does not lie in the government's mouth to ask people to consort with criminals to access their constitutional rights. As Justice Acton stated with respect to the old s. 56 exemption regime in Krieger, supra at para. 30:

> [T]hat substance must be something that is available to the individual by legal means at the time the exemption is granted. As a s. 56 exemption has no practical purpose without a legal source for cannabis marihuana, s. 56 cannot serve to delineate the boundaries of the Applicant's s. 7 rights or to justify violation of those boundaries.

161 In a sense, it is even incoherent for the government to allow medically qualified individuals to obtain ATPs without

obtaining either a PPL or DPL. Once again, granting an individual immunity from prosecution for possessing marijuana but not envisaging any legal means for that person to obtain his or her drug is highly problematic. Tacitly, the government is relying on a criminal, black market supply of marijuana to fill the individual's medical needs. Indeed, as several of the applicants attest in their affidavits, practically speaking they have no choice but to turn to the black market to obtain their medicine. That the government relies on the criminal underworld in this manner is rather surprising when it has declared that the goals of the MMAR and its interlocking regulatory regime include controlling the illicit drug trade and upholding Canada's international narcotics control obligations.

162 In the recent case of R. c. St.-Maurice et Néron, (19 December 2002), [2002] Q.J. No. 5670, Montreal 500-01-001826-004 (C.Q.), Justice Cadieux of the Court of Québec similarly noted the following:

> Comme le juge Acton dans l'affaire Krieger, on peut s'interroger quant au caractère raisonnable d'un système d'exemptions permettant de posséder et cultiver de la marihuana alors qu'il n'existe pas de source légale au Canada, de laquelle le titulaire de l'exemption peut obtenir la marihuana séchée pour la consommer ou des graines de semences viables pour la cultiver.
>
> Like Justice Acton in the Krieger case, we may ask ourselves about the reasonableness of an exemption system which permits the possession and cultivation of marijuana when there is no legal source in Canada by means of which the holder of an exemption may obtain dried marijuana to consume or viable seeds to grow [translated by author].

163 As a result, production licences offer the applicants an illusory remedy which can only be accessed through reliance on black market distributors. Despite ostensibly being concerned with avoiding diversion and illegal use of marijuana, to say nothing of conforming with international drug conventions, the MMAR force medical marijuana users into the arms of suppliers whom the state has deemed criminal drug dealers. This position is untenable, and is certainly not consistent with the principles of fundamental justice.

164 Several of the applicants further argue that they are having great difficulty growing their own marijuana despite having a PPL. They note that it takes a great deal of effort and expertise to successfully grow marijuana. As counsel put it, "it's not like growing tomatoes." For instance, indoor cultivation requires careful control of light, temperature, humidity, soil conditions, and a sanitary growing space, while outdoor growing is difficult and unreliable due to weather conditions and pollen contamination. Preparing the plant for consumption also requires skill to flush out chemicals. Some of the applicants have thus tried but not succeeded in growing cannabis because they lack the requisite skill or knowledge, or have simply been unlucky.

165 Other applicants are unable to grow because of the effort involved and the state of their health. Ms. Stultz-Giffin, for instance, has multiple sclerosis. She is too ill and too weak to cultivate her own cannabis with a PPL. Anticipating the respondent's argument, she also claims that a DPL is not a viable option for her. Not only is her husband ineligible for a DPL, because he was convicted of growing marijuana for her in 1999, but she lives on an isolated farm. There is simply no one nearby upon whom she could rely to cultivate marijuana for her and provide her with a continuous supply.

166 This case is thus distinguishable from Wakeford, supra, because some of the applicants have testified that they cannot successfully grow marijuana and have had to purchase their cannabis medicine on the black market. In doing so, they expose themselves to marijuana which may be contaminated with adulterants and mould.

167 The respondent's assertion with respect to DPLs also assumes that people will indeed be willing to come forward to grow for ATP holders. In light of the record-keeping obligations and inspection provisions which apply to marijuana producers under MMAR, I do not find it obvious that volunteers will be lining up to assist medially needy ATP holders. Mr. Hitzig's testimony in relation to the home invasions and assaults he has suffered while growing marijuana also speaks to the fears most law-abiding individuals would have in involving themselves with marijuana production (legal or not). That some seriously ill individuals with PPLs might also not want to face further health risks of this sort goes without saying.

168 To sum up, regulations which allow for the possession of marijuana without providing for any legal means to obtain this drug, to say nothing of maintaining access to a reliable supply of it on an ongoing basis, violate the applicants' s. 7 rights in a manner inconsistent with the principles of fundamental justice. While it is not surprising that the MMAR focus on the possession aspect of medical marijuana use at issue in Parker, the applicants' right to use marijuana therapeutically must be understood purposively. Marijuana possession and production rights offer little relief to seriously ill individuals when there is no legal and safe way to take advantage of them.

SECTION 1 ANALYSIS

169 Section 1 of the Charter states:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

170 This section permits legislative provisions which would otherwise breach Charter rights to be found constitutional. As when considering the principles of fundamental justice, the inquiry at this stage involves some consideration of whether the "law strikes the right balance between the accused's interests and the interests of society." (Cunningham v. Canada, [1993] 2 S.C.R. 143 at 152). But the justification analysis under s. 1, as noted above, goes beyond the internal limitations proscribed by the principles of fundamental justice and incorporates broader values, namely those of a free and democratic society. (See Mills, supra). Section 1 analysis thus involves two parts.

171 First, the party seeking to uphold the provision must demonstrate that its objective is "of sufficient importance to warrant overriding a constitutionally protected right or freedom." (Big M, supra at 352).

172 Second, the legislative means chosen in overriding that right or freedom must be proportional to the ends sought: they must be reasonable and demonstrably justified in a free and democratic society. In R. v. Oakes, [1986] 1 S.C.R. 103, the Supreme Court of Canada laid down three considerations which the court later described in Morgentaler, supra at 73, as "typically useful" in making this proportionality inquiry. First, the means chosen must be rationally connected to pressing and substantial legislative purpose. Secondly, the legislative means should impair the relevant right or freedom as minimally as possible. Thirdly, there must be a proportionality between the effects of the measure and its objective, such that the individual costs of the rights deprivation do not outweigh the collective benefit of the measure. The deleterious and salutary effects of the measures must be proportional. See R. v. Edwards Books and Art, [1986] 2 S.C.R. 713 at 768 and Dagenais v. CBC, [1994] 3 S.C.R. 835 at 889.

173 In the case at bar, the parties mainly dealt with balancing societal and individual interests in their submissions relating to the principles of fundamental justice. Having found the MMAR to violate the applicants' s. 7 rights, I will only briefly deal with the respondent's s. 1 arguments.

174 I do not find the MMAR to be saved under s. 1, regardless of the broader considerations to be examined at this stage of the analysis. While I agree with the respondent that the Regulations target pressing and substantial objectives - namely securing access to marijuana for seriously ill individuals while ensuring the public health and safety of Canadians, upholding existing drug control measures, and guarding against misuse, abuse, and diversion - the means chosen by the government to achieve these goals are not proportional. This is the case even if the MMAR are considered a temporary framework pending further research and the commercialization of marijuana as a medicine under the FDA and FDR - a process the respondent notes can take up to 15 years.

175 In particular, the lack of a licit source and supply of marijuana in the MMAR makes little sense when it comes to ensuring access, public health and narcotics control. Access is compromised because there is simply no legal way for individuals with production licences to obtain the marijuana seeds required to grow marijuana. Even if it were

somehow acceptable for individuals to rely on black market supplies to exercise their constitutional rights, the unreliability of this supply cannot be ignored.

176 Regarding public health, I find it hard to see this goal being served when seriously ill individuals are forced to rely on black market drug dealers to supply themselves with dried marijuana and seeds. As several of the affidavits sworn in connection with this application explain, one never knows exactly what one is getting when marijuana is bought on the black market. Mould, chemicals and other adulterants are often present. Consorting with criminal drug dealers also strikes me as a relatively risky means of obtaining medicine. And being forced to grow marijuana with a production licence may expose the applicants to home invasion and assault, crimes Mr. Hitzig swears to have suffered in his affidavit.

177 Forcing medically needy individuals to rely on black market marijuana is also obviously inconsistent with the narcotics control objectives of the MMAR. Many applicants end up in this position because they are unable to produce sufficient marijuana on their own, or have not applied for a production licence (PPL or DPL). More fundamentally, even holders of production licences must turn to an illegal supplier to obtain seeds to grow their marijuana medicine. In short, because they do not provide for a legal source or supply of cannabis, the MMAR actually foster the criminal conduct they are supposed to be working against, in conjunction with the CDSA and NCR.

178 For these reasons, I find that the provisions of the MMAR do not achieve their stated goal. The means chosen by Health Canada cannot be considered rationally connected to the objectives of the MMAR and related drug control and drug approval laws. Nor does the lack of provision for a legal source or supply minimally impair the applicants' rights.

REMEDY

179 Having found the MMAR to be unconstitutional in not allowing seriously ill Canadians to use marijuana because there is no legal source or supply of the drug, the question of what remedy to award the applicants now arises. The applicants seek a mandatory order under s. 24(1) of the Charter compelling the government to distribute the medical marijuana which has been grown and harvested by PPS to the applicants and other medically needy individuals. The applicants submit that this supply is presently available for distribution and is far safer in quality than marijuana acquired on the black market.

180 The respondent submits that a mandatory order is not appropriate and just for several reasons. Most of these relate to the fundamental constitutional principle of the separation of powers. As the Supreme Court noted in Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624 at para. 96:

> A declaration, as opposed to some kind of injunctive relief, is the appropriate remedy in this case because there are myriad options available to the government that may rectify the unconstitutionality of the current system. It is not this Court's role to dictate how this is to be accomplished.

181 In light of the complex balancing of policy considerations underlying the MMAR, the government submits that the injunctive relief requested by the applicants amounts to a "dramatic intrusion into the social policy and legislative sphere of government that is unwarranted."

182 In counsel's oral submissions, a further, very practical, point of contention emerged regarding the applicant's proposed remedy. The applicants and the respondent are at odds over the quantity of available marijuana in the hands of the government or PPS. Mr. Young submitted that the stockpile amounts to 400 kg and would supply 115 people with medicine for one and a half years. Mr. Frankel, on the other hand, estimated that there is presently only 200 kg available and that this amount would be used up in a week's time.

183 This dispute over the certainty of the supply currently in the government's hands reinforces my belief that injunctive relief is not the appropriate remedy in this situation. The problem the applicants face is with the MMAR themselves, not with government action under the Regulations per se. The MMAR are underinclusive in not ensuring

that seriously ill Canadians who have a right to use marijuana have some way of legally obtaining that drug. The appropriate remedy is thus one granted under s. 52(1) of the Constitution Act, 1982, which states:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

184 When faced with legislation that is partially unconstitutional due to its underinclusiveness, lower courts are bound by the Supreme Court of Canada's decision in Schachter v. Canada, [1992] 2 S.C.R. 679 [Schachter], to consider whether reading in is an appropriate remedy to repair "the extent of the inconsistency." As Chief Justice Lamer noted in that case at 718, however, "[s]everance or reading in will be warranted only in the clearest of cases."

185 After considering the test set out in Schachter, supra at 718, I find reading in a legal form of access to marijuana to be an inappropriate remedy in this case. In light of the careful balancing of policy considerations which have gone into formulating the MMAR and interlocking drug laws, and the numerous options which remain open to the government to remedy the lack of a legal source and supply of marijuana, reading in would constitute an unacceptable intrusion into the legislative domain.

186 The respondent may, for instance, wish to continue to utilize PPS or some other entity to grow medical marijuana and provide a legal source of seeds. As far as the distribution of marijuana to qualified users is concerned, the government might consider creating properly regulated distribution centres or licensing compassion clubs, as proposed in the recent Report of the Senate Special Committee on Illegal Drugs: Cannabis. As the applicants suggest, the Special Access Program may also offer a mechanism for distributing a safe and reliable supply of medical marijuana.

187 But ultimately it is up to the government - and not the courts - to decide how to create an appropriate legal source and supply of marijuana. The Court of Appeal suggested this at para. 204 of Parker, supra where it noted that the source problem "raises issues that can only be adequately addressed by Parliament."

188 In order to permit the respondent the "flexibility necessary to fashion a response which is suited to the circumstances," then, the appropriate relief in this application is declaratory in nature: Mahé v. Alberta (1990), 68 D.L.R. (4th) 69 at 106 (S.C.C.).

189 In Schachter, supra at 719, the Supreme Court of Canada held that suspending a declaration of invalidity would be appropriate when:

> the legislation was deemed unconstitutional because of underinclusiveness rather than overbreadth, and therefore striking down the legislation would result in the deprivation of benefits from deserving persons without thereby benefitting the individual whose rights have been violated.

190 This appears to be the case with declaring the MMAR unconstitutional. The government must be granted time to fix the MMAR or otherwise provide for a legal source and supply of the drug the MMAR authorize seriously ill individuals to possess and produce, consistent with their s. 7 rights.

191 Accordingly, there will be an order declaring the MMAR invalid and this order will be suspended for 6 months.

LEDERMAN J.

2003 CarswellOnt 5536
Ontario Superior Court of Justice

Parker v. Canada

2003 CarswellOnt 5536

Terrance Parker & John Turmel & Marc Paquette, Applicants and Her Majesty the Queen in Right of Canada, Respondent

Charbonneau J.

Heard: February 7, 2003
Judgment: February 7, 2003
Docket: L'Orignal 573-2002

Counsel: Applicants, for themselves
Mr. A. Préfontaine, for Respondent

Subject: Criminal; Constitutional
Related Abridgment Classifications
Criminal law
XX Illegal drugs
XX.1 Scope of statutory regulation
XX.1.a Constitutionality of legislation
Criminal law
XXXIII Appeals
XXXIII.6 Miscellaneous
Headnote
Narcotic and drug control --- Scope of statutory regulation — Constitutionality of legislation — General
Matter was transferred from judge in present instance to different judge — It was declared that regulations enacted by Federal Government to correct constitutional invalidity of prohibition against use of marijuana, found in Controlled Drugs and Substances Act, which had been declared unconstitutional in another decision, was itself invalid and unconstitutional — Declaration of invalidity was stayed for period of six months — Applicants attempted to bring matter back before judge in present instance on ground that this judge was originally seized of matter, and that other judge failed to deal with their application — Applicants contended that they were not challenging marijuana medical access regulations, but that they were addressing constitutionality of Act — Applicants brought motion for declaration that prohibition on possession of marijuana in Act was genocidal violation of their right to life under s. 7 of Canadian Charter of Rights and Freedoms — Motion dismissed — Applicants had to look to Court of Appeal for relief — Other judge dealt with unique argument that Act constituted genocide and infringed s. 7 of Charter — Such contentions were clearly dismissed — If applicants wanted to contest that decision, they had to appeal to Court of Appeal — Motion could not be decided in present instance, since it would constitute appeal from other judge's decision.
Criminal law --- Post-trial procedure — Appeal from order
Matter was transferred from judge in present instance to different judge — It was declared that regulations enacted by Federal Government to correct constitutional invalidity of prohibition against use of marijuana, found in Controlled Drugs and Substances Act, which had been declared unconstitutional in another decision, was itself invalid and unconstitutional — Declaration of invalidity was stayed for period of six months — Applicants attempted to bring matter back before judge in present instance on ground that this judge was originally seized of matter, and that other judge failed to deal with their application — Applicants contended that they were not challenging marijuana medical access regulations, but that they were addressing constitutionality of Act — Applicants brought motion for declaration that prohibition on possession of marijuana in

Act was genocidal violation of their right to life under s. 7 of Canadian Charter of Rights and Freedoms — Motion dismissed — Applicants had to look to Court of Appeal for relief — Other judge dealt with unique argument that Act constituted genocide and infringed s. 7 of Charter — Such contentions were clearly dismissed — If applicants wanted to contest that decision, they had to appeal to Court of Appeal — Motion could not be decided in present instance, since it would constitute appeal from other judge's decision.

Table of Authorities

Cases considered by *Charbonneau J.*:

R. v. Parker (2000), 2000 CarswellOnt 2627, 188 D.L.R. (4th) 385, 146 C.C.C. (3d) 193, 49 O.R. (3d) 481, 75 C.R.R. (2d) 233, 37 C.R. (5th) 97, 135 O.A.C. 1 (Ont. C.A.) — considered

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

s. 7 — referred to

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Generally — referred to

s. 55(1) — referred to

Regulations considered:

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Marihuana Medical Access Regulations, SOR/2001-227

Generally

MOTION for declaration that prohibition on possession of marijuana in *Controlled Drugs and Substances Act* was violation of applicant's rights under s. 7 of *Canadian Charter of Rights and Freedoms*.

***Charbonneau J.*, (orally):**

1 I will not need to hear from the respondents. I've decided to dismiss the application for the following reasons. The applicants bring a motion for an order declaring that the prohibition on the possession of marijuana in the Controlled Drug and Substances Act, I'll refer to it as the C.D.S.A., is a genocidal violation of the applicants section 7 right to life in accordance with the decision of the Ontario Court of Appeal in *R. v. Parker* [2000 CarswellOnt 2627 (Ont. C.A.)] and has been of no force and effect and unknown at law since August 1st, 2001.

2 Now, this application was originally before me in August 2002 and at that time, for reasons given on August 29th, 2002 I transferred the matter to be heard in Toronto with other applications dealing with similar issues. I made that decision at that time in order to avoid multiplicity of proceedings and possible conflicting decisions. The matter was heard in Toronto, by Mr. Justice Lederman, over a period of some four days in the fall and Mr. Justice Lederman, in lengthy and comprehensive reasons, declared that the regulations enacted by the Federal Government to correct the constitutional invalidity of the prohibition against the use of marijuana, found in the C.D.S.A., which had been declared by the Court of Appeal in *Parker* as being unconstitutional, was itself invalid and unconstitutional. He, however, stayed that declaration of invalidity for a period of six months.

3 Now, the applicants attempt to bring the matter back before me on the grounds that I was originally seized of their application and Mr. Justice Lederman failed to deal with their application. Therefore, the logic goes, I should decide the application which was not really decided. The applicants maintain the applicant Paquette is now left without a remedy, since his exemption will - his present medical exemption, will lapse before the six months period.

4 The applicants also maintain that I should find that the prohibition under the C.D.S.A., even for healthy individuals, would really amount to a genocide by preventing people from using a substance which is of benefit to them. Now, the applicants argue that they were not challenging the marijuana medical access regulations, the M.M.A.R., that the applicants state that they

were addressing really the constitutional validity of the Controlled Drugs and Substances Act. And this, they argue, Mr. Justice Lederman did not address, although it was squarely put before him by them.

5 They insisted, by hearing the matter and deciding the matter in their favour this morning, I would not be doing anything in contradiction of Mr. Justice Lederman's order, or in conflict, I should say, with his order. They argue that, what we have here, is that Mr. Justice Lederman stopped short of what was being asked of him and encourage this Court, to use Mr. Turmel's word, "Go all the way".

6 Finally, Mr. Turmel argues that for purely practical reasons the Court should hear this matter, or grant leave to proceed on very short notice and hear the matter right away as a new application. Since issue estoppel does not apply, why waste everybody's time by unnecessary delays, since both parties are present before the Court and ready, really to fully argue.

7 I disagree with Mr. Turmel, on the question of whether Mr. Justice Lederman dealt with his unique argument that the prohibition in the Controlled Drugs and Substances Act constitutes a genocide and infringes the Charter, section 7 of the Charter. Mr. Justice Lederman clearly dismissed those contentions in paragraphs 79, 80 and 81 of his reasons.

8 It's true that he dismissed them for a number of reasons, but he certainly dismissed them. And some of it were as a result of his findings, was clearly as result of findings on the merits. And therefore, if Mr. Turmel wishes to contest that decision, he must appeal to the Court of Appeal. I am not in the position, in this application or any new application to decide the matter, since any which way you look at the matter, it would constitute an appeal from Mr. Justice Lederman's decision.

9 Now, even if the appellant is correct that Mr. Justice Lederman failed to properly address fully their claim for relief and all the grounds they advanced at the hearing - that is an attempt to impugn at least part of Mr. Justice Lederman's decision and again that may only be done by an appeal to the Court of Appeal. Now, the central issue in all of these cases, and in all of these applications, including the application of the applicants before me, were based on the *Parker* decision. That's clear from the claim for relief in the applicant's motion. The *Parker* decision dealt with the prohibition under the C.D.S.A.

10 In paragraph 2 of Mr. Justice Lederman's reasons, he clearly states that, "these applications concerning the constitutionality of the Marijuana Medical Access Regulations, made by the Governor and Council, on June the 4th 2001, pursuant to subsection 555.1 of the Controlled Drugs and Substances Act, more particularly, that the issue is, whether these regulations in conjunction with prohibition specified in the Controlled Drugs and Substances Act, violates some or all of the applicant's right to liberty and security of the person, as guaranteed by section 7 of the Canadian Charter of Rights and Freedom. These applications follow very much in the footsteps of the Ontario Court of Appeal's, 31st of July 2000 decision, in *R. v. Parker* ".

11 So, obviously that's what is before the court. Any which way we look at it, what we're dealing with is the constitutionality or validity of the prohibition. Now, the respondent argued before Mr. Justice Lederman, that the M.M.R.A. had satisfied the requirements of the 12 months stay imposed by the Court of Appeal. In other word, that they were satisfactory to remove this invalidity found by the Court of Appeal.

12 And, all of these applications, including the applicant's application, success depended on the M.M.R.A. being found unconstitutional and therefore that the *Parker* declaration was continuing and that the prohibition was in place. Now, Mr. Justice Lederman decided that the M.M.R.A. were invalid. But he gave a further six months of stay of this declaration of invalidity. It is that decision which the applicants are contesting. Without the stay, there would be no prohibition, to the extant at least of the *Parker* decision. The applicant must look to the Court of Appeal for relief.

13 For all of these reasons, the application is dismissed.

14 I have endorsed the record: for oral reasons given in court, the application is dismissed. Thank you.

Motion dismissed.

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2003 CarswellOnt 5537
Ontario Superior Court of Justice

Parker v. Canada

2003 CarswellOnt 5537

Terrance Parker & John Turmel & Marc Paquette, Applicants and Her Majesty the Queen in Right of Canada, Respondent

Charbonneau J.

Heard: February 14, 2003
Judgment: February 14, 2003
Docket: L'Orignal 133-2003

Proceedings: affirmed *Parker v. Canada* (2003), 2003 CarswellOnt 3796 (Ont. C.A.)

Counsel: Applicants, for themselves
Mr. A. Préfontaine, for Respondent

Subject: Criminal

Related Abridgment Classifications

Criminal law
XVIII Narcotic and drug control
XVIII.1 Scope of statutory regulation
XVIII.1.d Miscellaneous

Headnote

Narcotic and drug control --- Scope of statutory regulation — Miscellaneous issues

Applicants applied for order declaring that declaration of invalidity on possession of marijuana in Controlled Drugs and Substances Act is no longer known at law — Applicants were not challenging constitutionality of Marihuana Medical Access Regulations (MMAR), but claimed that since prohibition on possession of marijuana for medical use would lapse one year after it was declared by Court of Appeal, and since that year had passed, prohibition was no longer valid — Application dismissed — Matter had, in substance, already come before court — Previous submission that prohibition on possession of marijuana was genocidal violation of applicants' right to life under s. 7 of Canadian Charter of Rights and Freedoms had been dismissed — Issues would all come before Court of Appeal — It was not in interests of justice to add another decision on matter.

Table of Authorities

Cases considered by *Charbonneau J.*:

R. v. Clay (2000), 2000 CarswellOnt 2626, 188 D.L.R. (4th) 468, 146 C.C.C. (3d) 276, 49 O.R. (3d) 577, 75 C.R.R. (2d) 310, 37 C.R. (5th) 170, 135 O.A.C. 66 (Ont. C.A.) — considered

R. v. Parker (2000), 2000 CarswellOnt 2627, 188 D.L.R. (4th) 385, 146 C.C.C. (3d) 193, 49 O.R. (3d) 481, 75 C.R.R. (2d) 233, 37 C.R. (5th) 97, 135 O.A.C. 1 (Ont. C.A.) — considered

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

s. 7 — referred to

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Generally — referred to

APPLICATION for order declaring that declaration of invalidity on possession of marijuana in *Controlled Drugs and Substances Act* was no longer known at law.

***Charbonneau J.*, (orally):**

1 The applicants here are - the Notice of Application indicates that the applicants are making an application for an order declaring that the declaration of invalidity on the possession of marijuana in the Controlled Drugs and Substances Act, by the Ontario Court of Appeal in *R. v. Parker* took effect on April 1 st , 200...

MR. TURMEL: August it is.

THE COURT: August 1 st , 2001 is no longer known at law. That's what is being sought here.

2 Now the applicants take the position that what is before the court here is a - or the court is being asked to view or to examine a new question of law and to make a decision, which is entirely different from the decisions made by Mr. Justice Lederman last fall in applications brought by the same applicants and other applicants and which was heard in Toronto.

3 The argument goes that the applicants are not addressing the constitutionality of the M.M.A.R. They are addressing, to put it in their words, the fact that the prohibition is no longer known at law, whatever that means. I have - that expression is not an expression which is a legal expression or a judicial expression, except possibly and the only time I hear - I can think of such an expression being used is in the criminal law field where for an example a motion is brought to quash an indictment on the grounds that the offence that is being brought by the Crown is not an offence known to law. Be that as it may, the basis of the argument, if I understand the applicants well, is that the Court of Appeal in *R. v. Parker*[2000 CarswellOnt 2627 (Ont. C.A.)], established that the prohibition on the possession of marijuana would lapse one year after the court's decision and that the year has gone and it's no longer of any validity. Therefore, this court is asked to make a declaration to that effect. When pressed Mr. Turmel originally indicated that that would be based on the fact that - not the unconstitutionality of the M.M.A.R. but rather that the Government did not use the proper tool, in other words that the law itself was not amended as required. And he takes some - he relies for that on an Ontario Court decision in Windsor, where in a criminal proceeding, the judge there appears to have come to that conclusion.

4 Now the issue really in cases such as this is really: what is in substance the real question which is being asked of the court? Everything in this application starts with the case of *R. v. Parker* and the declaration of invalidity found therein for medical use of marijuana. It is very important to note that the Court of Appeal in a companion case in *R. v. Clay* [2000 CarswellOnt 2626 (Ont. C.A.)] dealt with the non-medical use of marijuana or possession of marijuana and things of that nature and decided that it was within the ambit of Parliament to prohibit such use. In *Parker* it found that there was a breach of the section 7 rights of the individual when medical use was not properly regulated and a specific and clear and complete prohibition was an infringement of the section 7 rights of the individual.

5 So, however the applicants frame their request, what they're relying on is the decision of the Court of Appeal in *Parker*.

6 Now the matter came before Justice Lederman and in a very exhaustive decision Justice Lederman dealt with whether or not the prohibition was in fact- had in fact lapsed according to *Parker*. That was before...

MR. TURMEL: No, Your Honour, he said he did not...

THE COURT: I'm speaking and I'm giving...

MR. TURMEL: Oh! Excuse-me.

THE COURT: ...my decision and that is it, Mr. ...

MR. TURMEL: Excuse-me.

THE COURT: The applicants seem to confuse here the wording of the reasons themselves but it is obvious that what he said. First of all, he dismissed very clearly Mr. Turmel's application for a number of reasons. His application that it is unconstitutional or that the use of marijuana even for healthy people is unconstitutional because it's a genocide, et cetera. That was dismissed for a number of reasons, including reference to the *Clay* decision.

7 He then necessarily had to deal with the M.M.A.R. because the M.M.A.R. was the answer to *Parker*. He found the M.M.A.R. not a satisfactory answer and he provided a six-month suspension of his order that they were not constitutional.

8 All of that is back to the prohibition in the C.D.S.A. and all of that is back to *Parker*. So all of this- all that is before the court is exactly in substance, maybe by a different name, maybe with a little twist, but in substance it's all the same thing. It's all the same legal issue. I would have thought that my decision last week would have made that clear but obviously it didn't.

9 There is on the issue of the so-called Windsor decision a matter, which is before the Superior Court on an appeal apparently coming up shortly there. But even if that wasn't the case, I am satisfied in reading the overall Lederman J's decision and the appeals that are being brought on this issue that all of these issues will be before the Court of Appeal. I am not therefore - (obviously there is also the issue that any declaration is a discretionary remedy), I am not satisfied that it's not a different question and I am not satisfied that it's in the interest of the Administration of Justice to add another decision on this subject matter. Obviously, the Court of Appeal will have to decide and the whole issue is before the Court of Appeal now.

10 Therefore, the application is dismissed.

11

. . . . .

THE COURT: Yes, sir?

MR. PREFONTAINE: Your Honour, it's with regret that I must rise to speak to costs because this is an occasion where I believe costs need to be spoken to. For the reasons outlined in the factum of the respondent, Your Honour, and in accordance with the tariff, because of the nature, the vexatious nature of this proceeding, the respondent asks that costs be awarded on a substantial indemnity basis; and that they be fixed in the amount of $2,000. Thank you, Your Honour.

THE COURT: Reply on the question of costs.

MR. TURMEL: Well, we can only say that the attempt was made on the basis of a belief that it was a different issue and that we weren't re-litigating the same thing again. So, it wasn't meant to be vexatious. And frankly when you consider Paquette and Parker are going to be without exemptions in only weeks, I mean- I don't know how I can stop trying to get them protection, the two most famous exemptees in the country are going to be unprotected. So, I just thought they were worth it.

THE COURT: In such applications, it is often the case, whatever the good intentions of the parties, that the costs will be ordered as a general rule against the losing party. In cases of this particular nature that general rule is somewhat relaxed because we are dealing with the Federal Crown and these matters are of substantial importance and so on. But surely, the applicants here are obviously intelligent individuals and they're quite aware that it was a risk that they were facing.

12 Therefore, there will be costs payable by the applicants to the respondent in the sum of a $1,000.00 payable within 30 days.

13 Thank you.

Application dismissed.

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2003 CarswellOnt 3795
Ontario Court of Appeal

Hitzig v. R.

2003 CarswellOnt 3795, [2003] O.J. No. 3873, 111 C.R.R. (2d) 201, 14 C.R. (6th) 1, 177 C.C.C. (3d) 449, 177 O.A.C. 321, 231 D.L.R. (4th) 104, 59 W.C.B. (2d) 542

WARREN HITZIG, ALISON MYRDEN, MARY-LYNNE CHAMNEY, CATHERINE DEVRIES, JARI DVORAK, STEPHEN VAN DE KEMP, DEBORAH ANNE STULTZ-GIFFIN AND MARCO RENDA (Respondents / Appellants in Cross-Appeal) and HER MAJESTY THE QUEEN (Appellant / Respondent in Cross-Appeal)

TERRANCE PARKER (Appellant / Respondent in Cross-Appeal) and
HER MAJESTY THE QUEEN (Respondent / Appellant in Cross-Appeal)

JOHN C. TURMEL AND MARC J.J. PAQUETTE (Appellants / Respondents in Cross-Appeal) and HER MAJESTY THE QUEEN (Respondent / Appellant in Cross-Appeal)

Doherty, Goudge, Simmons JJ.A.

Heard: July 29-31, 2003
Judgment: October 7, 2003
Docket: CA C39532, C39738, C39740

Proceedings: reversing in part (2003), 10 C.R. (6th) 122 (Ont. S.C.J.)

Counsel: Alan Young, Paul Burstein, Leora R. Shemesh for Respondents / Appellants in Cross-Appeal, Warren Hitzig, Alison Myrden, Mary-Lynne Chamney, Catherine Devries, Jari Dvorak, Stephen Van De Kemp, Deborah Anne Stultz-Giffin, Marco Renda
Croft Michaelson, Christopher Leafloor, Vanita Goela for Her Majesty the Queen
Terrance Parker for himself
John C. Turmel for himself
Marc J.J. Paquette (written) for himself

***Per curiam*:**

I. Overview

1 In *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.), this court held that the criminal prohibition against the possession of marihuana in s. 4 of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 ("*CDSA*") was of no force or effect, absent a constitutionally acceptable medical exemption from that prohibition. The court suspended its declaration for a year to allow the Government of Canada (the "Government") to address the constitutional deficiency. The Government responded with the *Marihuana Medical Access Regulations*, S.O.R./2001-227 (June 14, 2001) ("*MMAR*"). Those regulations permitted the possession, and in some cases, the production of marihuana [2] by individuals (or in limited circumstances, production, by their designates) who met the medical criteria established in the *MMAR*. On these appeals, the court must decide whether Lederman J. erred in holding that the scheme set out in the *MMAR* was not a constitutionally acceptable medical exemption to the criminal prohibition against possession of marihuana.

2 This case is not about the social or recreational use of marihuana, but is about those with the medical need to use marihuana to treat symptoms of serious medical conditions. We have concluded that for those people the *MMAR* as drafted by the Government do not create a constitutionally acceptable medical exemption. Our reasons for so concluding differ somewhat from those of Lederman J. So does the remedy we would impose, namely to declare invalid only five specific sections of the *MMAR*. This renders constitutional the medical exemption as described in the remaining provisions of the *MMAR*, thereby rendering the possession prohibition in s. 4 of the *CDSA* constitutional: *R. v. Parker*, *supra*. The interests of justice are best served by removing any uncertainty as to the constitutionality of the possession prohibition while at the same time providing for a constitutionally acceptable medical exemption.

II. History of the Proceedings

3 The appeals come from three civil applications heard together by Lederman J. One application was brought on behalf of Mr. Hitzig and seven others (the "Hitzig application"). These applicants sought a declaration that the *MMAR* were unconstitutional and a further declaration that the prohibition against possession of marihuana in s. 4 of the *CDSA* was of "no force and effect" in accordance with the decision of this court in *R. v. Parker*, *supra*. The second application was brought by Mr. Parker in person. He also sought an order declaring the prohibition against possession of marihuana in the *CDSA* unconstitutional, and further asked the court to continue his personal exemption from that prohibition and the prohibition against cultivation of marihuana. The third application was brought by Mr. Turmel and Mr. Paquette in person. This application was broader than the Hitzig application. In addition to challenging the *MMAR*, these applicants argued that the prohibition against the possession of marihuana amounted to a "genocidal violation" of the right to life in s. 7 of the *Canadian Charter of Rights and Freedoms* of all persons, in that marihuana consumption could prevent healthy people from becoming ill. Messrs. Turmel and Paquette sought a declaration that the possession prohibition was of no force and effect, and requested "personal judicial exemptions" from that prohibition. [3]

4 In considering the merits of the s. 7 *Charter* claims advanced on the applications, Lederman J. rejected Mr. Turmel's contention that the criminalization of the possession of marihuana violated the right to life of all persons. He next analyzed the provisions of the *MMAR* and concluded that the applicants, save Mr. Turmel, had established a threshold violation of their right to liberty and their right to security of the person. Lederman J. completed his s. 7 analysis by considering whether those threshold violations were in accord with the principles of fundamental justice. He focused on two issues, the eligibility conditions set by the *MMAR* and the source of supply for those who did qualify for a medical exemption. He concluded that the process put in place by the regulations to determine eligibility for a licence to possess or grow marihuana "might be cumbersome" and some of the criteria "onerous", but that it was not inconsistent with the principles of fundamental justice. He went on, however, to hold that the absence of a legal supply of marihuana for those persons who were entitled to possess under the *MMAR* offended basic tenets of the legal system and was inconsistent with the principles of fundamental justice. He further held that the infringement was not saved by s. 1. His judgment reads:

> [1] This court orders and declares that the provision of the *Marijuana Medical Access Regulations*, S.O.R./2001-227 made by the Governor-in-Council on 14 June, 2001, pursuant to subsection 55(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the *MMAR*) are constitutionally invalid and are of no force and effect;
>
> [2] This court orders the suspension of the foregoing declaration for a period of six months.

5 The Government appeals, alleging error in the holding that the Government's failure to provide a legal source of medical marihuana for those entitled to possess it constituted a violation of s. 7 of the *Charter*. The Hitzig applicants support this aspect of the judgment below. They cross-appeal, however, alleging that Lederman J. erred in holding that the eligibility criteria in the *MMAR* did not contravene s. 7 of the *Charter*. The Government resists the cross-appeal, relying on the reasons below. In the course of these proceedings, the issue raised on the Government's appeal was referred to as the "supply" issue and the issue raised on the cross-appeal was described as the "eligibility" issue.

6 Messrs. Parker, Turmel and Paquette appeal, alleging that Lederman J. failed to address their claim that the criminal prohibition of the possession of marihuana amounted to a "genocidal violation" of the right to life found in s. 7. They also argue,

having found that the *MMAR* were constitutionally inadequate, that Lederman J. should have declared s. 4 of the *CDSA* to be of no force and effect in accordance with this court's decision in *R. v. Parker*, *supra*. The Government resists these appeals and also purports to cross-appeal, advancing the same argument it raises on its appeal in the Hitzig application.

7 The appeals and cross-appeals described above were heard in a single proceeding along with four other related appeals.[4] These reasons address only the appeals described above. The other appeals are dealt with in separate reasons. We will consider the appeal and cross-appeal arising out of the Hitzig application first, followed by a consideration of any unresolved issues arising out of the appeals brought by Messrs. Parker, Turmel and Paquette.

III. The Hitzig Appeals

(i) The Medical Marihuana Problem

8 There is a strong body of opinion supporting the claim that marihuana offers some individuals invaluable relief from a variety of debilitating symptoms associated with serious long-term illnesses such as AIDS, cancer and epilepsy. This support is based largely on personal experience and anecdotal evidence of individuals and their doctors. In 1999 the Government began to develop a policy with respect to the use of marihuana for medical purposes. That policy is a work in progress. Some of those who are seriously ill and gain significant relief from some of their symptoms by using marihuana see the government policy as a mean-spirited and grudging attempt to do only what the law absolutely demands. This viewpoint is understandable but ignores the complexity of the problem faced by the Government.

9 On the one hand, the courts, relying on evidence of individuals' personal experiences and anecdotal evidence have determined that some seriously ill persons derive substantial medical benefit from the use of marihuana. The pronouncements in these cases reflect the normal process of judicial fact-finding made in the context of an adjudicative process based on the evidence and arguments led by the parties in a given case. These factual findings have in turn provided the basis for the legal conclusion that s. 7 of the *Charter* requires that a medical exemption be carved out of any criminal prohibition against the possession of marihuana.

10 On the other hand, scientists, who approach questions of medical benefit and risk quite differently than do the courts, remain uncertain as to the benefits derived from the use of marihuana and concerned about the potential risks inherent in that use. The scientists regard the anecdotal evidence relied on by the courts as sufficient reason to conduct proper scientific inquiries into the medicinal use of marihuana, but not as justifying any conclusions as to the benefit of the drug. The scientists contend that the medicinal value of marihuana, if any, as a treatment for various symptoms can only be determined through properly conducted, rigorously reviewed long-term clinical studies. The same scientists have expressed strong concerns about the health risks attendant upon the long-term use of marihuana, particularly when it is smoked. There is some research indicating that the long-term smoking of marihuana carries with it many of the risks associated with cigarette smoking.

11 In developing a medical marihuana policy, the Government must respect individual constitutional rights as defined by the courts but, at the same time, be guided by the opinions of its medical experts concerning the health and safety of its citizens. As a legal policy, the medical marihuana policy must meet the requirements of s. 7 of the *Charter*. As a medical policy, it must reflect current scientific understanding of the medicinal benefits and risks flowing from the use of marihuana, particularly when it is smoked.

(ii) Overview of the Arguments

12 The Hitzig applicants accept, for the purposes of these proceedings, that the Government can constitutionally criminalize the possession of marihuana.[5] They also accept that the Government may regulate access to marihuana for medical purposes without violating s. 7 of the *Charter*. For its part, the Government accepts, in accordance with *R. v. Parker*, *supra*, that a criminal prohibition against the possession of marihuana will be constitutional only if it is accompanied by a medical exemption from that prohibition which is consistent with s. 7 of the *Charter*.

13 Mr. Michaelson, counsel for the Government's appeal, acknowledges that under the *MMAR* many individuals who are entitled to possess and/or grow marihuana for medical purposes will have to go to the black market, at least initially, to obtain the necessary supply of marihuana or marihuana seeds. He submits that the absence of a legal supply of marihuana has nothing to do with state action, but reflects the fact that marihuana is not an approved drug under the regulatory scheme that applies to all therapeutic drugs in Canada. He emphasizes that the regulatory scheme contemplates a private sector manufacturer and distributor who are prepared to make the case for the approval and distribution of a particular drug. Marihuana is not approved because no one has stepped forward to take it through the regulatory process. Mr. Michaelson contends that Lederman J. misinterpreted s. 7 of the *Charter* as imposing a positive obligation on the Government to ensure the security of those individuals in need of medical marihuana by providing them with a safe and legal supply of the drug for them. He argues that s. 7 does not require positive action by the state, but instead interdicts governmental interference with individual liberty or security of the person where that interference does not accord with the principles of fundamental justice.

14 Counsel next argues that even if individual liberty or security interests are infringed by the absence of a legal supply of marihuana, that violation is consistent with the principles of fundamental justice. In support of this contention, counsel argues that individuals who will obtain a licence to possess under the regulations will also obtain a licence to cultivate either personally or through a designate, or will access marihuana through the same "unlicensed suppliers" they used before the *MMAR* came into effect. Counsel argues that those who obtain licences to possess marihuana are long-term "self medicators" who will face no significant impediment to filling their medical needs albeit in many cases, through the black market. Lastly, counsel seeks refuge in s. 1 of the *Charter*, submitting that if the *MMAR* violate s. 7, that violation can be justified under s. 1.

15 The Hitzig applicants respond that the *MMAR*, combined with the criminal prohibitions against possession, distribution and cultivation in the *CDSA*, impact on both their liberty interest and their right to security of the person. They argue that the Government's scheme significantly limits their ability to make fundamental personal medical choices involving the treatment of very serious illnesses. The Hitzig applicants argue that the absence of a legal source of supply from which their legitimate medical needs can be filled is a direct result of state action that permits the lawful possession of marihuana for medical purposes, but does not provide for a legal supply to meet that recognized need. They contend that the absence of a legal source of supply is a direct result of both the *MMAR* and the criminalization of the conduct of anyone who would supply medical marihuana to individuals entitled to possess it for medical purposes. Lastly, the Hitzig applicants contend that a scheme, which drives seriously ill people who have a demonstrated medical need for marihuana to the black market to meet that need, is obviously and profoundly contrary to the principles of fundamental justice and cannot be saved by s. 1.

16 On the cross-appeal, the Hitzig applicants contend that the *MMAR* provisions governing eligibility for the medical exemption violate s. 7 in that they interfere with individual liberty and security of the person in a manner which is inconsistent with the principles of fundamental justice. Initially, the Hitzig applicants attacked several aspects of the regulatory scheme. However, in argument, counsel focused on the requirement that one, and sometimes two, medical specialists must complete detailed declarations establishing the medical prerequisites to the granting of a licence to possess or produce the drug. The Hitzig applicants submit that the limited availability of specialists, their relative ignorance of the medicinal qualities of marihuana, and the reluctance of many specialists to become involved in the *MMAR* process effectively renders the possession exemption in the *MMAR* illusory for many individuals who have a medical need to use marihuana. The Hitzig applicants also contend that the specialist requirements are arbitrary in that they do not meaningfully advance any legitimate interest the Government has in controlling the use of marihuana for medical purposes.

17 The Government responds that the eligibility requirements, and in particular the specialist requirements, strike a proper balance between individual rights and the Government's responsibility to protect public health and safety. The Government contends that the medicinal value of marihuana is largely unproved and that there are genuine risks associated with its use. Relying on comments by this court in *R. v. Parker*, *supra*, the Government says that medical approval, as a prerequisite to a licence to possess marihuana, is an obvious and justified requirement. The Government goes on to submit that the benefits/risk analysis will vary depending on the patient's condition and the symptom to which the marihuana use is directed. In some cases the risk will be lower and in others the potential benefit will be more problematic. The Government contends that a scheme requiring different levels of medical scrutiny is responsive to the different combinations of benefits and risk that may

exist and reflects the reality of the current state of knowledge concerning the medical use of marihuana. The Government also submits that the record does not support the Hitzig applicants' contention that the specialist requirements have rendered the possession exemption illusory. The Government points out that Lederman J. rejected this argument and contends that his rejection constitutes a finding of fact which must be given deference. Lastly, the Government stresses that it is not for this court to determine whether the eligibility requirements in the *MMAR* are ideal or even necessary. The court's function is to determine only whether the scheme clears the constitutional hurdle of s. 7.

(iii) The Applicants

18 All of the Hitzig applicants, with the exception of Mr. Hitzig, are seriously ill individuals who have used marihuana for many years to successfully treat one or more of the symptoms associated with their illnesses. These symptoms include pain, nausea, lack of appetite, seizures and spasticity. Four of the applicants have received licences to possess marihuana under the *MMAR*. One of those four, Mr. Dvorak, has also received a licence to personally produce marihuana to meet his medical needs. The three remaining applicants have not applied for licences to possess or produce. They contend that they cannot get the specialist support needed to obtain licences to possess under the *MMAR*. They attribute this to difficulties in getting access to a specialist, combined with the specialists' reluctance, based on advice from professional medical organizations and the primary insurer of doctors in Canada, to become involved in the *MMAR* process.

19 The Government does not accept the applicants' explanations for their failure to get the support of a specialist. Ms. Devries, one of the three applicants without a licence to possess, did not make any effort to obtain a specialist's support for her *MMAR* application until just days before she was to be cross-examined on her affidavit. Others with the same and similar conditions as Ms. Devries have received possession exemptions under the *MMAR*. The other two applicants who have not applied, Mr. Renda and Mr. Van de Kemp, suffer from medical problems for which the Government contends that current medical wisdom suggests marihuana is not an appropriate medication.

20 Mr. Hitzig operated the Toronto Compassion Centre, which provided a supply of medicinal marihuana to seriously ill individuals for more than three years until it was raided by the police and closed down. He attempted to obtain an exemption for the Centre, prior to the *MMAR* coming into force, but eventually concluded, based on legal advice, that he could not. Mr. Hitzig's affidavit contains vivid evidence of the risks associated with cultivating marihuana under the present legal regime. He has been robbed and beaten by criminals, and raided and arrested by the police.

(iv) The Applicants' Supply of Medical Marihuana

21 The applicants all meet their medical marihuana needs through a combination of self-cultivation and purchase on the black market. They described the significant problems associated with both sources of supply. Some are too ill and are physically unable to grow their marihuana. Others do not have the facilities to grow their own. Still others are concerned about exposing themselves and family members to the risks inherent in producing a product for which there is a thriving black market. Production by designates is also not a viable alternative to many for a variety of reasons. The applicants described the many problems associated with the actual cultivation. Growing marihuana that is suitable for medicinal use is no easy task. It is time consuming and labour intensive. Crops can fail entirely or yield insufficient marihuana to supply the grower's medical needs.

22 The problems associated with the purchase of medicinal marihuana on the black market are numerous and, in most cases, obvious. As with any black market product, prices are artificially high. High prices cause real difficulty for seriously ill individuals, many of whom live on fixed incomes. Black market supply is also notoriously unpredictable. The supplier of marihuana today may have moved on by tomorrow or may have been closed down by the police. In addition to unpredictability, there is no quality control on the black market. Purchasers do not know what they are getting and have no protection against adulterated product. This is particularly problematic for some whose illnesses involve allergies, or stomach ailments that can be aggravated by the consumption of tainted products. Resort to the black market may also require individuals to consort with criminals who are unknown to them. In doing so, they risk being cheated and even subjected to physical violence. Finally, the evidence of the applicants makes it abundantly clear that requiring law-abiding citizens who are seriously ill to go to the black market to fill an acknowledged medical need is a dehumanizing and humiliating experience.

23 The Government accepts that reliance on the black market to fill a medical need would in most cases raise supply problems. It maintains, however, that marihuana is unique in that there is an established part of the black market, which the Government calls "unlicensed suppliers", that has for many years provided a safe source of medical marihuana. The Government argues that those who want to use marihuana for medical purposes have been "self-medicating" for years and know full well where to go to obtain the necessary medical marihuana. It is the Government's contention that this particular part of the black market does not present the problems that are generally associated with purchase of product on the black market. The application record offers some support for this contention. Many of the applicants do have well-established "friendly" sources in the black market from which they can safely acquire reliable medicinal marihuana. It is ironic, given the Government's reliance on this part of the black market to supply those whom the Government has determined should be allowed to use marihuana, that the police, another arm of the state, shut down these operations from time to time, presumably because they contravene the law.

(v) The Legislative Context

24 Marihuana is a "drug" as defined under s. 2 of the *Food and Drugs Act*, R.S.C. 1985, c. F-27 ("*FDA*"), and it is a "substance" as defined under s. 2 of the *CDSA*. Its distribution is controlled by both *Acts* and regulations passed under them. Its possession is controlled by the *CDSA*.

25 Insofar as marihuana is said to have medicinal value, it qualifies as a drug under the *FDA*. With two exceptions, the distribution of marihuana, like the distribution of any drug to which the *FDA* applies, is prohibited unless that drug has been approved by the appropriate Government agency. The approval process is found in regulations enacted under the *FDA* and turns on an assessment of the potential risks and benefits flowing from the proposed therapeutic use of the drug. The Government acts as a regulator only. It does not develop or market new drugs. That process is left to private manufacturers and distributors. They develop new products through research and clinical trials and apply to the Government for approval of those products. The development of new drugs and obtaining approval for their distribution in Canada is a long process that may last many years and cost many millions of dollars.

26 Although two synthetic cannabinoids containing some of the active ingredients found in marihuana have been developed and approved for distribution in Canada, the private sector has shown little interest in developing marihuana as an approved drug. Various explanations are offered for this lack of commercial interest, including difficulties inherent in patenting a plant-based substance, the complexity of the various active agents found in marihuana, the uncertainty in the scientific community of the medicinal value of the drug, concerns as to the potential harm caused by the long-term smoking of marihuana, and the longstanding, virtual absolute criminal prohibition against its possession and distribution. In argument, we were told that marihuana is not an approved drug anywhere in the world.

27 As indicated above, there are two exceptions to the prohibition in the *FDA* against the distribution of an unapproved drug. First, drugs may be distributed in the course of an approved clinical trial. These trials are part of the process which may eventually lead to the approval of a drug. Clinical trials have been part of the Government policy in relation to the medicinal use of marihuana since 1999. There are presently two small clinical trials underway in Canada. The Government does not suggest that these clinical trials could provide a licit source of medical marihuana for those authorized to possess it under the *MMAR*.

28 The second exception to the prohibition against the distribution of an unapproved drug are found in the provisions of the *Food and Drug Regulations* which establish the Special Access Program ("SAP") [6], formerly known as the "Emergency Drug Release" program. Under these regulations, the Government may authorize a manufacturer to release an unapproved drug to a practitioner for distribution to a specific patient in an emergency situation. SAP is commonly used to obtain drugs that are not approved in Canada but have been approved in another jurisdiction for use by seriously ill persons suffering from diseases like AIDS and cancer. SAP depends on the existence of three things, a manufacturer who is willing to provide the drug, a doctor who is willing prescribe it, and a patient who is willing to give his or her informed consent to the use of an unapproved drug. SAP contemplates approval on a case-by-case basis. Each application may precipitate a dialogue among Health Canada officials, the manufacturer, and the doctor as to the advisability of the use of the drug for a specific patient and the availability of the drug.

29 Unsuccessful attempts have been made in the past to access medical marihuana through SAP. The Government takes the position that the criteria governing SAP do not permit distribution of marihuana to many of the individuals who would qualify for a licence to possess under the *MMAR*. Counsel for the Hitzig applicants do not suggest that SAP, as presently administered, offers these individuals a licit source of medical marihuana. In any event, SAP assumes that there is a manufacturer available to supply the drug. Prairie Plant Systems ("PPS") is the only authorized grower of marihuana in Canada, but the marihuana it grows is owned by the Government. The availability of marihuana through SAP would depend on the willingness of the Government to use its supply of marihuana to fill the needs of any who qualified for medical marihuana under SAP.

30 In addition to the regulation of marihuana as a drug under the *FDA*, marihuana is a Schedule II controlled substance under the *CDSA*. Section 4 of the *CDSA* prohibits possession of marihuana "except as authorized by the regulations". Section 5 of the *CDSA* makes it a criminal offence to traffic in marihuana. Trafficking is defined so widely as to encompass virtually every form of distribution of the drug. Depending on the amount distributed, the offence is punishable by up to life imprisonment. Under the present law, unless he or she is a designated producer under the *MMAR*, a person who supplies the holder of a licence to possess marihuana with a supply of marihuana that is within the terms of the licence to possess is guilty of trafficking in a narcotic. The recipient of the drug is not a party to the trafficking: *R. v. Greyeyes*, [1997] 2 S.C.R. 825 (S.C.C.). The recipient commits no crime as long as the possession is consistent with the terms of the licence granted under the *MMAR*. In addition, s. 56 of the *CDSA* permits the Minister to "exempt any person or class of persons or any controlled substance" from the application of any of the provisions of the Act or regulations if, "in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose".

31 The regulations referred to in s. 4 of the *CDSA* are the *Narcotic Control Regulations*, C.R.C. 1978, c. 1041 ("*NCR*") and the *MMAR*. The *NCR* control the distribution of narcotics through licensed dealers. There is no licensed dealer of marihuana in Canada who is able to supply marihuana to those with the medical need for it. All other *CDSA* Schedule I and II drugs, including heroin and cocaine, are commercially produced and available through licensed dealers in Canada, albeit under strict restrictions.

32 In addition to its domestic legislation, Canada's drug laws must also accord with its international obligations. Canada is a party to several United Nations drug conventions controlling the importation, exportation, distribution and use of various drugs, including marihuana. [7] The basic aim of these conventions is to limit the use of drugs like marihuana to medical and scientific purposes only. The conventions require governments to control the importation and exportation, production and distribution of identified drugs like marihuana and also to combat the abuse of and the illicit trade in those drugs.

33 Canada must report to various international organizations on its actions concerning marihuana and other drugs covered by the conventions. The Government argues that the *MMAR* has put Canada sufficiently in the forefront of the recognition of the use of marihuana for medical purposes that it has attracted concern from a leading international organization.

(vi) The Development of a Medical Marihuana Policy [8]

34 Prior to 1999, there was no process by which persons using marihuana for medical purposes could be exempted from the general criminal prohibition against possession. In March 1999, the Government took its first steps towards developing a legislative response to the demand for medical marihuana. These steps were taken in response to court challenges to the constitutionality of the possession prohibition absent a medical exemption. The Minister of Health announced that the Government policy would include research into the medical use of marihuana, clinical trials, formulation of appropriate guidelines for medical use, and development of access to a safe supply of the drug. In June 1999, the Minister spoke of:

> Moving forward on a research plan that includes establishing a quality Canadian supply of medicinal marihuana and a process to access it . . .

35 At the same time, he announced a $7.5 million program, the Medical Marihuana Research Program, which was designed to promote research and fund clinical trials into the medical use of marihuana.

36 In June 1999, the Government issued its first exemption under s. 56 of the *CDSA*. While the terms of s. 56 were broad enough to permit the Minister to exempt individuals from all provisions of the *CDSA*, exemptions were granted only with respect to the prohibitions against possession and cultivation of marihuana. Individuals who received a s. 56 exemption could grow the marihuana they needed to meet their medical needs. If they could not do so, they had to continue to use the black market.

37 In July 2000, this court held in *R. v. Parker*, *supra*, that the medical exemption scheme based on s. 56 of the *CDSA* was constitutionally inadequate in that it depended on the unfettered exercise of the Minister's discretion. The Government set to work fashioning a legislative response to *Parker* which would produce a constitutionally acceptable medical exemption within the one year for which the court had suspended its declaration of invalidity.

38 In December 2000, the Minister of Health announced that the Government had entered into a five-year contract with PPS to produce a domestic supply of marihuana for the Government. He said:

> The marihuana will be made available to people participating in structured research programs and authorized Canadians using it for medical purposes who agree to provide information to my department for monitoring and research purposes.

39 The *MMAR* came into force on July 30, 2001. The Regulatory Impact Analysis Statement (the "Statement") that accompanied the proclamation of the *MMAR* described them as providing seriously ill Canadians with "access" to marihuana for medical purposes while the medical efficacy of the drug is being investigated. By July 2001, when the *MMAR* came into effect, the Government had changed its position and decided that the marihuana being grown by PPS was not suitable for medical use and would be used exclusively for research purposes. Hence, those with medical need could not access the marihuana owned by the Government and being grown for it by PPS. The Statement observed that:

> Health Canada will be evaluating various options to ensure patients have access to a safe high quality supply of marihuana for medical purposes.

40 The most recent Government response to the medical marihuana problem is an interim policy brought forward by regulation on July 8, 2003, shortly before these appeals were heard. The interim policy is a direct response to the declaration by Lederman J. that the *MMAR* was unconstitutional, combined with the expiry of the six month suspension of that order granted by Lederman J., and this court's refusal to stay that declaration pending these appeals. As a result of these developments, the Government was faced with a declaration that arguably rendered the crime of possession of marihuana in s. 4 of the *CDSA* of no force and effect for all purposes. The interim policy was an attempt to save the criminal prohibition in s. 4 as it applied to individuals other than those who qualified for a medical exemption under the *MMAR*.

41 The Government announced in the interim policy that marihuana seeds and dried marihuana grown by PPS for the Government would be made available to individuals who had obtained a medical exemption under the *MMAR* or under s. 56 of the *CDSA*. It was made abundantly clear in the Statement that accompanied the regulation that this interim policy would remain in place only "while clarification was being sought from the courts".

42 The Crown placed this interim policy before the court by way of fresh evidence. Counsel for the Hitzig applicants advised the court that of the four Hitzig applicants who were entitled to possess marihuana under the *MMAR*, two had applied for a supply of marihuana under the interim policy and two were in the process of gathering the material needed to make their applications.

43 The Government did not ask the court to pass on the constitutionality of the *MMAR* as modified by the interim policy, and it did not suggest that the interim policy should have any effect on the outcome of this appeal. The interim policy was put before the court so that we would be aware of the current state of affairs.

(vii) The MMAR

44 The relevant parts of the *MMAR* are attached as an appendix to these reasons. Before examining specific provisions, it is helpful to take an overview. The regulations recognize that marihuana is a medically appropriate medication for the treatment of various symptoms associated with various serious illnesses. This recognition is consistent with the Government policy first

announced in March 1999, well before this court's decision in *R. v. Parker*, *supra*. The regulations further recognize that the determination of when marihuana is a medically appropriate medication and the amount of marihuana which is appropriate for that purpose are decisions that should be made by qualified doctors and not by Government officials, or by the users of medical marihuana.

45 The regulations provide for the issuing of an authorization to possess ("ATP") where an applicant can meet the medical criteria set out in the regulations. An applicant who acquires an ATP can possess marihuana without fear of criminal prosecution as long as the possession is within the terms and within the amounts provided for in the ATP. The regulations also provide for authorizations to grow the marihuana needed to fill an ATP holder's medical needs. The ATP holder may personally acquire a licence or a person designated to grow the marihuana for the ATP holder may acquire a licence to grow. As long as those individuals stay within the terms of their licences, the criminal prohibitions against the cultivation, trafficking and possession of marihuana do not apply to them.

46 We turn now to the specifics of the *MMAR*. Lederman J. described these provisions very clearly and we borrow heavily from his reasons in our description. Part I of the *MMAR* creates the framework by which seriously ill people may obtain authorizations to possess marihuana for medical purposes. The regulations designate three categories of application by reference to symptoms associated with medical conditions. Category 1 refers to persons whose symptoms are associated with a terminal illness. A terminal illness is defined as a medical condition for which the prognosis is death within 12 months. Category 2 applications refer to patients who have specific symptoms identified with specified, long-term or chronic conditions set out in a schedule to the regulations. For example, category 2 applies to cancer or AIDS patients who suffer from severe nausea. Category 3 is a "catch all" and potentially includes all patients with symptoms associated with medical conditions other than those who fall within category 1 or 2.

47 Applications made by category 1 applicants must be supported by a declaration from a medical practitioner containing the information required in the regulations. Applications made by category 2 applicants must be supported by a declaration from a medical specialist. Applications made by category 3 applicants must be supported by declarations from two medical specialists. The Government attempts to justify these distinctions as to the medical material needed to support applications in the various categories on the basis that the medical conditions and symptoms associated with each category require a different level of medical scrutiny. For category 1 applicants, long-term risks are virtually irrelevant, thereby justifying a lower level of medical scrutiny. For category 2 patients, long-term risks are potentially significant, but there is an established body of scientific evidence, in the Government's view, that category 2 applicants may benefit from the use of marihuana. The requirement that a specialist make the medical declaration required for category 2 applicants reflects the benefits/risks assessment involved for patients who fall within category 2. Category 3 patients face the same long-term risks as category 2 patients, but, again according to the Government, there is virtually no scientific evidence that marihuana could benefit these persons. Because of the reduced potential benefit, the Government takes the position that it is appropriate to require that the application be vetted and supported by a second medical specialist.

48 An individual who seeks an ATP must complete a personal declaration in addition to providing the required medical declaration or declarations. The applicant's declaration must contain the information set out in s. 5. Section 5(1)(e) is worth particular note:

> The declaration of the applicant under paragraph 4(2)(a) must indicate . . .
>
> (e) that the authorization as sought in respect of marihuana either
>
> (i) to be produced by the applicant or a designated person, in which case the designated person must be named, or
>
> (ii) to be obtained under the *Narcotic Control Regulations* in which case the licensed dealer who produces or imports the marihuana must be named. [Emphasis added.]

49 To comply with s. 5(1)(e), an applicant must identify one of two legal sources from which the applicant indicates he or she intends to obtain the marihuana for which the ATP is sought. The form which must be completed by all applicants is

consistent with the terms of s. 5(1)(e). In reality, many who apply for an ATP cannot identify a legal source from which they will obtain their marihuana. As indicated above, there are no licensed dealers of marihuana in Canada who could provide ATP holders with marihuana. Thus, no ATP applicant can possibly identify a licensed dealer as the potential source of supply for his or her marihuana. In addition, many ATP applicants do not apply for licences to produce either personally or through a designate. The Government acknowledges that some 30 percent of those who have received ATPs have not obtained a licence to cultivate marihuana either personally or through a designate. On a literal reading of s. 5(1)(e), it is difficult to understand how these applicants obtained an ATP.

50 The contents of the medical declarations required for all three categories of applicants are set out in ss. 6 and 7 of the *MMAR*. Section 6(1) requires that all medical declarations identify:

- the applicant's medical condition and the symptom associated with the condition which gives rise to the application;
- the category into which the applicant falls;
- the daily dosage and suggested mode of administration; [9] and
- the period for which the use of the marihuana is recommended if it is less than 12 months.

51 Section 6(2) requires that for category 1 applicants the medical declaration must be completed by a medical practitioner. The declaration must indicate that:

- the applicant has a terminal illness;
- all conventional treatments for the symptom have been tried or considered;
- the recommended use of marihuana would mitigate the symptom;
- the benefits from the use of marihuana would outweigh any risks associated with its use; and
- the medical practitioner is aware that marihuana is an unapproved drug under the *Food and Drug Regulations*.

52 Section 6(3) refers to category 2 applications. The medical declaration must be made by a certified medical specialist. The specialist must indicate his or her area of specialty and its relevance to the treatment of the applicant's medical condition. He or she also must confirm that:

- all conventional treatments for the symptom have been tried or considered and each of them is inappropriate for one of the reasons specified in s. 6(3)(b);
- the recommended use of marihuana would mitigate the symptom;
- the benefit from the use of marihuana would outweigh any risks associated with its use, including long-term risks; and
- he or she is aware that marihuana is not an approved drug under the *Food and Drug Regulations*.

53 Section 6(4) deals with category 3 applications. A specialist must complete a medical declaration like that required for category 2 applications, except he or she must specify why the other potential treatments are considered inappropriate.

54 Section 7 of the *MMAR* requires that category 3 applications provide a second medical declaration from a specialist. As with category 2 applications, this specialist must identify his or her specialty and the relevance of that specialty to the treatment of the applicant's condition. The second specialist must also confirm that he or she is aware of the basis for the application and that the symptom identified in the application relates to the medical condition identified by the applicant. The second specialist must indicate that he or she has reviewed the applicant's medical file, discussed the case with the specialist making the first declaration, and agrees that the use of marihuana would mitigate the symptom and that the benefits would outweigh the risks,

including the long-term risks. The second specialist is not required to consider whether all other treatments have been tried or at least considered, or whether they would be medically inappropriate. Finally, the second specialist, like the first, must acknowledge that he or she is aware that marihuana is not an approved drug under the *FDR*.

55 Pursuant to ss. 11 and 12 of the *MMAR*, the Minister has very little discretion to refuse an ATP once the necessary personal and medical declarations have been completed. The limited role played by the Minister is no doubt an attempt to cure the major defect in the previous scheme identified in *R. v. Parker*, *supra*.

56 Section 23 allows an individual to assist an ATP holder in the administration of the daily dosage of marihuana. The assistance is limited to the rather narrow circumstances described in s. 23.

57 Part 2 of the *MMAR* addresses licences to produce marihuana to fill the needs of ATP holders. As indicated above, there are two kinds of licences described in the regulations, a personal-use production licence ("PPL") and a designated-person production licence ("DPL"). The former is issued to an ATP holder and the latter is issued to an individual who will grow the necessary medical marihuana for an ATP holder. Applications for licences to produce must identify the site where the proposed production is to take place, where the marihuana will be stored, and describe the security measures that will be implemented at the proposed production and storage sites.

58 Persons applying for a DPL must be eighteen years of age and must not have been convicted, inside or outside of Canada, of a designated drug offence in the previous ten years. A designated person may hold only one DPL and production must be strictly in accordance with the terms of the licence. He or she may grow marihuana for only one person and may not produce it in common with more than two other licensed holders. A person who serves as a designated producer cannot be compensated. These restrictions effectively eliminate the potential licensing of "compassion clubs" like the one formerly operated by Mr. Hitzig.

59 If the application meets the criteria in the *MMAR*, the Minister may refuse to issue a licence only on limited grounds. Where a licence is issued, it must include:

- the address of the site where the marihuana is to be produced and stored;
- the maximum number of marihuana plants that may be grown and the maximum amount of marihuana that may be stored. These amounts are calculated by formulae set out in the *MMAR*.

60 There are also provisions in the *MMAR* which require licensed producers to keep detailed records. Inspectors may enter property where marihuana is being grown or stored without prior authorization to inspect and to examine the records of the licensed producer.

61 The *MMAR* appear to contemplate two other licit sources of marihuana to meet the medical needs of ATP holders. First, as described above, there are references to licensed dealers in Part 1 of the *MMAR*. In addition to those references, s. 70 of the *MMAR* refers to a medical practitioner obtaining marihuana from a licensed dealer for the purpose of selling or furnishing it to an ATP holder. These provisions are meaningless, at least at present, as there is no licensed marihuana dealer in Canada.

62 Section 51 of the *MMAR* refers to the second potential legal source of marihuana for ATP holders. That section authorizes the Minister or a designate to import and possess marihuana seeds for the purpose of delivery to a holder of a licence to produce. It is doubtful whether, under present international laws governing the importation of marihuana, the Minister could import marihuana seeds from a licit source outside of Canada to supply those seeds to a person authorized to possess or produce under the *MMAR*. In any event, there is no suggestion that the Minister has any intention of using s. 51 to supply ATP holders with a legal source of supply to meet their medical needs.

63 There was considerable evidence adduced on the Hitzig application concerning the actual operation of the *MMAR* since their implementation in July 2001. From the applicants' perspective, the regulations are cumbersome, slow and unnecessarily impede access to, what for the applicants is a vital medical treatment. The Government's evidence describes the steps that have

been taken by Health Canada to make the application process "user friendly". These steps include the developments of forms that are said to be easy to complete and the preparation of brochures that explain to applicants and their doctors how the various forms should be completed.

64 Statistics for the first ten months of the operation of the *MMAR* (July 30, 2001 - June 7, 2002) indicate that 565 applications for ATPs were made, and 299 were granted. Sixteen had been abandoned, and of the remaining 250 outstanding applications, 28 had not yet been reviewed by the authorities and 222 had been reviewed and found to be incomplete. [10] Only a small number of the incomplete applications were lacking the necessary medical documentation. Applications for ATPs increased gradually over the ten-month period. Once an application is complete, Health Canada takes two or three weeks to complete its assessment and if the application meets the criteria, issue the appropriate licence.

65 Of the 299 ATPs granted, 39 were for category 1 applications, 254 were for category 2 applications and 6 were for category 3 applications. About 20 percent of the medical declarations required for the category 1 applications had been completed by specialists, although under the regulations they could have been completed by a general practitioner. All of the other approved ATP required declarations from at least one medical specialist.

66 During this initial period, the Government issued 194 PPLs and 14 DPLs. The remaining 91 ATP holders (30%) have no possible legal source for their medical marihuana. Even those with a licence to produce must acquire the initial seeds on the black market unless they have a crop under cultivation at the time they receive their licence to produce.

(viii) The Supply of Medical Marihuana under the MMAR

67 It is acknowledged by the Government that despite references to licensed dealers, and the importation of marihuana seeds, the *MMAR* were not intended to provide for the supply of marihuana to those with the medical need for it, apart from strictly limited self cultivation and designated-producer growing. As Ms. Cripps-Prawak, the principal Government affiant said:

> These regulations do not authorize the sale or distribution of marihuana. Instead by way of overview, the regulations establish a compassionate framework to allow people who are suffering from serious illnesses to possess and cultivate marihuana for medical purposes while the substance is being researched as a possible medicine . . . . [Emphasis added.]

68 Although references have already been made to the effect of the absence of any legal source of supply on potential ATP holders, it is helpful to summarize those effects, given the issue raised on the Government's appeal.

- an ATP holder who does not have a licence to produce marihuana and for whom a designated person is not authorized to produce marihuana can only obtain the drug from the black market;

- an ATP holder who obtains a licence to produce marihuana or for whom a designated person is authorized to produce marihuana can only obtain the seeds necessary to commence production on the black market;

- an ATP holder who has a licence to produce or for whom a designated person is authorized to produce who has an adequate supply at the time authorization to produce is granted and who can maintain that supply, can obtain the marihuana necessary to meet his or her medical needs without going to the black market;

- a designated producer who is not already growing marihuana must go to the black market to obtain the first seed; and

- a designated producer must expend the time and cost required to grow the marihuana without being paid, and with no economies of scale.

69 Under the *MMAR*, no one with an ATP risks criminal conviction for the possession of marihuana if that possession is within the terms of the ATP. Similarly, no person with a licence to produce risks criminal conviction if the cultivation and possession are within the terms of that licence. To this extent, the *MMAR* have clearly addressed the constitutional problem confronted in *R. v. Parker*, *supra*. If they can comply with the *MMAR*, persons are not required to choose between using a medically necessary drug and committing a crime.

70 The *MMAR*, however, address access only for those who can grow their own marihuana or get a designate to do it for them. The evidence leaves no doubt that many individuals who have received ATPs and many who would be entitled to receive ATPs under the *MMAR* cannot possibly grow their own marihuana. Many of these individuals are not only seriously ill, but they are significantly physically handicapped. Cultivation by a designate is an answer for some, but by no means all, of these people. Mr. Hitzig's affidavit makes it clear that serving as a designate has real costs and risks. The possibility of getting someone else with the requisite skill to grow the necessary marihuana for an ATP holder is further restricted by the provisions in the *MMAR* which prohibit a designate from being compensated for his or her services, limit designates to growing for only one ATP holder, and restrict the pooling of licences to produce to no more than three growers.

71 The record here makes clear that these limitations on supply in the *MMAR* present real and significant challenges to ATP holders. Many individuals who establish the requisite medical need under the *MMAR* and obtain ATPs will have to go to the black market on a more or less regular basis to maintain their supply of medical marihuana. As the Government acknowledged in argument, the *MMAR* scheme assumes the existence of the black market in marihuana. Indeed, it depends on the black market. Without the black market, the scheme set out in *MMAR* would be a sham. In short, in their actual operation, the *MMAR* require what is, as far as we know, a unique partnering of the Government and the black market to fill serious and recognized medical needs.

72 The premise underlying the *MMAR*, that seriously ill people, some of whom are so sick it is anticipated they will die within a year, can grow their own medicine, have a friend grow it, or get it on the black market, is puzzling. It is explained, in our view, by the assumption implicit in the *MMAR* and specifically articulated by the Government in its factum, that those who will seek an ATP will be long-time medical marihuana users who have an established pattern of self-medication. According to this assumption, these persons will have no difficulty filling their medical marihuana needs either through cultivation or from "unlicensed" reliable sources. This first assumption reveals a second. In relying on the scheme in the *MMAR* as an appropriate response to the problem identified in *R. v. Parker*, *supra*, the Government must assume that a segment of the black market has provided and will continue to provide a reliable and suitable source of medical marihuana for those in need.

73 The evidence adduced on the Hitzig application belies both of the assumptions described above. Many long-term users of marihuana for medical reasons are unable to produce their own marihuana for a variety of reasons and cannot obtain a designate to produce it for them. Those individuals must go to the black market and have experienced significant difficulties in doing so safely. They go to the black market only because they have no choice. Moreover, the assumptions have no application to potential ATP holders who have not established a pattern of self-medication and have no prior contact with the marihuana black market. Nothing in the *MMAR* suggests that the scheme is limited to experienced medical marihuana users.

(ix) Section 7 of the Charter

(a) The approach

74 Section 7 of the *Charter* reads:

> Everyone 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.

75 The analytical approach to a s. 7 claim has been described both as a two-step and a three-step process: *Winnipeg Child & Family Services (Central Area) v. W. (K.L.)*, [2000] 2 S.C.R. 519 (S.C.C.), at 562; *R. v. White*, [1999] 2 S.C.R. 417 (S.C.C.), at 436; and *R. v. Malmo-Levine* (2000), 145 C.C.C. (3d) 225 (B.C. C.A.), at 244 (now on appeal to the Supreme Court of Canada: (2001), [2000] S.C.C.A. No. 361 (S.C.C.)). Choreographical differences aside, the approaches are the same in substance. We will address the s. 7 claim, as Lederman J. did, in two stages.

- Has the government action resulted in a threshold violation of one or more of the rights described in s. 7?
- If there is a threshold violation, is it inconsistent with the principles of fundamental justice?

76 The inquiry at the first stage requires the identification of the individual interests said to be infringed and a determination of whether those interests fall within the meaning of the phrase "life, liberty and security of the person" in s. 7: *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 (S.C.C.), at 339. At the first stage the court must also decide whether any identified individual interest which it has found to be sheltered under s. 7 has been infringed by some form of state conduct. This need not be by way of the criminal law, but encompasses any state action taken in enforcing and securing compliance with the law: *Gosselin c. Québec (Procureur général)*, [2002] S.C.J. No. 85 (S.C.C.) at paras. 77, 81.

77 The second stage of the s. 7 inquiry is reached only if there is a threshold violation of a right protected by s. 7. At the second stage the court must articulate the principle or principles of fundamental justice engaged in the circumstances of the case. Once the operative principle or principles have been identified, the court must decide whether the threshold infringement found in the first stage of the analysis is inconsistent with the pertinent principle or principles of fundamental justice: *R. v. White*, *supra*.

78 All parts of the s. 7 analysis must be sensitive to the specific context in which the claim is made. Context for the present purposes includes the factual matrix in which the claims are advanced, the nature of the alleged rights affected by the state conduct, the nature of the interference with those rights by the state, and the interests relied on by the state in support of its conduct. Context encompasses the effect as well as the purpose of the impugned state conduct. Where legislative provisions are in play, context refers to the language of the statute and the legislative and common law history leading up to the enactments of the challenged provisions: *R. v. Parker*, *supra*, at 224-25; *Winnipeg Child & Family Services, supra*, at 562; and *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (S.C.C.), at 61-63, per Dickson C.J.C.

79 The Government's appeal and the cross-appeal brought by the Hitzig applicants both engage the s. 7 analysis. The former is directed at the absence of a legal source of supply of medical marihuana and the latter at the eligibility requirements, particularly the specialist requirements, controlling access to an ATP. The first stage of the s. 7 analysis, that is whether there is a threshold violation of individual rights, is the same for both the supply issue raised in the Government's appeal and the eligibility issue raised on the cross-appeal. The second stage of the inquiry, that is whether any threshold infringement is inconsistent with the principles of fundamental justice, requires a separate consideration of the two issues.

(b) Stage one: is there a threshold violation of s. 7?

80 This question must be addressed in the context of those with the medical need to take marihuana. It is they who are entitled to a constitutionally sound medical exemption from criminal sanction for possession. However, before going further, we should note that there is no need in this case to define the precise extent of that group. For example, we need not address what need be shown to establish the medical necessity to take marihuana or how grave a medical condition must be in order to qualify. There is no dispute that the Hitzig applicants include persons with such a need and that those with this need must be afforded a constitutionally sound medical exemption if the criminal sanction against the possession of marihuana is to stand.

81 Equally, we should make clear that this case is not about those whose "need" to consume marihuana is not medical but simply social or recreational. These people have no s. 7 rights that are engaged by the discussion in this case: *R. v. Clay* (2000), 146 C.C.C. (3d) 276 (Ont. C.A.) (now on appeal to the Supreme Court of Canada: (2001), [2000] S.C.C.A. No. 492 (S.C.C.)).

82 For the purposes of this discussion the *MMAR* are best viewed in the context of the *CDSA* as constituting a regulatory regime which places strict controls, backed by criminal sanctions, on the acquisition and the use of marihuana by those who have medical need of it.

83 Our analysis at stage one is greatly assisted by the reasons of this court in *R. v. Parker*, *supra*. In that case, the context in which the rights to liberty and security of the person were considered was identical to this case in its most important aspect. There, as here, those whose s. 7 rights were at stake require access to marihuana for medical reasons, to treat the symptoms of serious medical conditions. There, as here, the state had placed barriers between them and the marihuana necessary for their health.

84 However, in one particular respect, the context in *Parker* was somewhat different. There Mr. Parker's rights to liberty and security of the person had to be considered in the context of a simple and unqualified criminal prohibition against possessing marihuana. Here the context is the *MMAR*, which permit the possession of marihuana without criminal sanction but only if specific eligibility conditions are met and only by making certain presumptions concerning the source of supply.

85 As we have described, the main eligibility conditions set by the *MMAR* begin by requiring that an individual have a symptom associated with a medical condition that fits within one of three specific categories. The individual must have support from a physician willing to declare that all conventional treatments have been tried or at least considered and that marihuana would mitigate the symptom, with benefits that outweigh the risks. The physician must also specify the daily dosage limit for the individual. For categories two and three the physician cannot be the individual's general practitioner but must be a specialist. And for category three, the support of a second specialist is required.

86 An individual with the medical need to take marihuana who cannot meet these conditions cannot obtain a medical exemption and is subject to the criminal sanction against possessing marihuana found in s. 4 of the *CDSA*. An individual with the same need who has not obtained a medical exemption for any other reason is subject to the same sanction. In the same way, an individual with this need who possesses more than the authorized amount of the medication is subject to the criminal sanction, even if that individual has obtained a medical exemption.

87 Thus, while the medical exemption scheme means that individuals who need to take marihuana for medical reasons are not automatically subjected to criminal sanction, the *MMAR* set up stringent conditions with which these individuals must attempt to comply in order to use the medication they require. If they do not do so they must risk conviction and imprisonment or forego their serious medical needs.

88 We have also described the constraints on the sources of supply of marihuana for those with the medical need to use it that accompany the *MMAR*. Apart from the wholly theoretical option of obtaining marihuana from a licensed dealer, an individual must declare that the exemption is sought in respect of marihuana that comes from one of two sources in order to get a medical exemption. Either the individual is to produce it personally or it is to be produced for him or her by a licensed designated person who cannot be paid for doing so and who can neither grow marihuana for more than that individual nor in combination with more than two other designated producers. The third option in the *MMAR* (that is, obtaining the marihuana from a dealer licensed under the *NCR*) is theoretical only since there are now no such dealers.

89 Where individuals cannot grow the marihuana they require (and many cannot for a variety of reasons, including their health) and cannot secure a designated producer (for a various reasons, including the constraints imposed by the *MMAR* on these producers) they go beyond the declarations they have made if they seek to acquire the medication they need in any other way. And anyone who would supply marihuana to them would face the criminal prohibition in s. 5 of the *CDSA*.

90 Given this context, we turn to whether the rights to liberty and security of the person of those with the medical need to take marihuana are engaged by this scheme of medical exemption.

91 As *R. v. Parker*, *supra* points out, the liberty interest of these individuals can be considered in two ways. First, viewed more narrowly, their right to liberty is at risk in the context of this medical exemption due to the threat of criminal prosecution and imprisonment arising from their need to possess and use marihuana for medial purposes. This risk manifests itself in several ways. The risk clearly exists for those who do not have an ATP because they cannot clear the eligibility hurdles set up by the *MMAR*. It also exists for those with medical need who do not have an ATP for any other reason (although in each case that other reason may be a factor in assessing compliance with the principles of fundamental justice). Further, even for those with an ATP, this aspect of the liberty interest is at risk should they stray outside the conditions set for their possession by the *MMAR*. For example, the *MMAR* authorize an ATP holder to possess marihuana, but only in a strictly limited quantity, beyond which there is no exemption.

92 The right to liberty can also be properly viewed more broadly, to include the right to make decisions of fundamental personal importance. See *R. v. Parker*, *supra*, at 228-29. Viewed in this way, s. 7 requires that if the state seeks to interfere with

these decisions, it must comply with the principles of fundamental justice in doing so. Like the other rights encompassed by s. 7 this aspect of the right to liberty is protected not just in the context of the criminal law, but against any deprivation that occurs as a result of an individual's interaction with the justice system and its administration.

93 Here, as in *Parker*, there is no doubt that the decision by those with the medical need to do so to take marihuana to treat the symptoms of their serious medical conditions is one of fundamental personal importance. While this scheme of medical exemption accords them a medical exemption, it does so only if they undertake an onerous application process and can comply with its stringent conditions. Thus, the scheme itself stands between these individuals and their right to make this fundamentally important personal decision unimpeded by state action. Hence the right to liberty in this broader sense is also implicated by the *MMAR*.

94 It is equally clear that the right to security of the person of those with the medical need to use marihuana is implicated in the circumstances of this case. In *Parker*, *supra*, this court reviewed the jurisprudence and concluded that this right encompasses the right to access medication reasonably required for the treatment of serious medical conditions, at least, when that access is interfered with by the state by means of a criminal sanction. In *Gosselin*, *supra*, (which postdated *Parker* by two and one-half years) the Supreme Court of Canada made clear that this interference by the state need not be by way of the criminal law, provided it results from the state's conduct in the course of enforcing and securing compliance with the law.

95 In this case, the *MMAR*, with their strict conditions for eligibility and their restrictive provisions relating to a source of supply, clearly present an impediment to access to marihuana by those who need it for their serious medical conditions. By putting these regulatory constraints on that access, the *MMAR* can be said to implicate the right to security of the person even without considering the criminal sanctions which support the regulatory structure. Those sanctions apply not only to those who need to take marihuana but do not have an ATP or who cannot comply with its conditions. They also apply to anyone who would supply marihuana to them unless that person has met the limiting terms required to obtain a DPL. As seen in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519 (S.C.C.), a criminal sanction applied to another who would assist an individual in a fundamental choice affecting his or her personal autonomy can constitute an interference with that individual's security of the person. Thus, we conclude that the *MMAR* implicate the right of security of the person of those with the medical need to take marihuana.

96 Having found that this scheme of medical exemption engages the rights of liberty and security of the person of those with the medical need to use marihuana, we must determine whether it can be said to deprive these individuals of those rights for the purposes of the s. 7 analysis.

97 In its narrower aspect, the right to liberty is clearly violated because those with the medical need to use marihuana are exposed to conviction and imprisonment if they do not meet the eligibility conditions for or otherwise do not possess an ATP or if they acquire and possess marihuana outside the strict conditions of the ATP. In those circumstances, they are subject to the criminal prohibition in s. 4 of the *CDSA*.

98 It is no answer at this stage of the s. 7 analysis to say that there is no risk to the right to liberty because those in medical need can possess marihuana lawfully simply by applying for an ATP, meeting the eligibility conditions and observing the other conditions that are part of the ATP process. While the reasonableness of these conditions may be relevant in determining whether the *MMAR* conform to the principles of fundamental justice they clearly represent significant barriers imposed by the state standing between those with medical need and their use of marihuana, unaffected by criminal sanction. Simply put, the *MMAR* do not remove the real risk of conviction and imprisonment for those who must acquire and use marihuana to meet their medical needs. The *MMAR* thus interfere with this aspect of their right to liberty.

99 As we have said, the right to liberty, viewed more broadly, encompasses the right to make decisions that are of fundamental personal importance, such as the decision to use marihuana when necessary to control symptoms of serious medical conditions. For those with that need, the *MMAR* undoubtedly constitute a serious intrusion into a decision of fundamental personal importance. In order to use the marihuana they require, they must comply with the various conditions specified in the

ATP process or face the threat of criminal prosecution. In placing these significant hurdles in their way the state has interfered with this broader aspect of their right to liberty.

100 Turning to the right to security of the person, this court concluded in *R. v. Parker*, *supra*, that the marihuana prohibition in s. 4 of the *CDSA* deprives those with the medical need to use marihuana of that right because it prevents them from using that medication on pain of criminal prosecution.

101 In coming to its conclusion, this court in *Parker* relied on the description by Sopinka J. of the right to security of the person in the context of medical treatment which is found in *Rodriguez*, *supra*, at 587-88:

> In my view, then the judgments of this Court in *Morgentaler* can be seen to encompass a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress. In *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.), supra*, Lamer J. (as he then was) also expressed this view, stating at p. 1177 that "[s]ection 7 is also implicated when the state restricts individuals' security of the person by interfering with, or removing from them, control over their physical or mental integrity". *There is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these*. [Emphasis added.]

102 As we have said, *Gosselin*, *supra*, at para. 77, affirmed that s. 7 protects the individual against the state impinging on life, liberty or security, not just through the process of the criminal law, but more generally through state action taken in the course of enforcing and securing compliance with the law.

103 The medical exemption scheme puts those people at risk of prosecution and imprisonment when they use the medication they need but do not have an ATP or cannot observe its conditions. Moreover, the *MMAR* provide them with very limited and ineffective access to marihuana through their own PPL or from a DPL holder. Apart from this, the criminal prohibition in s. 5 of the *CDSA* applies to anyone who would supply them with marihuana. The reality of supply thus is that this criminal sanction stands between those in medical need and the marihuana they require. That is the effect of the *MMAR*.

104 Even apart from these criminal sanctions for non-compliance, the *MMAR* constitute significant state interference with the human dignity of those who need marihuana for medical purposes. To take the medication they require they must apply for an ATP, comply with the detailed requirements of that process, and then attempt to acquire their medication in the very limited ways contemplated by the *MMAR*. These constraints are imposed by the state as part of the justice system's control of access to marihuana. As such, they are state actions sufficient to constitute a deprivation of the security of the person of those who must take marihuana for medical purposes. They are state actions within the administration of justice that stand between those in medical need and the marihuana they require.

105 In summary, we conclude that the *MMAR* constitute a scheme of medical exemption which deprives those who need to take marihuana for medical purposes of the rights to liberty and security of the person. This is a threshold violation of s. 7. We are therefore required to turn to the question of whether this deprivation is in accordance with the principles of fundamental justice.

(c) Stage two: Is the threshold violation inconsistent with the principles of fundamental justice?

(1) Introduction

106 The phrase "the principles of fundamental justice" in s. 7 is of necessity general and abstract. The court must articulate with as much precision as possible the core principles of our legal system engaged by the specific state action in issue and the specific alleged deprivation of the individual's rights. In articulating the operative principles, the court must avoid describing those principles at a level of generality that suggests little more than a personal assessment of the wisdom of the impugned state conduct. The principles of fundamental justice are not the constitutional equivalent of equity's Chancellor's foot: *Rodriguez*, *supra*, at 590-91.

107 Context is crucial to both the identification of the operative principles of fundamental justice and the determination of whether any threshold violation of an individual's rights under s. 7 is consistent with the principles of fundamental justice at play: *R. v. White*, *supra*, at 436-40. The Hitzig applicants assert the right to make a fundamental personal decision concerning how best to treat serious symptoms associated with life threatening medical problems: *R. v. Parker*, *supra*, at 228-29. The Government has recognized since 1999, that for some seriously ill individuals, marihuana is a medically useful and appropriate medication. The Government has accepted that those individuals must be able to obtain and use marihuana for medical purposes without fear of criminal prosecution. At the same time, however, the Government is obliged to protect the public health and safety of all of its citizens through the regulation of the medicinal use of substances like marihuana. The Government contends that public health and safety concerns include potential health risks from long-term use, the Government's need to comply with stringent international controls on the use and distribution of marihuana, and the Government's obligation to combat the criminal drug trade, which includes the illicit distribution of marihuana for non-medical purposes.

108 The nature of the individual right asserted and the purpose animating the Government action are important contextual considerations at the second stage of the s. 7 analysis. The actual effect of the state action is an equally important contextual consideration. State action that may on its face be benign or even promote individual interests may, in its actual operation, be inconsistent with the principles of fundamental justice: *R. v. Morgentaler*, *supra*. The Hitzig applicants stress the effects of the scheme implemented by the *MMAR* in asserting a violation of their s. 7 rights both in respect of the supply issue and the eligibility issue.

(2) The supply issue and the principles of fundamental justice

109 It is undeniable that the effect of the *MMAR* is to force individuals entitled to possess and use marihuana for medical purposes to purchase that medicine from the black market. As Lederman J. put it at para. 159:

> As a result, the regulatory system set in place by the *MMAR* to allow people with a demonstrated medical need to obtain marijuana simply cannot work without relying on criminal conduct and lax law enforcement. . . .

110 Lederman J. found that the absence of a legal supply of marihuana for people entitled to possess and use it under the *MMAR* resulted in a breach of s. 7, holding at para. 160:

> To my mind, this aspect of the scheme offends the basic tenets of our legal system. It is inconsistent with the principles of fundamental justice to deny a legal source of marijuana to people who have been granted ATPs and licences to produce. Quite simply, it does not lie in the government's mouth to ask people to consort with criminals to access their constitutional rights. . . .

111 We agree with the conclusion reached by Lederman J. He does not, however, expressly identify the principle or principles of fundamental justice which he finds are violated by the failure to provide for a legal source of supply. In attempting to identify that principle or principles, we begin with the words of Lamer J. (as he then was) in the seminal case of *Reference re s. 94(2) of the Motor Vehicle Act (British Columbia)*, [1985] 2 S.C.R. 486 (S.C.C.), at 503, 512:

> In other words, the principles of fundamental justice are to be found in the basic tenets of our legal system. They do not lie in the realm of general public policy, but in the inherent domain of the judiciary as guardian of the justice system. . . .
>
> [T]hey [the principles of fundamental justice] represent principles which have been recognized by common law, the international conventions, and by the very fact of entrenchment in the *Charter*, as essential elements of a system for the administration of justice which is founded upon a belief in the dignity of the human person and the rule of law.

112 The rule of law, identified by Lamer J. as a bulwark of our administration of justice, has been described as "the root of our system of government" and a "highly textured expression, importing many things": *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (S.C.C.), at 257. Several principles of fundamental justice, including some which are entrenched in the *Charter*, trace their roots to various components of the rule of law (*e.g.*, s. 9, s. 11(g), s. 11(h)). At its most general level, the

rule of law refers to the regulation of the relationship between the state and individuals by pre-established and knowable laws. The state, no less than the individuals it governs, must be subject to and obey the law: *Reference re Language Rights Under s. 23 of Manitoba Act, 1870 & s. 133 of Constitution Act, 1867*, [1985] 1 S.C.R. 721 (S.C.C.), at 748-51; *Reference re Questions Concerning Amendment of Constitution of Canada as Set out in O.C. 1020/80*, [1981] 1 S.C.R. 753 (S.C.C.), at 805-06; and *R. v. Shirose*, [1999] 1 S.C.R. 565 (S.C.C.), at 582-83.

113 The state's obligation to obey the law is central to the very existence of the rule of law. Without this obligation, there would be no enforceable limit on the state's power over individuals. Human dignity, the second essential component of the administration of justice identified by Lamer J. in *Reference re s. 94(2) of the Motor Vehicle Act (British Columbia)*, *supra*, could not long survive a system where the Government was free to do as it saw fit without regard to established laws.

114 The state's obligation to obey its own laws not only serves as an invaluable brake on the exercise of state power against the individual, it also makes the state a role model for its citizens. By adhering to the law, the state encourages its citizenry to do likewise: *Rodriguez*, *supra*, at 608. Because it obeys and honours the law, the state can assume the moral high ground, which justifies state prosecution and punishment of individuals who break the law. As the entrapment jurisprudence demonstrates, loss of that moral high ground, through for example, active solicitation of criminal conduct, will foreclose prosecution by the state: *R. v. Mack*, [1988] 2 S.C.R. 903 (S.C.C.).

115 The state's obligation to obey the law is fundamental to our system of justice. No one would argue that it does not have general acceptance among reasonable people: *Rodriguez*, *supra*, at 607. The state's obligation to obey the law is well established at common law through the process of judicial review, is implicitly recognized in the preamble to the *Constitution Act, 1867*, (U.K.), 30 and 31 Vict., c. 3, is expressly recognized in the preamble to the *Constitution Act, 1982*, and is further recognized in s. 52 of the *Constitution Act, 1982*. We have no hesitation in concluding that the state's obligation to obey the law is a principle of fundamental justice.

116 The *MMAR* do not require the state to violate the law. They do, however, create an alliance between the Government and the black market whereby the Government authorizes possession of marihuana for medical purposes and the black market supplies the necessary product. The *MMAR* provide a viable medical exemption to the prohibition against possession of marihuana only as long as there are individuals who are prepared to commit a crime by supplying the necessary medical marihuana to the individuals that the Government has determined are entitled to use the drug. At the same time, the *MMAR* force seriously ill individuals who have been found to be in need of medical marihuana to consort with criminals to fill that medical need. Forcing sick people to go to the black market to get their medicine can only discourage respect for the law and at the same time signal that the medical needs of these people are somehow not worthy of the same kind of consideration as other medical needs.

117 A Government scheme that depends on the criminal element to deliver the medically necessary product, and that drives those in need of that product to the black market strikes at the same values that underlie the state's obligation to obey the law. The *MMAR*, far from placing the Government in the position of a positive role model or on the moral high ground, are calculated to bring the law into disrepute and devalue the worth and dignity of those individuals to whom the *MMAR* are applied. The Government's obligation to obey the law must include an obligation to promote compliance with and respect for the law.

118 The inevitable consequences of the absence of a legal source of marihuana for those who have been determined to be in medical need of the drug are inconsistent with the fundamental principle that the state must obey and promote compliance with the law. In our view, the absence of a legal source of supply renders the *MMAR* inconsistent with the principles of fundamental justice.

119 There is an alternative approach to the second stage of the s. 7 inquiry which also leads to the conclusion that the provisions in the *MMAR* are inconsistent with the principles of fundamental justice. This alternative approach begins by recognizing that it is a principle of fundamental justice within our legal system that the individual rights identified in s. 7 may be subordinated, at least to some extent, to substantial and compelling collective interests: *Godbout c. Longueuil (Ville)*, [1997] 3 S.C.R. 844

(S.C.C.), at 898-900, per La Forest J.; and *R. v. Pan* (1999), 134 C.C.C. (3d) 1 (Ont. C.A.), at 61-62; aff'd [2001] 2 S.C.R. 344 (S.C.C.), at 386-89.

120 The application of this approach to the principles of fundamental justice requires that the court determine whether there is a substantial and compelling state interest served by the impugned state action which has resulted in the threshold violation of the individual rights identified in s. 7. If the action is in furtherance of a substantial and compelling interest, then the question becomes whether the state action imposes an undue burden on the individual's rights: *R. v. Beare*, [1988] 2 S.C.R. 387 (S.C.C.), at 401-04. Determining when the balance struck by the state can be said to effect a fair balance between state interests and individual rights can be a very difficult question which pushes the court to the brink of the forbidden world of policy-driven decision making.

121 In this case, however, the Government's attempt to rely on the assertion that the *MMAR* serve a substantial and compelling collective interest justifying the absence of any legal source of medical marihuana fails at its most basic level. The substantial and compelling interest advanced by the Government is the need to preserve and promote public health and safety. We accept that this can be a substantial and compelling collective interest for the purposes of s. 7 of the *Charter*. However, a scheme which depends on the criminal black market and which forces individuals to go to the black market to obtain necessary medical treatment cannot possibly further public health and safety. In fact, it has the opposite effect. By failing to provide for a lawful source of medical marihuana, the *MMAR* not only compromise individual rights, but undermine the very collective interests which the Government contends are promoted by these regulations. Lederman J. made this point at paras. 161, 163:

> That the Government relies on the criminal underworld in this manner is rather surprising when it has declared that the goals of the *MMAR* and its interlocking regulatory scheme include controlling the illicit drug trade and upholding Canada's international narcotics control obligations. . . .
>
> As a result, production licences offer the applicants an illusory remedy which can only be accessed through reliance on black market distributors. Despite ostensibly being concerned with avoiding diversion and illegal use of marihuana, to say nothing of conforming with international drug conventions, the *MMAR* force medical marihuana users into the arms of suppliers whom the state has deemed criminal drug dealers. This position is untenable, and is certainly not consistent with the principles of fundamental justice.

122 Our conclusion that a scheme which does not provide for lawful access to medical marihuana is inconsistent with s. 7 of the *Charter* should not surprise anyone who has read this court's decision in *R. v. Parker*, *supra*, or the decision of the Alberta Court of Queen's Bench in *R. v. Krieger* (2000), 225 D.L.R. (4th) 164 (Alta. Q.B.); aff'd (2003), 225 D.L.R. (4th) 183 (Alta. C.A.); leave to appeal sought by Canada: [2003] S.C.C.A. No. 114. Although neither case dealt with the *MMAR*, both made it clear that any medical exception to the criminal prohibition against possession of marihuana would have to address not just possession, but also the means of obtaining the drug needed for the medical purpose. In determining that the prohibition against cultivation of marihuana in the former *Narcotic Control Act* was unconstitutional absent an adequate medical exception, Rosenberg J.A. said in *Parker*, at 249-50:

> To conclude, the deprivation of Parker's right to liberty and security of the person because of the complete prohibition on the possession of cultivation of marihuana in the former *Narcotics Control Act* does little or nothing to enhance the state interest. In my view, Parker established that his rights under s. 7 were violated by the absolute prohibition of cultivation of marihuana in the *Narcotics Control Act*. Parker has no practical means of obtaining the drug for his medical needs. I did not understand the Crown to suggest that we should distinguish between the possession and cultivation for medical use, for the purpose of the s. 7 analysis.

123 Rosenberg J.A. reached the same conclusion with respect to the cultivation prohibition in the *CDSA*, saying, at 262-63:

> However, it is apparent from these reasons and the reasons dealing with the cultivation offence under the *Narcotics Control Act* that if the cultivation prohibition had been before this court, I would hold that it too infringes Parker's s. 7 rights. Since there is no legal source of supply of marihuana, Parker's only practical way of obtaining marihuana for his medical needs

> is to cultivate it. In this way, he avoids having to interact with the illicit market and can provide some quality control. [Emphasis added.]

124 We read Rosenberg J.A. as requiring "a practical way of obtaining" the necessary medical marihuana as an integral part of any legitimate medical exemption. We also read him as clearly eliminating the black market as a suitable means of obtaining the necessary medical marihuana. [11]

125 The trial judge in *R. v. Krieger*, *supra*, concluded that the cultivation prohibition in the *CDSA* was unconstitutional, opining at 178-79:

> Obtaining a s. 56 exemption from the Minister of Health triggers the absurdity that an individual who has been granted an exemption has the legal right to produce, possess and use cannabis marihuana. However, in order to obtain the product, the individual is required to participate in an illegal act, since whoever sells the exempted person either the raw cannabis marihuana or the seeds to grow their own does so in breach of s. 5(2) of the *CDSA* . . . .
>
> I am not satisfied that the absurdity that I mentioned above has been properly addressed. In my view, when a minister has the discretion to allow someone an exemption to produce and use a substance for proper medical purposes, that substance must be something that is available to the individual by legal means at the time exemption is granted. As a s. 56 exemption has no practical purpose without a legal source for cannabis marihuana, s. 56 cannot serve to delineate the boundaries of the Applicant's s. 7 rights or to justify violation of those boundaries. [Emphasis added.]

126 In affirming the trial decision, the Alberta Court of Appeal said, at para. 5:

> We agree with the trial judge that s. 56 [*CDSA*] creates an absurdity because there was no legal source of marihuana. That absurdity is not removed by the fact that the respondent had a personal supply at the time the charge was laid. There is no evidence as to how long the supply would last nor as to the duration of the potential s. 56 exemption.

127 The previous appellate decisions dealing with the constitutionality of medical exemptions to the prohibition against marihuana possession point directly at the result reached by Lederman J. on the supply issue.

128 Thus, we conclude that in setting up a scheme of medical exemption which depends on an illicit source of supply, the *MMAR* do not accord with the principles of fundamental justice.

(3) The eligibility issue and the principles of fundamental justice

129 Before Lederman J., the Hitzig applicants argued that in depriving those who need to use marihuana of their rights to liberty and security of the person, the *MMAR* do not accord with the principles of fundamental justice because they throw up so many barriers to eligibility for a medical exemption for marihuana that it effectively remains unavailable to many seriously ill people who need it.

130 Lederman J. rejected this argument, concluding that the application process, the specialist requirement and the daily dosage provisions are neither arbitrary nor unrelated to the objectives of the *MMAR* and they did not render the scheme an illusory medical exemption from the criminal prohibition.

131 On their cross-appeal, the Hitzig applicants seek to reverse that finding in this court. In addressing the eligibility issue, they raised a number of aspects of the *MMAR* in their written material: the daily dosage limits imposed by the scheme; the reliance on physicians to determine if marihuana is needed by the individual; and the requirement for support from specialists to qualify, unless the individual is terminally ill. In argument, the focus was very much on the last of these.

132 We will deal with each of these in turn, but in the end we differ with Lederman J.'s. conclusion in only one respect. In our view, only the requirement for a second specialist for individuals in category 3 has been shown by these applicants not to accord with the principles of fundamental justice.

133 The legal context for this analysis is best provided by the balancing approach to the principles of fundamental justice that we already have described. Here, it is useful to begin with the words of McLachlin J. (as she then was) in *Cunningham v. Canada*, [1993] 2 S.C.R. 143 (S.C.C.), at 151-52:

> The principles of fundamental justice are concerned not only with the interest of the person who claims his liberty has been limited, but with the protection of society. Fundamental justice requires that a *fair balance* be struck between these interests, both substantively and procedurally. [Emphasis added.]

134 This approach is elaborated in *Godbout*, *supra*, at 899-900, where La Forest J. said this on behalf of the three judges who dealt with s. 7 in that case:

> But just as this Court has relied on specific principles or policies to guide its analysis in particular cases, it has also acknowledged that looking to "the principles of fundamental justice" often involves the more general endeavour of balancing the constitutional right of the individual claimant against the countervailing interests of the state. In other words, deciding whether the principles of fundamental justice have been respected in a particular case has been understood not only as requiring that the infringement at issue be evaluated in light of a specific principle pertinent to the case, but also as permitting a broader inquiry into whether the right of life, liberty or security of the person asserted by the individual can, in the circumstances, justifiably be violated given the interests or purposes sought to be advanced in doing so. To my mind, performing this balancing test in considering the fundamental justice aspect of s. 7 is both eminently sensible and perfectly consistent with the aim and import of that provision, since the notion that individual rights may, in some circumstances, be subordinated to substantial and compelling collective interests is itself a basic tenet of our legal system lying at or very near the core of our most deeply rooted juridical convictions. We need look no further than the Charter itself to be satisfied of this. Expressed in the language of s. 7, the notion of balancing individual rights against collective interests itself reflects what may rightfully be termed a "principle of fundamental justice" which, if respected, can serve as the basis for justifying the state's infringement of an otherwise sacrosanct constitutional right.

135 Related to this principle is the concept described by Sopinka J. in *Rodriguez*, *supra*, where he said that if the state action which causes the deprivation does little or nothing to enhance the state's interest, it can properly be seen as arbitrary and not in accordance with fundamental justice. In such circumstances there cannot possibly be a fair balance between the individual's rights and the collective interests. Sopinka J. put it this way, at 594:

> Where the deprivation of the right in question does little or nothing to enhance the state's interest (whatever it may be), it seems to me that a breach of fundamental justice will be made out, as the individual's rights will have been deprived for no valid purpose. This is, to my mind, essentially the type of analysis which E. Colvin advocates in his article "Section Seven of the Canadian Charter of Rights and Freedoms" (1989), 68 *Can. Bar Rev.* 560, and which was carried out in *Morgentaler*. That is, both Dickson C.J. and Beetz J. were of the view that at least some of the restrictions placed upon access to abortion had no relevance to the state objective of protecting the foetus while protecting the life and health of the mother. In that regard the restrictions were arbitrary or unfair.

136 The first way in which the Hitzig applicants say that the conditions of the *MMAR* do not comply with fundamental justice is the daily dosage limit they place on the amount of marihuana that an ATP holder can possess at any point in time. They argue that this is unreasonable because, given the unpredictability of the strength and quality of the marihuana that is available, this limit may well deprive the individual of sufficient medication to properly control the symptoms of his or her serious medication condition.

137 This argument fails for two reasons. First, the state has a substantial and compelling interest in ensuring that the dosages of this medication are no greater than necessary both to protect vulnerable patients from an untested drug and to ensure against the diversion of any excess to the illicit drug trade. A daily limit fixed by a doctor is a reasonable way to achieve both ends. Second, if the daily dosage limit proves inadequate to treat the symptom properly, the *MMAR* provide for it to be raised on

medical recommendation, so that the individual's medical need is met. Thus, the daily dosage limit cannot be said to impose an undue burden on individual rights and represents a fair balance between the individual interest and the state interest.

138 The second attack on the eligibility barriers created by the *MMAR* focuses on the use of physicians as gatekeepers in the sense that every application must be supported by a doctor and it is that doctor who must declare that marihuana is recommended to mitigate the symptom involved. It is argued that this places unwarranted power to determine whether an individual receives a medical exemption in the hands of physicians rather than letting the individual decide for him or herself or having the Minister of Health do so. It is further argued that the serious concerns of several central medical groups about the gatekeeper role for physicians means that doctors will not assist individuals to obtain medical exemptions.

139 Again, we do not agree. Whether marihuana will mitigate the particular symptom of an individual with a particular serious medical condition is fundamentally a medical question. Just as physicians are relied on to determine the need for prescription drugs, it is reasonable for the state to require the medical opinion of physicians here, particularly given that this drug is untested. [12] The second argument is answered by Lederman J.'s finding that despite the concerns of central medical bodies, a sufficient number of individual physicians were authorizing the therapeutic use of marihuana that the medical exemption could not be said to be practically unavailable. This finding of fact is entirely reasonable on the record in this case and we would not interfere with it. Of course, if in future physician co-operation drops to the point that the medical exemption scheme becomes ineffective, this conclusion might have to be revisited.

140 The third attack on the eligibility conditions of the *MMAR*, and the one focused on in the argument before us, rests on the requirement that the physician support for a medical exemption for individuals in category 2 and category 3 must come from specialists. Again, the Hitzig applicants make two arguments in mounting the attack.

141 First, they say that because marihuana is an untested medication there is no justification for requiring medical support beyond the individual's own general practitioner since the specialist has no knowledge advantage. They say that when this is combined with the practical difficulties that exist in accessing specialists, particularly in rural areas, the specialist requirements for categories 2 and 3 constitute an unreasonable barrier which significantly interferes with those in medical need from accessing the medication they require.

142 In our view, this argument too does not succeed. In order to qualify for a medical exemption, both individuals in category 2 and those in category 3 must have a declaration from a specialist practising in an area of medicine relevant to the treatment of the individual's medical condition causing the symptom to be mitigated. The declaration must say that all conventional treatments for the symptom have been tried or considered and why each is medically inappropriate. The requirement for a declaration in this form serves substantial and compelling state interests. First, it serves the state interest in protecting the health and safety of its citizens in relation to an untested drug. Second, it serves the state interest in complying with international conventions aimed at restricting the use of drugs such as marihuana save for legitimate medical and scientific purposes. A specialist in the treatment of the particular medical condition is likely to have more knowledge than a general practitioner of the complete range of possible treatments, including ones that may just be emerging. The specialist requirement thus better assures that marihuana is used only if no other more conventional medication is effective. Given that marihuana is an untested drug, this is a substantial and compelling state interest. So too is compliance with international conventions that are designed to restrict the use of drugs save for legitimate medical and scientific purposes a state interest which the specialist requirement also serves.

143 Moreover, on this record, the Hitzig applicants simply have not shown that the specialist requirement is a significant impediment to obtaining a medical exemption. Only one of these applicants, Ms. Devries, can point to any difficulty, due to a lack of access, in getting specialist support for her application, and there is some doubt that this individual sought actively to meet this requirement, because she first spoke to a specialist only a few days before her cross-examination in this proceeding. Here as well, Lederman J.'s finding of fact, at paras. 154-56, that the specialist requirement does not make the medical exemption practically unavailable, is entirely reasonable and not open to interference by this court. However, as with the concern over physician co-operation, should the passage of time reveal that access to specialists is a significant practical impediment a different conclusion might be reached. Thus, on this record we conclude that the specialist requirement does not constitute an undue constraint on the individual's ability to get a medical exemption and represents a fair balance between the interests of the individual and the state.

144 However, in our view, the second argument in this attack does have merit. The Hitzig applicants simply say that the requirement to have a second specialist support the application for an individual in category 3 does little or nothing to enhance the state's interest and in that sense represents an arbitrary restriction.

145 We agree. The second specialist requirement is clearly an additional restriction on the acquisition of a medical exemption by those in category 3. Yet it is hard to see that the second specialist adds anything that could be said to advance the state interest. The second specialist is no differently qualified than the first. Ironically, the second specialist is not asked at all to opine about the availability of other possible treatments, which is the principal justification advanced by the state for any specialist involvement. Rather, the second specialist is required only to agree with the first specialist that marihuana would mitigate the symptom and that the benefits outweigh the risks. And in doing so the second specialist does not see the individual but merely reviews the medical file. In these circumstances the requirement for a second opinion adds so little if any value to the assessment of medical need that it is no more than an arbitrary barrier standing between an individual in category 3 and a medical exemption. In this particular respect only, the eligibility conditions of the *MMAR* do not accord with the principles of fundamental justice.

(x) The s. 1 Analysis

146 Having found that this scheme of medical exemption violates s. 7, it remains to consider s. 1. Can the Government demonstrate that the offensive aspects of the *MMAR* constitute a reasonable limit that is demonstrably justified in a free and democratic society? We agree with Lederman J. that the answer to this is no. Indeed, we are in substantial agreement with his reasons.

147 In the course of our s. 7 analysis, with respect to both eligibility and supply, we have undertaken a balancing between the interests of the state and the interests of the individual and have concluded that the offending provisions of the *MMAR* do not advance the collective interest sufficiently to justify the limitation which they place on the individual's rights. The factors which we considered there are also germane to the s. 1 analysis. Hence, we do not think it necessary to repeat in detail the balancing exercise in relation to s. 1, particularly since there, unlike s. 7 the onus of justification rests on the state, making the state's task that much harder.

148 Suffice it to say that we agree with Lederman J. that the *MMAR* seek to provide a medical exemption while pursuing the objectives of better public health and safety and effective narcotic drug control consistent with Canada's international treaty obligations. We accept that these objectives are pressing and substantial.

149 However, like Lederman J., we conclude that both offending aspects of the *MMAR* clearly fail the first step in the proportionality test required by s. 1. There is simply no rational connection between either of the two offending aspects of the scheme of medical exemption and these important objectives.

150 The first aspect is the eligibility requirement that those individuals in category 3 have the support of a second specialist. As we have said, this requirement is at best redundant. It adds no value to the application and does little or nothing to advance the state objective. In particular it does nothing to promote public health and safety. And it is entirely irrelevant to effective narcotic drug control. There is no rational connection between this requirement and the state objectives.

151 The second aspect is the maintenance of significant barriers between individuals with the medical need to use marihuana and a licit supply of the medication which they require. As we have described, the effect of the *MMAR* is to force seriously ill individuals to seek the medication they need from the black market with all the risks of tainted product that this presents. Exposing these individuals to these risks does not advance the objective of better public health and safety. Rather, it is contrary to it. Equally, driving business to the black market is contrary to better narcotic drug control. Here again there is an absence of rational connection with the state objectives.

152 Thus, neither aspect of the *MMAR* which we have found to contravene s. 7 can be saved by s. 1.

(xi) The Appropriate Remedy

153 Having found that the *MMAR* do not create a constitutionally valid medical exemption to the criminal prohibition in s. 4 of the *CDSA*, we must now shape a declaration under s. 52 of the *Charter* which responds to the constitutional shortcomings of the *MMAR*. We must then determine whether that order should be suspended. As we shall explain, we have concluded that a precisely targeted declaration is appropriate and that it should not be suspended. In this case, the same considerations which dictate the relatively narrow focus of our declaration of invalidity militate against any suspension of that order. We will identify and address those factors subsequently, as they apply to both the scope and timing of the remedy we would grant. First, however, we must turn to the order proposed by the Hitzig applicants.

154 The Hitzig applicants argue that the appropriate remedy for the constitutional deficiency in the scheme of medical exemption crafted by the Government is the declaration granted by Lederman J., namely that the *MMAR* in their entirety are constitutionally invalid and of no force or effect. In their cross-appeal they also seek a declaration that the criminal prohibition against possession in s. 4 of the *CDSA* is of no force or effect in relation to marihuana. Of course, without the invalidity of the marihuana prohibition in s. 4, an order declaring the *MMAR* to be of no force or effect would leave those in medical need of marihuana with no way to possess it without criminal sanction.

155 We find the remedy contended for by the Hitzig applicants to be overly broad and inadequately tailored to the constitutional deficiencies in the MMAR. Section 52(1) of the *Constitution Act, 1982* requires the court to strike down any law that is inconsistent with the Constitution, but only "to the extent of the inconsistency". This invites some precision in selecting a remedy.

156 Dealing first with the eligibility deficiencies in the *MMAR*, it is true that the declarations sought by these applicants have the effect of removing the barrier of criminal sanction for possession of marihuana by those in medical need of it. However, the remedy proposed by the respondents achieves this result only by striking down the *MMAR* in their entirety and by coupling this with the invalidation of the marihuana prohibition in s. 4 of the *CDSA*. The latter declaration would exempt from criminal sanction all those who possess marihuana, not just those who must do so out of medical necessity. Thus, the remedy sought goes well beyond the eligibility deficiencies in the medical exemption crafted by the appellant. In that sense the remedy sought by these respondents is simply too broad.

157 Turning to the supply deficiency in the *MMAR*, the remedy proposed by these respondents does nothing to address this constitutional defect. Even if the entirety of the *MMAR* and the marihuana prohibition in s. 4 of the *CDSA* were declared invalid, those with a medical need for marihuana would remain without a licit source of supply. The proposed solution is simply not tailored to meet that problem.

158 Rather, we think that the remedy must be more specifically targeted to the constitutional shortcomings that we have identified in the *MMAR*.

159 First, as to its eligibility provisions, we have found that the requirement for a second specialist is unnecessary and violates the s. 7 rights of those in medical need who come within category 3. We would simply declare that requirement, found in ss. 4(2)(c) and s. 7 of the *MMAR*, to be of no force or effect.

160 We have also found that the *MMAR* violate the s. 7 rights of those with a medical need for marihuana because they fail to effectively remove the state barriers to a licit source of supply. As we have described, these barriers encompass a broad array of state actions: the *MMAR*, the provisions of the *FDA* and the *CDSA* and the regulations made thereunder and ultimately the criminal sanction applied to anyone (except a DPL holder) who supplies marihuana to an individual with a medical need for it.

161 We have earlier described the ineffectiveness of the DPL provisions of the *MMAR* to ensure a licit supply to ATP holders. That ineffectiveness appears to stem very largely from two prohibitions in the *MMAR*. First, a DPL holder cannot be remunerated for growing marihuana and supplying it to the ATP holder (s. 34(2)). Second, a DPL holder cannot grow marihuana for more than one ATP holder (s. 41(b)) nor combine his or her growing with more than two other DPL holders (s. 54). These barriers effectively prevent the emergence of lawfully sanctioned "compassion clubs" or any other efficient form of supply

to ATP holders. Indeed, when asked in argument which specific barriers had to be removed to provide for a lawful source of supply, counsel for the Hitzig applicants immediately cited these provisions.

162 As the record makes clear, there are a number of people who already have a source of marihuana and wish to engage in compassionate supply of it to those in medical need. Indeed the Government's case rested in large part on their existence. It argued that they effectively serve as "unlicensed suppliers" for ATP holders. It may be that not all of these people would satisfy the requirements to become DPL holders set out in the *MMAR*. However, we are satisfied that, on this record, enough would do so that taken together with existing DPL holders, the DPL mechanism as modified could then provide a licit source of supply to ATP holders. Once this modification is implemented, ATP holders would therefore no longer need to access the black market to get the marihuana they need.

163 Nor for DPL holders drawn from "unlicensed suppliers" is there a "first seed" problem requiring that they enter the black market. They already have their first seed. For future DPL holders who do not have their first seed, the constitutional problem presented by their need to access the black market once in order to get that first seed is far less than the problem under the *MMAR*, where ATP holders themselves are mostly unable to obtain designated producers and, not being healthy enough to grow their own marihuana, must regularly and repeatedly access the black market.

164 However, even this limited first seed difficulty would be eliminated if future DPL holders who did not already have their first seed could access the Government supply to obtain it. The regulation that was brought into force on July 8, 2003 would appear to provide for just that solution.

165 Taking these considerations together, we conclude that the remedy which most directly addresses the constitutional deficiency presented by the absence of a licit supply of marihuana is to declare invalid sections 34(2), 41(b) and 54 of the *MMAR*. This will allow all DPL holders to be compensated, to grow for more than one ATP holder, and to combine their growing with more than two other DPL holders. Provided that the regulation of July 8, 2003 remains in place and is acted upon, there is no need to declare that the Government has a constitutional obligation to provide the first seed to those DPL holders who do not have one.

166 The declarations of invalidity we propose remove the single unconstitutional barrier to eligibility and sufficient barriers to supply that ATP holders will be reasonably able to meet their medical needs from licit sources. As a result, the *MMAR* as modified become a constitutionally sound medical exemption to the marihuana prohibition in s. 4 of the *CDSA*. While the record before us sustains this conclusion, it is conceivable that, as events unfold, further serious barriers could emerge either to eligibility or to reasonable access to a licit source of supply. Should that happen, the issue of the appropriate remedy might have to be revisited in a future case.

167 The final question we must consider is whether to suspend our declarations. We address this in the context of the guidance provided by Lamer C.J.C. in *Schachter v. Canada*, [1992] 2 S.C.R. 679 (S.C.C.), at 717:

> The question whether to delay the application of a declaration of nullity should therefore turn not on considerations of the role of the court and the legislature, but rather on considerations listed earlier relating to the effect of an immediate declaration on the public.

168 Chief Justice Lamer was referring to any potential public danger, threat to the rule of law, or denial of benefit to deserving persons that could arise if there were no suspension. None are applicable here. Indeed an immediately effective order would reduce any potential public danger and the threat to the rule of law by providing ATP holders with an effective alternative to the black market.

169 Not only is the suspension of our order not justified under the ratio of *Schachter*. There are five factors specific to this case which weigh against any suspension of our order. As will be apparent, these considerations have also shaped the scope of our remedy albeit viewed from a somewhat different perspective. Viewed in that context, they speak to the targeted declaration we have determined to be appropriate. Viewed in the context of the timing of that declaration, they also speak against any suspension.

170 First, if we do not suspend our order, there will immediately be a constitutionally valid exemption in effect and the marihuana prohibition in s. 4 of the *CDSA* will immediately be constitutionally valid and of full force and effect. In *R. v. Parker*, *supra*, this court declared the prohibition invalid as of July 31, 2001 if by that date the Government had not enacted a constitutionally sound medical exemption. Our decision in this case confirms that it did not do so. Hence the marihuana prohibition in s. 4 has been of no force or effect since July 31, 2001. Since the July 8, 2003 regulation did not address the eligibility deficiency, that alone could not have cured the problem. However, our order has the result of constitutionalizing the medical exemption created by the Government. As a result, the marihuana prohibition in s. 4 is no longer inconsistent with the provisions of the Constitution. Although Parliament may subsequently choose to change it, that prohibition is now no longer invalid, but is of full force and effect. Those who establish medical need are simply exempted from it. This consequence removes the cloud of uncertainty from the marihuana prohibition in s. 4 of the *CDSA* - a cloud which we were told in argument has created very considerable confusion for courts and law enforcement agencies alike. A suspension of our remedy would simply have continued that undesirable uncertainty for a further period of time.

171 Second, in argument, counsel for the Government strongly urged that if we found the *MMAR* to be constitutionally flawed, we should be as precise as possible in specifying the corrective measures to be taken. Our remedy quite precisely determines the barriers in the *MMAR* which, if removed, would render it a constitutionally sound medical exemption to s. 4 of the *CDSA*. Our order represents a minimal intrusion on the Government's scheme of medical exemption. It leaves untouched the licensed possession aspect of the scheme and modifies the licensed production aspect of it only enough to make it constitutionally acceptable.

172 Third, we acknowledge that the Government could choose to address the constitutional difficulty by adopting an approach fundamentally different from that contemplated in the *MMAR*. The alternatives range from the Government acting as the sole provider, to the decriminalization of all transactions that provide marihuana to an ATP holder. Indeed, even if the Government is content with the solution contained in the *MMAR* as modified by our order, it may seek to impose reasonable limits, provided they do not impede an effective licit supply, for example on the amount of compensation that a DPL holder can claim or on the size of the operation that a DPL holder can undertake.

173 If the Government wishes to adopt any of these alternatives, that decision could be taken quickly, given the obvious thought that has gone into the development of its policy on the medical use of marihuana. Moreover, it can easily be implemented with dispatch, simply by regulation. An amendment to the *CDSA* is not necessary. [13] In the meantime, the constitutional rights of those in medical need will be respected.

174 Fourth, a central component of the Government's case is that there is an established part of the black market, which has historically provided a safe source of marihuana to those with the medical need for it, and that there is therefore no supply issue. The Government says that these "unlicensed suppliers" should continue to serve as the source of supply for those with a medical exemption. Since our remedy in effect simply clears the way for a licensing of these suppliers, the Government cannot be heard to argue that our remedy is unworkable.

175 Finally an order that is not suspended gives immediate recognition to the s. 7 rights of those whose serious illnesses necessitate that they use marihuana. Some of these people are terminally ill. To suspend our remedy if they may die in the meantime is, in our view, inconsistent with fundamental *Charter* values.

176 In summary, we would dismiss the Government's appeal and allow the cross-appeal of the Hitzig applicants, but only in one specific respect. However, because of our conclusion about the proper remedy, we would alter the judgment appealed from by setting aside its first two paragraphs and substituting an order declaring that the second specialist requirement (s. 4(2)(c) and s. 7) and sections 34(2), 41(b) and 54 of the *MMAR* are of no force and effect. We would not disturb the order as to costs made below nor order costs in this court.

IV. The *Parker*, *Turmel* and *Paquette* Appeals

177 The applications brought below by Mr. Turmel, Mr. Parker and Mr. Paquette attack the constitutionality of the criminal prohibition against the possession of marihuana in the *CDSA* on the basis that marihuana is a medically necessary drug. Because the issues were so common, these applications were heard together with the application brought by the Hitzig applicants. All these applications were disposed of by Lederman J. in one set of reasons.

178 Mr. Turmel, Mr. Parker and Mr. Paquette all brought in-person appeals from Lederman J. In argument, we heard submissions from Mr. Turmel and Mr. Parker. Mr. Paquette was not present, although he did file a factum.

179 The position put forward in this court by these appellants differ in only two respects from the case as put forward by the Hitzig applicants. Thus, we need only deal with these two arguments.

180 First, Mr. Turmel and Mr. Parker argue that the criminal prohibition on the possession of marihuana in s. 4 of the *CDSA* is a "genocidal" violation of the s. 7 right to life in that it prohibits healthy Canadians from using marihuana to prevent the onset of serious medical conditions such as epilepsy.

181 The simple answer to this is that, as Lederman J. found, there was no medical evidence presented that the smoking of marihuana by healthy individuals has any prophylactic effect whatsoever. Moreover, as this court found in *R. v. Clay*, *supra*, s. 4 is overbroad only in that it extends to those who need to use marihuana because they already have a serious medical condition. The "prophylactic use" argument, particularly, where there is no evidence upon which to found it, cannot be squared with *Clay*.

182 For his part, Mr. Paquette argued in his factum that the marihuana prohibition in s. 4 of the *CDSA* violates his own right to life. This too is an argument with no evidence to support it. While Mr. Paquette has not applied for a medical exemption under the *MMAR*, he has been granted a series of exemptions under s. 56 of the *CDSA* which have permitted him to lawfully possess marihuana. The *MMAR* therefore have not prevented him from possessing marihuana without criminal sanction, and thus could pose no threat to his right to life.

183 Thus, it is unnecessary to examine either argument further. In summary, we reject both of them and would dismiss the Turmel, Parker and Paquette appeals.

Appeal dismissed; cross-appeal allowed in part.

Appendix

Marihuana Medical Access Regulations, S.O.R./2001-227 (June 14, 2001) in force July 31, 2001

Her Excellency the Governor General in Council, on the recommendation of the Minister of Health, pursuant to subsection 55(1) of the *Controlled Drugs and Substances Act*, hereby makes the annexed *Marihuana Medical Access Regulations*.

1. (1) The following definitions apply in these Regulations. . . .

"Act" means the *Controlled Drugs and Substances Act*. . . .

"authorization to possess" means an authorization to possess dried marihuana issued under section 11.

"category 1 symptom" means a symptom that is associated with a terminal illness or its medical treatment.

"category 2 symptom" means a symptom, other than a category 1 symptom, that is set out in column 2 of the schedule and that is associated with a medical condition set out in column 1 or its medical treatment.

"category 3 symptom" means a symptom, other than a category 1 or 2 symptom, that is associated with a medical condition or its medical treatment.

"conventional treatment" means, in respect of a symptom, a medical or surgical treatment that is generally accepted by the Canadian medical community as a treatment for the symptom.

"designated drug offence" means

(a) an offence against section 39, 44.2, 44.3, 48, 50.2 or 50.3 of the *Food and Drugs Act*, as those provisions read immediately before May 14, 1997;

(b) an offence against section 4, 5, 6, 19.1 or 19.2 of the *Narcotic Control Act*, as those provisions read immediately before May 14, 1997;

(c) an offence under Part I of the Act, except subsection 4(1); or

(d) a conspiracy or an attempt to commit, being an accessory after the fact in relation to or any counselling in relation to an offence referred to in any of paragraphs (a) to (c).

"designated marihuana offence" means

(a) an offence, in respect of marihuana, against section 5 of the Act, or against section 6 of the Act except with respect to importation; or

(b) a conspiracy or an attempt to commit or being an accessory after the fact in relation to or any counselling in relation to an offence referred to in paragraph (a).

"designated person" means the person designated, in an application made under section 37, to produce marihuana for the applicant.

"designated-person production licence" means a licence issued under section 40.

"dried marihuana" means harvested marihuana that has been subjected to any drying process.

"licence to produce" means either a personal-use production licence or a designated-person production licence.

"marihuana" means the substance referred to as "Cannabis (marihuana)" in subitem 1(2) of Schedule II to the Act.

"medical practitioner" means a person who is authorized under the laws of a province to practise medicine in that province and who is not named in a notice given under section 58 or 59 of the *Narcotic Control Regulations*.

"medical purpose" means the purpose of mitigating a person's category 1, 2 or 3 symptom identified in an application for an authorization to possess.

"personal-use production licence" means a licence issued under section 29.

"production area" means the place where the production of marihuana is conducted, that is

(a) entirely indoors;

(b) entirely outdoors; or

(c) partly indoors and partly outdoors but without any overlapping period between the two types of production.

"specialist" means a medical practitioner who is recognized as a specialist by the medical licensing authority of the province in which the practitioner is authorized to practise medicine.

"terminal illness" means a medical condition for which the prognosis is death within 12 months.

(2) For the purpose of sections 28 and 53, a site for the production of marihuana is considered to be adjacent to a place if the boundary of the land on which the site is located has at least one point in common with the boundary of the land on which the place is located.

PART 1 — AUTHORIZATION TO POSSESS

2. The holder of an authorization to possess is authorized to possess dried marihuana, in accordance with the authorization, for the medical purpose of the holder.

3. A person is eligible to be issued an authorization to possess only if the person is an individual ordinarily resident in Canada.

4. (1) A person seeking an authorization to possess dried marihuana for a medical purpose shall submit an application to the Minister.

(2) An application under subsection (1) shall contain

(a) a declaration of the applicant;

(b) a medical declaration that is made

(i) in the case of an application based on a category 1 symptom, by the medical practitioner of the applicant, or

(ii) in the case of an application based on a category 2 or 3 symptom, by a specialist;

(c) if the application is based on a category 3 symptom, a second medical declaration made by another specialist, that supports the medical declaration made under subparagraph (b)(ii); and

(d) Two copies of a current photograph of the applicant.

5. (1) The declaration of the applicant under paragraph 4(2)(a) must indicate

(a) the applicant's name, date of birth and gender;

(b) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(c) the mailing address of the place referred to in paragraph, if different;

(d) if the place referred to in paragraph (b) is an establishment that is not a private residence, the type and name of the establishment;

(e) That the authorization is sought in respect of marihuana either

(i) to be produced by the applicant or a designated person, in which case the designated person must be named, or

(ii) to be obtained under the *Narcotic Control Regulations*, in which case the licensed dealer who produces or imports the marihuana must be named;

(f) That the applicant is aware that no notice of compliance has been issued under the *Food and Drugs Act* concerning the safety and effectiveness of marihuana as a drug and that the applicant understands the significance of that fact; and

(g) That the applicant has discussed the risks of using marihuana with the medical practitioner providing the medical declaration under paragraph 4(2) (b), and consents to using it for the recommended medical purpose.

(2) The declaration must be dated and signed by the applicant attesting that the information contained in it is correct and complete.

6. (1) The medical declaration under paragraph 4(2)(b) must indicate, in all cases

(a) the medical practitioner's or specialist's name, business address and telephone number, provincial medical licence number and, if applicable, facsimile transmission number and e-mail address;

(b) the applicant's medical condition, the symptom that is associated with that condition or its treatment and that is the basis for the application and whether the symptom is a category 1, 2 or 3 symptom;

(c) the daily dosage of dried marihuana, in grams, and the form and route of administration, recommended for the applicant; and

(d) the period for which the use of marihuana is recommended, if less than 12 months.

(2) In the case of a category 1 symptom, the medical declaration must also indicate that

(a) the applicant suffers from a terminal illness;

(b) all conventional treatments for the symptom have been tried, or have at least been considered;

(c) the recommended use of marihuana would mitigate the symptom;

(d) the benefits from the applicant's recommended use of marihuana would outweigh any risks associated with that use; and

(e) the medical practitioner is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug.

(3) In the case of a category 2 symptom, the medical declaration must also indicate that

(a) the specialist practices in an area of medicine, to be named by the specialist in the declaration, that is relevant to the treatment of the applicant's medical condition;

(b) all conventional treatments for the symptom have been tried, or have at least been considered, and that each of them is medically inappropriate because

(i) the treatment was ineffective,

(ii) the applicant has experienced an allergic reaction to the drug used as a treatment, or there is a risk that the applicant would experience cross-sensitivity to a drug of that class,

(iii) the applicant has experienced an adverse drug reaction to the drug used as a treatment, or there is a risk that the applicant would experience an adverse drug reaction based on a previous adverse drug reaction to a drug of the same class,

(iv) the drug used as a treatment has resulted in an undesirable interaction with another medication being used by the applicant, or there is a risk that this would occur,

(v) the drug used as a treatment is contra-indicated, or

(vi) the drug under consideration as a treatment has a similar chemical structure and pharmacological activity to a drug that has been ineffective for the applicant;

(c) the recommended use of marihuana would mitigate the symptom;

(d) the benefits from the applicant's recommended use of marihuana would outweigh any risks associated with that use, including risks associated with the long-term use of marihuana; and

(e) the specialist is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug.

(4) In the case of a category 3 symptom, the medical declaration must also indicate

(a) the matters referred to in subsection (3); and

(b) all conventional treatments that have been tried or considered for the symptom and the reasons, from among those mentioned in paragraph (3)(b), why the specialist considers that those treatments are medically inappropriate.

7. In the case of a category 3 symptom, the second medical declaration under paragraph 4(2)(c) must indicate

(a) the specialist's name, business address and telephone number, provincial medical licence number and, if applicable, facsimile transmission number and e-mail address;

(b) that the specialist practices in an area of medicine, to be named by the specialist in the declaration, that is relevant to the treatment of the applicant's medical condition;

(c) that the specialist is aware that the application is in relation to the mitigation of the symptom identified under paragraph 6(1)(b) and that the symptom is associated with the medical condition identified under that paragraph or its treatment;

(d) that the specialist has reviewed the applicant's medical file and the information provided under paragraph 6(4)(b) and has discussed the applicant's case with the specialist providing that information and agrees with the statements referred to in paragraphs 6(3)(c) and (d); and

(e) that the specialist is aware that no notice of compliance has been issued under the *Food and Drug Regulations* concerning the safety and effectiveness of marihuana as a drug.

8. A medical declaration under section 6 or 7 must be dated and signed by the medical practitioner or specialist making it and must attest that the information contained in the declaration is correct and complete.

9. If the daily dosage recommended under paragraph 6(1)(c) is more than five grams, the medical practitioner or specialist providing the medical declaration under paragraph 4(2)(b) must also indicate that

(a) the risks associated with an elevated daily dosage of marihuana have been considered, including risks with respect to the effect on the applicant's cardio-vascular, pulmonary and immune systems and psychomotor performance, as well as potential drug dependency; and

(b) the benefits from the applicant's use of marihuana according to the recommended daily dosage would outweigh the risks associated with that dosage, including risks associated with the long-term use of marihuana.

. . .

11. (1) Subject to section 12, if the requirements of sections 4 to 10 are met, the Minister shall issue to the applicant an authorization to possess for the medical purpose mentioned in the application, and shall provide notice of the authorization to the medical practitioner or specialist who made the medical declaration under paragraph 4(2)(b).

(2) The authorization shall indicate

(a) the name, date of birth and gender of the holder of the authorization;

(b) the full address of the place where the holder ordinarily resides;

(c) the authorization number;

(d) the name and category of the symptom;

(e) the medical condition, or its treatment, with which the symptom is associated;

(f) the maximum quantity of dried marihuana, in grams, that the holder may possess at any time;

(g) the date of issue;

and

(h) the date of expiry.

(3) The maximum quantity of dried marihuana referred to in paragraph (2)(f) or resulting from an amendment under subsection 20(1) or 22(3) is the amount determined according to the following formula:

A × 30

where A is the daily dosage of dried marihuana, in grams, recommended for the holder under paragraph 6(1)(c), 19(1)(c) or 22(2)(b), whichever applies.

12. (1) The Minister shall refuse to issue an authorization to possess if

(a) the applicant is not eligible under section 3;

(b) any information, statement or other item included in the application is false or misleading;

(c) the application involves a category 3 symptom and either all conventional treatments have not been tried or considered or they are considered to be medically inappropriate for any reason not mentioned in paragraph 6(3)(b); or

(d) the person mentioned in the authorization application as a licensed dealer under the *Narcotic Control Regulations* does not have a valid licence to distribute marihuana under those Regulations.

(2) If the Minister proposes to refuse to issue an authorization to possess, the Minister shall

(a) notify the applicant in writing of the reason for the proposed refusal; and

(b) give the applicant an opportunity to be heard.

13. An authorization to possess expires 12 months after its date of issue or, if a shorter period is specified in the application for the authorization under paragraph 6(1)(d), at the end of that period.

. . .

23. While in the presence of the holder of an authorization to possess and providing assistance in the administration of the daily dosage of marihuana to the holder, the person providing the assistance may, for the purpose of providing the assistance, possess a quantity of dried marihuana not exceeding the recommended daily dosage for the holder.

PART 2 — LICENCE TO PRODUCE

24. The holder of a personal-use production licence is authorized to produce and keep marihuana, in accordance with the licence, for the medical purpose of the holder.

25. (1) Subject to subsection (2), a person is eligible to be issued a personal-use production licence only if the person is an individual ordinarily resident in Canada who has reached 18 years of age.

(2) If a personal-use production licence is revoked under paragraph 63(2)(b), the person who was the holder of the licence is ineligible to be issued another personal-use production licence during the period of 10 years after the revocation,

26. (1) An application for a personal-use production licence shall be considered only if it is made by a person who

(a) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(b) is not the holder of an authorization to possess but either has applied for an authorization to possess, or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(b) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

27. (1) A person mentioned in subsection 26(1) who is seeking a personal-use production licence shall submit an application to the Minister.

(2) The application must include

(a) a declaration of the applicant; and

(b) if the proposed production site is not the ordinary place of residence of the applicant and is not owned by the applicant, a declaration made by the owner of the site consenting to the production of marihuana at the site.

(3) The application may not be made jointly with another person.

28. (1) The declaration of the applicant under paragraph 27(2)(a) must indicate

(a) the applicant's name, date of birth and gender;

(b) the full address of the place where the applicant ordinarily resides as well as the applicant's telephone number and, if applicable, facsimile transmission number and e-mail address;

(c) the mailing address of the place referred to in paragraph (b), if different;

(d) if the applicant is the holder of an authorization to possess, the number of the authorization;

(e) the full address of the site where the proposed production of marihuana is to be conducted;

(f) the proposed production area;

(g) if the proposed production area involves outdoor production entirely or partly indoor and partly outdoor production, that the production site is not adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age;

(h) that the dried marihuana will be kept indoors and—indicating whether it is proposed to keep it at

(i) the proposed production site, or

(ii) the ordinary place of residence of the applicant, if different; and

(i) a description of the security measures that will be implemented at the proposed production site and the proposed site where dried marihuana will be kept.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in it is correct and complete.

29. (1) Subject to section 32, if the requirements of sections 27 and 28 are met, the Minister shall issue a personal-use production licence to the applicant.

(2) The licence shall indicate

(a) the name, date of birth and gender of the holder of the licence;

(b) the full address of the place where the holder ordinarily resides;

(c) the licence number;

(d) the full address of the site where the production of marihuana is authorized;

(e) the authorized production area;

(f) the maximum number of marihuana plants that may be under production at the production site at any time;

(g) the full address of the site where the dried marihuana may be kept;

(h) the maximum quantity of dried marihuana, in grams, that may be kept at the site referred to in paragraph (g) at any time;

(i) the date of issue; and

(j) the date of expiry.

30. (1) In the formulas in subsection (2),

(a) "A" is the daily dosage of dried marihuana, in grams, recommended for the applicant under paragraph 6(1)(c), 19(1)(c) or 22(2)(b), whichever applies;

(b) "C" is a constant equal to 1, representing the growth cycle of a marihuana plant from seeding to harvesting; and

(c) "D" is the maximum number of marihuana plants referred to in subsections 20(2) and 22(5) and paragraphs 29(2)(f) and 40(2)(g).

(2) The maximum number of marihuana plants referred to in paragraph (1)(c) is determined according to whichever of the following formulas applies:

(a) if the production area is entirely indoors,

$D = [(A \times 365) \div (B \times 3C)] \times 1.2$ where B is 30 grams, being the expected yield of dried marihuana per plant,

(b) if the production area is entirely outdoors,

$D = [(A \times 365) \div (B \times C)] \times 1.3$ where B is 250 grams, being the expected yield of dried marihuana per plant; and

(c) if the production area is partly indoors and partly outdoors,

(i) for the indoor period

D = [(A × 182.5) ÷ (B × 2C)] ×. 1.2 where B is 30 grams, being the expected yield of dried marihuana per plant, and

(ii) for the outdoor period

D = [(A × 182.5) ÷ (B × C)] × 1.3 where B is 250 grams, being the expected yield of dried marihuana per plant.

(3) If paragraph (2)(c) applies, the maximum number of marihuana plants for both periods of production shall be mentioned in the licence to produce.

(4) If the number determined for D is not a whole number, it shall be rounded to the next-highest whole number.

31. (1) In the formula in this subsection (2),

(a) "D" is,

(i) if the production area is entirely indoors or outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under paragraphs 30(2)(a) or (b), whichever applies,

(ii) if the production area is partly indoors and partly outdoors, the maximum number of marihuana plants that the holder of the licence to produce is authorized to produce, calculated under subparagraph 30(2)(c)(ii); and

(b) "E" is the maximum quantity of dried marihuana mentioned in paragraphs 20(2) and 22(5) and in paragraphs 29(2)(h) and 40(2)(i).

(2) The maximum quantity of dried marihuana referred to in paragraph (1)(b) is determined according to whichever of the following formulas applies:

(a) if the production area is entirely indoors,

E = D × B × 1.5 where B is 30 grams, being the expected yield of dried marihuana per plant,

(b) if the production area is entirely outdoors,

E = D × B × 1.5 where B is 250 grams, being the expected yield of dried marihuana per plant, and

(c) if the production area is partly indoors and partly outdoors,

E = D × B × 1.5 where B is 250 grams, being the expected yield of dried marihuana per plant.

32. The Minister shall refuse to issue a personal-use production licence if

(a) the applicant is not a holder of an authorization to possess;

(b) the applicant is not eligible under section 25;

(c) any information or statement included in the application is false or misleading;

(d) the proposed production site would be a site for the production of marihuana under more than three licences to produce; or

(e) the applicant would be the holder of more than one licence to produce.

33. A personal-use production licence expires on the earlier of

(a) 12 months after its date of issue, and

(b) the date of expiry of the authorization to possess held by the licence holder.

34. (1) The holder of a designated-person production licence is authorized, in accordance with the licence,

(a) to produce marihuana for the medical purpose of the person who applied for the licence;

(b) to possess and keep, for the purpose mentioned in paragraph (a), a quantity of dried marihuana not exceeding the maximum quantity specified in the licence;

(c) if the production site specified in the licence is different from the site where dried marihuana may be kept, to transport directly from the first to the second site a quantity of marihuana not exceeding the maximum quantity that may be kept under the licence;

(d) if the site specified in the licence where dried marihuana may be kept is different from the place where the person who applied for the licence ordinarily resides, to transport directly from that site to the place of residence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued; and

(e) to transfer, give or deliver directly to the person who applied for the licence a quantity of dried marihuana not exceeding the maximum quantity specified in the authorization to possess on the basis of which the licence was issued.

(2) No consideration may be obtained for any activity authorized under subsection (1).

35. A person is eligible to be issued a designated-person production licence only if the person is an individual ordinarily resident in Canada who

(a) has reached 18 years of age; and—

(b) has not been found guilty, within the 10 years preceding the application, of

(i) a designated drug offence, or

(ii) an offence committed outside Canada that, if committed in Canada, would have constituted a designated drug offence.

36. (1) An application for a designated-person production licence shall be considered only if it is made by a person who

(a) is the holder of an authorization to possess on the basis of which the licence is applied for; or

(b) is not the holder of an authorization to possess, but either has applied for an authorization to possess or is applying for an authorization to possess concurrently with the licence application.

(2) If paragraph (1)(b) applies, the Minister must grant or refuse the application for an authorization before considering the licence application.

37. (1) A person mentioned in subsection 36(1) who is seeking to have a designated-person production licence issued to a designated person shall submit an application to the Minister.

(2) The application must include

(a) a declaration by the applicant;

(b) a declaration by the designated person;

(c) if the proposed production site is not the ordinary place of residence of the applicant and is not owned by the applicant, a declaration made by the owner of the site consenting to the production of marihuana at the site;

(d) a document issued by a Canadian police force establishing that, in respect of the 10 years preceding the application, the designated person does not have a criminal record as an adult for a designated drug offence; and

(e) two copies of a current photograph of the designated person that complies with the standards in paragraphs 10(a) to (c) and is certified by the applicant, on the reverse side, to be an accurate representation of the designated person.

(3) The application may not be made jointly with another person.

38. (1) The declaration of the applicant under paragraph 37(2)(a) must

(a) include the information referred to in paragraphs 28(1) (a) to (d);

(b) indicate the name, date of birth and gender of the designated person;

(c) indicate the full address of the place where the designated person ordinarily resides as well as the designated person's telephone number and, if applicable, facsimile transmission number and e-mail address; and

(d) indicate the mailing address of the place referred to in paragraph (c), if different.

(2) The declaration must be dated and signed by the applicant and attest that the information contained in the declaration is complete and correct.

39. (1) The declaration of the designated person under paragraph 37(2)(b) must

(a) include the information referred to in paragraphs 28(1) (e) to (g) and (i);

(b) indicate that the dried marihuana will be kept indoors and whether it is proposed to keep it at:

(i) the proposed production site, or

(ii) the ordinary place of residence of the designated person, if the proposed production site is not the ordinary place of residence of the applicant; and

(c) indicate that, within the 10 years preceding the application, the designated person has not been convicted of

(i) a designated drug offence, or

(ii) an offence that, if committed in Canada, would have constituted a designated drug offence.

(2) The declaration must be dated and signed by the designated person and attest that the information contained in it is correct and complete.

40. (1) Subject to section 41, if the requirements of sections 37 to 39 are met, the Minister shall issue a designated-person production licence to the designated person.

(2) The licence shall indicate

(a) the name, date of birth and gender of the holder of the licence;

(b) the name, date of birth and gender of the person for whom the holder of the licence is authorized to produce marihuana and the full address of that person's place of ordinary residence;

(c) the full address of the place where the holder of the licence ordinarily resides;

(d) the licence number;

(e) the full address of the site where the production of marihuana is authorized;

(f) the authorized production area;

(g) the maximum number of marihuana plants that may be under production at the production site at any time;

(h) the full address of the site where the dried marihuana may be kept;

(i) the maximum quantity of dried marihuana that may be kept at the site authorized under paragraph (h) at any time;

(j) the date of issue; and

(k) the date of expiry.

41. The Minister shall refuse to issue a designated-person production licence

(a) if the designated person is not eligible under section 35;

(b) the designated person would be the holder of more than one licence to produce; or

(c) for any reason referred to in paragraphs 32(a) to (d).

42. A designated-person production licence expires on the earlier of

(a) 12 months after its date of issue, and

(b) the date of expiry of the authorization to possess on the basis of which the licence was issued.

. . .

51. (1) The Minister, and any person designated by the Minister under section 57 of the Act, is authorized to import and possess marihuana seed for the purpose of selling, providing, transporting, sending or delivering the seed in accordance with this section.

(2) The persons referred to in subsection (1) may sell, provide, transport, send or deliver marihuana seeds only to

(a) the holder of a licence to produce; or

(b) a licensed dealer under the *Narcotic Control Regulations*.

52. The holder of a licence to produce may produce marihuana only at the production site authorized in the licence and only in accordance with the authorized production area.

53. If the production area for a licence to produce permits the production of marihuana entirely outdoors or partly indoors and partly outdoors, the holder shall not produce marihuana outdoors if the production site is adjacent to a school, public playground, day care facility or other public place frequented mainly by persons under 18 years of age.

54. The holder of a licence to produce shall not produce marihuana in common with more than two other holders of licences to produce.

55. The holder of a licence to produce may keep dried marihuana only indoors at the site authorized in the licence for that purpose.

56. (1) The holder of a designated-person production licence must, at either the production site or the site where dried marihuana may be kept, maintain records of the following information in respect of the licence:

(a) the number of plants grown;

(b) the date each plant was planted from seed or by transplant;

(c) the date each plant was harvested; and

(d) for each plant harvested, the weight in grams of dried marihuana obtained.

(2) The information referred to in subsection (1) shall be retained for at least two years after it is recorded.

(3) On request, the holder of a designated-person production licence must provide the Minister with a copy of any record referred to in subsection (1).

57. (1) To verify that the production of marihuana is in conformity with these Regulations and a licence to produce, an inspector may, at any reasonable time, enter any place where the inspector believes on reasonable grounds that marihuana is being produced or kept by the holder of the licence to produce, and may, for that purpose,

(a) open and examine any container found there that could contain marihuana;

(b) examine anything found there that is used or is capable of being used to produce or keep marihuana;

(c) examine any records, electronic data or other documents found there dealing with marihuana, other than records dealing with the medical condition of a person, and make copies or take extracts;

(d) use, or cause to be used, any computer system found there to examine electronic data referred to in paragraph (c);

(e) reproduce, or cause to be reproduced, any document from electronic data referred to in paragraph (c) in the form of a printout or other output;

(f) take any document or output referred to in paragraph (c) or (e) for examination or copying;

(g) mine any substance found there and, for the purpose of analysis, take samples, as reasonably required; and

(h) seize and retain any substance found there, if the inspector believes, on reasonable grounds, that it is necessary.

(2) Despite subsection (1), an inspector may not enter a dwelling-place without the consent of an occupant.

. . .

PART 4 — SUPPLY BY A MEDICAL PRACTITIONER

70. A medical practitioner who has obtained marihuana from a licensed dealer under subsection 24(2) of the *Narcotic Control Regulations* may sell or furnish the marihuana to the holder of an authorization to possess under the practitioner's care.

Footnotes

* College of Law, University of Saskatchewan.

2 The *MMAR* refer only to marihuana and not to other cannabis products.

3 Lederman J. first dealt with standing issues raised by the Government in respect of several of the applicants and denied standing to Mr. Turmel. However, standing was not an issue in this court.

4 See *R. v. P. (J.)* [2003 CarswellOnt 3797 (Ont. C.A.)] (C40043), released concurrently with these reasons; *R. v. Parker* [2003 CarswellOnt 3794 (Ont. C.A.)] (C38113); *R. v. Parker* [2003 CarswellOnt 3796 (Ont. C.A.)] (C39653); and *R. v. Turmel* [2003 CarswellOnt 3798 (Ont. C.A.)] (C40127), also released concurrently with these reasons.

5 The constitutionality of the criminalization of marihuana possession is now before the Supreme Court of Canada in *R. v. Clay* (2000), 146 C.C.C. (3d) 276 (Ont. C.A.); and *R. v. Malmo-Levine* (2000), 145 C.C.C. (3d) 225 (B.C. C.A.).

6 See C.R.C. 1978, c. 870, ss. C.08.010 and C.08.011.

7 See *Single Convention on Narcotic Drugs, 1961*, March 30, 1961, Can. T.S. 1964 No. 30; *Protocol Amending the Single Convention on Narcotic Drugs, 1961*, March 25, 1972, UN Doc. E/Conf. 63/8, Can. T.S. 1976, No. 48; *Convention on Psychotropic Substances, 1971*, February 21, 1971, UN Doc. E/Conf. 58/7, Can T.S. 1988 No. 35; and *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, December 19, 1988, UN Doc. E/Conf. 82/15, Can. T.S. 1990 No. 42.

8 The history of that policy is traced in the reasons of Lederman J. at paras. 9-21; in *R. v. Parker*, *supra*; and in *Wakeford v. Canada* (2002), 58 O.R. (3d) 65 (Ont. C.A.) (leave to appeal dismissed: [2002] S.C.C.A. No. 147 (S.C.C.)).

9 Section 9 of the *MMAR* requires additional information where the recommended daily dosage is above 5 grams.

10 The Government has released more timely *MMAR* application and authorization statistics on the website of its Office of Cannabis Medical Access. This material is available at *http://www.hc-sc.gc.ca/hecs-sesc/ocma/stats/stats.htm* However, the court did not consider the more recent statistics because they did not form part of the record in these appeals and because the parties did not have an opportunity to address them.

11 We see no inconsistency between the holding in *Parker* and this court's refusal in the subsequent case of *Wakeford v. Canada* (2002), 58 O.R. (3d) 65 (Ont. C.A.) to make an order compelling the Government to supply marihuana to the holder of a medical exemption. Nothing said in *Parker*, or in this case, compels the Government to supply marihuana to anyone. Furthermore, the refusal to make the order in *Wakeford* was based on specific findings of fact, including the fact that the Government did not have access to a safe supply of marihuana. Those facts were supported by the evidence adduced in *Wakeford*, but some of them are inconsistent with the evidence heard in this case.

12 Every jurisdiction in the United States that has enacted a law to permit the medical use of marihuana by seriously ill persons requires the prior approval of a physician in order to access this drug. As of the time these appeals were heard, eight states had enacted such laws: Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon and Washington. Similar bills were before the state Legislatures in Iowa, Massachusetts, Minnesota, New York, Rhode Island, Vermont and Wyoming.

13 See the reasons of this court in *R. v. P. (J.)* (C40043), at paras. 19-27, being released concurrently with these reasons.

R. v. Parker, [2003] O.J. No. 3875

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

Doherty, Goudge and Simmons JJ.A.

Heard: July 30, 2003.

Judgment: October 7, 2003.

Docket No. C39653

[2003] O.J. No. 3875

Between Terrance Parker and John Turmel and Marc J.J. Paquette, (appellants), and Her Majesty the Queen, (respondent)

(3 paras.)

Case Summary

On appeal from the decision of Justice Michel Charbonneau of the Superior Court of Justice dated February 14, 2003.

Counsel

Terrance Parker, on his own behalf. John C. Turmel, on his own behalf. Marc J.J. Paquette (submissions in writing). Croft Michaelson, Christopher Leafloor and Vanita Goela, for the respondent.

The following judgment was delivered by

THE COURT (endorsement)

1 Charbonneau J. was correct to dismiss these appellants' application dated February 10, 2003. The relief sought in that application was exactly the same as the relief sought in the prior applications brought by these appellants, which were heard by Lederman J. and disposed of by him on January 9, 2003.

2 All the issues in the February 10, 2003 application were or could have been raised before Lederman J.

3 The appeal is dismissed.

DOHERTY J.A.
GOUDGE J.A.
SIMMONS J.A.

End of Document

R. v. Turmel, [2003] O.J. No. 3877

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

Doherty, Goudge and Simmons JJ.A.

Heard: July 29-30, 2003.

Judgment: October 7, 2003.

Docket No. C40127

[2003] O.J. No. 3877 | 231 D.L.R. (4th) 190 | 177 C.C.C. (3d) 533 | 59 W.C.B. (2d) 14

Between Her Majesty the Queen, respondent, and John C. Turmel, appellant

(7 paras.)

Case Summary

On appeal from the decision of Justice Catherine Aitken of the Superior Court of Justice dated May 26, 2003.

Counsel

John C. Turmel, on his own behalf. Croft Michaelson, Christopher Leafloor and Vanita Goela, for the respondent.

The following judgment was delivered by

THE COURT

1 On May 14, 2003 Mr. Turmel was charged with possession of marihuana for the purposes of trafficking pursuant to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (the CDSA).

2 On May 26, 2003 Mr. Turmel brought a motion in the Superior Court of Justice seeking in effect to have this charge stayed. Aitken J. dismissed the motion and Mr. Turmel now appeals from her order.

3 He makes only one argument. It is founded on the order made by this court in R. v. Parker (2000), 146 C.C.C. (3d) 193 declaring the marihuana prohibition in s. 4 of the CDSA to be invalid and suspending the declaration for 12 months. Mr. Turmel says that since s. 4 prohibits possession of any substance included in, inter alia Schedule II (which lists marihuana) this court's declaration can only be effected (now that the 12 months has passed) by deleting

marihuana from Schedule II. He argues that this must remove marihuana from Schedule II for all purposes. Section 5(2), like s. 4, relies on the listing of marihuana in Schedule II to create the charge of possession of marihuana for the purposes of trafficking. Mr. Turmel says that the Parker declaration means that there was no such charge on May 26, 2003, since it deletes marihuana from Schedule II.

4 While there are questions about whether this motion was properly brought, and whether the Superior Court had jurisdiction to hear it, we prefer to deal with this appeal by addressing directly the argument made by Mr. Turmel.

5 It is based on a fundamental misconception. A declaration does not delete a provision from a statute. Pursuant to s. 52(1) of the Constitution Act, 1982 its effect is to render the provision of no force or effect to the extent of its inconsistency with the provisions of the Constitution.

6 The declaration of invalidity made by this court in Parker supra, does not delete marihuana from Schedule II of the CDSA. It simply declares that the reference to marihuana in Schedule II is of no force or effect for the purposes of the possession charge in s. 4 of the CDSA. The declaration does not extend to any other section of the CDSA. In particular, it does not diminish the effect of the listing of marihuana in Schedule II for the purposes of s. 5(2) of the CDSA. As a result, the charge of possession of marihuana for the purposes of trafficking existed on May 26, 2003.

7 Thus Aitken J. was correct to dismiss the appellant's argument and we would dismiss his appeal.

DOHERTY J.A.
GOUDGE J.A.
SIMMONS J.A.

R. v. Turmel, [2004] S.C.C.A. No. 451

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: October 7, 2004.

File No.: 30570

[2004] S.C.C.A. No. 451

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal filed October 7, 2004. Motion to extend the time dismissed March 11, 2005.

Counsel

John C. Turmel, for the motion. Croft Michaelson (Attorney General of Canada), contra.

Chronology:

1. Application for leave to appeal:

FILED: October 7, 2004. S.C.C. Bulletin, 2004, p. 1564.

* Motion to extend the time in which to serve and file the leave application dismissed March 11, 2005. Before: Binnie J. S.C.C. Bulletin, 2005, p. 411.

(2) This is an application by John C. Turmel (the applicant) for an order extending the time to complete the application for leave to appeal by filing the formal order of the Trial Court.

(3) On October 7, 2004, an application for leave to appeal was filed from the judgment of the Court of Appeal of Ontario rendered on October 7, 2003. The application for leave to appeal was also missing a proper motion for an extension of time.

(4) On October 22, 2004, a letter was sent to the applicant advising that the application for leave to appeal was incomplete, as it was missing the order of the Trial Court.

(5) On January 12, 2005, a notice from the Registrar of intention to dismiss the application for leave for delay pursuant to Rule 64 was sent to the applicant noting that he had failed to serve and file all the documents required under Rule 25 of the Rules of the Supreme Court of Canada for his application for leave to appeal.

(6) The applicant was advised that the Registrar may dismiss the application for leave to appeal as abandoned if the time for serving and filing the materials is not extended by a judge on motion.

(7) The applicant has offered no persuasive reason for the delay.

(8) IT IS HEREBY ORDERED THAT:

The motion of the applicant is dismissed and the application for leave to appeal is dismissed as abandoned.

Procedural History:

Judgment	on appeal:
	Ontario Court of Appeal, Doherty, Goudge and Simmons
	JJ.A., October 7, 2003.
	(2003) 231 D.L.R. (4th) 190; (2003) 177 C.C.C. (3d)
	533; [2003] O.J. No. 3877.

R. v. Turmel, [2004] S.C.C.A. No. 452

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: October 7, 2004.

File No.: 30571

[2004] S.C.C.A. No. 452

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal filed October 7, 2004. Motion to extend the time dismissed March 11, 2005

Counsel

John C. Turmel, for the motion. Croft Michaelson (Attorney General of Canada), contra.

Chronology:

1. Application for leave to appeal:

FILED: October 7, 2004. S.C.C. Bulletin, 2004, p. 1564.

* Motion to extend the time in which to serve and file the leave application dismissed March 11, 2005. Before: Binnie J. S.C.C. Bulletin, 2005, p. 411.

(9) This is an application by John C. Turmel (the applicant) for an order extending the time to complete the application for leave to appeal by filing the formal order of the Court of Appeal.

(10) On October 7, 2004, an application for leave to appeal from the judgment of the Court of Appeal of Ontario rendered on October 7, 2003. The application for leave to appeal was also missing a proper motion for an extension of time.

(11) On October 22, 2004, a letter was sent to the applicant advising that the application for leave to appeal was incomplete, as it was missing the order of the Court of Appeal.

(12) On January 12, 2005, a notice from the Registrar of intention to dismiss the application for leave for delay pursuant to Rule 64 was sent to the applicant noting that he had failed to serve and file all the documents required under Rule 25 of the Rules of the Supreme Court of Canada for his application for leave to appeal.

(13) The applicant was advised that the Registrar may dismiss the application for leave to appeal as abandoned if the time for serving and filing the materials is not extended by a judge on motion.

(14) The applicant has offered no persuasive reason for the delay.

(15) IT IS HEREBY ORDERED THAT:

The motion of the applicant is dismissed and the application for leave to appeal is dismissed as abandoned.

Procedural History:

Judgment	on appeal:
	Ontario Court of Appeal, Doherty, Goudge and Simmons
	JJ.A., October 7, 2003.
	(2003) 231 D.L.R. (4th) 190; (2003) 177 C.C.C. (3d)
	533; [2003] O.J. No. 3877.

THIS IS EXHIBIT "18" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

2006 CarswellOnt 9439
Ontario Court of Justice

R. v. Turmel

2006 CarswellOnt 9439

Her Majesty the Queen and John Turmel

P.R. Bélanger Sr. J.

Judgment: March 10, 2006
Docket: 03-20030

Proceedings: affirmed *R. v. Turmel* (2007), 2007 CarswellOnt 1048 (Ont. C.A.); refused leave to appeal *R. v. Turmel* (2007), 2007 CarswellOnt 4435, 2007 CarswellOnt 4436 (S.C.C.); refused leave to appeal *R. v. Turmel* (2007), 2007 CarswellOnt 4433, 2007 CarswellOnt 4434 (S.C.C.); refused leave to appeal *R. v. Turmel* (2007), 2007 CarswellOnt 4431, 2007 CarswellOnt 4432 (S.C.C.)

Counsel: Allyson Ratsoy, for Crown / Respondent
John Turmel, for himself

Subject: Criminal; Constitutional

***P.R. Bélanger Sr. J.*:**

1 The applicant has admitted the factual allegations which underpin the charges brought against him. He asks, however, that the charges against him be quashed based on his interpretation of *R. v. Krieger* as well as a claim for abuse of process.

2 I reproduce, nearly in their entirety, the Crown's submissions in response to the application brought by John Turmel. I am of the view that those submissions accurately reflect the chronology of events leading to the applicant's eventual appearance before me. In addition, I agree entirely with the Crown's analysis of the relevant issues and of the law and adopt it as my own.

3 The relevant parts of the Crown's submissions are as follows:

Part I: History of the Proceedings

1. The applicant was charged on May 14, 2003 with possession of marijuana for the purpose of trafficking. He was found to have 3.277 kilograms of marijuana in a duffel bag he was carrying. Although the amount of marijuana in his possession was over 3 kilograms, the Crown proceeded on a charge of possession under 3 kilograms, pursuant to sections 5(2) and 5(4) of the *Controlled Drugs and Substances Act (CDSA)*.

2. Although the offence under section 5(4) of the *CDSA* is an indictable offence, it falls within the category of "absolute jurisdiction" offences established in section 553(c)(xi) of the *Criminal Code*. That is, the trial of an offence under section 5(4) of the *CDSA* is within the absolute jurisdiction of a provincial court judge and the accused person does not have the options of electing to have a preliminary hearing and/or electing to be tried by a judge of the superior court.

3. The applicant's trial was initially set to proceed on November 20, 2003. On November 4th, 2003 the trial was adjourned at the request of the applicant with the consent of the Crown and a new date was set for June 17, 2004. On June 4, 2004 a further adjournment was granted at the request of the Crown with the consent of the applicant and a new trial date was set for October 22, 2004. On October 22, 2004 the applicant argued a pre-trial application to quash the charge, which was dismissed by the court. The trial proper did not commence due to lack of time and a new date

was set for February 10, 2005. On February 2, 2005 the applicant brought another application to adjourn his trial. This application was remanded to set a date for argument to May 11, 2005. On that date a new trial date of December 15, 2005 was set, with a reporting date of December 1, 2005. On the reporting date of December 1st, Bélanger J. ruled that the applicant's application to adjourn and another application to quash that had been filed should be dealt with on the day set for trial by the trial judge.

Applications

4. On May 26, 2003 the applicant brought a "motion to quash for mandamus and prohibition" in the Superior Court of Justice. He asked the court to quash the information, as it disclosed no offence known to law. The basis of his argument was that the decision of the Ontario Court of Appeal in *R. v. Parker* [1], released on July 31, 2000, had invalidated all prohibitions regarding marijuana contained in the *CDSA*. This motion was dismissed by Aitken J. on the grounds that the declaration made by the Court of Appeal in *Parker* related only to section 4(1) of the *CDSA* and the applicant had been charged under s.5(2) of that act.

5. The applicant appealed the ruling made by Aitken J. to the Court of Appeal. The court dismissed the appeal on October 7, 2003. [2]

6. On July 27, 2003 the applicant brought an application in the Superior Court of Justice to "amend the information or for particulars" in order to have the word "not" deleted from the sentence "not exceeding 3 kgs". This application was dismissed by Lalonde, J. on the grounds that he did not have any jurisdiction to make the amendment requested as the offence was within the absolute jurisdiction of the provincial court.

7. On October 22, 2004, a day scheduled for the applicant's trial, the applicant again brought a motion to quash the charge against him. He argued, as he had before Aitken J., that the offence with which he was charged was "no longer known to law". The motion was dismissed by Earle-Renton J. on the grounds that the *Parker* decision was determinative of the issue. The applicant's trial did not proceed on this day and the matter was adjourned to February 10, 2005.

8. On April 19, 2005 the applicant argued before Wright J. in the Ontario Court of Justice that as on May 14, 2003 he was in possession of an amount of marijuana greater than 3 kilograms, s. 553 of the Criminal Code did not apply and he should have an election as to his mode of trial. He stated, "I did my crime on purpose for the purpose of getting a jury to discuss and decide on my situation..." [3] Wright J. dismissed the application, stating that it was within the Crown's discretion to decide what charge to proceed with and that "the accused doesn't get a say in what charges are brought and the consequent mode of trial..." [4]

9. On April 25, 2005 the applicant brought a purported "application for certiorari" before Roy J. in the Superior Court of Justice seeking to quash the decision of Wright J. The applicant did not identify either in his materials or in oral submissions the jurisdictional error made by Wright J. such that the remedy of certiorari was available or appropriate. The application was dismissed by Roy J. without prejudice to the applicant's right to bring it again, as he had not provided the court with a transcript of the proceedings before Wright J.

10. On November 28, 2005 the applicant re-launched his application for certiorari, along with an application for prohibition, before MacLeod J. of the Superior Court of Justice. The application for prohibition requested an order staying the charge "as an abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and the Crown knows it". MacLeod J. dismissed the application for certiorari as she could find no jurisdictional error made by Wright J. She dismissed the application for prohibition, finding that the Ontario Court of Appeal's decision in *Hitzig v. R.* was binding on her. [5]

11. On December 11, 2005 the applicant served the Crown with notices of appeal to the Ontario Court of Appeal pertaining to MacLeod J.'s dismissal of his applications for certiorari and prohibition.

12. At the outset of his trial on December 15, 2005 before Bélanger J. the applicant brought an application to adjourn his trial and sought to argue an application to quash the charge against him. Belanger J. dismissed the application to adjourn and declined to hear oral submissions on the application to quash, requesting that the applicant and Crown provide written submissions according to a schedule set by the court.

Part II: Issues and the Law

13. The applicant's Notice of Application asks the court to quash the charge against him on two grounds.

Ground One — the* Krieger *Decision

14. The applicant seeks an order "quashing charges relating to marijuana under s.7(1) of the *CDSA* as unknown to law on the grounds Parliament has not re-enacted the s.7 cultivation (and by implication s.4 possession) prohibitions which underpin all other marijuana prohibitions in the *CDSA* since they were struck down by the Alberta Court of Appeal in *R. v. Krieger* on December 4, 2002."

15. The case of *R. v. Krieger*[6] was concerned with the constitutionality of the prohibition against the cultivation of marijuana in the context of Mr. Krieger's production and use of marijuana to alleviate his suffering from multiple sclerosis. Acton J. of the Alberta Court of Queen's Bench held that section 7(1) of the *CDSA*, which makes cultivation of marijuana an offence, offended Mr. Krieger's rights to liberty and security of the person as guaranteed by section 7 of the *Charter of Rights and Freedoms*. She therefore struck down s.7(1) to the extent that it dealt with the production of cannabis marijuana. However she suspended the declaration of invalidity for one year in order to give the federal government time to arrange for a legal source of marijuana to be made available to those who legitimately required it for therapeutic use.

16. In 2001 the Alberta Court of Appeal extended the suspension of the declaration of invalidity made by Acton J. "until further order of the Court". In fact, that suspension has never been lifted, presumably because subsequent legal challenges in Ontario resulted in federal regulations allowing for lawful access to marijuana for therapeutic use.[7] The constitutional defect in s.7(1) of the *CDSA*, which led Acton J. to strike down the section, has thereby been addressed and remedied and the suspension and declaration have become moot.

17. The applicant's analysis of the effect of the *Krieger* decision on the marijuana provisions of the *CDSA* is flawed. The authority to issue a declaration of invalidity is found in section 52 of the *Constitution Act, 1982*, which says:

> s.52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the constitution is, **to the extent of the inconsistency**, of no force or effect. (emphasis added)

18. The *Krieger* decision affected only s.7(1) of the *CDSA* and, as Acton J. was careful to state, only to the extent that that it dealt with the production of marijuana. The applicant's assertion that s.7(1) "underpins" all other marijuana prohibitions in the *CDSA* is neither factually nor legally correct. In fact, in the *Krieger* decision Acton J. upheld the constitutionality of s.5(2) of the *CDSA* — the prohibition against possession of marijuana for the purpose of trafficking — which had also been challenged by Mr. Krieger. Section 4(1) of the *CDSA* — simple possession — was not addressed in the *Krieger* case.

19. In any event, a decision made by an Alberta court has no binding effect in the province of Ontario. Even if the suspension of the order striking down s.7(1) of the *CDSA* had been lifted in Alberta, this would not have changed the status of that provision in Ontario. Further, the applicant is not charged under s.7(1) of the *CDSA*.

Ground Two — Abuse of Process

20. The applicant further seeks an order staying the charge against him as an "abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and the Crown knows it." Although the basis for this argument is not explicitly stated, the applicant appears to be relying on a series of cases concerning the constitutionality of sections 4(1) and 7(1) of the *CDSA* which unfolded in Ontario and other provinces between 2001 and 2003. The Crown makes reference only to those cases which it considers relevant to the issues before the Court.

21. In *R. v. Parker* [8], a decision of the Ontario Court of Appeal released on July 31, 2000, the court held that the prohibition on simple possession of marijuana in section 4 of the *CDSA* must be struck down as it infringed the rights to liberty and security of the person guaranteed by section 7 of the *Charter of Rights and Freedoms* in a manner that did not accord with the principles of fundamental justice. Mr. Parker suffered from a particularly severe form of epilepsy which was only moderately alleviated by conventional treatment. He found that by smoking marijuana he could substantially reduce the incidence of his seizures and, having no legal source of marijuana, began to grow it himself. The declaration of invalidity made by the court on July 31, 2000 was suspended for 12 months to give Parliament time to develop and legislate an adequate mechanism for individuals to possess and use marijuana for valid medicinal purposes.

22. In response to the Court of Appeal's declaration of invalidity the federal government enacted the *Marihuana Medical Access Regulations (MMRA)*, which came into force on July 30, 2001. Eleven applicants, including Mr. Parker, a Mr. Hitzig, and Mr. Turmel, then sought orders from the Superior Court declaring that the *MMRA* violated their s.7 rights. On January 9, 2003, Lederman J. declared the *MMRA* invalid as they failed to adequately provide for a legal, safe and reliable source of marijuana. He suspended this declaration of invalidity for six months. All parties appealed. The Court of Appeal's decision was released on October 7, 2003 in *Hitzig v. R.*. [9]

23. In *Hitzig*, the Court of Appeal unanimously dismissed the federal government's appeal and found that the *MMRA* were unconstitutional and a violation of the applicants' section 7 rights as they failed to craft an adequate medical exemption into the offence of possession of marijuana in section 4 of the *CDSA*. Rather than strike down the *MMRA* in their entirety and declare s.4 of the *CDSA* to be of no force and effect, the Court set aside the declaration of invalidity made by Lederman J. and crafted a narrower remedy more specifically targeted to the shortcomings it identified in the *MMRA*. The Court itself created a constitutionally valid medical exemption to s.4 of the *CDSA*, thereby making s.4 of full force and effect in Ontario as of October 7, 2003. However, the court found that between July 31, 2001 (the date that the suspension of invalidity declared in *Parker* expired) and October 7, 2003, there had been no constitutionally valid prohibition against the possession of marijuana in Ontario.

24. On the same day that it released the *Hitzig* decision, the Court of Appeal released its decision on the applicant's appeal of the judgment of Aitken J. [10] (See paragraph 4.) The applicant had argued that the effect of the court's ruling in *Parker* was to delete marijuana from schedule II of the *CDSA*, therefore rendering all marijuana offences in the *CDSA* "of no force and effect".

25. The court held that the applicant's argument was based on a "fundamental misconception" and said the following:

> The declaration of invalidity made by this court in *Parker* ... does not delete marihuana from Schedule II of the *CDSA*. It simply declares that the reference to marihuana in Schedule II is of no force or effect **for the purposes of the possession charge in s.4 of the *CDSA*. The declaration does not extend to any other section of the *CDSA*. In particular, it does not diminish the effect of the listing of marihuana in Schedule II for the purposes of s.5(2) of the *CDSA*. As a result, the charge of possession of marihuana for the purposes of trafficking existed on May 26, 2003.** Thus Aitken J. was correct to dismiss the appellant's argument and we would dismiss his appeal. [11]

(emphasis added)

4 I am entirely satisfied that the grounds upon which the application is based have been ruled upon by Courts whose reasons both bind and persuade me. I am unable to craft a decision which is in any way more eloquent or complete in its analysis than that which has been advanced by counsel for the Crown. I am not swayed by the applicant's submissions and entreaties that I decline to abide by the decisions of hierarchically superior courts. I refuse to do so, both on principle and because I am in total agreement with them.

5 The application is dismissed.

6 The accused admits the factual elements of the Crown's case and has stated that he had no evidence to call. He has essentially admitted that only this application stands in the way of a guilty finding. (See transcript of December 15, 2005 at p. 38). He is consequently found guilty of the charge that brings him to court.

7 We will now proceed to a sentencing hearing.

Footnotes

1 *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.)

2 *R. v. Turmel* (2003), 177 C.C.C. (3d) 533 (Ont. C.A.)

Application for leave to appeal dismissed as abandoned by the S.C.C. on March 11, 2005

3 Transcript of Proceedings before Wright J., page 2

4 Transcript, supra, page 22-23

5 *Hitzig v. R.* (2003), 177 C.C.C. (3d) 449 (Ont. C.A.)

Leave to appeal dismissed by the S.C.C. on May 6, 2004 [2004 CarswellOnt 1830 (S.C.C.)]

6 *R. v. Krieger*, [2000] A.J. No. 1683 (Alta. Q.B.)

7 see *Hitzig*, supra

8 *R. v. Parker*, supra

9 *Hitzig v. R.*, supra

10 *R. v. Turmel*, supra

11 *R. v. Turmel*, supra, at page 535

R. v. Turmel, [2007] O.J. No. 724

Ontario Judgments

Ontario Court of Appeal

Toronto, Ontario

J. Labrosse, R.J. Sharpe and R.A. Blair JJ.A.

Heard: February 23, 2007.

Oral judgment: February 23, 2007.

Released: February 28, 2007.

Dockets: C45295, C44587 and C44588

[2007] O.J. No. 724 | 2007 ONCA 133 | 72 W.C.B. (2d) 501

RE: Her Majesty the Queen (Respondent), and John C. Turmel (Appellant)

(4 paras.)

Case Summary

Appeal From:

On appeal from the conviction entered on March 10, 2006 and the sentence imposed on March 29, 2006 by Justice Paul R. Bélanger.

Counsel

The appellant in person.

Steve A. Coroza and François Lacasse for the respondent.

ENDORSEMENT

The following judgment was delivered by

THE COURT (orally)

1 In this case the trial judge refused to suspend the proceedings pending the determination of Mr. Turmel's appeal on the prerogative remedies and he proceeded with the trial. Mr. Turmel was convicted and sentenced. His appeals

C44587 and C44588 (the prerogative remedies) are now moot as he has been convicted and now appeals his conviction (C45295).

2 The appeal is premised on the argument that possession for the purpose of trafficking is not an offence known to law. Mr. Turmel's enthusiastic arguments face an insurmountable hurdle. This court has already rejected these types of arguments (see *R. v. Turmel* (2003), 177 C.C.C. (3d) 533 (Ont. C.A.) and *Hitzig v. Canada* (2003), 177 C.C.C. (3d) 449 (Ont. C.A.)) 3873 and concluded that these offences remained in full force and effect. This applies at the time that the appellant is alleged to have committed them. These decisions are binding upon us and we agree with them.

3 The appellant admitted the Crown's case at trial and was properly convicted. There is no merit to the argument that the Crown did not properly exercise its discretion in the manner that it charged the appellant.

4 At trial, Mr. Turmel was given full opportunity to present written argument on any issue he wished to raise prior to conviction. It is only after his conviction, and without notice, that he raised the *Charter* argument he now asserts. The decision of the trial judge not to exercise his discretion to hear the *Charter* issue was properly exercised.

J. LABROSSE J.A.
R.J. SHARPE J.A.
R.A. BLAIR J.A.

R. v. Turmel, [2007] S.C.C.A. No. 216

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: April 24, 2007.

Record updated: July 12, 2007.

File No.: 32011

[2007] S.C.C.A. No. 216

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed (without reasons) July 12, 2007.

Catchwords:

Criminal law — Narcotic control — Criminal procedure — Whether section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, is still an offence known to law? — Whether the Court of Appeal has the discretion as to when it will convene a five-judge panel to reconsider one of its earlier decisions?

Case Summary:

The Applicant was charged with possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"). He was later convicted by a judge sitting alone in the Ontario Superior Court of Justice. The Applicant admitted the facts but advanced the proposition that he was not charged with an offence known to law. His appeal from conviction to the Court of Appeal for Ontario was dismissed. The question remains whether section 5(2) is an offence known to law. The question also remains whether the Court of Appeal has the discretion as to when it will convene a five-judge panel to reconsider one of its earlier decisions.

Counsel

John C. Turmel, for the motion.

Steve A. Coroza (Public Prosecution Service of Canada), contra.

Chronology:

1. Application for leave to appeal:
FILED: April 24, 2007. S.C.C. Bulletin, 2007, p. 721.

SUBMITTED TO THE COURT: June 11, 2007. S.C.C. Bulletin, 2007, p. 863.

DISMISSED: July 12, 2007 (without reasons). S.C.C. Bulletin, 2007, p. 1047.

Before: McLachlin C.J. and Charron and Rothstein JJ.

Procedural History:

Judgment at first instance: Applications for orders prohibiting prosecution dismissed.
Ontario Superior Court of Justice, MacLeod J., November 28, 2005.

Judgment at first instance: Applicant convicted of possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
Ontario Superior Court of Justice, Bélanger J., March 10, 2006.

Judgment on appeal: Appeal from conviction dismissed. Court of Appeal for Ontario, Labrosse, Sharpe and Blair JJ., February 23, 2007.
[2007] O.J. No. 724.

R. v. Turmel, [2007] S.C.C.A. No. 217

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: April 24, 2007.

Record updated: July 12, 2007.

File No.: 32012

[2007] S.C.C.A. No. 217

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed (without reasons) July 12, 2007.

Catchwords:

Criminal procedure — Whether the Crown has the discretion to decide on what charges to proceed? — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(2).

Case Summary:

The Applicant was charged with possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"). He was later convicted by a judge sitting alone in the Ontario Superior Court of Justice. The Applicant admitted the facts but advanced the proposition that he was not charged with an offence known to law. His appeal from conviction to the Court of Appeal for Ontario was dismissed. The question remains whether the Crown has the discretion to decide on what charges to proceed.

Counsel

John C. Turmel, for the motion.

Steve A. Coroza (Public Prosecution Service of Canada), contra.

Chronology:

1. Application for leave to appeal:
FILED: April 24, 2007. S.C.C. Bulletin, 2007, p. 721.

SUBMITTED TO THE COURT: June 11, 2007. S.C.C. Bulletin, 2007, p. 863.

DISMISSED: July 12, 2007 (without reasons). S.C.C. Bulletin, 2007, p. 1048.

Before: McLachlin C.J. and Charron and Rothstein JJ.

Procedural History:

Judgment at first instance: Applications for orders prohibiting prosecution dismissed.

Ontario Superior Court of Justice, MacLeod J., November 28, 2005.

Judgment at first instance: Applicant convicted of possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

Ontario Superior Court of Justice, Bélanger J., March 10, 2006.

Judgment on appeal: Appeal from conviction dismissed. Court of Appeal for Ontario, Labrosse, Sharpe and Blair JJ., February 23, 2007.

[2007] O.J. No. 724.

R. v. Turmel, [2007] S.C.C.A. No. 218

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: April 24, 2007.

Record updated: July 12, 2007.

File No.: 32013

[2007] S.C.C.A. No. 218

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed (without reasons) July 12, 2007.

Catchwords:

Criminal law — Narcotic control — Criminal procedure — Whether section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, is still an offence known to law? — Whether the trial judge was correct in refusing to allow the Applicant to raise certain defences after he was convicted?

Case Summary:

The Applicant was charged with possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 ("CDSA"). He was later convicted by a judge sitting alone in the Ontario Superior Court of Justice. The Applicant admitted the facts but advanced the proposition that he was not charged with an offence known to law. His appeal from conviction to the Court of Appeal for Ontario was dismissed. The question remains whether the Crown has the discretion to decide on what charges to proceed. The question also remains whether the trial judge was correct in refusing to allow the Applicant to raise certain defences after he was convicted.

Counsel

John C. Turmel, for the motion.

Steve A. Coroza (Public Prosecution Service of Canada), contra.

Chronology:

1. Application for leave to appeal:
FILED: April 24, 2007. S.C.C. Bulletin, 2007, p. 721.

SUBMITTED TO THE COURT: June 11, 2007. S.C.C. Bulletin, 2007, p. 863.

DISMISSED: July 12, 2007 (without reasons). S.C.C. Bulletin, 2007, p. 1050.

Before: McLachlin C.J. and Charron and Rothstein JJ.

Procedural History:

Judgment at first instance: Applications for orders prohibiting prosecution dismissed.
Ontario Superior Court of Justice, MacLeod J., November 28, 2005.

Judgment at first instance: Applicant convicted of possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
Ontario Superior Court of Justice, Bélanger J., March 10, 2006.

Judgment on appeal: Appeal from conviction dismissed. Court of Appeal for Ontario, Labrosse, Sharpe and Blair JJ., February 23, 2007.
[2007] O.J. No. 724.

COURT OF APPEAL FOR ONTARIO

DOCKET: M45479

Doherty J.A.

BETWEEN

Her Majesty the Queen

Respondent

and

John Turmel

Applicant/Appellant

John Turmel, appearing in person

Howard Piafsky, for the respondent

Heard: November 3, 2015

ENDORSEMENT

[1] The applicant seeks an extension of time to further appeal his conviction. That conviction was already the subject of an appeal to this court (*R. v. Turmel*, 207 ONCA 133). That appeal was dismissed on its merits and leave to appeal to the Supreme Court of Canada was refused.

[2] Mr. Turmel submits that he is entitled to bring a fresh appeal based on changes in the law effected by case law decided after his appeal was considered and dismissed (*R. v. Smith*, 2015 SCC). He argues that *Smith* changes the legal landscape and that on the present state of the law he would be entitled to an acquittal.

[3] A party is not entitled to appeal the same conviction more than once. The order dismissing the appeal renders any new appeal *res judicata*. Counsel may, in limited circumstances, move to reopen a decided appeal: *R. v. Hummel* (2003), 175 C.C.C. (3d) 1. Assuming that power exists when the appeal has been dismissed on the merits, it cannot be exercised on the basis of case law decided when the appeal was no longer "in the judicial system": see *R. v. Sarson* (1996), 107 C.C.C. (3d) 20 at 30-31 (SCC).

[4] Finality concerns trump the applicant's claim to re-litigate his appeal based on developments in the case law that postdate the dismissal of his appeal and the refusing of leave to appeal.

[5] The application is dismissed.

April 5, 2016

1. **H.M.Q. v. Turmel, John M45751 (M45479) Federal (TO REVIEW)**

"Mr. Turmel moves to set aside the order of Doherty J.A. declining to permit Mr. Turmel to launch a fresh appeal of a prior conviction for possession of marijuana for the purpose of trafficking.

This court dismissed Mr. Turmel's prior appeal in 2007 and leave to appeal to the Supreme Court of Canada was denied.

We are not persuaded that we have any jurisdiction to entertain Mr. Turmel's motion. In any event, we see no error in Doherty J.A.'s reasons.

The motion is dismissed."

Simmons J.A.

R. v. Turmel, [2016] S.C.C.A. No. 248

Supreme Court of Canada Rulings on Applications for Leave to Appeal and Other Motions

Supreme Court of Canada

Record created: June 2, 2016.

Record updated: October 6, 2016.

File No.: 37064

[2016] S.C.C.A. No. 248 | [2016] C.S.C.R. no 248

John C. Turmel v. Her Majesty the Queen

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Case Summary

Status:

Application for leave to appeal dismissed (without reasons) October 6, 2016.

Catchwords:

Criminal law — Appeals — Application for an extension of time to further appeal conviction dismissed — If there is no remedy to correct past bogus convictions, whether this is an unconscionable maladministration of justice.

Case Summary:

In 2006, the applicant was convicted of possession of marihuana for the purpose of trafficking contrary to section 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19. His appeal was dismissed. His application for leave to appeal to this Court was also dismissed, Turmel v. The Queen, [2007] 2 S.C.R. viii. After this Court released its decision in R. v. Smith, 2015 SCC 34, the applicant sought to bring a fresh appeal in the Ontario Court of Appeal. His application to further appeal his conviction was dismissed by Doherty J.A. on the basis that he was not entitled to appeal the same conviction more than once. The applicant then brought a further application in the Court of Appeal seeking to set aside Doherty J.A.'s ruling. The Court of Appeal dismissed the application.

Counsel

John C. Turmel, for the motion.

Howard D. Piafsky (Public Prosecution Service of Canada), contra.

Chronology:

1. Application for leave to appeal:
FILED: June 2, 2016.

SUBMITTED TO THE COURT: September 6, 2016.

DISMISSED: October 6, 2016 (without reasons).

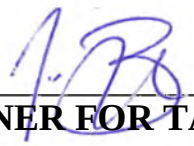
Before: M.J. Moldaver, S. Côté and R. Brown JJ.

Procedural History:

Judgment on appeal: Application for an extension of time to further appeal conviction dismissed.
Court of Appeal for Ontario, Doherty J.A., November 3, 2015.

Judgment on appeal: Application dismissed.
Court of Appeal for Ontario, Feldman, Simmons, Pepall JJ.A., April 5, 2016.

THIS IS EXHIBIT "19" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.



A COMMISSIONER FOR TAKING AFFIDAVITS

COURT FILE NO.: 12755

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
HER MAJESTY THE QUEEN	)	Elizabeth O'Grady, for the Crown
	)	
	)	
	)	
Respondent	)	
	)	
- and -	)	
	)	
	)	
JAMES TURNER	)	James Turner, Self-Represented
	)	
	)	
	)	
Applicant	)	
	)	
	)	
	)	**HEARD:** November 26, 2008 (Ottawa)

REASONS FOR DECISION

LALONDE J.

Nature of Proceeding

[1] James Turner ("Mr. Turner") applies for the following relief:

(1) An order prohibiting prosecution of all charges relating to marijuana under the *Controlled Drugs and Substances Act* (the "CDSA"), S.C. 1996, c. 19, as unknown to law on the grounds Parliament has not re-enacted the

section 7 cultivation and section 4 possession prohibitions which underpin all other marijuana prohibitions in the *CDSA* since they were struck down by the Ontario and Alberta Courts of Appeal;

(2) An order staying any charges for marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect;

(3) An order, citing the Minister of Justice for contempt of this court because he allows this prosecution to take place;

(4) an order allowing the applicant to turn on a portable tape recorder pursuant to section 136 of the *Ontario Courts of Justice Act* which states that "nothing prohibits a party acting in person from unobtrusively making an audio recording of the court hearing for the sole purpose of supplementing or replacing handwritten notes in the manner that has been approved by the judge;" or for any other manner of audio taping deemed preferable by the court.

[2] The Crown moves for a summary dismissal of Mr. Turner's application pursuant to Rule 6.11(2) of the *Criminal Proceedings Rules* that reads as follows:

> Application by Respondent
>
> (2) Upon application by the respondent that a notice of application does not show a substantial ground for the order sought, a judge of the court may, if he or she considers that the matter is frivolous or vexatious and can be determined without a full hearing, dismiss the application summarily and cause the applicant to be advised accordingly.

History of Mr. Turner's Case

[3] On September 28, 2006, James Turner was charged with production of marijuana, namely 2,879 plants, contrary to section 7(1) of the *Controlled Drugs and Substances Act*; possession of marijuana for the purposes of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act* and with possession of proceeds of property obtained by crime, contrary to Section 354(1)(a) of the *Criminal Code*.

[4] James Turner has elected to be tried before the Superior Court of Justice.

[5] On June 4, 2007, James Turner scheduled a preliminary hearing before the Ontario Court of Justice for November 22, 2007 at 10:00 a.m.

[6] On November 14, 2007, James Turner served the Public Prosecution Service of Canada – National Capital Region office, with an application, to be heard in Ottawa, on November 19, 2007 at 10:00 a.m.

[7] On November 19, 2007, Mr. Turner did not appear at the application hearing and the application was dismissed by the Honourable Justice McWilliam without prejudice to Mr. Turner's option to re-file the application at a future date.

[8] On November 22, 2007, Mr. Turner appeared for the scheduled preliminary hearing however, the hearing was adjourned for Mr. Turner to address a medical condition and obtain counsel.

[9] Following the preliminary hearing date, counsel, Mr. Zachary Horricks, appeared on Mr. Turner's behalf for 7 court appearances as well as a judicial pre-trial with the Honourable Justice Ann Alder of the Ontario Court of Justice.

[10] At the most recent court appearances on May 28, 2008, Mr. Horricks indicated that Mr. Turner is presently a self-represented accused person and as a result, a judicial pre-trial was scheduled with Mr. Turner to be held on June 23, 2008 with the Honourable Justice Ann Alder of the Ontario Court of Justice.

[11] That same day, Mr. Turner served the Public Prosecution Service of Canada – National Capital Region office, with the above application.

Crown's Position

[12] I reproduce the Crown's position in its entirety. Elizabeth O'Grady argues that:

(a) As the preliminary hearing has yet to occur, committal to trial is still at issue and this Court should decline jurisdiction to adjudicate the application until such a time as a trial judge has been assigned.

(b) Mr. Turner does not have the requisite standing to request the remedies sought. In particular, Mr. Turner does not have public interest standing to obtain an order for a prohibition of the prosecution of all marijuana-related offences in Canada or a remedy on behalf of all persons charged with marijuana-related offences in Canada. In the absence of the requisite public interest standing, Mr. Turner may only seek remedies as they apply to his specific legal proceedings.

(c) Mr. Turner's request for an order staying his specific charges as an abuse of process on the grounds that all statutes governing marijuana are of no force and effect, is an allegation that his rights as protected by section 7 of the *Canadian Charter of Rights and Freedoms* have been infringed. This issue has been disposed of by the Court of Appeal for Ontario in a number cases and most recently reiterated in *R. v. Turmel*, [2007] O.J. No. 724.

(d) Mr. Turner has no standing to seek an order citing the Minister of Justice in contempt of a court order.

(e) Mr. Turner has not complied with the requirements concerning applications as set out in the *Courts of Justice Act* or the *Criminal Proceedings Rules*.

(f) An official transcript of court proceedings may be made available to Mr. Turner should he wish to supplement or replace his handwritten notes. A further recording of the proceeding for any other purpose is contrary to section 136 of the *Courts of Justice Act*.

Mr. Turner's Position

[13] Mr. Turner pleads that the charges laid against him are an abuse of the court process on the grounds that all statutes related to marijuana are of no force and effect and that the Crown knows it. That is why he is requesting that the Minister of Justice be found to be in contempt of this Court.

[14] The grounds Mr. Turner relies on are that section 7(1) and section 4(1) prohibitions have never been legislated by Parliament after being struck by the decisions of *R. v. Parker* (2000), 146 C.C.C. (3d) 193 (Ont. C.A.) and *R. v. Krieger,* [2000] A.J. No. 1683 (Alta. Q.B.).

[15] Mr. Turner was content to file the materials used by John Turmel in his Superior Court appearance before Justice Catherine Aitken of that court on May 26, 2003. Mr. Turmel had argued, as does Mr. Turner, that the decision in *R. v. Parker, supra*, meant that the marijuana prohibition in section 4 of the *CDSA* was invalid and that declaration had been suspended for 12 months. Since the 12 months have elapsed and, as Mr. Turner pleads, the Chrétien Liberal Government refused to pass legislation deleting marijuana from Schedule II of *CDSA*, then marijuana has been removed from Schedule II for all purposes.

[16] Section 5(2) like section 4 of *CDSA* relied on the listing of marijuana in Schedule II to create the charge of possession of marijuana for the purposes of trafficking. As a result, Mr. Turner claims that no such charge existed on September 28, 2006 when he was charged and that the Crown should be prohibited from proceedings with the charges against him.

Analysis

[17] At the opening of her argument, Crown counsel filed the affidavit of Ellen J. Creighton, an articling student with the Public Prosecution Service of Canada, National Capital Region to establish that Mr. Turner used substantially the same materials previously filed by John Turmel in his application for prohibition and his Record of Application to Quash in *R. v. Turmel*, Court File No. 03-20630.

[18] I agree with counsel for the respondent that Mr. Turner's application which is governed by Rules 6, 27 and 33 of the *Criminal Proceedings Rules* does not comply with those Rules. Rule 6 provides for an application record that Mr. Turner did not file despite being told to do so as far back as November 2007. In this case, the factual situation is only referred to in the Crown's "notice of basis for Crown's opposition to application" document. Mr. Turner's materials are photocopied from another case and the breaches of the *Criminal Proceedings Rules*

alone give me grounds to summarily dismiss Mr. Turner's application. He has not filed a factum and under Rule 27 since he claims a stay, a section 24(1) *Charter* remedy, he has not adhered to the requirements of the rule for a constitutional application.

[19] However, there are more grounds to summarily dismiss Mr. Turner's application. He is attempting to re-litigate the *John Turmel* decision that the Ontario Court of Appeal decided had no merit. Doherty J. had this to say in *R. v. Turmel*, 2003 CanLII 17130 (Ont. C.A.):

> [6] The declaration of invalidity made by this court in *Parker¸ supra*, does not delete marihuana from Schedule II of the *CDSA*. It simply declares that the reference to marihuana in Schedule II is of no force or effect for the purposes of the possession charge in s. 4 of the *CDSA*. The declaration does not extend to any other section of the *CDSA*. In particular, it does not diminish the effect of the listing of marihuana in Schedule II for the purposes of s. 5(2) of the *CDSA*. As a result, the charge of possession of marihuana for the purposes of trafficking existed on May 26, 2003.

In the case at bar, the same charge existed on September 28, 2006 when Mr. Turner was charged.

[20] Mr. Turner argues that both he and Mr. Turmel are not lawyers but they know that the statute cannot be fixed by an appeal court but only by Parliament and what Parliament has not seen fit to legislate, a court of appeal cannot abrogate. It is a simplistic argument and Mr. Turner knows it. He is not represented by counsel as he has probably been told by his former counsel that his position is untenable. A litigant does not have to be a lawyer to understand that if an argument is rejected by a court of appeal, a lower court is bound by the decision. The reason for that is to prevent inconsistent decisions by various courts in Canada.

[21] The most important argument made by Crown counsel in this case is that an extraordinary remedy such as prohibition cannot interfere with the trial process. Finlayson J.A. in *R. v. Tucker* (1992), 9 O.R. (3d) 291 (Ont. C.A.) states that very proposition at paragraph 29 of the decision:

> In R. v. Jones (Nos. 1 & 2) (1974), 2 O.R. (2d) 741, 16 C.C.C. (2d) 338 (C.A.), at p. 751 O.R., p. 348 C.C.C., Schroeder J.A. cited with approval, the following

passage from High's Extraordinary Legal Remedies (3rd ed., 1896), p. 719, which explains the rationale for limiting prerogative relief:

> If a disappointed litigant were at liberty to obtain an order of mandamus or prohibition whenever he was dissatisfied with an order or ruling made by a Court in the course of trial, this would constitute a disastrous interference with the orderly administration of justice and the wheels of justice would soon grind to a halt. Moreover, the burden of expense which such a course of procedure would impose upon the State is not to be left out of consideration. See also: Stewart v. R. (1977), 36 C.C.C. (2d) 5 (Ont. C.A.); Cheyenne Realty Ltd. v. Thompson , [1975] 1 S.C.R. 87 at pp. 95-96, 15 C.C.C. (2d) 49 at p. 55, and Drinkwalter and Ewart, Ontario Provincial Offences Procedure (1980) at p. 385.

Mr. Turner has not yet had a hearing on the merits of his case.

[22] Mr. Turner is in the wrong forum at the wrong time. Prohibition is only granted for clear cases where want of jurisdiction is present. There are no exceptional jurisdiction issues here especially as the case of *R. v. Turmel, supra*, has taken out the exceptional circumstances. Mr. Turmel appealed the decision of Aitken J. of this court to the Ontario Court of Appeal who dismissed his prohibition application and Mr. Turmel's application to have the Supreme Court of Canada hear an appeal was turned down. Then Mr. Turmel appeared before Judge Paul Bélanger of the Ontario Provincial Court to have his charges quashed based on his interpretation of *R. v. Krieger, supra,* as being an abuse of the court's process. He was unsuccessful before Judge Paul Bélanger as he was also unsuccessful on appeal to the Ontario Court of Appeal and he applied to appeal to the Supreme Court of Canada and leave was refused.

[23] It is to be noted that in this case, Thompson J. had ordered Crown counsel to assist Mr. Turner in notifying the Attorney General of Ontario that Mr. Turner was bringing a constitutional challenge. This was done and the Attorney General of Ontario declined the invitation to get involved in Mr. Turner's application as it presented itself as a constitutional issue that can be dealt with by the trial judge and not as an extraordinary remedy issue.

[24] I agree with Crown Counsel's written submission which states that:

> This is an application better suited for a trial court whereby Mr. Turner could raise a constitutional application and appeal any error therefrom. To elaborate, the basis of Mr. Turner's prohibition application is that the Superior Court of Justice should prohibit the charges from proceeding because he has not been charged with an offence known to law. However, it has long been established in Ontario law that "prohibition is not available to restrain a judge from proceeding with an information which does not disclose a criminal offence or is defective in substance or form, unless the statute under which the information was laid is *ultra vires*", in the case, the CDSA. The issue of whether or not an information discloses a criminal offence is a matter for the trial judge.

[25] I further agree with Crown counsel's written submission that I reproduce to arrive at the conclusion that Mr. Turner has no standing to argue on behalf of the citizens of Canada as he has done. She argues as follows:

(a) *Canadian Council of Churches v. Canada (Minister of Employment and Immigration),* [1992] 1 S.C.R. 236, is a leading Supreme Court of Canada case on the law of standing in Canada.

(b) The court acknowledged the need for public-interest standing in principle, to ensure that government is not immunized from constitutional challenges to legislation.

(c) However, the court also stressed "the need to strike a balance between ensuring access to the courts and preserving judicial resources, citing the concern of an "unnecessary proliferation of marginal or redundant suits brought by well-meaning organizations pursuing their own particular cases certain in the knowledge that their cause is all important." That latter concern is the exact situation that we are faced with here. This matter is a redundant application regardless of whether it has been brought with a well-meaning intent by Mr. Turner.

(d) By virtue of the fact that this application has substantively been argued twice by Mr. Turmel, both times the hearing judges denying the application and in both situations an appeal to the Ontario Court of Appeal being dismissed.

(e) The current test for standing, as summarized in the *Canadian Council of Churches* decision, considers three factors:

1. Is there a serious issue raised as to the invalidity of legislation in question?

2. Has it been established that the plaintiff is directly affected by the legislation or, if not, does the plaintiff have a genuine interest in its validity?

3. Is there another reasonable and effective way to bring the issue before the Court? The Supreme Court went on to hold that this last factor is an onerous one, the obligation falling to the applicant to establish.

(f) Given that the matter has previously been brought before the court in a manner sufficiently effective for the court to rule on the issue, this request should be denied.

(g) Mr. Turner only has standing to request an order or remedy for his own particular proceedings. In that capacity, he is seeking that his own charges be stayed as an abuse of process on the grounds that all statutes governing marijuana are of no force and effect, Mr. Turner is in essence arguing that his rights as protected under section 7 of the *Charter* have been violated and he is seeking a stay of proceedings as a remedy under section 24(1) of the *Charter*. This is an application to be addressed by the trial judge.

[26] I find that considering the above analysis, there are no grounds to cite the Minister of Justice in contempt of court, which conduct, in any event, pertain to matters involved in other courts.

[27] Mr. Turner did not bring a tape recorder to this hearing. He would not have been allowed to use it, in any event, as I would not have been persuaded that pursuant to Rule 36(2)(b) of the

Ontario Rules of Practice the only purpose for the audio recording would have been to supplement his handwritten notes. I am concerned that a blog has already been set up through a website operated by John Turmel which includes a copy of the Crown's notice of opposition in this particular matter. The chances that an audio recording in the circumstances of this case be corrupted or modified would be too great.

[28] I grant the Crown's motion and summarily dismiss Mr. Turner's applications. It is my hope that, in the future, such frivolous and vexatious applications for prohibition will not prevent Crown counsel across the Province of Ontario to get on with the prosecutions of charges such as we have in this case. The constitutional questions raised by the Turmels and Turners of this world are matters to be decided by the trial judge from whom an appeal lies to the Ontario Court of Appeal. There should be no further interruption of the trial process with applications such as discussed in this case. I also think that applicants like Mr. Turmel and Mr. Turner should pay court costs when frivolous applications are brought before the courts.

_____

Mr. Justice Paul F. Lalonde

Released: December 1, 2008

COURT FILE NO.: 12755

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HER MAJESTY THE QUEEN

Respondent

– and –

JAMES TURNER

Applicant

REASONS FOR DECISION

Mr. Justice Paul F. Lalonde

Released: December 1, 2008

CITATION: R. v. Stephane Nadeau, 2010 ONSC 4795
COURT FILE NO.: CR-568-10
DATE: 2010-09-02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Her Majesty the Queen v. Stephane Nadeau

BEFORE: Mr. Justice Michel Z. Charbonneau

COUNSEL: Mr. Steven A. White, Counsel, for the Crown

Acting on his own behalf, Stephane Nadeau

HEARD: August 18, 2010

ENDORSEMENT

[1] On May 25, 2010, Stephane Nadeau was charged with having unlawfully produced cannabis marijuana contrary to section 7(1) of the *Controlled Drugs and Substances Act*, 1996 S.C. c.19. He has appeared on several occasions in Ontario Court but has not yet registered a plea to the charge.

[2] On June 21, 2010, Mr. Nadeau initiated the present application seeking the following orders:

A) an Order prohibiting prosecution of all charges relating to marijuana under the CDSA as unknown to law on the grounds that: 1) Parliament has not re-enacted the s.7 cultivation and s.4 possession prohibitions which underpin all other marijuana prohibitions in the CDSA since they were struck down by the Ontario and Alberta Courts of Appeal.

B) And an Order staying all charges for marijuana as abuse of the court process on the grounds all statutes related to marijuana are of no force and effect and ordering the Crown to cease and desist all marijuana prosecutions until Parliament re-enacts a new constitutionally valid prohibition with a new constitutionally valid exemption.

C) And an order, in the absence of proof that all inmates convicted since the marijuana prohibitions were repealed have been released, that cites the Ministry of Justice for contempt of this Court by continuing prosecution of penal statutes after judgments the Crown has admitted create a similar period of retrospective invalidity dating back to December 3, 2003.

D) And an Order expunging the criminal records of all those convicted since the prohibitions have been invalidated.

[3] The Crown asks the court to summarily dismiss the application as frivolous or vexatious pursuant to section 6.11 of the Rules of Criminal Proceedings.

[4] On August 18, 2010, I heard the application. I called on both sides to make oral submissions. Mr. Nadeau, who was accompanied by Mr. John Turmel, whom he called his "coach", declined to make any oral submissions and indicated he would only rely on the written material filed with the court.

[5] Rule 6.11 states that the judge hearing an application may summarily dismiss the application "if he or she is satisfied the application is frivolous or vexatious".

[6] At the end of the hearing, I indicated to the parties that I was convinced that Mr. Nadeau's application was both frivolous and vexatious. I dismissed the application and indicated that I would provide written reasons at a later date. Here are those reasons.

Rule 6.11

[7] In order to succeed, the Crown must show that the application is either frivolous or vexatious. Black's Law dictionary defines these two terms as follows:

> "frivolous: a claim which is without legal basis or merit.
>
> vexatious: a claim initiated to harass the opposite party or cause delays and/or expenses to the other side."

[8] In Currie v. Halton Regional Police (2003), 233 D.L.R. 4th, 657, the Ontario Court of Appeal decided that an action for which there is clearly no merit qualifies as frivolous, vexatious or an abuse of process.

[9] The present application is clearly without merit for the following reasons:

1. Identical applications were dismissed by the Court as being totally without legal foundations in a number of cases: see for example R. v. Turner [2008], O.J. No. 4852; R. v. Ethier (June 10, 2010 SCJ).

I fully endorse the reasons provided by the courts in the above cases and find that they are fully applicable to Mr. Nadeau's application.

2. It is clear that as a result of the decisions of the Ontario Court of Appeal in Hitzig v. Canada [2003] O.J. No. 3873, R. v. Turmel (2003) O.J. 3877 and R. v. Turmel (2007) O.J. 724 that the marijuana offences in the *Controlled Drugs and Substances Act* remained in full force and effect after the decision in Parker. It did not require re-enactment by Parliament. The accused Turmel in the above two decisions is the same person who is before the court on this application as the "coach" of Mr. Nadeau. The only written argument made to side step the Court of Appeal decisions is that "the Ontario Court of Appeal erred". This is not a valid submission to be made in this court. When Mr. Nadeau was charged the marijuana prohibition was in effect and Parliament had put in place medical access regulations which appear to meet the flaws concerning medical access to marijuana originally raised by the Court of Appeal in R. v. Parker.

If Mr. Nadeau wishes to attack these regulations as failing to meet his fundamental Charter rights, he must do so before the judge hearing his trial. To circumvent this perfectly available forum is an obvious tactic to delay the proceedings against him.

3. Mr. Nadeau also makes a claim for a writ of prohibition on behalf of other accused in past criminal cases and other persons. Mr. Nadeau fails to establish that he has standing to pursue a public interest litigation. The same type of request was dismissed on that basis in R. v. Turner [2008] O.J. No.4852 and in R. v. Michel Ethier (June 16, 2010, SCJ).

[10] Mr. Nadeau's application is dismissed.

Justice Michel J. Charbonneau

Date: September 2, 2010

CITATION: R. v. Stephane Nadeau, 2010 ONSC 4795
COURT FILE NO.: CR-568-10
DATE: 2010-09-02

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: Her Majesty the Queen

AND

Stephane Nadeau

BEFORE: Mr. Justice Michel Z. Charbonneau

COUNSEL: Mr. Steven A. White, Counsel, for the Crown

Acting on his own behalf, Stephane Nadeau

ENDORSEMENT

Charbonneau J.

Released: September 2, 2010

CITATION: R. v. TURNER, 2011 ONSC 1508
COURT FILE NO.: 06-G1708
DATE: 2011-03-09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. TURNER

BEFORE: Honourable Justice Timothy Ray

COUNSEL: Steven White, Counsel, for the Crown

James Turner, self represented

HEARD: March 9, 2011

ENDORSEMENT - MOTION TO QUASH

[1] The defendant moves to quash "all CDSA charges relating to marijuana" as unknown to law on the grounds that

a. Parliament has not re-enacted ss. 4 and 7, since they were struck down by the Ontario and Alberta Courts of Appeal;

b. The effect of the various jurisprudence is there is no constitutionally valid marijuana offence between July 31, 2001 and October 7, 2003;

c. An order abridging the time for the application.

[2] The defendant is facing two counts dated July 7, 2009: a) that he did on or about the 28th of September, 2006 unlawfully produce marijuana contrary to s. 7 (1) thereby committing an offence under s. 7 (2), CDSA, (*Controlled Drugs and Substances Act,* 1996 S.C. c.19) and b) that on or about the 28th of September, 2006 he did unlawfully possess marijuana contrary to s. 5 (2) thereby committing an offence under s. 5 (3), CDSA.

[3] The defendant filed no evidence in support of his application. He relies exclusively on legal argument and cites various authorities.

[4] The defendant contends that the court holding in *R v J.P.*, [2003] O.J. No. 3876 (C.A.) that s.4 of the CDSA was invalid between July 31, 2001 and October 7, 2003 by analogy renders ss 4 and 7 CDSA invalid retroactive to December 3, 2003. He contends that that is the effect of *Sftekopoulos v Canada (A.G.)* [2008] 3 F.C.R. 39976; aff'd Sftekopoulos v. Canada (A.G.) (2008), 382 N.R. 71 (FCA); and *R v Beren & Swallow*, 2009 BCSC 429.

[5] This is not a novel argument. It was advanced in *R v Ethier*, unreported, June 16, 2010, (SCJ, Bracebridge) per Stong, J.; *R v Ethier*, unreported, April 8, 2010, (SCJ, North Bay) per Nadeau, J.; *R v Nadeau*, unreported, September 2, 2010, (SCJ, L'Orignal) per Charboneau, J.; and *Pearson v Canada*, F.C.J. No. 1797 (Fed. Ct.) (appeal to F.C.A. dismissed). And was rejected. In addition, the same argument was advanced in this case but at an earlier stage before P.F. Lalonde, J. (*R v Turner*, [2008] OJ, No. 4852 (SCJ) (leave to appeal dismissed without reasons). At paragraphs 13 to 16, P.F. Lalonde, J., set out the defendant's arguments before him. They are the same arguments advanced before me, and were rejected at the time.

[6] In *R v Real Martin*, unreported, November 19, 2010, the Ontario Court of Appeal referenced its earlier decisions in *R v Turmel*, (2003), 177 C.C.C.(3d) 533; *R v Hitzig*, (2003), 177 C.C.C.(3d) 449 and *R v J.P., (2003),* 177 C.C.C. (3d) 522; all of which were released October 7, 2003, and all of which referenced the court's decision in *R v Parker, (2000)*, 146 C.C.C. (3d)193. The court reaffirmed that *"the charge of production of marihuana under s. 7(1) of the CDSA was not affected by the court order in Parker, and continued to exist on June 18, 2003 when the appellant was charged."* Also argued before the Court of Appeal, as before me, were the decisions in *R v Krieger* (2000) 225 D.L.R. (4th) 164 (Alta Q.B.); *Sftekopoulos v. Canada (A.G.)* [2008] 3 F.C.R. 39976; aff'd Sftekopoulos v. Canada (A.G.) (2008), 382 N.R. 71 (FCA); and *R v Beren & Swallow*, 2009 BCSC 429. The court noted that all of these cases dealt with Marihuana Medical Access Regulations, S.O.R./2001-227 which permitted possession and cultivation for medical purposes, and as in the case at bar, are inapplicable

because the defendant has not asserted that he has an ATP or was producing marijuana to supply persons with an ATP. More importantly, the court at paragraph 9 held that:

> *This court's decision in Parker did not repeal or otherwise alter the terms of the CDSA. The court could only declare the constitutionally offensive part of the legislation to be of no force or effect, which it did with respect to s. 4 of the CDSA. This declaration did not affect other parts of the statute, including the offence under which the appellant was charged. There are no applicable court decisions that have declared s. 7(1) of the CDSA unconstitutional. The production offence under s. 7(1) of the CDSA was known to law at the time the appellant was charged, and continues to be in force.*

[7] This is completely dispositive of the defendant's argument. His motion to quash is dismissed.

[8] At the opening of submissions, the defendant who is self represented, asked if Mr. Turmel who was sitting in the body of the court could speak on his behalf. It appears from the repeated references to Mr. Turmel in the jurisprudence that he is seen by the defendant to have some experience in dealing with and in fact is the author of the particular argument that he was advancing. Since Mr. Turmel is not a lawyer, I refused to grant permission. At one stage, Mr Turmel seemed unable to control his outburst and left the courtroom after I admonished him for his interruptions.

Honourable Justice T.D. Ray

Date: March 9, 2011

R. v. Turner

Ontario Judgments

Ontario Superior Court of Justice

T.D. Ray J.

Heard: February 6 and May 2, 2014.

Judgment: August 7, 2014.

Court File No. 06-G17008

[2014] O.J. No. 3657 | 2014 ONSC 2736 | 2014 CarswellOnt 10746 | 116 W.C.B. (2d) 211

Between Her Majesty the Queen, Applicant, and James Turner, Respondent

(14 paras.)

Counsel

Steve White, for the Crown.

Self-represented, Respondent.

T.D. RAY J.

1 The Crown brings this application to quash the defendant's application which challenges the constitutional validity of ss. 4(1) and 7(1) of the , S.C. 1996, c.19 (""), the , SOR/2001-119, s. 227 (""), and seeks a stay of proceedings. The Crown's motion to quash without a hearing is based on the grounds that the defendant's application is frivolous, and that the defendant's constitutional challenge has no chance of success based on the evidence he proposes to lead.

2 The parties agreed that at the conclusion of the Crown argument, the motion to quash would be adjourned to permit the defendant time to marshal his arguments, which he did.

3 The defendant's Notice of Application and Constitutional Challenge seeks a stay of the charges against him, a declaration that the *MMAR* are unconstitutional, and a declaration that the *CDSA* ss. 4(1) and 7(1) prohibitions are of no force and effect. The lion's share of the application is the same as that argued before me in 2011, and dismissed on the ground that the defendant's arguments had previously been litigated and dismissed.

4 The Crown contends that as a legal matter, all of the provisions of the *CDSA* are in full force and effect. The period of invalidity only took place between July 31, 2001 and October 7, 2003. The current charges the defendant is facing arose in September, 2006. In addition, the Crown says that the evidence the defendant proposes to lead at the hearing to be held for his constitutional challenge is grossly inadequate, and is not in accordance with the evidentiary foundation required for this type of challenge.

5 The defendant contends in argument that his proposed evidence meets the threshold established by the Court of Appeal in *R. v. Mernagh*1, and that his case is similar to an unreported case in London, Ontario (*R. v. Spottiswood*)

where he alleges the court began to hear witnesses, but a plea was taken, and the case ended. He also argued that a provincial court decision in Nova Scotia (*R. v. Scovil*) on similar facts, was under reserve.

6 For the reasons that follow, I would grant the Crown's motion to quash, and order the defendant's Notice of Application and Constitutional Challenge dismissed.

7 The history of this matter is part of a campaign launched by persons similar to the defendant who are engaged in an unrelenting series of legal challenges designed to change the law as it relates to marijuana and to frustrate criminal proceedings. To date, the efforts have been for the most part unsuccessful in the courts, not because the law is right or wrong, but because Parliament is the appropriate forum to entertain these arguments. None of the defendant's arguments are novel. All were previously argued and disposed of. The success of some of these arguments in the courts that previously identified particular statutory issues have since been corrected. A brief history of this case is as follows:

a. September 28, 2006 - the defendant was arrested and charged with possession and production of some 2,879 marijuana plants and related paraphernalia (ss. 4(1) and 7(1) *CDSA*).

b. October 11, 2006 - the defendant's first appearance.

c. Numerous adjournments were requested by the defendant and granted over the following several months; and finally he became self-represented.

d. December 1, 2008 - Lalonde, J. (SCJ) dismissed the defendant's motion for prohibition (*R. v. Turner*, [2008] O.J. 4852). Lalonde, J., noted the defendant's materials were boilerplate materials copied from John Turmel, a long-time activist, and further that he was attempting to relitigate *R. v. Turmel* (*R. v. Turmel*, 231 D.L.R. (4th) 190 (Ont. C.A.)).

e. June 28, 2009 - after a number of preliminary enquiry adjournments requested by the defendant, he consented to be committed for trial on all charges.

f. July 7, 2009 - an indictment was filed.

g. August 18, 2009 - the defendant's appeal from the decision of Lalonde J. was ordered abandoned by the Court of Appeal.

h. December 17, 2009 - the defendant's further appeal to the Supreme Court of Canada was dismissed without reasons.

i. March 9, 2011 - I heard and dismissed the defendant's motion to quash and held the marijuana offences were in full force and effect (*R. v.* Turner, 2011 ONSC 1508). The defendant's constitutional challenge was adjourned on consent pending disposition on appeal of *R. v. Mernagh*.

j. October 10, 2013 - the defendant filed his current updated Notice of Application and Constitutional Challenge.

8 The defendant's challenge to the regulatory scheme (*MMAR*) is to the scheme that was in place at the time he was charged. It has since been replaced by a new scheme. The defendant has no standing to challenge the current regulatory scheme. Since the scheme in place at the time of his charges is no longer in force, the only relief the defendant would be able to seek would be a stay of proceedings. In his challenge to the *MMAR*, he lists some 23 grounds for seeking his relief. For the most part, the complaints do not relate to the regulatory scheme but to the manner in which it was administered and to the role of the medical profession in the execution of the regulatory scheme. Specifically, delay is his chief complaint. That is not a function of the regulations. Even if the regulatory scheme were still in place, his complaints do not concern the regulations. His present challenge is therefore untenable and has no merit.

9 The defendant says that he intends to call in excess of 55 witnesses at the proposed hearing to attest to the operation of the previous regulatory scheme. None are qualified or competent to give opinion evidence concerning

the operation of the regulatory scheme. His intended witnesses are limited to being able to give only anecdotal evidence which was specifically commented on by the Court of Appeal as being insufficient. Anecdotal evidence containing hearsay of what physicians or others may or may not have said cannot be accepted as the truth of what was said (*R. v. Mernagh, para. 74 ff.)*. What is also concerning about the defendant's proposed hearing is that it is tailored after the materials on the website of John Turmel,2 which suggests that this number of witnesses is necessary in order to make the proceeding at least as long as the hearing in *R. v. Mernagh*. There is nothing in the defendant's proposed hearing that relates to the defendant's own case.

10 Similarly concerning is that the written materials filed by the defendant are also modelled after the materials on John Turmel's website. The language from the website speaks to legal warfare and is a boilerplate approach. In fact there is nothing in the defendant's application materials that relates to his personal circumstances. Leaving aside the unsatisfactory evidence the defendant proposes to rely upon, there is no clear demonstration of the constitutional infirmity of the *MMAR*, and the link between the *CDSA* offences and the alleged infirmity in the *MMAR* (*R. v. McCrady,* 2011 ONCA 820, at para. 30).

11 The constitutionality of the *CDSA* marijuana provisions regarding production (s. 7(1)) and trafficking (s. 5(1)) has repeatedly been upheld by the Court of Appeal.3

12 It is notable that the defendant has not alleged that he has or should have had an Authorization to Produce (ATP) under the regulatory scheme at the material time. His complaints regarding those parts of the *CDSA* and the *MMAR* which relate to the production or use of marijuana for medical purposes are immaterial to the defendant, and immaterial to the charges against him.

13 I do not consider the defendant's description of the proceedings in *R. v. Spottiswood* of assistance; nor am I persuaded that I should await the provincial court decision from Nova Scotia which the defendant says is a similar case.

14 I find that the defendant's Notice of Application and Constitutional Challenge has no merit, and no likelihood of success. The Crown's motion to Quash is granted and the defendant's application is dismissed.

T.D. RAY J.

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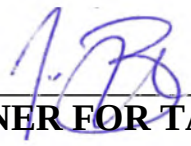
1 *R. v. Mernagh*, 2013 ONCA 67, at paras. 101-102.

2 Affidavit of Jason Mulligan, Crown Supplementary Motion Record.

3 *Regina v. Turmel*, at para 2; *R. v. Real Martin* (November 19, 2010), unreported (Ont. C.A.), at paras. 6-8: *R. v. Ethier*, 2011 ONCA 588, at para. 4; *R. v. McCrady*, at paras 28-30; *R. v. Parker*, 2011 ONCA 819, at paras 28-32.

THIS IS EXHIBIT "20" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.



A COMMISSIONER FOR TAKING AFFIDAVITS

File No: _____

FEDERAL COURT

Between:

_____

Plaintiff

AND

HER MAJESTY THE QUEEN

Defendant

STATEMENT OF CLAIM

(Pursuant to S.48 of the Federal Court Act)

(Check [ ] if this is a Simplified Action less than $50,000)

FACTS

The Plaintiff claims declaratory and financial remedy for violations of rights under S. 7 of the Charter for an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A2) And that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from prohibitions in the CDSA on marihuana for the Plaintiff's personal medical use.

C) Or, alternatively, damages in the amount of $_____ for loss of patient's marihuana, plants and production site.

VIOLATIONS UNDER BOTH THE MMAR AND MMPR

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1) MMAR S.4(2)(b) and MMPR S.119 require a medical document from recalcitrant or not-available family doctors unreasonably restricting access;

2) MMAR and MMPR fail to provide DIN (Drug Identification Number) for affordability unreasonably restricting access and supply;

3) MMAR S.13(1), S.33(1), s42(1)(a) and MMPR S.129(2)(a) require annual renewals unreasonably restricting access;

4) MMAR S.65(1) and MMPR compel exemptees to destroy unused cannabis with no compensation unreasonably restricting supply;

5) MMAR S12.(1)(b), S.32(c), S.62(2)(c), S.63(2)(f) and MMPR S.117(1)(c) allow the Minister or the Licensed Producer to refuse or cancel the patient's permits for non-medical reasons unreasonably restricting access and supply;

6) MMAR and MMPR feedback from Health Canada to doctors opposing high dosages unreasonably restricting access;

7) MMAR and MMPR fail to provide instantaneous online processing of licenses, renewals and amendments unreasonably restricting access and supply;

8) MMAR fail to provide the resources to handle any large demand and the MMPR by failing to organize enough Licensed Producers to meet the demand unreasonably restricting access and supply;

9) MMAR S.2 and MMPR S.4(1) prohibit non-dried forms of cannabis unreasonably restricting access;

10) MMAR and MMPR fail to exempt patients from the CDSA S.5(1) prohibition on trafficking for trading and sampling different strains for different pains and gains in production unreasonably restricting access and supply.

VIOLATIONS UNDER THE MMAR ONLY
==========

MMAR 11) S.6(2)(b)(i) & (vi) require a specialist consultation unreasonably restricting access;

MMAR 12) S.6(1)(e), S.4(2)(b), S.6(2)(b)(v) require a medical declaration on conventional treatments being inappropriate unreasonably restricting access;

MMAR 13) S.32(e) prohibits more than 2 licenses/grower unreasonably restricting supply;

MMAR 14) S.32(d) & S.63(1) prohibit more than 4 licenses/site unreasonably restricting supply;

MMAR 15) S.30(1) limits the number of plants ensuring no seasonal economies nor respite from constant gardening unreasonably restricting supply ;

MMAR 16) fails to license any garden help unreasonably restricting access and supply;

VIOLATIONS UNDER THE MMPR

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MMPR 11) S.255(2) makes the ATP valid solely as a "medical document" after March 31 2014 unreasonably restricting access and supply;

MMPR 12) S.117(4) allows the Licensed Producer to cancel the patient's registration for an undefined "business reason" unreasonably restricting access and supply;

MMPR 13) S.117(7), S.118 prohibit the Licensed Producer from returning or transfering the medical document back to the patient unreasonably restricting access;

MMPR 14) S.13 prohibits production in a dwelling unreasonably restricting supply;

MMPR 15) S.14 prohibits outdoor production unreasonably restricting supply;

MMPR 16) S.138(1)(c), S.264 fail to protect the patient's brand genetics and rights to those brands unreasonably restricting access and supply;

MMPR 17) fails to remove financial barriers unreasonably restricting access and supply;

MMPR 18) fails to provide central registry for police verification unreasonably restricting access and supply;

MMPR 19) fails to have enough Licensed Producers to supply upcoming needs unreasonably restricting supply;

MMPR 20) S.5(c), S.73(1)(e), S.123(1)(e), S.130(2) prohibit possession or delivery of more than 150 grams unreasonably restricting supply;

THE PARTIES
==========

1. The Plaintiff brings these claims for declaratory relief and/or financial relief pursuant to S.7, 24(1) and 52(1) of the Charter of Rights and Freedoms as a person who can establish medical need having:
a) an exemption under the MMAR, the MMPR or the Narcotic Control Regulations (NCR); or
b) medical files documenting a qualifying illness, or
c) desire to prevent illness it's good for before getting it.

2. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, is named as the representative of the Federal Government of Canada and the Minister of Health for Canada who is the Minister responsible for Health Canada and certain aspects of the Controlled Drugs and Substances Act including the Narcotic Control Regulations, the Marihuana Medical Access Regulations and program and the Marihuana for Medical Purposes Regulations and program.

BACKGROUND

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CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA)

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3. Cannabis, its preparations, derivatives and similar synthetic preparations are listed in Schedule II to the Controlled Drugs and Substances Act, S.C. 1996, c.19, and amendments thereto (the "CDSA"). Its production, possession, possession for the purposes of distribution or trafficking, and trafficking, as well as importing and exporting are prohibited by this Statute as a "controlled substance", formerly known as "narcotics".

4. CDSA S.56 permits the Minister for Health Canada or his designate, to exempt any person, class of persons, controlled substance or precursor of a controlled substance from the application of the CDSA or its Regulations if, in the Minister's or the designate's opinion, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

5. While no viable constitutional medical exemption to the prohibitions against cannabis existed prior to July 30th, 2001, the Ontario Court of Appeal in R. v. Parker (2000) 49 O.R. (3d) 481 (leave to appeal to the Supreme Court of Canada dismissed) declared "the prohibition on marihuana in S.4(1) of the CDSA to be invalid" for the failure of the government 'to provide reasonable access

for medical purposes' as an exemption to the general prohibition violated s.7 of the Canadian Charter of Rights and Freedoms in that the 'life,' 'liberty' and 'security' of the patient was affected in a manner that was inconsistent with the "principles of fundamental justice;" it suspended its decision for 1 year to allow the government to comply and granted Terry Parker a 1-year constitutional exemption until it had complied.

6. Initially the government, pursuant to s.56 of the CDSA issued an "Interim Guidance" document and processed exemptions under that section until ultimately, on July 30 2001, the Government of Canada brought the Medical Marihuana Access Regulations (MMAR) into effect attempting to bring the CDSA into compliance with the Charter by putting into place a "constitutionally acceptable medical exemption" to the prohibition against the possession and cultivation of marihuana for those who establish medical need and before the prohibition became invalid on Aug 1 2001.

7. On Aug 1 2001, unable to complete the Application process in only one day, Terry Parker's constitutional exemption lapsed without his being actually exempted pursuant to the Order of the Court thus once again facing unconstitutional penal jeopardy unless the Declaration of Invalidation had taken effect where he remains today since his doctor refuses to sign his MMAR application form.

MEDICAL MARIHUANA ACCESS REGULATIONS (MMAR)

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8. In an era when 5 million Canadians do not have doctors, the MMAR established a framework where an individual could apply to Health Canada for an "Authorization to Possess" (ATP) only "dried marihuana" for medical purposes with the support of their medical practitioner. The Regulations set out various categories 1-3 relating to symptoms of various medical conditions with the latter categories requiring the involvement of one or two specialists. The ATP was subject to annual renewal.

9. Hitzig struck down the requirement for a second specialist for category three applicants as not in accord with the principles of fundamental justice, the requirement adding little to no value to the assessment of medical need and was an arbitrary barrier to the granting of an exemption for category three applicants. On June 29 2005 the Government of Canada made further amendments to the MMAR re-defining the types of applicants by merging categories 1 and 2 into category 1, requiring the declaration of only one physician, and merging category 3 into 2 and eliminating the requirement of a declaration from a specialist but still requiring a consultation with one.

10. Further, where a specialist was required, it was no longer necessary for the specialist to provide the declaration that s/he had reviewed the case and concurred "that conventional treatments were ineffective or

medically inappropriate and was aware that marihuana was being considered as an alternative treatment." Rather, the onus was put on to the family physician to ensure the specialist "had reviewed the case and concurred that conventional treatments were ineffective or medically inappropriate and was aware that marihuana was being considered as an alternative treatment" so no actual change took effect but transferring the workload to the family doctor.

11. Doctors are deterred from participation by their medical associations, by insurance companies, by the yearly renewal forms for permanent diseases, by having to consult with a specialist, by non-approval of cannabis without a DIN (Drug Identification Number), and by Health Canada feedback urging lower dosages and demanding doctors complete an unmentioned form certifying anew a high dosage!

12. The Regulations provided for the individual to obtain a Personal-Use-Production-Licence (PUPL) subject to annual review specifying a number of plants to produce for them an amount of cannabis and to store and possess certain amounts depending upon a calculation derived from the medical practitioner's authorization of grams per day for the particular ailment. A low plant limit forces patients to grow bigger less-wieldy plants, prevents seasonal economies by forcing patients to garden year round with no respite.

13. Personal-Use-Production-License holders are prohibited from engaging any help though the Regulations provide for a "Designated Person Production Licence" (DPPL) authorizing someone to produce dried marihuana for the patient.

14. There is no provision for trading different strains for different pains or different gains in growth which puts one in jeopardy of CDSA S.5(1) trafficking to do so. And evidently, any patient on social assistance or meager income is compelled to traffic part of the crop to cover production expenses!

15. The Regulations provided that a designated producer could only produce for one patient holding an ATP and there could only be three licences in one place. If renewals of ATPs are late, the plants and stored marijuana had to be destroyed until the permits arrived and they could start producing all over, without any medicine all the while.

16. On Oct 7 2003, Hitzig v. HMTQ ruled the Bad Exemption provided by the MMAR had not complied with the Parker ruling because a limit of 1 patient per grower and 3-growers per garden made the regime unconstitutionally uneconomical.

17. The same day, the Ontario Court of Appeal in R v. J.P. quashed the possession charge ruling:
"In Parker, this court made it clear that the criminal prohibition against possession of marihuana, absent a constitutionally acceptable medical exemption, was of no force and effect."

18. A Bad Exemption means No Offence. BENO! But the Court ruled that when those limiting caps had been struck down, the MMAR exemption became constitutionally sound; the CDSA prohibitions were once again constitutionally valid; new charges could be laid again as of Oct 7 2003.

19. On Dec 8 2003, 4,000 charges were stayed as a result of there being No Offence while the MMAR had been flawed for 2 years by the unconstitutional caps on patients and growers.

20. On Dec 3 2003, as a result of the Ontario Court of Appeal decision in Hitzig striking down the limits on patients and growers to make the MMAR constitutionally valid, the Government of Canada amended the MMAR to UN-COMPLY by re-enacting the provisions to permit a designated producer to only produce for one patient and permit only 3 growers per garden in virtually identical terms; the same two caps on patients and growers whose presence in the MMAR caused the J.P. Court to rule the prohibitions in the CDSA to be invalid retrospectively from Aug 1 2001 to Oct 7 2003 when the patient-grower deficiencies in the MMAR were rectified.

21. In Sfetkopoulos v. AG Canada 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA), the Federal Court of Appeal, essentially following Hitzig, struck down the limit on 1 patient per grower as being a negative restriction violating s.7 of the Charter. But no charges were dropped while the MMAR was once again declared unconstitutional for the very same Hitzig flaw. In 2009, Health Canada enacted a new ratio allowing a designated producer to produce for 2 authorized persons!

22. In 2010, the R. v. Beren and Swallow (2009) BCSC 429 declaration took effect that the re-imposed limit of 3 growers per garden once again rendered the MMAR unconstitutional for the very same Hitzig flaw. Again, no charges were dropped. A week later, Health Canada upped the limit to 4 growers per garden.

23. In 2010, Health Canada was swamped by several extra thousand applications, each now needing yearly renewals. Exempting Canada's 400,000 epileptics would seem to have little chance, the regime could not cope. Thousands of patients have suffered the stress of having their ATPs delayed or expire without prompt renewal or amendment and were put into penal jeopardy by S.65(1) for failure to destroy their stored marijuana and plants until their new ATP arrived.

MARIHUANA FOR MEDICAL PURPOSES REGULATIONS (MMPR)

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24. On June 19th, 2013 the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 came into effect. These Regulations run concurrently with the MMAR until March 31, 2014 when, by virtue of s. 267 of the MMPR, the MMAR will be repealed and all Personal-Use-Production-Licences and Designated Producer Production Licences (DPPL) will be terminated effective that date regardless of the dates specified on the actual licences previously issued. While "access" is increased slightly by the definition of a "Health care practitioner" being expanded to include "nurse practitioners." Annual renewals are still required.

25. The MMPR continues to limit possession by a patient to "dried marihuana" and the patient cannot possess nor be shipped any more than 30 times the daily quantity authorized or 150 grams whichever is the lesser amount. All MMAR ATPs are canceled as of Mar 31 2014 and after that

current ATPs may only be used as a "medical document." Patients with MMAR Authorizations To Possess are expected to destroy their life's botanical savings, any current crop and production site when registering under the new MMPR with no compensation while patients under the MMPR must destroy any remaining prescription when the new supply arrives.

26. The question of "supply" is dealt with by providing for "Licensed Producers" (LP) as the sole source of supply to registered patients, doctors or hospitals for patients.

27. Under the MMAR, the Minister refuses or revokes an authorization to possess if any information in the application "is" false or misleading. Under the MMPR, the onus of canceling a patient's medicine is transfered to the private Licensed Producer who needs not be certain "the information is false" but only have "reasonable grounds to believe the information is false" to refuse or cancel a patient's registration.

28. The Licensed Producer may cancel a patient's registration for an undefined "business reason" but may not return the patient's original "medical document" so he can take it to another Licensed Producer.

29. The MMPR puts in place a transitional scheme to be implemented between now and March 31 2014 whereby persons holding an Authorization to Possess and a Personal Production Licence or a Designated Producer will obtain a notice of authorization from the Minister to sell or transfer their plants or seeds to a Licensed Producer.

Production is not permitted at a 'dwelling place' and can only take place 'indoors,' not 'outdoors' and no provision is made for securing the rights to the brand of seed or plant sold or transfered.

30. In the Government of Canada produced "Regulatory impact analysis statement" about the Marihuana for the Medical Purposes Regulations in the Canada Gazette, Volume 146, #50 on December 15th, 2012 it is indicated that the main economic cost associated with the proposed MMPR would arise from the loss to consumers who may have to pay a higher price for dry marihuana estimated to be $1.80 per gram to $5.00 a gram in the status quo to about $7.60 per gram in 2014 rising to $8.80 per gram thereafter than the free to $4 per gram to produce their own. Add taxes which do not apply to personal production.

31. As of Feb 20 2014 there were eight approved Licensed Producers (LP's) and one of them is a wholly owned subsidiary of Prairie Plants Systems the former government sole contractor, and goes by the name of 'CanniMed Ltd.' It has indicated that the price of its product will be between $8.00 and $12.00 a gram. Add tax and shipping only by signed courier postal delivery for each 5 ounces!

32. In queries to Licensed Producers:
- Greg Vermeulen at Bedrocan informs that they only grow their "own proprietary standardized strains" and that they "cannot process such a large order as 200g/day due to limited supply" until the end of 2014, once they have domestic production up and running.

- Lindsay Thorimbert of Cannimed informs "all of the medical marijuana grown at the CanniMed facility is internally so we aren't able to purchase your genetics or grow those specific plants.
- 'Your Friends at Tweed' inform interested patients they "will be back in touch very shortly."
- Medreleaf can't deliver before end of May 2014.

33. Though plants and seeds may be transfered or sold to the Licensed Producer, there is no provision for a seed bank for those genetics not accepted by Licensed Producers to be saved.

CONSTITUTIONAL VIOLATIONS ALLEGED
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UNDER THE MMAR AND MMPR
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1) RECALCITRANT DOCTORS AS GATEKEEPERS

MMAR S.4(2)(b): "An application under subsection (1) shall contain a medical declaration made by the medical practitioner treating the applicant;"
MMPR S.119 "Applicant must include original of their medical document."

34. In the current constitutional challenge in R. v. Godfrey (Nova Scotia) with a ruling on declaring the MMAR-MMPR invalid expected on Apr 24 2014, Applicant adopted the facts established by Taliano J. in R. v. Mernagh not with respect to there being "not enough

doctors" but with respect to there being some doctors allowed to opt out of the MMAR for non-medical reasons.

35. On Apr 11 2011, the Ontario Court of Appeal ruled in R. v. Mernagh:
"[9] On the Charter application, Mr. Mernagh did not argue that the MMAR are unconstitutional as they are drafted. Rather, he argued that the MMAR are unconstitutional as they are implemented because physicians have decided en masse not to participate in the scheme."

36. The Court pointed out there was no evidence of the number of people who need it, the number who asked for it and were refused, no numbers proving a boycott.

37. The Court further noted:
"[28] In answer to the argument of the Hitzig appellants that the concerns of the medical profession and its governing bodies regarding the role of doctors as gatekeepers would prevent doctors from signing the requisite forms and thereby prevent worthy individuals from obtaining a licence, the Court found that on the record before it the argument was answered by Lederman J.'s findings that despite the concerns of central medical bodies, a sufficient number of individual physicians were authorizing the therapeutic use of marihuana that the medical exemption could not be said to be practically unavailable (Hitzig, supra at para. 139)."

38. So even if there had been a boycott by a vast majority of doctors, in 2003 Hitzig had ruled the medical exemption was "not practically unavailable" with even only 1 doctor in 100 participating.

39. Unlike Mernagh, Godfrey did not argue there was boycott of doctors making his access illusory, he has argued the MMAR permits doctors to refuse without any contra-indications of use, with non-medical reasons, that make access illusory. Similar evidence to that in Mernagh of the same unhealthy ramifications of the MMAR was given in Godfrey but in support of the different head of relief.

40. The Court of Appeal ruled that the Mernagh witnesses had not given evidence that the refusing doctors had not had valid medical reasons contra-indicating use. To fill this gap, the patient witnesses in R. v. Godfrey, all with qualifying diseases testified to their angst-filled searches for a doctor to sign and the non-medical reasons the doctors had used to refuse:
"I don't know enough about marijuana."
"I don't like the forms."
"I don't need the calls from Health Canada."
"I'm not interested" because of my Medical Association."
"I'm afraid for my practice!"
"I don't want to be known as a pot doctor."
"I don't know you well-enough."
"I don't want to be liable should you commit a criminal act under the influence!"
"I don't do that. Have some narcotics instead."
"Marijuana is not approved with a DIN."

41. The Mernagh evidence is also replete with more non-medical reasons for refusals though that evidence was wasted in a futile attempt to prove a doctor boycott. Applicant Godfrey submitted that an exemption that is "not practically unavailable" because some sign is not enough, it is not practically available when some don't sign.

42. The Mernagh Court of Appeal wrote:

"[147] Much of the evidence relied on by Mr. Mernagh to support his claim that the defence in the MMAR is illusory does not link physician non-participation in the MMAR or individual refusals by physicians to provide the necessary declaration with any kind of governmental action. A doctor who refuses to provide the necessary declaration because he or she is not satisfied that the criteria in the regulations are met, does not feel sufficiently knowledgeable about the effects of marihuana, is unfamiliar with the patient, or views the use of marihuana as medically contra-indicated, is certainly limiting the availability of the medical exemption contemplated in the MMAR. However, that decision is not attributable to the government or any form of governmental action. Nor, in my view, can the physician, by exercising the gatekeeping role demanded of the physician by the legislation, be said to make the defence created by the legislation illusory. Refusals based on the doctor's exercise of his or her judgment are inherent in the defence created by the MMAR."

43. One would presume refusals would be based on the doctor's exercise of his or her MEDICAL judgment, not for the myriad of lame non-medical excuses listed above. The Court presumed doctors would be professional and not let their clients die, that doctors would do right even if given a responsibility they don't want to bear. But they do let their clients die with no contra-indication of marijuana use. Every epileptic having a fatal seizure without access to a joint is testament to his doctor not doing his research. What medical reasons could a doctor

have to refuse an epileptic with a permanent disease when the Parker decision established the Charter Right not to be denied its anti-seizure efficacy? From 100 seizures a day, after a lobotomy and lobectomies failed to help, Terry Parker has not had an epileptic seizure in all the years that he has continued smoking cannabis since his constitutional exemption expired in 2001 and before.

44. Of course, if cannabis was contra-indicated or the patient had not satisfied the criteria in the regulations, refusal is justifiable. But the doctor cop-outs listed above are not medical judgments.

45. To plead incompetence can never be deemed professional when it comes to the least dangerous herbal treatment with the best safety record in history? "Never killed anyone, works for others but I haven't studied up so find someone who has" is no medical judgment.

46. The doctor refusing for being afraid of his medical association, afraid of his insurance company, afraid of Health Canada calls, afraid of being called a "pot doctor," afraid of the mountain of paperwork or afraid for his practice is not making a medical judgment.

47. That the doctor is unfamiliar with the patient is irrelevant when the doctor should be familiar with the patient's condition. If a medical history says Epilepsy, how much more does the doctor need to know? Why are some doctors willing to authorize epileptics upon one consultation, even by Skype video-call, yet others need a more personal tete-a-tete?

48. That the doctor could believe he would be liable for criminal acts committed "under the influence" shows the silliness of some non-medical reasons.

49. That the doctor will only prescribe addictive narcotics when the patient wants to try non-addictive herbal treatment violates the patient's right to decide established in Morgentaler. If this were any new chemical drug, doctors would be expected to do their professional research when the patient asks about it, not refuse.

59. Though most witnesses eventually found doctors to sign, two patients never did and one was thrown out of the doctor's office. There are other reports of such "no more family doctor" refusals. Applicant submitted that when the patient is thrown out by the doctor, that doctor may be presumed to not be signing for any of the other patients in his practice. Minus the 5 million without family doctors, 60,000 doctors serving 30 million Canadians is 500 patients per practice. So it's safe to conclude that doctor's whole 500-patient practice remains un-served, not only that particular patient being currently un-served. And if the recalcitrant gate-keepers are not opening the gates, it's the regimes' fault for making recalcitrant doctors gatekeepers. The patient has no use for his doctor's medical opinion when the doctor admits he's ignorant of the treatment. Installing the reluctant and willfully-ignorant as gatekeepers can only impede access.

51. Taliano J. pointed out:
"[147] With the leadership of the medical profession being so adamant in its opposition to its proposed role as gatekeeper, it is little wonder that the profession has not been supportive of the MMAR and the patient witness evidence of this lack of support becomes understandable."

52. The Crown argues it is not the legislation's fault that the doctors may not be signing in large numbers. Taliano J. cited the resistance by medical associations to being appointed gate-keepers over something they knew nothing about. Legislation appointing someone ignorant of the treatment is tantamount to appointing a monkey as gate-keeper and noting the fact the monkey sometimes opens the gate means the exemption is "not practically unavailable!" For the 5 million Canadians without a family doctor, it is completely practically unavailable and they must remain completely unserved by the present regime with recalcitrant doctors as gate-keepers.

53. The Court of Appeal should not need the numbers to logically infer that doctors were boycotting the regime when so many medical associations had been noted in opposition as well as the testimony of the Mernagh witnesses to the refusals of many doctors to serve them, and implicitly, their 500-patient practices. Fortunately, Applicant objects to doctors being able to opt out at all without medical contra-indications of use.

54. Justice Taliano finally concluded:
"[327] While that approach was justified and feasible in Hitzig, the same cannot be said of the present case.

Because the court in Hitzig only found certain and isolated sections of the MMAR to be invalid, it was able to specifically address those provisions in its remedy without altering the overall significance of the legislation. However, in the case at bar I have found that the requirement for a medical doctor's declaration has rendered the MMAR unconstitutional. This requirement infects numerous sections of the MMAR."

55. On the basis of the similar evidence as Mernagh but with the gap on why the doctors refused filled, the requirement of ignorant recalcitrant doctors is unnecessary and unconstitutional when simple proof of illness should be the only medical judgment needed.

56. The health improvements all patient witnesses in Godfrey and Mernagh attested to do condemn the doctors who wouldn't or couldn't do their duty in exercising the gatekeeping role demanded of the physician by the legislation. Once demanded of them, unprofessional incompetence and bias aren't proper gate-keeping for anyone's medicine.

2) NOT APPROVED WITHOUT DIN
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57. One cardiologist refused because marijuana was "not an approved medication." Health Canada web site explains: http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php "Dried marihuana is not an approved drug or medicine in Canada. The Government of Canada does not endorse the use of marihuana, but the courts have required reasonable access to a legal source of marihuana when authorized by a physician."

58. Not being an approved substance has been used as a reasonable rationale to allow some doctors to assuage their conscience when they opt out of their responsibility to their patients. Cannabis can never be approved until it gets a DIN. Not having a DIN also forecloses any hope of financial coverage. The lack of DIN remains in the MMPR.

3) ANNUAL MEDICAL DOCUMENTS FOR PERMANENTLY ILL

MMAR S.13(1): "ATP Subject to subsection (2), an authorization to possess expires 12 months after its date of issue..."
MMAR S.33(1)(a): "PUPL Subject to subsection (2), a personal-use production licence expires on the earlier of 12 months after its date of issue.."
MMAR S.42(1)(a): "DPPL Subject to subsection (2), a designated-person production licence expires on the earlier of 12 months after its date of issue.."
MMPR s.129(2)(a) "The period of use referred to in paragraph (1)(e) must be specified as a number of days, weeks or months, which must not exceed one year;

59. Doctors know that instead of prescribing cannabis once and perhaps never seeing an epileptic again, the patient would have to come back every year for him to fill out the forms. Imagine how all that yearly form-filling would affect any practice for epilepsy! Instead of exempting them all once, it's all of them every year! Say a doctor has 500 epileptic patients and exempts them 100 per year of 5 years. When he's done he hasn't had to

fill out 100 forms per year but 100, 100+100 renewals, 100+200 renewals, 100+300 renewals, 100+400 renewals totaling 1,500 forms filled out with 500 more every year thereafter when it should have been only 500 forms once. Over a 10-year span for 1,000 epileptics, that would take 5,500 forms filled out instead of 1,000 once. Annual renewals for permanent diseases is a waste of the patient', doctor's, and regulator's time.

60. Testimony in Godfrey showed show Exemptees fell under penal jeopardy each time renewed or amended Authorizations were delayed. The Federal Court case of Ray Turmel v. HMTQ [2013] highlighted how the Health Canada site informed people renewing their Authorizations with no changes they only needed to fill out Form R, always with 8-10 weeks for processing. Then 3 weeks later, he received a rejection letter for failure to re-submit another Form F. Nowhere on Form R instructions did it say anything about another Form F and his renewal was thus delayed by 3 weeks. With the Form F then sent in, Health Canada started the clock anew and let his exemption expire on Friday May 31 2013 without renewal advising him to comply with the rules which said to destroy his stash and garden until his new permits arrived! At 7pm Friday night, Federal Court Justice Roy granted a short notice hearing and by 11pm, Health Canada had renewed his exemption. The Form F glitch catches all such "no-change" Renewals and puts them behind schedule and Health Canada has seemed in no rush to prevent those many Authorizations from expiring and the patients falling into jeopardy for that time.

4) DESTRUCTION OF SUPPLY

MMAR S.65(1): "If an authorization to possess expires without being renewed or is revoked, the holder shall destroy all marihuana in their possession."
MMPR
http://www.hc-sc.gc.ca/dhp-mps/marihuana/repeal-abrogation-eng.php
"All dried marihuana and/or marihuana seeds or plants in your possession obtained under the MMAR must be destroyed on or before March 31, 2014."

61. MMAR orders that marijuana be destroyed without compensation upon expiry of any exemption without renewal. Every person whose exemption properly expires knows the Criminal Code prohibition means his stash had better be disposed of, why repeat it here when it's already in the Criminal Code? The only people it can possibly affect aversely are patients legitimately awaiting a late renewal or amendment who are reminded that they should destroy all their medicine until their permit arrives when they can start all over again and do without until their first crop comes in. The witnesses who testified to late renewals or amendments admitted they did not destroy their stash nor their plants and were guilty of violating both S.65 and the Criminal Code during those lapses in coverage. This jeopardy for sick people was ruled unconstitutional in R. v. Parker.

62. The MMPR demands the same destruction of medication by the prohibition on possession of more than the 30 day dosage. Should a patient under-use and have some spare at

the end of the month, it is prohibited to possess his new supply without destroying the remainder of his old supply. But should a patient over-use and lack some at the end of the month, bad luck, can't get any more.

5) BUREAUCRATIC CANCELLATIONS

MMAR S.12(1)(b): "The Minister shall refuse to issue an authorization to possess if any information, statement or other item included in the application is false or misleading;"
MMAR S.32(c): "The Minister shall refuse to issue a personal-use production licence if any information or statement included in the application is false or misleading;"

MMAR S.62(2)(c): "The Minister shall revoke an authorization to possess and any licence to produce issued on the basis of the authorization if the authorization was issued on the basis of false or misleading information;"

63. Two witnesses testified to having been authorized with many others by Ontario's Dr. Kammermans upon his visit to Nova Scotia. On Oct. 1 2012, they received revocations of their exemptions for being false and misleading though no doubt about their medical condition was alleged. What may Health Canada have construed as "false?" Dr. Kammermans was not licensed to practice in Nova Scotia!

64. Though one revokee never found another doctor, the other obtained another Authorization from a doctor in B.C. The Greenleaf Clinic does its medical examinations by Skype with the patient anywhere in Canada and the doctor in B.C. Similarly, had the doctor in B.C. done a house call to Nova Scotia and signed it there, Health Canada could have deemed that false and reject the application too. So Dr. Kammermans could have used Skype or waited until he was back in his Ontario office before signing and sending out the Authorizations to his Nova Scotia patients but because he signed them at the house call instead of in his office, Health Canada cut off the medication of thousands of valid patients for non-medical reasons!

65. Health Canada no longer cancels Exemptions for its own "reasonable grounds," it has delegated that onus onto the non-governmental Licensed Producer (LP):

MMPR S.117(1)(c)(i): "The Licensed Producer must cancel if there are reasonable grounds to believe that false information has been submitted;"
S.117(2): "must cancel without delay if LP has verified the existence of the ground in a "reasonable manner."
s.117(3): "has reasonable grounds that a ground exists."

66. Action used to be taken if it "is false!" Not only needs "reasonable grounds to believe it is false." That bureaucrats or private companies and not the doctors rule the pharmacy by declaring non-medical errors or inconsistencies "false and misleading" is an indictment of the total regime. Health Canada bureaucrats can and did cut off the medication to thousands of Dr. Kammermans' medically-qualified patients for such a trite non-medical reason.

67. What are "reasonable grounds to believe something false" for a private Licensed Producer to cut off a patient's medicine? Shouldn't it be upon "indictment or conviction" and not "reasonable grounds to believe?" "Oops, sorry for the mistake, patient's dead." If the Licensed Producer has verified grounds, he can call a cop, not say he has "reasonable grounds to believe." Or shouldn't it be up to the doctor to decide when medicine will no longer be given?

6) HEALTH CANADA FEEDBACK

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68. Testimony showed one doctor was "not interested" because of Health Canada feedback! Not only does Health Canada telephone doctors opposing high dosages but has them fill out another form to certify anew the amount! Like saying: "Are you really signing for this much? Sign another form saying it again." This second unmentioned part to the application process and phone calls verifying the same has intimidated doctors in some cases to reduce prescriptions. The same intimidation tactics are possible under the MMPR.

7) PROCESSING DELAYS

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69. Like any life-saving medication, marijuana should be available as fast as needed. Imagine an epileptic having a fit and a hospital emergency ward doctor trying to obtain an Authorization to use marijuana to stop it. That hospitals are not prepared to dispense marijuana to an epileptic in the throes of seizure is an indictment of the total regime. It's the only almost guaranteed anti-

seizure medication not available at a hospital because of the application process for authorization. Hospitals remain as unprepared under the MMPR.

8) NO RESOURCES TO PROCESS LARGE DEMAND

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70. The Taliano decision mentions the 2010 delays in MMAR processing when Health Canada were swamped by several extra thousand applications, each now needing yearly renewals. With only 8 MMPR Licensed Producers to date, and most not up to production, there seems great chance the MMPR could not cope with actual necessary demand coming up.

9) PROHIBITION ON NON-DRIED CANNABIS

MMPR S.3(1): "A person (2) may possess dried marihuana.."

71. The Plaintiff is limited to using only "dried marihuana" as provided in the NCR, MMAR and MMPR, such restriction having been struck down in B.C. due to the decision in R v. Smith 2012 BCSC 544, which is on appeal, and in relation to the MMAR as that limitation did little or nothing to enhance the government's interest including the government's interest in preventing diversion of the drug, or controlling false and misleading claims of medical benefit and that it was arbitrary and violated s.7 of the Charter.

72. Cannabis may be used in its various forms, including in its raw form for juicing, and making butter, as well as using oils and tinctures, using it in teas, and as salves and creams for topical applications, or by making

edibles and by smoking in cigarettes/joints or using a vaporizer or atomizer. It is an offense to separate or extract the resin glands from the dead plant material and a further offense to possess those resin glands, whether as resin or "hashish, or when infused into derivative products such as foods, oils or even tea. It is an offence to possess cannabis juice derived from the natural undried plant as it is not "dried marihuana". This explains how someone may consume 200g/day: 140g/day for juicing, 40g/day reduced to 4g/day for derivatives, concentrates and comestibles, and 20g/day smoked.

73. The Plaintiff says that the decision in Smith should be followed to enable Plaintiff to consume medicine in whatever form is most effective and to avoid a form that may be harmful, and that such a limitation in the NCR, MMAR and MMPR is unconstitutional as being in violation of s.7 and inconsistent therewith and is not saved by s.1.

10) NO EXEMPTION FROM CDSA S.5 TRAFFICKING

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74. With different strains for different pains and different gains in productivity, Plaintiff's opportunity to sample and trade those strains is impeded by the trafficking prohibition in the CDSA. Without a DIN for financial support, it is evident that any PUPL patient on social assistance cannot divert his food budget to pay for his growing expenses and is compelled to traffic some of his crop to cover those inevitable costs. The CDSA S.5 prohibitions on trafficking of marijuana are a clear impediment to the patient's benefit through access and supply of different strains.

UNDER THE MMAR ONLY

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MMAR 11) SPECIALIST REQUIREMENT

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75. Taliano J. notes how the Nolin Commission concluded that the specialist requirement would impede access. But a decade later, it's still there impeding access. Taliano J. notes:

"33.. where a specialist was required, it was no longer necessary for the specialist to provide the declaration that s/he had reviewed the case and concurred that conventional treatments were ineffective or medically inappropriate and was aware that marihuana was being considered as an alternative treatment."

76. Though the specialist no longer had to provide the signed declaration, he still had to provide the same oral declaration to the family doctor! Just another chore for the doctor to do in filling out the forms. Putting the onus on the family doctor to swear that the specialist had made the declaration did not remove the requirement that specialist make the declaration that conventional treatments were ineffective or medically inappropriate. Whereas the Specialist Declaration used to satisfy the family doctor that the specialist was aware of the intended use, now the doctor has to do the ensuring by his own communication with the specialist. So nothing really changed but the onus or verification off Health Canada and onto the family doctor.

77. The true unimportance of the Specialist Requirement is shown by its being passed onto the family doctor in the MMAR and its no longer being required at all in the MMPR!

MMAR 12) DECLARATION OF CONVENTIONAL TREATMENT

S.6(1)(e): "The medical declaration must indicate that conventional treatments for the symptom have been tried or considered and have been found to be ineffective or medically inappropriate for the treatment of the applicant;"
S.6(2)(b)(v): "must indicate that the specialist concurs that conventional treatments for the symptom are ineffective or medically inappropriate for the treatment of the applicant."

78. The Morgentaler decision makes clear the patient's right to use the treatment of his choice unless contra-indicated. The true unimportance of the requirement for the declaration that conventional treatments are inappropriate is shown by its no longer being required at all in the MMPR now that simple proof of illness is all that is required.

MMAR 13) 2 PATIENTS PER GROWER (HITZIG, SFETKOPOULOS)

S.41(b): "The Minister shall refuse to issue a designated-person production licence if the designated person would become the holder of more than two licences to produce.."

79. The new ratio of 2 patients rather than 1 per grower is twice as good but not much less bad. Not much less so as to again unreasonably restrict supply.

MMAR 14) 4 GROWERS PER GARDEN (HITZIG, BEREN)

S.32(d): "The Minister shall refuse to issue a personal-use production licence if the proposed production site would be a site for the production of marihuana under more than four licences to produce;" MMAR 63.1 "if a production site is authorized under more than four licences to produce, the Minister shall revoke the excess licences."

80. R. v. Beren and Swallow (2009) BCSC 429 declared that the re-imposed limit of 3 growers per garden once again rendered the MMAR unconstitutional but again no charges were dropped. A week later, Health Canada upped the limit to 4 growers per garden. Only 4/3, 1.33 times as good and far less less bad. So far less less bad as to again unreasonably restrict supply.

81. Plaintiff submits that the new caps of 2 replacing 1 and 4 replacing 3 make the MMAR only slightly less unconstitutional retrospective to Dec 8 2003 as their lesser versions in Hitzig had been retrospective back to Aug 1 2001 until the deficiencies were remedied on Oct 7 2003 in Hitzig.

MMAR 15) NUMBER OF PLANTS INAPPROPRIATE PARAMETER

S.30(1): "Maximum Number of Plants"
S.30(2): "The maximum number of marihuana plants referred to in paragraph (1)(c) is determined according to..."

82. The limits on plants is inappropriate because different strains for different pains produce different gains of growth and only the stored amount should matter.

83. In R. v. Ray Turmel [2012] in Quebec, the accused had 4 pounds towards his Authorized 11 pounds but was charged with having too many plants, growing too fast. Such a limit impedes the patient's opportunity to fully stock his medicine chest by only allowing him to reach his maximum storage very slowly. As well, different strains provide different yields making the number of plants the wrong main limiting parameter that again impedes supply.

84. Limiting the number plants also means that gardening becomes a more expensive year-round chore. Instead of growing double for free in winter when no air conditioning is needed and taking the summer off, patients must tend to their gardens with no respite all year round.

MMAR 16) NO HELP FOR PERSONAL-USER-PRODUCTION-LICENSEE

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85. A limited number of plants also means that they have to be grown bigger. Rather than small 10 gram buds on 20

small stalks, they have to grow 50 gram buds on 4 mini-trees. Bigger plants mean patients have to handle and get around bigger pots and reduces the efficiency of the lamp when light doesn't get through to the bottom buds. Having forced patients to deal with larger pots, the MMAR then prohibits them hiring or having any helpers which restricts access and supply!

86. Taliano J. comments on the stress caused by the MMAR: "[47].. Accordingly, the medical use of marihuana by these individuals constitutes a criminal activity, even though they are not criminally minded people. This in turn has created an additional a source of concern and anxiety for all of the patient witnesses. The stress of which further undermines their health. "

UNDER THE MMPR ONLY
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MMPR 11) ATP VALID SOLELY AS "MEDICAL DOCUMENT"

S.255(2) An authorization to possess that was valid immediately before the repeal of the Marihuana Medical Access Regulations remains valid solely for the purpose of being used as specified in subsection (1).

87. Everyone's ATPs become ineffective without proof of purchase from a Licensed Producer. Medical need goes on, tens of thousands fall into jeopardy

MMPR 12) CANCEL FOR BUSINESS REASON

S.117(4): "A licensed producer may cancel the registration of a client for a business reason."

88. "Business reason" to cut the patient's medicine is undefined in the legislation. But Health Canada has written:
"The term "Business" is generally defined as an enterprise or a firm which provides goods and services to its customers for a profit. Coming from that term "business reasons" could cover a wide spectrum of scenarios. For example, an organization could stop doing business with customers due to (the business decision based on) long-overdue, pending payments from the customer/client. Also, the licensed producer might close business, etc.

89. Adding to the spectrum, "they're low on that brand and it profits more to sell it to someone else" is another great business reason.

MMPR 13) MEDICAL DOCUMENT NOT RETURNED

S.117(7): "A licensed producer who cancels a client's registration must not return the medical document."
S.118: "A licensed producer must not transfer to any person a medical document on the basis of which a client has been registered."

90. The Licensed Producer may cut off not only a patient's supply but also his access since he can't take his current "access document" to any other supplier and has to start the access process with the doctor all over again. If they close business, the patient should get his "medical document" back so he can take it to another who is still in business?

MMPR 14) NO PRODUCTION IN DWELLING

S.13. A licensed producer must not conduct any activity referred to in section 12 at a dwelling place.

91. The Plaintiff says that the proposed MMPR restrictions preventing production in a dwelling house and preventing any production outdoors should not be applicable to the patient or personal producer or designated caregiver because they amount to unnecessary restrictions in relation to the patient producer or his or her designate and would be unconstitutionally too restrictive. As the patient producer or his designate would not be involved in selling any of their product to any members of the public, none of the provisions of the MMPR relating thereto, such as packaging and labeling and the costs thereof, including packaging arbitrary maximum amounts in containers that a person can possess on their person at any one time, such as the maximum of 150 g, regardless of one's authorized dosage, should not apply to the patient, producer or designate.

MMPR 15) NO OUTDOOR PRODUCTION

S.14: "A licensed producer must produce, package or label marihuana only indoors."

92. Plaintiff submits that prohibiting production with free sunlight is an arbitrary and unreasonable restriction on supply.

MMPR 16) NO BRAND RIGHTS TO GENETICS

S. 138(1)(c) "provide the name of the brand"
S.261: "The holder of a personal-use production licence may sell or provide marihuana plants or seeds to a licensed producer.."

93. Cannabis has many specific strains for different pains. Though there is provision to transfer or sell a patient's own brands, two of the eight current Licensed Producers, Bedrocan and CanniMed, only produce their own proprietary brands. Medreleaf can't deliver before the end of May 2014. Tweed says they'll get back.

94. The United States are just recently bemoaning having lost all their hemp genetics since prohibition. Canadian growers have spent years, there is a whole generation of genetics at stake in Canada and the failure to make provision for a seed-bank to save them does severely impede access to the proper medication. Tens of thousands of growers having to destroy their own home-grown strains is an unconscionable restriction on access and supply.

MMPR 17) UNAFFORDABILITY

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95. The Canada Health Act R.S.C., 1985, c. C-6 states: "3. It is hereby declared that the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers."

96. Doctors don't fill out forms for free. Making permanently ill patients have their doctor fill out a form every year is an unconscionable waste of everyone's time and resources.

97. Despite no DIN, The Plaintiff finds it affordable to produce the required cannabis at $1.00 to $4.00 a gram or less but he will not be able to afford the estimated Licensed Producer prices which are comparable to illicit market prices and that unaffordability is a barrier to access at Plaintiff's income level.

MMPR 18) PROOF OF AUTHORITY TO POSSESS

S.125: "On demand, an individual who, in accordance with these Regulations, obtains dried marihuana for their own medical purposes must show to a police officer proof that they are authorized to possess the dried marihuana."

98. There is no central database for a police officer to check whether the potential-accused's proof of purchase

label is legitimate. There are many varied containers and labels and the Licensed Producer is not responsible for providing that information, no one is.

MMPR 19) UNAVAILABLE SUPPLY

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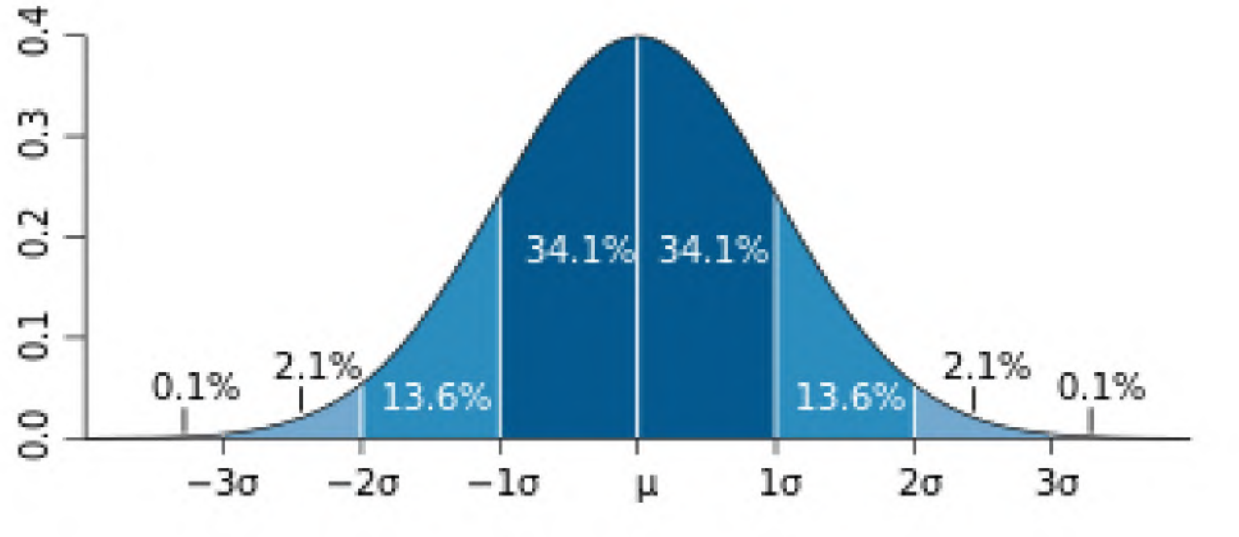
99. One Licensed Producer, Bedrocan, has responded that it unfortunately "cannot process orders as large as 200g/day at this time due to limited supply." Tweed cannot respond, Medreleaf can't deliver until end of May. Tens of thousands of patients cannot be served by April 1 2014.

MMPR 20) 150-GRAM LIMIT

MMPR S.5, S.130, S.122, S.123 "must not possess or deliver more than 30xDaily or 150 Grams."

100. The 150 gram limit on possession and shipment is based on Health Canada's recommended maximum dosage of 5g/day times 30 days, 150. Health Canada FAQ says writes: http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/faq-eng.php "Various surveys published in peer-reviewed literature have suggested that the majority of people using inhaled or orally ingested cannabis for medical purposes reported using approximately 1-3 grams of cannabis per day. While there are no restrictions under the new Marihuana for Medical Purposes Regulations on the daily amount that you may recommend, there is a possession cap of the lesser of 150 grams or 30 times the daily amount."

101. No Standard Deviations for their averages sampled were provided to give us an idea of the spread of the Bell curve around those averages. But each survey reported half their results over their average and half below.

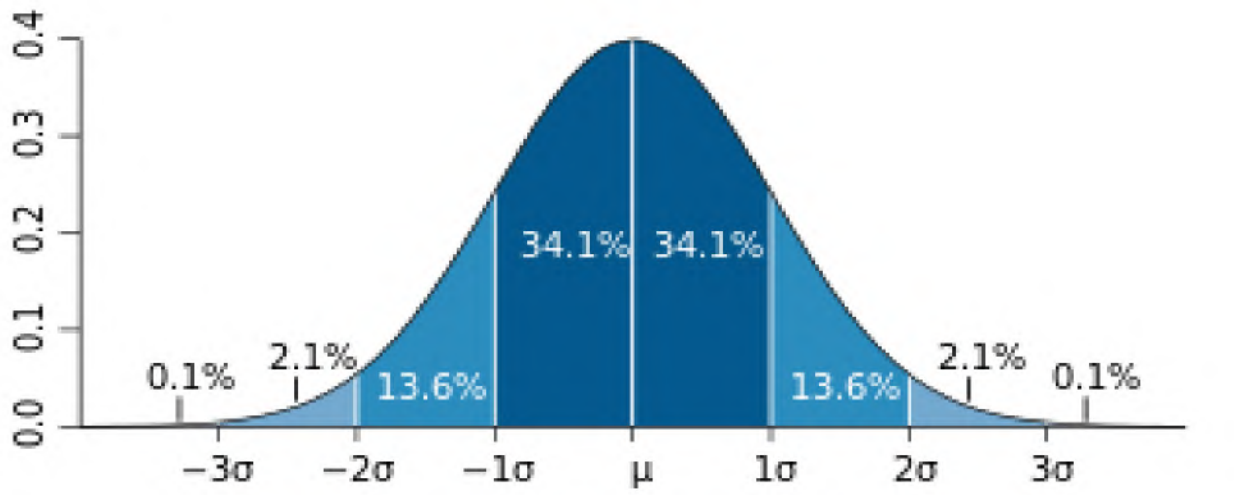


1.5g 2g 2.5g 3g 3.5g 4g 4.5g 5g

102. Diag.1 shows the Normal Bell curve with an average 3g/day and Standard Deviation of 0.5g/day, 1/6 of the sample average. Some reputable polls use 1 Standard Deviation for the Bell Curve around their survey's estimated average to be able to state: 68% or 2/3 of results fall around an average of 3g/day plus or minus .5g/day." 1/3 of the results are outside under the end tails of the curve, half that, 1/6th under the over-estimate tail. With a true mean of 3g, an under-estimate of 2.5g or over-estimate of 3.5g happens 1/6 of the time: 5:1 against. Sampling an under-estimate of 2g or over-estimate of 4g is 2 Standard Deviations off the average 3g that his 1 time in 40 in either tail. Sampling an under-estimate of 1.5g or over-estimate of 4.5g is 3SD off: 1/700. Sampling an under-estimate of 1g or over-estimate 5g is 4SD off = 33,000:1 against. Tables in books stop there but sampling an over-estimate of 6g would be 6SD off in the millions to one against. Sampling 7g or 8g would be in the

billions. So with a true mean of 3g/day, Health Canada limiting monthly delivery to 30*5g = 150g, should serve all but one in 33,000 patients. 4SD is a very good safety factor.

103. Similarly, with a true mean of 3g, only 1 result in 33,000 should hit as low as 1g! Yet the other survey says their whole sample landed around 1g when even 1 hit was 33,000:1 against; let alone the whole sample "n"! To have two 1/33,000 events hit is 33,000^2 (squared) to 1. To have their whole 100 person survey average 1g is 33,000^100:1, the hundredth power. It is ludicrous to say their whole sample all averaged hitting 4SD off the true mean.



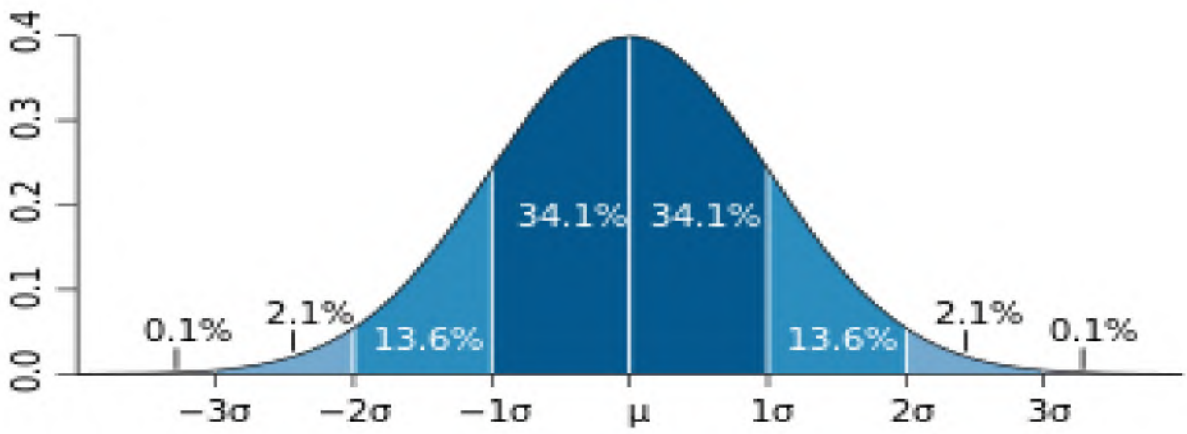
0.5g .66g .83g 1g 1.17g 1.33g 1.5g

105. Diag.2 shows that with enough readings to have a Standard Deviation 1/6 of the average of 1g/day, 1SD (2/3 of results) hit between 0.83g and 1.17g; 2SD (95% of results) hit between 0.67g and 1.33g; and 3SD (99.7% of results) hit between 0.5g and 1.5g. To have one hit way out at 2g is 6SD off, millions to one against. To hit just one result of 3g is 12SD off, trillions to one against. Of course, for the whole survey population to average 12SD off is ultra-ludicrous when the true mean is 1g.

Reputable surveys cannot have one poll with triple the mean of the other. It's (1/33,000)^n that the 1% survey is honest when it's a 3g mean and (1/10^12)^n that the 3% survey is honest when it's a 1g mean.

106. According to Health Canada statistics there are:
24,185 persons held PUPLs;
04,251 persons held Designated Grower (DG) licences
06,027 persons had access to Health Canada's supply.
Total 34,463 persons Authorized to Possess.

107. As of April, 2013, Health Canada authorized the production of 188,189K of Cannabis (marihuana) to be produced under the MMAR under the various licences during 2012. So: 188,198K / 34,463 patients / 365 days = 14.96g/day.



5g 7.5g 10g 12.5g 15g 17.5g 20g 22.5g 25g

108. Diag.3 is the Normal Bell Curve around 15g with the same 1/6 of average (2.5g) swings about the mean. That means that the odds of one result being 5 grams is 4SD, 33,000:1 and 3 grams is 4.67SD, let alone the whole population averaging around 3g! It is startling to think that the actual Population Mean of 15 is known and Health Canada find survey Bell Curve samplings all around 3! or worse 1! For any surveys sampling a population with known mean of 15g

that claim any results with Bell Curves around averages of 3g or 1g (plus or minus some fraction of their small estimated average) cannot be taken as valid or honest. The fix was in.

109. Health Canada's 150g monthly limit is based on its maximum 5g/day recommendation given those biased survey sample averages of 1-3g/day! A factor of 1.67 over the highest 3g/day survey sample would seem reasonable given the odds against anyone needing as much as 5g/day with a 3g/day true mean at .5g/day per Standard Deviations is 4 Standard Deviations off, 33,000:1. Nice safety margin. But given the true population mean is 15 grams, a month's supply for the average patient would be 450g! And given Health Canada's 1.67 safety factor for those dosages above average, that would be 750 grams maximum per delivery. Health Canada offers supply 5 times too slowly.

110. There is no provision for how an LP may ship in 150 gram packages dosages of 200g/day which would necessitate 40 deliveries per month with commensurate shipping costs in 20 weekdays and with a prohibition on possessing two 150-gram packages with 300 grams both at the same time.

111. Given Health Canada used biased surveys when objective data was always available, it is submitted that the limit on the amount of cannabis possessed and shipped has been set too low based on false and misleading data and must be struck.

EFFECT OF MMAR AND MMPR CONSTITUTIONAL VIOLATIONS

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112. Plaintiff has suffered stress due to the myriad of defects in the both exemption regimes. All these torts generated by the MMAR have been raised herein to make the point that the regime is hopelessly flawed ab initio in too many vital areas, not just recalcitrant and ignorant doctors appointed gate-keepers, and must be struck down in its totality as having failed to provide a acceptable medical exemption to the prohibitions.

113. For all the irremediable deficiencies demonstrated herein, Plaintiff submits the MMAR and MMPR medical marihuana regimes are fatally flawed and should be declared invalid legislation.

REMEDY UNDER THE CDSA

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114. The Court of Appeal in Mernagh wrote:
"[11] Since this declaration of invalidity left no legislative scheme in place for people to obtain exemptions from the prohibitions in ss. 4 and 7 of the CDSA, the trial judge also declared those sections to be of no force and effect."

115. Plaintiff submits that BENO, the remedy Taliano J. ordered, followed from R. v. J.P. where the Ontario Court of Appeal wrote:
"[11] This court.. Having held in Hitzig, supra, that the MMAR did not create a constitutionally valid medical

exemption, we can determine the merits of the respondent's claim that there was no charge of possession of marihuana in existence on April 12, 2002 on that basis. Viewed in light of our holding in Hitzig, the analysis of the respondent's claim becomes straightforward. As of April 12, 2002 when the respondent was charged, the prohibition against possession of marihuana in s. 4 of the CDSA was subject to the exemption created by the MMAR. As we have held, the MMAR did not create a constitutionally acceptable medical exemption. In Parker, this court made it clear that the criminal prohibition against possession of marihuana, absent a constitutionally acceptable medical exemption, was of no force and effect. [BENO] As of April 12, 2002, there was no constitutionally acceptable medical exemption. It follows that as of that date the offence of possession of marihuana in s. 4 of the CDSA was of no force and effect. The respondent could not be prosecuted. [BENO]

[14].. The Parker order by its terms took effect one year after its pronouncement. That order was never varied. After the MMAR came into effect, the question was not whether the enactment of the MMAR had any effect on the Parker order, but rather whether the prohibition against possession of marihuana in s. 4 of the CDSA, as modified by the MMAR, was constitutional. If it was, the offence of possession was in force. Paired with the suspension of the declaration in Parker, this would have the effect of keeping the possession prohibition in force continually. [Not BENO] If the MMAR did not create a constitutionally valid exception, as we have held, then according to the ratio in Parker, the possession prohibition in s. 4 was unconstitutional and of no force and effect. [BENO] The determination of whether there was an offence of possession of marihuana in force as of April 2002 depended not on the terms of

the Parker order but on whether the Government had cured the constitutional defect identified in Parker. It had not. [BENO]

[16].. The determination of whether there was a crime of possession of marihuana in force on the day the respondent was charged turned on whether s. 4 combined with the MMAR created a constitutional prohibition against the possession of marihuana.

[31] The court in Parker, supra, declared that the marihuana prohibition in s. 4 was inconsistent with the Charter and consequently of no force or effect absent an adequate medical exemption. [BENO]

[32] By bringing forward the MMAR, the Government altered the scope of the possession prohibition in s. 4 of the CDSA. After the MMAR came into force, the question therefore became whether the prohibition against possession of marihuana as modified by the MMAR was constitutional. If it was, then the possession prohibition was in force. [Not BENO] If the MMAR did not solve the constitutional problem, then the possession prohibition, even as modified by the MMAR, was of no force or effect. [BENO]

[33] There was no need to amend or re-enact s. 4 of the CDSA to address the constitutional problem in Parker. That problem arose from the absence of a constitutionally adequate medical exemption. [BENO] As our order in Hitzig demonstrates, the prohibition against possession of marihuana in s. 4 is in force when there is a constitutionally acceptable medical exemption in force. [Not BENO]

[34] We would dismiss the appeal."

RELIEF SOUGHT

==========

A) A Declaration pursuant to s.52 (1) of the Canadian Charter of Rights and Freedoms ("the Charter") for an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A2) And that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from prohibitions in the CDSA on marihuana for the Plaintiff's personal medical use.

C) Or, alternatively, damages in the amount of $_____ for loss of patient's marihuana, plants and production site.

The Plaintiffs propose that this action be tried in the City of _____, Province of _____.

DATED at _____ on _____ 2014.

_____

Plaintiff Signature

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

File No: _____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

Her Majesty The Queen

Defendant

STATEMENT OF CLAIM

(Pursuant to S.48 of

the Federal Court Act)

For the Plaintiff:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

RECORD OF MOTION

1. Notice of Motion

2. Plaintiff's Affidavit

3. Plaintiff's Memorandum

For the Plaintiff:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

For the Respondent:

Attorney General for Canada

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT on _____ at _____ or as soon thereafter as can be heard the Plaintiff's urgent short notice telephonic motion to the Federal Court.

.

THE MOTION SEEKS an interim constitutional exemption from the prohibitions on marihuana in the CDSA for the Plaintiff's personal medical use pending trial of the Action.

THE GROUNDS ARE THAT the 36 major concerns raised in the Statement of Claim about the medical marijuana regimes below were not heard in time to prevent Manson J. from imposing conditions based on false or non-existent Health Canada survey data and perjured testimony that would inflict on the group conditions of life calculated to bring about its physical destruction starting April 1 2014.

AND FOR ANY ORDER abridging any time for service or amending any error or omission which this Honourable Court may allow.

Dated at _____on _____ 2014.

_____

Plaintiff:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

TO: Registrar of this Court

Attorney General for Canada

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

For the Plaintiff:

Name: _____

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

PLAINTIFF'S AFFIDAVIT

I, _____ ,
residing at _____ make oath as follows:

1. I am one of numerous Canadians asking Federal Court for a constitutional exemption to use cannabis for personal medical purposes and wish to use cannabis marijuana for the medical purpose checked:
[ ] to prevent illness it's good for before getting it; or
[ ] to alleviate suffering from the following illnesses for which I have medical documentation or medical permits; and for the chemical drugs I have been prescribed which have proven to be not as effective as cannabis for my particular treatment:

Illness:	**Drug Treatment:**
_____	_____
_____	_____
_____	_____

2. If applicable, I possess this exemption:

Authorization To Possess #_____

Grams/day: _____ Storage limit: _____ Plant limit: ____

3. I claimed damages to compensate for the loss of:

Stored Grams: _____ @ $15/gram or less = $_____

Plants: _____ @ $1,000/plant or less = $_____

Gr/day: _____ x 365 x $15 x ____Yrs to 90 = $_____

Production site investment = $_____

Grow-cycle loss by H.C. Order = $_____

Total: = $_____

4. Despite cannabis having no Drug Identification Number for financial support, I can afford to have my own medication produced using my own resources rather than that of a Licensed Producer; without paying any taxes. I can not afford a taxing Licensed Producer growing my medication for me.

5. Other than the Boolean proofs of the constitutional violations alleged in my Statement of Claim, these are more details of how the MMAR/MMPR have impacted my health and right to life:

6. With my Statement of Claim detailing 36 torts suffered under the regimes than the mere 4 enumerated in Allard, Appellant seeks an interim constitutional exemption to the prohibitions on marijuana in the CDSA for personal medical use pending trial of the issues that I did not receive out of the Allard decision.

7. This Affidavit is made in support of a motion for an interim constitutional exemption from the prohibitions on marihuana in the CDSA for the Plaintiff's personal medical use pending trial of the Action.

Sworn before me at _____ on _____ 2014.

_____

Plaintiff

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

_____

A COMMISSIONER, ETC.

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

PLAINTIFF'S AFFIDAVIT

For the Plaintiff:

Name: _____

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

PLAINTIFF'S MEMORANDUM

PART I - STATEMENT OF FACTS

1. The Plaintiff, as have others claiming declaratory and financial relief for violations of rights under S. 7 of the Charter, seeks an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A2) And that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from prohibitions in the CDSA on marihuana for the Plaintiff's personal medical use.

C) Or, alternatively, damages in the amount of $_____ for loss of patient's marihuana, plants and production site.

2. This motion is for an interim constitutional exemption for personal medical use pending trial of the action.

3. In the Affidavit of John Turmel, expert witness in Mathematics of Gambling, in T-488-14, he explains how the 150 gram limit on personal possession and shipments suggested by Health Canada and imposed by Manson J. was based on false or non-existent peer-reviewed surveys that suggested no such thing and end up under-medicating the whole class by a factor of 9, thus inflicting on the group conditions of life calculated (8/9) to bring about it's physical destruction in violation of S.318(2) of the Criminal Code.

4. The Allard ruling's failure to extend the MMAR makes it impossible for all who cannot afford Health Canada retail prices to get a self-grow for their own personal use, again inflicting on the group conditions of life calculated to bring about its physical destruction.

5. Plaintiff's Affidavit details the life-threatening torts suffered by Plaintiff under the MMAR-MMPR regimes.

PART II - POINT OF ISSUE

6. A) Does the the MMPR's 150-gram limit that under-medicates by a factor of 9 inflict on the group conditions of life calculated to bring about its physical destruction sufficient reason for interim relief?

7. B) Does eliminating access through self-production for whom the MMPR is unaffordable sufficient reason for interim relief?

8. C) Is "for personal medical use" sufficient limitation to comply with Justice Manson's demand in refusing Allard's motion for exemption "without limitation?"

PART III - SUBMISSIONS

9. The recent decision in Allard represents the interests of the COALITION AGAINST MMAR REPEAL who possess Authorizations To Possess ("ATPs") under the Medical Marijuana Access Regulations ("MMAR"). They seek to declare the MMPR constitutionally invalid only to the extent that 4 minor cosmetic flaws to leave the regime constitutional:
a) prohibition on non-dried forms of cannabis,
b) prohibition on production in a dwelling;
c) prohibition on outdoor production;
d) prohibition on possessing and dealing more than 150g;
or for an extension of the MMAR and its associated privileges.

10. We seek to have the MMPR declared invalid because of the many more fatal deficiencies to the point the regime is so full of holes, it is in effect invalidated. It is submitted our larger list of constitutional violations alleged that those addressed in the Allard mini-list should be addressed before Mar 31 2014 when many Plaintiffs' Authorizations to Possess expire and before the group suffers too much damage. Those without ATPs and unhappy with the regime raise 16 other constitutional flaws to leave the regime in tatters:

BOTH 1) Require recalcitrant doctor;
BOTH 2) Not provide DIN (Drug Identification Number);
BOTH 3) Require annual renewals for permanent diseases;
BOTH 4) Require unused cannabis to be destroyed;
BOTH 5) Refusal or cancellation for non-medical reasons;
BOTH 6) Health Canada feedback to doctors on dosages;
BOTH 7) Not provide instantaneous online processing;
BOTH 8) Not have resources to handle large demand;
BOTH 9) Prohibit non-dried forms of cannabis; * Allard a)
BOTH 10) Not exempt from CDSA S.5.;

MMPR 11) ATP valid solely as "medical document";
MMPR 12) Licensed Producer may cancel for "business reason";
MMPR 13) Prohibit return of medical document to cancelee;
MMPR 14) Prohibit production in a dwelling; * Allard b)
MMPR 15) Prohibits outdoor production; * Allard c)
MMPR 16) Not protect rights to brand genetics;
MMPR 17) Not remove financial barriers;
MMPR 18) Not provide central registry for police verification;
MMPR 19) Not have enough Licensed Producers to supply demand;
MMPR 20) Prohibit processing > 150 grams. * Allard d)

11. Though the Coalition AGAINST MMAR repeal want it extended, those unhappy with the MMAR regime raise 6 additional concerns added to the first 10 in common with the MMPR to have it condemned:
MMAR 11) Require a specialist consultation;
MMAR 12) Require conventional treatments be inappropriate;
MMAR 13) Prohibit more than 2 licenses/grower;
MMAR 14) Prohibit more than 4 licenses/site;
MMAR 15) Number of plants limit improper;
MMAR 16) Not allow any gardening help.

12. There are a lot of ailing an angry Canadians who do not like the MMAR and do not want to pin our hopes on a 4-pea shooter to fix the regime when we all have our own 36-barrel Gatling-guns ready to blow them both full of holes.

13. A) It is brought to the Court's attention that a genocidal under-medication of a whole class of patients takes effect when Justice Manson's under-evaluated limit takes effect on April 1 2014. This is no April Fool's joke, Health Canada are about to kill people and must be prevented by the court from accomplishing it's deadly objectives. Plaintiff submits that the fraudulent surveys and perjured testimony used to convince the court in Allard to impose some genocidal conditions is of such urgency as to warrant the expeditious attention of the Court.

14. Given this question of genocide, and given the Ministry of Justice has had almost a month to study the statistics of the fraud, Plaintiff's only hope is for a constitutional exemptions from the CDSA for personal medical use.

15. B) It is submitted that Justice Manson has disallowed the whole of the population who cannot afford Health Canada's retail prices from being able to self-produce at affordable prices and only an exemption for personal medical use is suitable remedy.

16. C) In Para. 124 of his decision, Justice Manson refused constitutional exemptions to Allard because "the relief sought would grant them exemption from the provisions of the CDSA without limitation." It is submitted that "for personal medical use" is a reasonable limitation on such exemption.

17. Though Plaintiffs with ATPs may benefit from having their exemptions extended under the deficient MMAR, whatever comes of the ATPs case has nothing to do with the motions of those without or those who are not satisfied by the regime. After all, they are the Coalition AGAINST REPEAL and we are FOR REPEAL! And "absent a constitutionally viable medical exemption," the prohibitions against marijuana in the CDSA cannot have force or effect.

PART IV - ORDER SOUGHT

18. For these and other constitutional violations alleged in the Statement of Claim, Plaintiff seeks an Order for an interim constitutional exemption from the CDSA prohibitions on marihuana for Plaintiff's personal medical use pending trial of the Action.

Dated at _____ on _____ 2014.

_____

Plaintiff:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

TO: Registrar of this Court

Attorney General for Canada

AUTHORITIES

No Authorities relied on

REGULATIONS CITED

No regulations cited.

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

PLAINTIFF'S MEMORANDUM

For the Plaintiff:

Name: _____

File No: T-_____

FEDERAL COURT

BETWEEN:

_____

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

RECORD OF MOTION

For the Plaintiff:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

Federal Court MMPR Grow-Op Exemption Gold Star Team Instructions
(updated April 2 2014)

As of today, many of us who were stayed have filed Notices of Appeal and Motions for interim relief from the Federal Court of Appeal. So the same motion stayed below is now made to a judge above for interim relief. Once you file your Statement of Claim, it is now automatically stayed, so you then have to file your Notice of Appeal and Motion for relief. Yesterday, April Fools, Dale Conners and Sharon Misener both filed their Statements of Claims in Ottawa and then filed their Notices of Appeal of the automatic stay and Motion for relief from a higher judge.

INSTRUCTIONS

Updates at http://facebook.com/john.turmel

http://johnturmel.com/kits has the latest court documents:
MMPR Grow-Op Exemption Challenge & Statement of Claim Instructions Video
http://youtu.be/szCRjO7ZRxk
now out dated due to new moves.

FILING THE STATEMENT OF CLAIM
Every one has to start with the originating Statement of Claim. Filling in the blanks, If it says "Dated at [where] on [when], then you have to sign under it.
The End Page of each document does not need to be signed. Just where it says Dated at...
In Federal Court, there's no need to turn the back page around like the back cover on a book. Just let the machine photocopy, collate and staple the kits. But save the print costs and file online.

The Statement of Claim files
http://johnturmel.com/mmprsc.pdf if you can amend a PDF or
http://johnturmel.com/mmprsc.doc to add your info then save as a PDF.

You open your Action by bringing 5 copies of the Statement of Claim to the Registry with the $2 fee, 3 for the Court, 2 they certify with a gold star for you.
The Court serves the Attorney General the originating document.

You'll need to figure out your damages claim in the Statement from your Affidavit in your Motion Record..

PDFS CAN BE SUBMITTED ONLINE!!!
Federal Court has an efiling sytsem.

FILLING OUT (.DOC) & CONVERTING IT TO (.PDF) TO SUBMIT ONLINE

- Open (.doc) file and fill it in. - Save it!

- goto http://www.convertonlinefree.com/

- click 'browse'

- find and select (.doc) file you just saved and click open.

- click the ‘convert’ button on the website now, and wait..

- a save to dialogue box will pop up to save the (.pdf) file.

- save the (.pdf) file and then open it using adobe reader.

[newest version works for sure and has been tested!]

SIGNING THE (.PDF) FILE HOW-TO

- in adobe reader under the file menu, select ‘get documents

- click clear my signature button just to be sure, then draw a new one in the white space provided under ‘draw my signature’ with your mouse! Make sure you do this.

- then click ‘accept’ if you are satisfied with it, otherwise click ‘clear my signature’ and do it over again and again until it’s close enough to your real one that it’s acceptable atleast.

- now on the right side again click ‘place my signature’ and then just move your mouse over to where it should go and click to place it where you want, and then you can resize it or whatever you want to make it look how you want.

- finally save the (.pdf) file now using ‘save as’ under the file menu. (remember where you saved it to!)

ONLINE FILING:

Visit: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/E-Filing

Click English

Click Initiate New Proceeding

Proceeding Type: Click Federal Court

Proceeding Subject: Click Against the Crown

Proceeding Nature: Click Others – Crown (v. Queen)[Actions]

Click Simplified or Ordinary Action (Simplified under $50,000)

Click Next

Click "Add Party" button

Role: Click Plaintiff

Type: Click Individual

First Name: Type yours

Last Name: Type yours

Click Save

Click "Add Party" button

Role: Click Defendant

Type: Click Other

Full Name: Her Majesty The Queen

Click Save

Click Next

Click Add Document

Type: Click Statement of Claim (Section 48)

Document Language: Click English

Browse to find your mmprsc.pdf

Filing Instructions: If any.

Filing Party: Click your name

Click Save

With everything right, click Next

Put in the Filing Party Contact Information (red stars)

Choose a Registry Office nearest you.

Don’t click "Urgent" for the Statement of Claim.

Click Next

If you are satisfied, click Submit.

You will be given a confirmation number and get a File number when you arrange the $2 payment.

FILING NOTICE OF APPEAL $50

With Justice Crampton's automatic stay, the next step is to file the Notice of Appeal.

http://johnturmel.com/mmprna.doc or http://johnturmel.com/mmprna.pdf Notice of Appeal
Go to https://efiling.fct-cf.gc.ca/efiling/xcrtcsnm?1 and type in your File Number.
Follow regular procedure from instructions to select Notice of Appeal, upload, submit,
get case number just like Stephen Burrows first did.

MOTION FOR INTERIM EXEMPTION FOR PERSONAL USE PENDING TRIAL

With that A-file number, you now put it on your Notice of Motion, leave the date blank, for an interim exemption for personal medical use from the prohibitions pending the outcome at Federal Court. That's free.You're not arguing about your compensation at Appeal Court, only for interim exemption.

http://johnturmel.com/mmprn5.doc and http://johnturmel.com/mmprn5.pdf Motion Record
http://johnturmel.com/mmprn5l.doc and http://johnturmel.com/mmprn5l.pdf Letter to Admin for Date for telephonic conference call hearing to explain how April Fool MMPR left your health in peril.

Your Affidavit has damages to compensate for the loss of:

Stored Grams: _____ @ $15/gram Prairie Price = $_____

Plants: _____ @ $1,000/plant = $_____

Input storage and plant number from ATP

Gr/day: _____ x 365 x $15 x ____Yrs to 90 = $_____

Production site investment = $_____

Grow-cycle loss by H.C. Order =$_____

Total: = $_____

Should be a scary number. Remember it. It gets repeated over and over and you'll have to fill it out over and over.

So add the A-File Number to the Motion Record, leave the desired hearing date blank and fill in the other blanks but do not sign the Affidavit on Page 6 until you are before the clerk when filing the Notice of Appeal or a commissioner or notary of oaths.

SERVICE OF MOTION ON CROWN

The registry will serve an originating document but side motions we serve ourselves as so we non-personal service needs a Fax Cover Page and Affidavit of Service.

http://johnturmel.com/mmprn5fx.doc or http://johnturmnel.com/mmprn5fx.pdf Fax Cover Page and Affidavit of Fax Service of Motion for Court of Appeal for non personal service. Get it sworn.

Once your Motion Record and Letter to Admin are completely filled and sworn,
fax a copy of the Motion Record and Letter to the Attorney General for Canada at 613-954-1920
with the Cover page that is provided with the Affidavit of Fax Service.
Fax a copy of the Letter to the Court of Appeal Administrator at 613-952-7226.

Fax Cover page handy but not required .

Add the the Fax Cover Page before end page of the Affidavit of Service.
After you've sworn your Affidavit of Fax Service to Crown of the 1) Motion Record and 2) Letter, make PDFs of the Motion Record and Affidavit of Service, go to the online "Submit documents" page, upload the new Motion record PDF then submit Affidavit of Service PDF too.

Don't ask me why the Letter to the Admin has to be faxed. But you do have to mention you faxed both Record and Letter in the Affidavit of Service.

If you have time, and no computer or PDF, you can fax the Crown and mail in 4 copies with Affidavit of Fax service to 130 Queen St. W. Toronto M5H 2N6.

If you're lucky enough to live in a city with a registry, just personally serving the Crown, get their acceptance of service on the back of another copy, then file that copy with their "acceptance proof of service" and 2 more copies with the Registry for no fee, keeping the last 2 copies for yourself. Bring extra copies of your originating Statement of Claim or Notice of Appeal for certification (Gold Star) as souvenirs of your personal quest for justice from the justice system. .

So an out-of-towner needs 2 Affidavits: the Motion Affidavit and the Affidavit of Service (with Fax Cover Page included before end page of affidavit) that must be submitted to the court with the 3 copies of the Motion Record. The easiest way to swear your affidavit is to ask any lawyer around the courthouse if he could commission your oath. Most will. Or you may pay a notary or other public commissioner. Some ministers and priests can commission oaths. Anyway, easiest is Her Majesty The Clerk.

For my reports:

http://facebook.com/john.turmel status page. No time to post updates anywhere else.

https://groups.yahoo.com/neo/groups/MedPot/info

For any help or questions:

https://groups.yahoo.com/neo/groups/MedPot-discuss/info

johnturmel@yahoo.com
50 Brant Ave. Brantford N3T 3G7 Tel: 519-753-5122 Cell: 519-717-1012

RETURN TO:

Medpot Self-Defence kits explanations

Self-Defender Wins Page

MedPot Combat Engineer's page

MedPot Engineer's Yahoogroup

The Medpot Engineer's MedPot-Discuss YahoopGroup

MedPot Timeline of decisions since Parker (1997-2005)

KingofthePaupers YouTube Channel

John Turmel's Home Page

Facebook Wall for Current Comments

The Medpot Engineer's MedPot-Discus YahoopGroup

KingofthePaupers YouTube Channel or John Turmel's Home Page or Facebook Wall for Current Comments

Federal Court Notice of Appeal of Stay: http://johnturmel.com/mmprna.pdf or http://johnturmel.com/mmprna.doc Ray Turmel handed in 8 copies before 10 days of his stay and got the 8th copy stamped proving he filed on time. Those first 25 who filed and were stayed Mar 7 will have motions for extensions of time to join him.

THIS IS EXHIBIT "21" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

TURMEL KIT MMAR-MMPR CLAIMS

T-485-14	*Samuel Mellace v HMQ*	T-581-14	*William Turner v HMQ*
T-486-14	*Shawn Tedder v HMQ*	T-582-14	*Darron Finn v HMQ*
T-487-14	*Laurence Cherniak v HMQ*	T-584-14	*Lyndsey Nelson v HMQ*
T-488-14	*John C. Turmel v HMQ*	T-585-14	*Melissa Price v HMQ*
T-513-14	*Stephen Patrick Burrows v HMQ*	T-586-14	*Richard Laframboise v HMQ*
T-516-14	*Henriette Mcintyre v HMQ*	T-587-14	*Daniel Dias v HMQ*
T-517-14	*Raymond Turmel v HMQ*	T-588-14	*Heidi Chartrand v HMQ*
T-518-14	*Devin J. Davis v HMQ*	T-590-14	*Brenda Macrae v HMQ*
T-523-14	*Christopher Enns v HMQ*	T-591-14	*Barbara Paruch v HMQ*
T-529-14	*Ronald Yule v HMQ*	T-592-14	*Anita Cyr v HMQ*
T-530-14	*Kamelle Mattu v HMQ*	T-593-14	*David Dobbs v HMQ*
T-531-14	*Kason Mattu v HMQ*	T-594-14	*Diane Dobbs v HMQ*
T-532-14	*Paul Mattu v HMQ*	T-595-14	*Douglas Finn v HMQ*
T-538-14	*Anthony Van Edig v HMQ*	T-596-14	*Christopher Dobbs v HMQ*
T-539-14	*Bela Laszlo Beke v HMQ*	T-597-14	*Jennifer Dobbs v HMQ*
T-540-14	*Cheryle Hawkins v HMQ*	T-598-14	*Richard Smith v HMQ*
T-543-14	*Michael Spottiswood V HMQ*	T-599-14	*Tracy Miller v HMQ*
T-545-14	*Gary Pallister v HMQ*	T-601-14	*Harold Ruddolph v HMQ*
T-546-14	*Terrence Parker v HMQ*	T-602-14	*Douglas Gauld v HMQ*
T-548-14	*Rev. Kevin J. Moore v HMQ*	T-603-14	*Nadine Bews v HMQ*
T-553-14	*John Pittman v HMQ*	T-604-14	*Nicole Plouffe Van Edig v HMQ*
T-560-14	*Sherri Lee Reeve v HMQ*	T-607-14	*Wayne Robinson v HMQ*
T-561-14	*Janice Way v HMQ*	T-610-14	*Victoria Hollinrake v HMQ*
T-564-14	*Stephen Sealy v HMQ*	T-612-14	*Marie Sylvia Whalen v HMQ*
T-565-14	*Heather Macmichael v HMQ*	T-613-14	*Betty Johnson v HMQ*
T-566-14	*Peter Siegel v HMQ*	T-614-14	*Terry Andrew Wood v HMQ*
T-567-14	*Emily Fisher Jackson v HMQ*	T-615-14	*Terry Cousineau v HMQ*
T-575-14	*Lorne Russell Barth v HMQ*	T-616-14	*Curtis Sears v HMQ*
T-576-14	*Christine Lowe v HMQ*	T-619-14	*Craig D. Macdonald v HMQ*

T-578-14	*Terry Findlay v HMQ*	T-620-14	*Manon Myette v HMQ*
T-579-14	*Brian Horne v HMQ*	T-621-14	*Loretta Clark v HMQ*
T-623-14	*Cory Amirault v HMQ*	T-672-14	*Brent Fisher v HMQ*
T-624-14	*Craig Upham v HMQ*	T-678-14	*Arthur Mackay v HMQ*
T-625-14	*Denis Lanteigne v HMQ*	T-680-14	*Xavier Marcinkiewicz v HMQ*
T-626-14	*Danielle Deveau v HMQ*	T-684-14	*Marcel Couture v HMQ*
T-627-14	*Sean Lynch v HMQ*	T-685-14	*Steeve Cloutier v HMQ*
T-628-14	*Samantha Lynn Mcneil v HMQ*	T-686-14	*Brenda Mcdonald-Rogers v HMQ*
T-629-14	*Saleem Luciano-Toulany v HMQ*	T-689-14	*Dainius Kuncas v HMQ*
T-630-14	*Randy Allen v HMQ*	T-691-14	*Galvydas Kuncas v HMQ*
T-631-14	*Chris Backer v HMQ*	T-692-14	*Philip Ward v HMQ*
T-633-14	*Stephen Miles v HMQ*	T-698-14	*Brenda Smith v HMQ*
T-634-14	*Lea Anne Mcleod v HMQ*	T-704-14	*Wallace Mcdonald-Rogers v HMQ*
T-635-14	*Marlene Williams v HMQ*	T-706-14	*Wayne Phillips v HMQ*
T-636-14	*Phillip Prall v HMQ*	T-718-14	*Victoria Czapla v HMQ*
T-637-14	*Donna Jones v HMQ*	T-723-14	*Andre Van Embden v HMQ*
T-638-14	*Gary Hiltz v HMQ*	T-724-14	*Kevin Pearlman v HMQ*
T-639-14	*Harry Wilson v HMQ*	T-725-14	*Scott Peever v HMQ*
T-640-14	*Joseph Macrae v HMQ*	T-726-14	*John Sherman v HMQ*
T-641-14	*Paul Pinder v HMQ*	T-727-14	*Douglas Miller v HMQ*
T-642-14	*Joseph Chater v HMQ*	T-728-14	*Christopher Cowan v HMQ*
T-644-14	*Glendon Archibald Lloyd v HMQ*	T-729-14	*Andrew Marshall v HMQ*
T-645-14	*Matthew Bond v HMQ*	T-733-14	*Elisha Mcdermott v HMQ*
T-647-14	*Catherine Peever v HMQ*	T-734-14	*Jonathon Dury v HMQ*
T-650-14	*Gerard Faux v HMQ*	T-735-14	*Tracy O'connor v HMQ*
T-657-14	*Richard Gauthier v HMQ*	T-738-14	*Tony Phan v HMQ*
T-660-14	*Jakub Knapik v HMQ*	T-739-14	*James West v HMQ*
T-662-14	*Mark Gontarz v HMQ*	T-747-14	*Pattie Vivier v HMQ*
T-664-14	*Jerzy Knapik v HMQ*	T-748-14	*Thomas Fougere v HMQ*

T-667-14	*Michael Gontarz v HMQ*
T-669-14	*Vygantas Kuncas v HMQ*
T-671-14	*Gwen Anger v HMQ*
T-753-14	*Linda Yule v HMQ*
T-755-14	*Christoper Lawson v HMQ*
T-766-14	*Steve Ingraham v HMQ*
T-767-14	*Aaron Smith v HMQ*
T-784-14	*Diane Snowdon v HMQ*
T-785-14	*Richard Snowdon v HMQ*
T-797-14	*Roman Stasiewicz v HMQ*
T-800-14	*Beverly Sharon Misener v HMQ*
T-802-14	*Dale Conners v HMQ*
T-804-14	*Jacqueline Alexander v HMQ*
T-807-14	*Adam Binnie v HMQ*
T-812-14	*Deanna Dury v HMQ*
T-815-14	*Michael Kaer v HMQ*
T-845-14	*Leigh Sutton v HMQ*
T-855-14	*Lynn Childs v HMQ*
T-861-14	*Larry John Benz v HMQ*
T-896-14	*Perry Hutchins v HMQ*
T-909-14	*Sylvie Allen v HMQ*
T-918-14	*Robert Wilson Roy v HMQ*
T-920-14	*Sheila Baker v HMQ*
T-926-14	*Timothy Murphy v HMQ*
T-929-14	*Luc Leblanc v HMQ*
T-930-14	*Jessica Leblanc v HMQ*
T-936-14	*Christian Pelletier v HMQ*
T-945-14	*Richard James Miller v HMQ*
T-948-14	*Bruce H. Lane v HMQ*
T-951-14	*Jonathan Howard v HMQ*
T-952-14	*Shirley Martineau v HMQ*
T-957-14	*Bruce Zwicker v HMQ*
T-749-14	*Carlos Duarte v HMQ*
T-750-14	*Teresa Oliver v HMQ*
T-751-14	*Sean Oliver v HMQ*
T-964-14	*Eric Topple v HMQ*
T-965-14	*Tanya Cross v HMQ*
T-966-14	*Paul Durling v HMQ*
T-967-14	*Lenord Cross v HMQ*
T-968-14	*Janice Baikie v HMQ*
T-969-14	*Michael Custance v HMQ*
T-970-14	*Frederick Spencer v HMQ*
T-971-14	*James Roberts v HMQ*
T-972-14	*David Shea v HMQ*
T-974-14	*Jeffrey Allen v HMQ*
T-976-14	*Jacob Settle v HMQ*
T-977-14	*Kathleen Murphy v HMQ*
T-981-14	*William Siddall v HMQ*
T-988-14	*Daniel Toney v HMQ*
T-989-14	*Craig Cousineau v HMQ*
T-990-14	*Pam Ritcey v HMQ*
T-991-14	*Mathew Duke v HMQ*
T-992-14	*Daniel Innocente v HMQ*
T-993-14	*Elizabeth Innocente v HMQ*
T-994-14	*Gwendolyn Innocente v HMQ*
T-997-14	*Curtis Brown v HMQ*
T-998-14	*Stephen Godfrey v HMQ*
T-1010-14	*Jeffrey Dow v HMQ*
T-1011-14	*John Nitsopoulos v HMQ*
T-1016-14	*Paul Pothier v HMQ*
T-1017-14	*Craig Marchand v HMQ*
T-1018-14	*Gina Shaw v HMQ*
T-1021-14	*Daniel Evans v HMQ*
T-1025-14	*Mary Holding v HMQ*

T-960-14	*Bobbylee Dillman v HMQ*	T-1089-14	*William Riordan v HMQ*
T-962-14	*Anthony Irons v HMQ*	T-1099-14	*Tyler Yule v HMQ*
T-963-14	*Michael Innocente v HMQ*	T-1101-14	*Janice Davis v HMQ*
T-1038-14	*Shawn Vincent Burke v HMQ*	T-1031-14	*Edward Benoit v HMQ*
T-1039-14	*Alexander Innocente v HMQ*	T-1032-14	*Andrew Peter Craig v HMQ*
T-1040-14	*Benjamin Goldsmith v HMQ*	T-1033-14	*Rick Wilson v HMQ*
T-1041-14	*Jesse Chiasson v HMQ*	T-1104-14	*Bradley John Brickwell v HMQ*
T-1042-14	*Laura Chiasson v HMQ*	T-1106-14	*Michael Pearce v HMQ*
T-1043-14	*Arthur Jackes v HMQ*	T-1107-14	*William Mark Chenier v HMQ*
T-1044-14	*Robert Keenan v HMQ*	T-1126-14	*Christene Higgins v HMQ*
T-1047-14	*Phuong Pham v HMQ*	T-1129-14	*Donald Clements v HMQ*
T-1048-14	*George Luker v HMQ*	T-1130-14	*Victoria Dobbs v HMQ*
T-1049-14	*Darryl Richard Kolewaski v HMQ*	T-1134-14	*Kevin Russell v HMQ*
T-1052-14	*Samantha Clattenburg v HMQ*	T-1135-14	*Guy St. Jean v HMQ*
T-1053-14	*Adam Robinson v HMQ*	T-1137-14	*Jean Francois Trepanier v HMQ*
T-1054-14	*Glen Dredge v HMQ*	T-1138-14	*Adrien Trepanier v HMQ*
T-1055-14	*Joseph William Jessy Forsyth v HMQ*	T-1143-14	*Joshua Chiasson v HMQ*
T-1056-14	*Christopher Lozinski v HMQ*	T-1149-14	*Denise Beaudoin v HMQ*
T-1058-14	*Maevanne M. Lafferty v HMQ*	T-1150-14	*Romolo Balestra v HMQ*
T-1059-14	*Richard Darchi v HMQ*	T-1152-14	*Silvano Mosca v HMQ*
T-1060-14	*Ryan Jerrard v HMQ*	T-1155-14	*Winston Lawson v HMQ*
T-1063-14	*Matthew Darchi v HMQ*	T-1157-14	*Leslie Hollinrake v HMQ*
T-1064-14	*Jason Michael Martin v HMQ*	T-1164-14	*Karine Charette v HMQ*
T-1065-14	*Che Miller v HMQ*	T-1165-14	*Michael Richard v HMQ*
T-1066-14	*James Fair v HMQ*	T-1171-14	*Kendra Teal v HMQ*
T-1067-14	*Karen Lynn Gordon v HMQ*	T-1179-14	*Richard Brian Macdonald v HMQ*
T-1070-14	*Douglas Wagner v HMQ*	T-1180-14	*Iewen Macdonald v HMQ*
T-1076-14	*Michael Leon Desrochers v HMQ*	T-1187-14	*Jason Allman v HMQ*
T-1087-14	*Karen Corville v HMQ*	T-1191-14	*Gary Schulz v HMQ*
T-1088-14	*Brandon Searay v HMQ*	T-1192-14	*Glenda Mcauley v HMQ*

T-1193-14	*Adam Longstaffe v HMQ*	T-1365-14	*Jason Allman v HMQ*
T-1196-14	*Michael Thompson v HMQ*	T-1370-14	*Lorna Anne Brown v HMQ*
T-1208-14	*Debra Cochrane v HMQ*	T-1373-14	*Rickey Marshall v HMQ*
T-1209-14	*Joel Samson v HMQ*	T-1377-14	*Peter Jones v HMQ*
T-1213-14	*Alex R. Boyachek v HMQ*	T-1379-14	*Elsie Gear v HMQ*
T-1222-14	*Colleen Abbott v HMQ*	T-1380-14	*Tabatha Ward v HMQ*
T-1224-14	*Allan Jeffrey Harris v HMQ*	T-1381-14	*Bruce Connell v HMQ*
T-1225-14	*Peter Papadeas v HMQ*	T-1395-14	*Angela Spencer v HMQ*
T-1226-14	*Giuseppe Gervasi v HMQ*	T-1398-14	*Dorio Neal v HMQ*
T-1227-14	*Philippe Bonin v HMQ*	T-1405-14	*John Ward v HMQ*
T-1228-14	*Tania Slabotsky v HMQ*	T-1467-14	*Lillian Sorko Houle v HMQ*
T-1229-14	*Cynthia Anne Gibbins v HMQ*	T-1468-14	*Cynthia Gibbons v HMQ*
T-1230-14	*Christos Rizos v HMQ*	T-1469-14	*Michelle Sorko v HMQ*
T-1231-14	*Cameron Tracey v HMQ*	T-1470-14	*Tabitha Riley v HMQ*
T-1233-14	*Marc Andre Labelle v HMQ*	T-1471-14	*Diane Aylward v HMQ*
T-1236-14	*Douglas Green v HMQ*	T-1485-14	*Jennifer Macdonald v HMQ*
T-1238-14	*Charlene Lupien v HMQ*	T-1490-14	*Randy Scott Kingsley v HMQ*
T-1239-14	*Scott Mccluskey v HMQ*	T-1492-14	*Ryan Albert v HMQ*
T-1241-14	*Yvon Villeneuve v HMQ*	T-1524-14	*Steven Campbell v HMQ*
T-1242-14	*Shane Yule v HMQ*	T-1563-14	*Donald Allen Proctor v HMQ*
T-1245-14	*Charlene Calka v HMQ*	T-1593-14	*Colin Priaulx v HMQ*
T-1246-14	*Robert Gilchrist v HMQ*	T-1612-14	*Barbara Paraniak v HMQ*
T-1247-14	*Grace Parr v HMQ*	T-1752-14	*Janet Grandy v HMQ*
T-1248-14	*Brett Garnham v HMQ*	T-2272-14	*Amy Clark v HMQ*
T-1250-14	*Pawel Stanislaw Kaminski v HMQ*	T-2403-14	*Christos Stavropoulos v HMQ*
T-1251-14	*Dinesh Kumar Sharma v HMQ*	T-2539-14	*Reginald Lachance v HMQ*
T-1274-14	*Robert Neron v HMQ*	T-2623-14	*Donald Eldon v HMQ*
T-1275-14	*Stephen Mcdonald v HMQ*	T-251-15	*Laura Ann Gallant v HMQ*
T-1283-14	*Lynn Mcleod v HMQ*	T-800-15	*Gregory Maccormack v HMQ*
T-1284-14	*Jacques Trudel v HMQ*	T-978-15	*Christopher Stubbert v HMQ*
T-1291-14	*Annie Brunet v HMQ*	T-998-15	*Daniel Thiara v HMQ*

T-1023-15	*Ryan Ruffell v HMQ*
T-1136-15	*Michele Wilkinson v HMQ*
T-1490-15	*Steven Mccathie v HMQ*
T-1528-15	*Jacey Joseph Edward Careme v HMQ*
T-1531-15	*Darren Roy Macdonald v HMQ*
T-234-16	*Mark Cameron Bolton v HMQ*
T-983-16	*Raymond Lee Hathaway v HMQ*
T-1113-16	*Darren Roy Macdonald v HMQ*
T-1114-16	*Jacey Joseph Edward Careme v HMQ*
T-1191-16	*Collen Abbott v HMQ*
T-1194-16	*Allan Harris v HMQ*
T-1215-16	*Cheryle Hawkins v HMQ*
T-1248-16	*Robert James Woolsey v HMQ*

THIS IS EXHIBIT "22" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

File No: T-488-14 This is a simplified action.

FEDERAL COURT OF CANADA

Between:

John C. Turmel

Plaintiff

AND

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

Defendant

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: FEB 26 2014

MICHELLE GAUVIN
REGISTRY OFFICER
AGENT DU GREFFE

Issued by: _____
(Registry Officer)

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CLAIMS OF THE PLAINTIFF

The Plaintiff claims as follow:

A) A Declaration pursuant to s.52 (1) of the Canadian Charter of Rights and Freedoms (Charter) for an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A1) and that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from the prohibitions on marihuana in the CDSA for the Plaintiff's personal medical use;

C) Or, alternatively, damages in the amount of $300.00 the loss of patient's marihuana, plants and production site.

AND FOR ANY ORDER abridging any time for service or amending any error or omission which this Honourable Court may allow.

THE GROUNDS of the claim are:

VIOLATIONS UNDER BOTH THE MMAR AND MMPR

1) MMAR S.4(2)(b) and MMPR S.119 require a medical document from recalcitrant or not-available family doctors unreasonably restricting access;

2) MMAR and MMPR fail to provide DIN (Drug Identification Number) for affordability unreasonably restricting access and supply;

3) MMAR S.13(1), S.33(1), s42(1)(a) and MMPR S.129(2)(a) require annual renewals unreasonably restricting access;

4) MMAR S.65(1) and MMPR compel exemptees to destroy unused cannabis with no compensation unreasonably restricting supply;

5) MMAR S12.(1)(b), S.32(c), S.62(2)(c), S.63(2)(f) and MMPR S.117(1)(c) allow the Minister or the Licensed Producer to refuse or cancel the patient's permits for non-medical reasons unreasonably restricting access and supply;

6) MMAR and MMPR feedback from Health Canada to doctors opposing high dosages unreasonably restricting access;

7) MMAR and MMPR fail to provide instantaneous online processing of licenses, renewals and amendments unreasonably restricting access and supply;

8) MMAR fail to provide the resources to handle any large demand and the MMPR by failing to organize enough Licensed Producers to meet the demand unreasonably restricting access and supply;

9) MMAR S.2 and MMPR S.4(1) prohibit non-dried forms of cannabis unreasonably restricting access;

10) MMAR and MMPR fail to exempt patients from the CDSA S.5(1) prohibition on trafficking for trading and sampling different strains for different pains and gains in production unreasonably restricting access and supply.

VIOLATIONS UNDER THE MMAR ONLY
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MMAR 11) S.6(2)(b)(i) & (vi) require a specialist consultation unreasonably restricting access;

MMAR 12) S.6(1)(e), S.4(2)(b), S.6(2)(b)(v) require a medical declaration on conventional treatments being inappropriate unreasonably restricting access;

MMAR 13) S.32(e) prohibits more than 2 licenses/grower unreasonably restricting supply;

MMAR 4) S.32(d) & S.63(1) prohibit more than 4 licenses/site unreasonably restricting supply;

MMAR 15) S.30(1) limits the number of plants ensuring no seasonal economies nor respite from constant gardening unreasonably restricting supply ;

MMAR 16) fails to license any garden help unreasonably restricting access and supply;

VIOLATIONS UNDER THE MMPR

MMPR 11) S.255(2) makes the ATP valid solely as a "medical document" after March 31 2014 unreasonably restricting access and supply;

MMPR 12) S.117(4) allows the Licensed Producer to cancel the patient's registration for an undefined "business reason" unreasonably restricting access and supply;

MMPR 13) S.117(7), S.118 prohibit the Licensed Producer from returning or transfering the medical document back to the patient unreasonably restricting access;

MMPR 14) S.13 prohibits production in a dwelling unreasonably restricting supply;

MMPR 15) S.14 prohibits outdoor production unreasonably restricting supply;

MMPR 16) S.138(1)(c), S.264 fail to protect the patient's brand genetics and rights to those brands unreasonably restricting access and supply.

MMPR 17) fails to remove financial barriers unreasonably restricting access and supply;

MMPR 18) fails to provide central registry for police verification unreasonably restricting access and supply;

MMPR 19) fails to have enough Licensed Producers to supply upcoming needs unreasonably restricting supply;

MMPR 20) S.5(c), S.73(1)(e), S.123(1)(e), S.130(2) prohibit possession or delivery of more than 150 grams unreasonably restrict supply;

THE PARTIES

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1. The Plaintiff brings these claims for declaratory relief and/or financial relief pursuant to S.7, 24(1) and 52(1) of the Charter of Rights and Freedoms as a person who can establish medical need having:
a) an exemption under the MMAR, the MMPR or the Narcotic Control Regulations (NCR), ; or
b) medical files documenting a qualifying illness, or
c) desire to prevent illness it's good for before getting it.

2. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, is named as the representative of the Federal Government of Canada and the Minister of Health for Canada who is the Minister responsible for Health Canada and certain aspects of the Controlled Drugs and Substances Act including the Narcotic Control Regulations, the Marihuana Medical Access Regulations and program and the Marihuana for Medical Purposes Regulations and program.

BACKGROUND

CONTROLLED DRUGS AND SUBSTANCES ACT (CDSA)

3. Cannabis, its preparations, derivatives and similar synthetic preparations are listed in Schedule II to the Controlled Drugs and Substances Act, S.C. 1996, c.19, and amendments thereto (the "CDSA"). Its production, possession, possession for the purposes of distribution or trafficking, and trafficking, as well as importing and exporting are prohibited by this Statute as a "controlled substance", formerly known as "narcotics".

4. CDSA S.56 permits the Minister for Health Canada or his designate, to exempt any person, class of persons, controlled substance or precursor of a controlled substance from the application of the CDSA or its Regulations if, in the Minister's or the designate's opinion, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

5. While no viable constitutional medical exemption to the prohibitions against cannabis existed prior to July 30th, 2001, the Ontario Court of Appeal in R. v. Parker (2000) 49 O.R. (3d) 481 (leave to appeal to the Supreme Court of Canada dismissed) declared "the prohibition on marihuana in S.4(1) of the CDSA to be invalid" for the failure of the government 'to provide reasonable access

for medical purposes' as an exemption to the general prohibition violated s.7 of the Canadian Charter of Rights and Freedoms in that the 'life,' 'liberty' and 'security' of the patient was affected in a manner that was inconsistent with the "principles of fundamental justice;" it suspended its decision for 1 year to allow the government to comply and granted Terry Parker a 1-year constitutional exemption until it had complied.

6. Initially the government, pursuant to s.56 of the CDSA issued an "Interim Guidance" document and processed exemptions under that section until ultimately, on July 30 2001, the Government of Canada brought the Medical Marihuana Access Regulations (MMAR) into effect attempting to bring the CDSA into compliance with the Charter by putting into place a "constitutionally acceptable medical exemption" to the prohibition against the possession and cultivation of marihuana for those who establish medical need and before the prohibition became invalid on Aug 1 2001.

7. On Aug 1 2001, unable to complete the Application process in only one day, Terry Parker's constitutional exemption lapsed without his being actually exempted pursuant to the Order of the Court thus once again facing fell under unconstitutional penal jeopardy unless the Declaration of Invalidation had taken effect where he remains today since his doctor refuses to sign his MMAR application form.

MEDICAL MARIHUANA ACCESS REGULATIONS (MMAR)

8. In an era when 5 million Canadians do not have doctors, the MMAR established a framework where an individual could apply to Health Canada for an "Authorization to Possess" (ATP) only "dried marihuana" for medical purposes with the support of their medical practitioner. The Regulations set out various categories 1–3 relating to symptoms of various medical conditions with the latter categories requiring the involvement of one or two specialists. The ATP was subject to annual renewal.

9. Hitzig struck down the requirement for a second specialist for category three applicants as not in accord with the principles of fundamental justice, the requirement adding little to no value to the assessment of medical need and was an arbitrary barrier to the granting of an exemption for category three applicants. On June 29 2005 the Government of Canada made further amendments to the MMAR re-defining the types of applicants by merging categories 1 and 2 into category 1, requiring the declaration of only one physician, and merging category 3 into 2 and eliminating the requirement of a declaration from a specialist but still requiring a consultation with one.

10. Further, where a specialist was required, it was no longer necessary for the specialist to provide the declaration that s/he had reviewed the case and concurred "that conventional treatments were ineffective or medically inappropriate and was aware that marihuana was being considered as an alternative treatment." Rather,

the onus was put on to the family physician to ensure the specialist "had reviewed the case and concurred that conventional treatments were ineffective or medically inappropriate and was aware that marihuana was being considered as an alternative treatment" so no actual change was effect but transferring the workload to the family doctor.

11. Doctors are deterred from participation by their medical associations, by insurance companies, by the yearly renewal forms for permanent diseases, by having to consult with a specialist, by non-approval of cannabis without a DIN (Drug Identification Number), and by Health Canada feedback urging lower dosages and demanding doctors complete an unmentioned form certifying anew a high dosage!

12. The Regulations provided for the individual to obtain a Personal-Use-Production-Licence (PUPL) subject to annual review specifying a number of plants to produce for them an amount of cannabis and to store and possess certain amounts depending upon a calculation derived from the medical practitioner's authorization of grams per day for the particular ailment. A low plant limit forces patients to grow bigger less-wieldy plants, prevents seasonal economies by forcing patients to garden year round with no respite.

13. Personal-Use-Production-License holders are prohibited from engaging any help though the Regulations provide for a "Designated Person Production Licence" (DPPL) authorizing someone to produce dried marihuana for the patient.

14. There is no provision for trading different strains for different pains or different gains in growth which puts one in jeopardy of CDSA S.5(1) trafficking to do so. And evidently, any patient on social assistance or meager income is compelled to traffic part of the crop to cover production expenses!

15. The Regulations provided that a designated producer could only produce for one patient holding an ATP and there could only be three licences in one place. If renewals of ATPs are late, the plants and stored marijuana had to be destroyed until the permits arrived and they could start producing all over, without any medicine all the while.

16. On Oct 7 2003, Hitzig v. HMTQ ruled the Bad Exemption provided by the MMAR had not complied with the Parker ruling because a limit of 1 patient per grower and 3-growers per garden made the regime unconstitutionally uneconomical.

17. The same day, the Ontario Court of Appeal in R v. J.P. quashed the possession charge ruling:
"In Parker, this court made it clear that the criminal prohibition against possession of marihuana, absent a constitutionally acceptable medical exemption, was of no force and effect."

18. A Bad Exemption means No Offence. BENO! But the Court ruled that when those limiting caps had been struck down, the MMAR exemption became constitutionally sound; the CDSA prohibitions were once again constitutionally valid; new charges could be laid again as of Oct 7 2003.

19. On Dec 8 2003, 4,000 charges were stayed as a result of there being No Offence while the MMAR had been flawed for 2 years by the unconstitutional caps on patients and growers.

20. On Dec 3 2003, as a result of the Ontario Court of Appeal decision in Hitzig striking down the limits on patients and growers to make the MMAR constitutionally valid, the Government of Canada amended the MMAR to UN-COMPLY by re-enacting the provisions to permit a designated producer to only produce for one patient and permit only 3 growers per garden in virtually identical terms; the same two caps on patients and growers whose presence in the MMAR caused the J.P. Court to rule the prohibitions in the CDSA to be invalid retrospectively from Aug 1 2001 to Oct 7 2003 when the patient-grower deficiencies in the MMAR were rectified.

21. In Sfetkopoulos v. AG Canada 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA); the Federal Court of Appeal, essentially following Hitzig, struck down the limit on 1 patient per grower as being a negative restriction violating s.7 of the Charter. But no charges were dropped while the MMAR was once again declared unconstitutional for the very same Hitzig flaw. In 2009, Health Canada enacted a new ratio allowing a designated producer to produce for 2 authorized persons!

22. In 2010, the R. v. Beren and Swallow (2009) BCSC 429 declaration took effect that the re-imposed limit of 3 growers per garden once again rendered the MMAR unconstitutional for the very same Hitzig flaw. Again, no charges were dropped. A week later, Health Canada upped the limit to 4 growers per garden.

23. In 2010, Health Canada was swamped by several extra thousand applications, each now needing yearly renewals. Exempting Canada's 400,000 epileptics would seem to have little chance, the regime could not cope. Thousands of patients have suffered the stress of having their ATPs delayed or expire without prompt renewal or amendment and were put into penal jeopardy by S.65(1) for failure to destroy their stored marijuana and plants until their new ATP arrived.

MARIHUANA FOR MEDICAL PURPOSES REGULATIONS (MMPR)

24. On June 19th, 2013 the Marihuana for Medical Purposes Regulations (MMPR) SOR/2013-119 came into effect. These Regulations run concurrently with the MMAR until March 31, 2014 when, by virtue of s. 267 of the MMPR, the MMAR will be repealed and all Personal-Use-Production-Licences and Designated Producer Production Licences (DPPL) will be terminated effective that date regardless of the dates specified on the actual licences previously issued. While "access" is increased slightly by the definition of a "Health care practitioner" being expanded to include "nurse practitioners." Annual renewals are still required.

25. The MMPR continues to limit possession by a patient to "dried marihuana" and the patient cannot possess nor be shipped any more than 30 times the daily quantity authorized or 150 grams whichever is the lesser amount. All MMAR ATPs are canceled as Mar 31 2014 and after that

current ATPs may only be used as a "medical document." Patients with MMAR Authorizations To Possess are expected to destroy their life's botanical savings, any current crop and production site when registering under the new MMPR with no compensation while patients under the MMPR must destroy any remaining prescription when the new supply arrives.

26. The question of "supply" is dealt with by providing for "Licensed Producers" (LP) as the sole source of supply to registered patients, doctors or hospitals for patients.

27. Under the MMAR, the Minister refuses or revokes an authorization to possess if any information in the application "is" false or misleading. Under the MMPR, the onus of canceling a patient's medicine is transfered to the private Licensed Producer who needs not be certain "the information is false" but only have "reasonable grounds to believe the information is false" to refuse or cancel a patient's registration.

28. The Licensed Producer may cancel a patient's registration for an undefined "business reason" but may not return the patient's original "medical document" so he can take it to another Licensed Producer.

29. The MMPR puts in place a transitional scheme to be implemented between now and March 31 2014 whereby persons holding an Authorization to Possess and a Personal Production Licence or a Designated Producer will obtain a notice of authorization from the Minister to sell or transfer their plants or seeds to a Licensed Producer.

Production is not permitted at a 'dwelling place' and can only take place 'indoors,' not 'outdoors' and no provision is made for securing the rights to the brand of seed or plant sold or transfered.

30. In the Government of Canada produced "Regulatory impact analysis statement" about the Marihuana for the Medical Purposes Regulations in the Canada Gazette, Volume 146, #50 on December 15th, 2012 it is indicated that the main economic cost associated with the proposed MMPR would arise from the loss to consumers who may have to pay a higher price for dry marihuana estimated to be $1.80 per gram to $5.00 a gram in the status quo to about $7.60 per gram in 2014 rising to $8.80 per gram thereafter than the free to $4 per gram to produce their own. Add taxes which do not apply to personal production.

31. As of Feb 20 2014 there were eight approved Licensed Producers (LP's) and one of them is a wholly owned subsidiary of Prairie Plants Systems the former government sole contractor, and goes by the name of 'CanniMed Ltd.' It has indicated that the price of its product will be between $8.00 and $12.00 a gram. Add tax and shipping only by signed courier postal delivery for each 5 ounces!

32. In queries to Licensed Producers:
- Greg Vermeulen at Bedrocan informs that that they only grow their "own proprietary standardized strains" and that they "cannot process such a large order as 200g/day due to limited supply" until the end of 2014, once they have domestic production up and running.

- Lindsay Thorimbert of Cannimed informs "all of the medical marijuana grown at the CanniMed facility is internally so we aren't able to purchase your genetics or grow those specific plants.
- 'Your Friends at Tweed' inform interested patients they "will be back in touch very shortly."
- Medreleaf can't deliver before end of May 2014.

33. Though plants and seeds may be transfered or sold to the Licensed Producer, there is no provision for a seed bank for those genetics not accepted by Licensed Producers to be saved.

CONSTITUTIONAL VIOLATIONS ALLEGED

UNDER THE MMAR AND MMPR

1) RECALCITRANT DOCTORS AS GATEKEEPERS

MMAR S.4(2)(b): "An application under subsection (1) shall contain a medical declaration made by the medical practitioner treating the applicant;"
MMPR S.119 "Applicant must include original of their medical document."

34. In the current constitutional challenge in R. v. Godfrey (Nova Scotia) with a ruling on declaring the MMAR-MMPR invalid expected on Apr 24 2014, Applicant adopted the facts established by Taliano J. in R. v. Mernagh not with respect to there being "not enough

doctors" but with respect to there being some doctors allowed to opt out of the MMAR for non-medical reasons.

35. On Apr 11 2011, the Ontario Court of Appeal ruled in R. v. Mernagh:

"[9] On the Charter application, Mr. Mernagh did not argue that the MMAR are unconstitutional as they are drafted. Rather, he argued that the MMAR are unconstitutional as they are implemented because physicians have decided en masse not to participate in the scheme."

36. The Court pointed out there was no evidence of the number of people who need it, the number who asked for it and were refused, no numbers proving a boycott.

37. The Court further noted:

"[28] In answer to the argument of the Hitzig appellants that the concerns of the medical profession and its governing bodies regarding the role of doctors as gatekeepers would prevent doctors from signing the requisite forms and thereby prevent worthy individuals from obtaining a licence, the Court found that on the record before it the argument was answered by Lederman J.'s findings that despite the concerns of central medical bodies, a sufficient number of individual physicians were authorizing the therapeutic use of marihuana that the medical exemption could not be said to e practically unavailable (Hitzig, supra at para. 139)."

38. So even if there had been a boycott by a vast majority of doctors, in 2003 Hitzig had ruled the medical exemption was "not practically unavailable" with even only 1 doctor in 100 participating.

39. Unlike Mernagh, Godfrey did not argue there was boycott of doctors making his access illusory, he has argued the MMAR permits doctors to refuse without any contra-indications of use, with non-medical reasons, that make access illusory. Similar evidence to that in Mernagh of the same unhealthy ramifications of the MMAR was given in Godfrey but in support of the different head of relief.

40. The Court of Appeal ruled that the Mernagh witnesses had not given evidence that the refusing doctors had not had valid medical reasons contra-indicating use. To fill this gap, the patient witnesses in R. v. Godfrey, all with qualifying diseases testified to their angst-filled searches for a doctor to sign and the non-medical reasons the doctors had used to refuse:
"I don't know enough about marijuana."
"I don't like the forms."
"I don't need the calls from Health Canada."
"I'm not interested" because of my Medical Association."
"I'm afraid for my practice!"
"I don't want to be known as a pot doctor."
"I don't know you well-enough."
"I don't want to be liable should you commit a criminal act under the influence!"
"I don't do that. Have some narcotics instead."
"Marijuana is not approved with a DIN."

41. The Mernagh evidence is also replete with more non-medical reasons for refusals though that evidence was wasted in a futile attempt to prove a doctor boycott. Applicant Godfrey submitted that an exemption that is "not practically unavailable" because some sign is not enough, it is not practically available when some don't sign.

42. The Mernagh Court of Appeal wrote:

" [147] Much of the evidence relied on by Mr. Mernagh to support his claim that the defence in the MMAR is illusory does not link physician non-participation in the MMAR or individual refusals by physicians to provide the necessary declaration with any kind of governmental action. A doctor who refuses to provide the necessary declaration because he or she is not satisfied that the criteria in the regulations are met, does not feel sufficiently knowledgeable about the effects of marihuana, is unfamiliar with the patient, or views the use of marihuana as medically contra-indicated, is certainly limiting the availability of the medical exemption contemplated in the MMAR. However, that decision is not attributable to the government or any form of governmental action. Nor, in my view, can the physician, by exercising the gatekeeping role demanded of the physician by the legislation, be said to make the defence created by the legislation illusory. Refusals based on the doctor's exercise of his or her judgment are inherent in the defence created by the MMAR."

43. One would presume refusals would be based on the doctor's exercise of his or her MEDICAL judgment, not for the myriad of lame non-medical excuses listed above. The Court presumed doctors would be professional and not let their clients die, that doctors would do right even if given a responsibility they don't want to bear. But they do let their clients die with no contra-indication of marijuana use. Every epileptic having a fatal seizure without access to a joint is testament to his doctor not doing his research. What medical reasons could a doctor

have to refuse an epileptic with a permanent disease when the Parker decision established the Charter Right not to be denied its anti-seizure efficacy? From 100 seizures a day, after a lobotomy and lobectomies failed to help, Terry Parker has not had an epileptic seizure in all the years that he has continued smoking cannabis since his constitutional exemption expired in 2001 and before.

44. Of course, if cannabis was contra-indicated or the patient had not satisfied the criteria in the regulations, refusal is justifiable. But the doctor cop-outs listed above are not medical judgments.

45. To plead incompetence can never be deemed professional when it comes to the least dangerous herbal treatment with the best safety record in history? "Never killed anyone, works for others but I haven't studied up so find someone who has" is no medical judgment.

46. The doctor refusing for being afraid of his medical association, afraid of his insurance company, afraid of Health Canada calls, afraid of being called a "pot doctor," afraid of the mountain of paperwork or afraid for his practice is not making a medical judgment.

47. That the doctor is unfamiliar with the patient is irrelevant when the doctor should be familiar with the patient's condition. If a medical history says Epilepsy, how much more does the doctor need to know? Why are some doctors willing to authorize epileptics upon one consultation, even by Skype video-call, yet others need a more personal tete-a-tete?

48. That the doctor could believe he would be liable for criminal acts committed "under the influence" shows the silliness of some non-medical reasons.

49. That the doctor will only prescribe addictive narcotics when the patient wants to try non-addictive herbal treatment violates the patient's right to decide established in Morgentaler. If this were any new chemical drug, doctors would be expected to do their professional research when the patient asks about it, not refuse.

59. Though most witnesses eventually found doctors to sign, two patients never did and one was thrown out of the doctor's office. There are other reports of such "no more family doctor" refusals. Applicant submitted that when the patient is thrown out by the doctor, that doctor may be presumed to not be signing for any of the other patients in his practice. Minus the 5 million without family doctors, 60,000 doctors serving 30 million Canadians is 500 patients per practice. So it's safe to conclude that doctor's whole 500-patient practice remains un-served, not only that particular patient being currently un-served. And if the recalcitrant gate-keepers are not opening the gates, it's the regimes' fault for making recalcitrant doctors gatekeepers. The patient has no use for his doctor's medical opinion when the doctor admits he's ignorant of the treatment. Installing reluctant and willfully-ignorant as gatekeepers can only impede access.

51. Taliano J. pointed out:
"[147] With the leadership of the medical profession being so adamant in its opposition to its proposed role as gatekeeper, it is little wonder that the profession has not been supportive of the MMAR and the patient witness evidence of this lack of support becomes understandable."

52. The Crown argues it is not the legislation's fault that the doctors may not be signing in large numbers. Taliano J. cited the resistance by medical associations to being appointed gate-keepers over something they knew nothing about. Legislation appointing someone ignorant of the treatment is tantamount to appointing a monkey as gate-keeper and noting the fact the monkey sometimes opens the gate means the exemption is "not practically unavailable!" For the 5 million Canadians without a family doctor, it is completely practically unavailable and they must remain completely unserved by the present regime with recalcitrant doctors as gate-keepers.

53. The Court of Appeal should not need the numbers to logically infer that doctors were boycotting the regime when so many medical associations had been noted in opposition as well as the testimony of the Mernagh witnesses to the refusals of many doctors to serve them, and implicitly, their 500-patient practices. Fortunately, Applicant objects to doctors being able to opt out at all without medical contra-indications of use.

54. Justice Taliano finally concluded:
"[327] While that approach was justified and feasible in Hitzig, the same cannot be said of the present case. Because the court in Hitzig only found certain and isolated sections of the MMAR to be invalid, it was able to specifically address those provisions in its remedy without altering the overall significance of the legislation. However, in the case at bar I have found that the requirement for a medical doctor's declaration has rendered the MMAR unconstitutional. This requirement infects numerous sections of the MMAR."

55. On the basis of the similar evidence as Mernagh but with the gap on why the doctors refused filled, the requirement of ignorant recalcitrant doctors is unnecessary and unconstitutional when simple proof of illness should be the only medical judgment needed.

56. The health improvements all patient witnesses in Godfrey and Mernagh attested to do condemn the doctors who wouldn't or couldn't do their duty in exercising the gatekeeping role demanded of the physician by the legislation. Once demanded of them, unprofessional incompetence and bias aren't proper gate-keeping for anyone's medicine.

2) NOT APPROVED WITHOUT DIN

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57. One cardiologist refused because marijuana was "not an approved medication." Health Canada web site explains:
http://www.hc-sc.gc.ca/dhp-mps/marihuana/index-eng.php

"Dried marihuana is not an approved drug or medicine in Canada. The Government of Canada does not endorse the use of marihuana, but the courts have required reasonable access to a legal source of marihuana when authorized by a physician."

58. Not being an approved substance has been used as a reasonable rationale to allow some doctors to assuage their conscience when they opt out of their responsibility to their patients. Cannabis can never be approved until it gets a DIN. Not having a DIN also forecloses any hope of financial coverage. The lack of DIN remains in the MMPR.

3) ANNUAL MEDICAL DOCUMENTS FOR PERMANENTLY ILL

MMAR S.13(1): "ATP Subject to subsection (2), an authorization to possess expires 12 months after its date of issue..."
MMAR S.33(1)(a): "PUPL Subject to subsection (2), a personal-use production licence expires on the earlier of 12 months after its date of issue.."
MMAR S.42(1)(a): "DPPL Subject to subsection (2), a designated-person production licence expires on the earlier of 12 months after its date of issue.."
MMPR s.129(2)(a) "The period of use referred to in paragraph (1)(e) must be specified as a number of days, weeks or months, which must not exceed one year;

59. Doctors know that instead of prescribing cannabis once and perhaps never seeing an epileptic again, the patient would have to come back every year for him to fill out the forms. Imagine how all that yearly form-filling would affect any practice for epilepsy! Instead

of exempting them all once, it's all of them every year! Say a doctor has 500 epileptic patients and exempts them 100 per year of 5 years. When he's done he hasn't had to fill out 100 forms per year but 100, 100+100 renewals, 100+200 renewals, 100+300 renewals, 100+400 renewals totaling 1,500 forms filled out with 500 more every year thereafter when it should have been only 500 forms once. Over a 10-year span for 1,000 epileptics, that would take 5,500 forms filled out instead of 1,000 once. Annual renewals for permanent diseases is a waste of the patient', doctor's, and regulator's time.

60. Testimony in Godfrey showed show Exemptees fell under penal jeopardy each time renewed or amended Authorizations were delayed. The Federal Court case of Ray Turmel v. HMTQ [2013] highlighted how the Health Canada site informed people renewing their Authorizations with no changes they only needed to fill out Form R, always with 8-10 weeks for processing. Then 3 weeks later, he received a rejection letter for failure to re-submit another Form F. Nowhere on Form R instructions did it say anything about another Form F and his renewal was thus delayed by 3 weeks. With the Form F then sent in, Health Canada started the clock anew and let his exemption expire on Friday May 31 2013 without renewal advising him to comply with the rules which said to destroy his stash and garden until his new permits arrived! At 7pm Friday night, Federal Court Justice Roy granted a short notice hearing and by 11pm, Health Canada had renewed his exemption. The Form F glitch catches all such "no-change" Renewals and puts them behind schedule and Health Canada has seemed in no rush to prevent those many Authorizations from expiring and the patients falling into jeopardy for that time.

4) DESTRUCTION OF SUPPLY

MMAR S.65(1): "If an authorization to possess expires without being renewed or is revoked, the holder shall destroy all marihuana in their possession."

MMPR

http://www.hc-sc.gc.ca/dhp-mps/marihuana/repeal-abrogation-eng.php

"All dried marihuana and/or marihuana seeds or plants in your possession obtained under the MMAR must be destroyed on or before March 31, 2014."

61. MMAR orders that marijuana be destroyed without compensation upon expiry of any exemption without renewal. Every person whose exemption properly expires knows the Criminal Code prohibition means his stash had better be disposed of, why repeat it here when it's already in the Criminal Code? The only people it can possibly affect aversely are patients legitimately awaiting a late renewal or amendment who are reminded that they should destroy all their medicine until their permit arrives when they can start all over again and do without until their first crop comes in. The witnesses who testified to late renewals or amendments admitted they did not destroy their stash nor their plants and were guilty of violating both S.65 and the Criminal Code during those lapses in coverage. This jeopardy for sick people was ruled unconstitutional in R. v. Parker.

62. The MMPR demands the same destruction of medication by the prohibition on possession of more than the 30 day dosage. Should a patient under-use and have some spare at the end of the month, it is prohibited to possess his new supply without destroying the remainder of his old supply. But should a patient over-use and lack some at the end of the month, bad luck, can't get any more.

5) COMMON BUREAUCRATIC CANCELLATIONS

MMAR S.12(1)(b): "The Minister shall refuse to issue an authorization to possess if any information, statement or other item included in the application is false or misleading;"
MMAR S.32(c): "The Minister shall refuse to issue a personal-use production licence if any information or statement included in the application is false or misleading;"
MMAR S.62(2)(c): "The Minister shall revoke an authorization to possess and any licence to produce issued on the basis of the authorization if the authorization was issued on the basis of false or misleading information;"

63. Two witnesses testified to having been authorized with many others by Ontario's Dr. Kammermans upon his visit to Nova Scotia. On Oct. 1 2012, they received revocations of their exemptions for being false and misleading though no doubt about their medical condition was alleged. What may Health Canada have construed as "false?" Dr. Kammermans was not licensed to practice in Nova Scotia!

64. Though one revokee never found another doctor, the other obtained another Authorization from a doctor in B.C. The Greenleaf Clinic does its medical examinations by Skype with the patient anywhere in Canada and the doctor in B.C. Similarly, had the doctor in B.C. done a house call to Nova Scotia and signed it there, Health Canada could have deemed that false and reject the application too. So Dr. Kammermans could have used Skype or waited until he was back in his Ontario office before signing and sending out the Authorizations to his Nova Scotia patients but because he signed them at the house call instead of in his office, Health Canada cut off the medication of thousands of valid patients for non-medical reasons!

65. Health Canada no longer cancels Exemptions for its own "reasonable grounds," it has delegated that onus onto the non-governmental Licensed Producer (LP):

MMPR S.117(1)(c)(i): "The Licensed Producer must cancel if there are reasonable grounds to believe that false information has been submitted;"
S.117(2): "must cancel without delay if LP has verified the existence of the ground in a "reasonable manner."
s.117(3): "has reasonable grounds that a ground exists."

66. Action used to be taken if it "is false!" Not only needs "reasonable grounds to believe it is false." That bureaucrats or private companies and not the doctors rule the pharmacy by declaring non-medical errors or inconsistencies "false and misleading" is an indictment of the total regime. Health Canada bureaucrats can and

did cut off the medication to thousands of Dr. Kammermans' medically-qualified patients for just such a trite non-medical reason.

67. What are "reasonable grounds to believe something false" for a private Licensed Producer to cut off a patient's medicine? Shouldn't it be upon "indictment or conviction" and not "reasonable grounds to believe?" "Oops, sorry for the mistake, patient's dead." If the Licensed Producer has verified grounds, he can call a cop, not say he has "reasonable grounds to believe." Or shouldn't it be up to the doctor to decide when medicine will no longer be given?

6) HEALTH CANADA FEEDBACK

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68. Testimony showed one doctor was "not interested" because of Health Canada feedback! Not only does Health Canada telephone doctors opposing high dosages but has them fill out another form to certify anew the amount! Like saying: "Are you really signing for this much? Sign another form saying it again." This second unmentioned part to the application process and phone calls verifying the same has intimidated doctors in some cases to reduce prescriptions. The same intimidation tactics are possible under the MMPR.

7) PROCESSING DELAYS

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69. Like any life-saving medication, marijuana should be available as fast as needed. Imagine an epileptic having a fit and a hospital emergency ward doctor trying to

obtain an Authorization to use marijuana to stop it. That hospitals are not prepared to dispense marijuana to an epileptic in the throes of seizure is an indictment of the total regime. It's the only almost guaranteed anti-seizure medication not available at a hospital because of the application process for authorization. Hospitals remain as unprepared under the MMPR.

8) NO RESOURCES TO PROCESS LARGE DEMAND

70. The Taliano decision mentions the 2010 delays in MMAR processing when Health Canada were swamped by several extra thousand applications, each now needing yearly renewals. With only 8 MMPR Licensed Producers to date, and most not up to production, there seems great chance the MMPR could not cope with actual necessary demand coming up.

9) PROHIBITION ON NON-DRIED CANNABIS

MMPR S.3(1): "A person listed in subsection (2) may possess dried marihuana.."

71. The Plaintiff is limited to using only "dried marihuana" as provided in the NCR, MMAR and MMPR, such restriction having been struck down in B.C. due to the decision in R v. Smith 2012 BCSC 544, which is on appeal, and in relation to the MMAR as that limitation did little or nothing to enhance the government's interest including the government's interest in preventing diversion of the drug, or controlling false and misleading claims of medical benefit and that it was arbitrary and violated s.7 of the Charter.

72. Cannabis may be used in its various forms, including in its raw form for juicing, and making butter, as well as using oils and tinctures, using it in teas, and as salves and creams for topical applications, or by making edibles and by smoking in cigarettes/joints or using a vaporizer or atomizer. It is an offense to separate or extract the resin glands from the dead plant material and a further offense to possess those resin glands, whether as resin or "hashish, or when infused into derivative products such as foods, oils or even tea. It is an offence to possess cannabis juice derived from the natural undried plant as it is not "dried marihuana". This explains how someone may consume 200g/day: 140g/day for juicing, 40g/day reduced to 4g/day for derivatives, concentrates and comestibles, and 20g/day smoked.

73. The Plaintiff says that the decision in Smith should be followed to enable Plaintiff to consume medicine in whatever form is most effective and to avoid a form that may be harmful, and that such a limitation in the NCR, MMAR and MMPR is unconstitutional as being in violation of s.7 and inconsistent therewith and is not saved by s.1.

10) NO EXEMPTION FROM CDSA S.5 TRAFFICKING

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74. With different strains for different pains and different gains in productivity, Plaintiff's opportunity to sample and trade those strains is impeded by the trafficking prohibition in the CDSA. Without a DIN for financial support, it is evident that any PUPL patient on social assistance cannot divert his food budget to pay

for his growing expenses and is compelled to traffic some of his crop to cover those inevitable costs. The CDSA S.5 prohibitions on trafficking of marijuana are a clear impediment to the patient's benefit through access and supply of different strains.

UNDER THE MMAR ONLY
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MMAR 11) SPECIALIST REQUIREMENT
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75. Taliano J. notes how the Nolin Commission concluded that the specialist requirement would impede access. But a decade later, it's still there impeding access. Taliano J. notes:
"33.. where a specialist was required, it was no longer necessary for the specialist to provide the declaration that s/he had reviewed the case and concurred that conventional treatments were ineffective or medically inappropriate and was aware that marihuana was being considered as an alternative treatment."

76. Though the specialist no longer had to provide the signed declaration, he still had to provide the same oral declaration to the family doctor! Just another chore for the doctor to do in filling out the forms. Putting the onus on the family doctor to swear that the specialist had made the declaration did not remove the requirement that specialist make the declaration that conventional treatments were ineffective or medically inappropriate. Whereas the Specialist Declaration used to satisfy the

family doctor that the specialist was aware of the intended use, now the doctor has to do the ensuring by his own communication with the specialist. So nothing really changed but the onus or verification off Health Canada and onto the family doctor.

77. The true unimportance of the Specialist Requirement is shown by its being passed onto the family doctor in the MMAR and its no longer being required at all in the MMPR!

MMAR 12) DECLARATION OF CONVENTIONAL TREATMENT

MMAR S.6(1)(e): "The medical declaration must indicate that conventional treatments for the symptom have been tried or considered and have been found to be ineffective or medically inappropriate for the treatment of the applicant;"
MMAR S.6(2)(b)(v): "must indicate that the specialist concurs that conventional treatments for the symptom are ineffective or medically inappropriate for the treatment of the applicant."

78. The Morgentaler decision makes clear the patient's right to use the treatment of his choice unless contra-indicated. The true unimportance of the requirement for the declaration that conventional treatments are inappropriate is shown by its no longer being required at all in the MMPR now that simple proof of illness is all that is required.

13) 2 PATIENTS PER GROWER (HITZIG, SFETKOPOULOS)

MMAR S.41(b): "The Minister shall refuse to issue a designated-person production licence if the designated person would become the holder of more than two licences to produce.."

79. The new ratio of 2 patients rather than 1 per grower is twice as good but not much less bad. Not much less so as to again unreasonably restrict supply.

14) 4 GROWERS PER GARDEN (HITZIG, BEREN)

MMAR S.32(d): "The Minister shall refuse to issue a personal-use production licence if the proposed production site would be a site for the production of marihuana under more than four licences to produce;" MMAR 63.1 "if a production site is authorized under more than four licences to produce, the Minister shall revoke the excess licences."

80. R. v. Beren and Swallow (2009) BCSC 429 declared that the re-imposed limit of 3 growers per garden once again rendered the MMAR unconstitutional but again no charges were dropped. A week later, Health Canada upped the limit to 4 growers per garden. Only 4/3, 1.33 times as good and far less less bad. So far less less bad as to again unreasonably restrict supply.

81. Plaintiff submits that the new caps of 2 replacing 1 and 4 replacing 3 make the MMAR only slightly less unconstitutional retrospective to Dec 8 2003 as their lesser versions in Hitzig had been retrospective back to Aug 1 2001 until the deficiencies were remedied on Oct 7 2003 in Hitzig.

15) NUMBER OF PLANTS INAPPROPRIATE PARAMETER

S.30(1): "Maximum Number of Plants"
S.30(2): "The maximum number of marihuana plants referred to in paragraph (1)(c) is determined according to..."

82. The limits on plants is inappropriate because different strains for different pains produce different gains of growth and only the stored amount should matter.

83. In R. v. Ray Turmel [2012] in Quebec, the accused had 4 pounds towards his Authorized 11 pounds but was charged with having too many plants, growing too fast. Such a limit impedes the patient's opportunity to fully stock his medicine chest by only him to reach his maximum storage very slowly. As well, different strains provide different yields making the number of plants the wrong main limiting factor that again impedes supply.

84. Limiting the number plants also means that gardening becomes a more expensive year-round chore. Instead of growing double for free in winter when no air conditioning is needed and taking the summer off, patients must tend to their gardens with no respite all year round.

16) NO HELP FOR PERSONAL-USER-PRODUCTION-LICENSEE

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85. A limited number of plants also means that they have to be grown bigger. Rather than small 10 gram buds on 20 small stalks, they have to grow 50 gram buds on 4 mini-trees. Bigger plants mean patients have to handle and get around bigger pots and reduces the efficiency of the lamp when light doesn't get through to the bottom buds. Having forced patients to deal with larger pots, the MMAR then prohibits them hiring or having any helpers which restricts access and supply!

86. Taliano J. comments on the stress caused by the MMAR: "[47].. Accordingly, the medical use of marihuana by these individuals constitutes a criminal activity, even though they are not criminally minded people. This in turn has created an additional a source of concern and anxiety for all of the patient witnesses. The stress of which further undermines their health. "

UNDER THE MMPR ONLY

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MMPR 11) ATP VALID SOLELY AS "MEDICAL DOCUMENT"

S.255(2) An authorization to possess that was valid immediately before the repeal of the Marihuana Medical Access Regulations remains valid solely for the purpose of being used as specified in subsection (1).

87. Everyone's ATPs become ineffective without no proof of purchase from a Licensed Producer. Medical need goes on, tens of thousands fall into jeopardy

MMPR 12) CANCEL FOR BUSINESS REASON

S.117(4): "A licensed producer may cancel the registration of a client for a business reason."

88. "Business reason" to cut the patient's medicine is undefined in the legislation. But Health Canada has written:
"The term "Business" is generally defined as an enterprise or a firm which provides goods and services to its customers for a profit. Coming from that term "business reasons" could cover a wide spectrum of scenarios. For example, an organization could stop doing business with customers due to (the business decision based on) long-overdue, pending payments from the customer/client. Also, the licensed producer might close business, etc.

89. Adding to the spectrum, "they're low on that brand and someone it profits more to sell it to someone else" is another great business reason.

MMPR 13) MEDICAL DOCUMENT NOT RETURNED

S.117(7): "A licensed producer who cancels a client's registration must not return the medical document."

MMPR S.118: "A licensed producer must not transfer to any person a medical document on the basis of which a client has been registered."

90. The Licensed Producer may cut off not only a patient's supply but also his access since he can't take his current "access document" to any other supplier and has to start the access process with the doctor all over again. If they close business, the patient should get his "medical document" back so he can take it to another who is still in business?

MMPR 14) NO PRODUCTION IN DWELLING

S.13. A licensed producer must not conduct any activity referred to in section 12 at a dwelling place.

91. The Plaintiff says that the proposed MMPR restrictions preventing production in a dwelling house and preventing any production outdoors should not be applicable to the patient or personal producer or designated caregiver because they amount to unnecessary restrictions in relation to the patient producer or his or her designate and would be unconstitutionally too restrictive. As the patient producer or his designate would not be involved in selling any of their product to any members of the public, none of the provisions of the MMPR relating thereto, such as packaging and labeling and the costs thereof, including packaging arbitrary maximum amounts in containers that a person can possess on their person at any one time, such as the maximum of 150 g, regardless of one's authorized dosage, should not apply to the patient, producer or designate.

MMPR 15) NO OUTDOOR PRODUCTION

S.14: "A licensed producer must produce, package or label marihuana only indoors."

92. Plaintiff submits that prohibiting production with free sunlight is an arbitrary and unreasonable restriction on supply.

MMPR 16) NO BRAND RIGHTS TO GENETICS

S. 138(1)(c) "provide the name of the brand"
S.261: "The holder of a personal-use production licence may sell or provide marihuana plants or seeds to a licensed producer.."

93. Cannabis has many specific strains for different pains. Though there is provision to transfer or sell a patient's own brands, two of the eight current Licensed Producers, Bedrocan and CanniMed, only produce their own proprietary brands. Medreleaf can't deliver before the end of May 2014. Tweed says they'll get back.

94. The United States are just recently bemoaning having lost all their hemp genetics since prohibition. Canadian growers have spent years There is a whole generation of genetics at stake in Canada and the failure to make provision for a seed-bank to save them does severely impede access to the proper medication. Tens of thousands of growers having to destroy their own home-grown strains is an unconscionable restriction on access and supply.

17) UNAFFORDABILITY

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95. The Canada Health Act R.S.C., 1985, c. C-6 states: "3. It is hereby declared that the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers."

96. Doctors don't fill out forms for free. Making permanently ill patients have their doctor fill out a form every year is an unconscionable waste of everyone's time and resources.

97. Despite no DIN, The Plaintiff finds it affordable to produce the required cannabis at $1.00 to $4.00 a gram or less but he will not be able to afford the estimated Licensed Producer prices which are comparable to illicit market prices and that unaffordability is a barrier to access at Plaintiff's income level.

MMPR 18) PROOF OF AUTHORITY TO POSSESS

S.125: "On demand, an individual who, in accordance with these Regulations, obtains dried marihuana for their own medical purposes must show to a police officer proof that they are authorized to possess the dried marihuana."

98. There is no central database for a police officer to check whether the potential-accused's proof of purchase

label is legitimate. There are many varied containers and labels and the Licensed Producer is not responsible for providing that information, no one is.

MMPR 19) UNAVAILABLE SUPPLY

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99. One Licensed Producer, Bedrocan, has responded that it unfortunately "cannot process orders as large as 200g/day at this time due to limited supply." Tweed cannot respond, Medreleaf can't deliver until end of May. Tens of thousands of patients cannot be served by April 1 2014.

MMPR 20) 150-GRAM LIMIT

MMPR S.5, S.130, S.122, S.123 "must not possess or deliver more than 30xDaily or 150 Grams."

100. The 150 gram limit on possession and shipment is based on Health Canada's recommended maximum dosage of 5g/day times 30 days, 150. Health Canada FAQ says writes: http://www.hc-sc.gc.ca/dhp-mps/marihuana/info/faq-eng.php "Various surveys published in peer-reviewed literature have suggested that the majority of people using inhaled or orally ingested cannabis for medical purposes reported using approximately 1-3 grams of cannabis per day. While there are no restrictions under the new Marihuana for Medical Purposes Regulations on the daily amount that you may recommend, there is a possession cap of the lesser of 150 grams or 30 times the daily amount."

101. No Standard Deviations for their averages sampled were provided to give us an idea of the spread of the Bell curve around those averages. But the poll reporting 1g had half its results under 1g and half over 1g.

102. Some reputable polls use 1 Standard Deviation for the Bell Curve around their survey's estimated average to say: 1g/day plus or minus .5g/day 68% (2/3) of the time." 1/3 of the results are outside under the end tails of the curve, half that, 1/6th under the over-estimate tail. An over-estimate of 3.5g when it's really 3g happens 1/6 of the time: 5:1 against.

103. An over-estimate of 2g is 2 Standard Deviations off the average 1g. That's 1 time in 40. Sampling an over-estimate of 2.5g is 3 S.D. off = 1/700. Sampling an over-estimate 3g is 4 S.D. off = 33,000:1. Tables in books stop there but sampling an over-estimate of 6g, 6 S.D. off, is in the millions to one against.

104. Yet the other survey polled the majority of its results around 3g while the other poll says it's 33,000:1 against hitting 3g even once, let alone a sample average! Reputable polls cannot have one poll with triple the average of the other. It's 33,000:1 that both surveys could not be honest random samplings of the general population.

105. According to Health Canada statistics there are:
24,185 persons held PUPLs;
04,251 persons held Designated Grower (DG) licences
06,027 persons had access to Health Canada's supply.
Total 34,463 persons Authorized to Possess.

106. As of April, 2013, Health Canada authorized the production of 188,189K of Cannabis (marihuana) to be produced under the MMAR under the various licences during 2012. So: 188,198K / 34,463 patients / 365 days = 14.96g/day.

107. It is startling to think that the actual Population Mean of 15 is known and Health Canada find survey Bell Curve samplings all around 3! or worse 1! Given the known mean, it's (15-3) * 2 half-gram deviations = 24 S.D. against that 3g survey being unbiased, trillions to one against. It's (15-1)*2 = 28 Standard Deviations, 4 more S.D., against that 1g survey being unbiased. For any surveys sampling a population with known mean of 15g that claim any results with Bell Curves around averages of 3g or 1g (plus or minus some fraction of their small estimated average) cannot be taken as valid or honest. The fix was in.

108. Health Canada's 150g monthly limit is based on its maximum 5g/day recommendation given those biased survey sample averages of 1-3g/day! A factor of 1.67 over the highest 3g/day survey sample would seem reasonable given the odds against anyone needing as much as 5g/day with a 3g/day true mean at .5g/day per Standard Deviations is 4 Standard Deviations off, 33,000:1. Nice safety margin.

109. Given the true population mean is 15 grams, a month's supply for the average patient would be 450g! And given Health Canada's 1.67 safety factor for those dosages above average, that would be 750 grams maximum per delivery. Health Canada offers supply 5 times too slowly.

110. There is no provision for how an LP may ship in 150 gram packages dosages of 200g/day which would necessitate 40 deliveries per month with commensurate shipping costs in 20 weekdays and with a prohibition on possessing two 150-gram packages totally 300 grams both at the same time.

111. Given Health Canada used biased surveys when objective data was always available, it is submitted that the limit on the amount of cannabis possessed and shipped has been set too low based on false and misleading data and must be struck.

EFFECT OF MMAR AND MMPR CONSTITUTIONAL VIOLATIONS
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112. Plaintiff has suffered stress due to the myriad of defects in the both exemption regimes. All these torts generated by the MMAR have been raised herein to make the point that it the regime is hopelessly flawed ab initio in too many vital areas, not just recalcitrant and ignorant doctors appointed gate-keepers, and must be struck down in its totality as having failed to provide a acceptable medical exemption to the prohibitions.

113. For all the irremediable deficiencies demonstrated herein, Plaintiff submits the MMAR and MMPR medical marihuana regimes are fatally flawed and should be declared invalid legislation.

REMEDY UNDER THE CDSA

114. The Court of Appeal in Mernagh wrote:
"[11] Since this declaration of invalidity left no legislative scheme in place for people to obtain exemptions from the prohibitions in ss. 4 and 7 of the CDSA, the trial judge also declared those sections to be of no force and effect."

115. Plaintiff submits that BENO, the remedy Taliano J. ordered, followed from R. v. J.P. where the Ontario Court of Appeal wrote:
"[11] This court:. Having held in Hitzig, supra, that the MMAR did not create a constitutionally valid medical exemption, we can determine the merits of the respondent's claim that there was no charge of possession of marihuana in existence on April 12, 2002 on that basis. Viewed in light of our holding in Hitzig, the analysis of the respondent's claim becomes straightforward. As of April 12, 2002 when the respondent was charged, the prohibition against possession of marihuana in s. 4 of the CDSA was subject to the exemption created by the MMAR. As we have held, the MMAR did not create a constitutionally acceptable medical exemption. In Parker, this court made it clear that the criminal prohibition against possession of marihuana, absent a constitutionally acceptable medical exemption, was of no force and effect. [BENO] As of April 12, 2002, there was no constitutionally acceptable medical exemption. It follows that as of that date the offence of possession of marihuana in s. 4 of the CDSA was of no force and effect. The respondent could not be prosecuted. [BENO]

[14].. The Parker order by its terms took effect one year after its pronouncement. That order was never varied. After the MMAR came into effect, the question was not whether the enactment of the MMAR had any effect on the Parker order, but rather whether the prohibition against possession of marihuana in s. 4 of the CDSA, as modified by the MMAR, was constitutional. If it was, the offence of possession was in force. Paired with the suspension of the declaration in Parker, this would have the effect of keeping the possession prohibition in force continually. [Not BENO] If the MMAR did not create a constitutionally valid exception, as we have held, then according to the ratio in Parker, the possession prohibition in s. 4 was unconstitutional and of no force and effect. [BENO] The determination of whether there was an offence of possession of marihuana in force as of April 2002 depended not on the terms of the Parker order but on whether the Government had cured the constitutional defect identified in Parker. It had not. [BENO]

[16].. The determination of whether there was a crime of possession of marihuana in force on the day the respondent was charged turned on whether s. 4 combined with the MMAR created a constitutional prohibition against the possession of marihuana.

[31] The court in Parker, supra, declared that the marihuana prohibition in s. 4 was inconsistent with the Charter and consequently of no force or effect absent an adequate medical exemption. [BENO]

[32] By bringing forward the MMAR, the Government altered the scope of the possession prohibition in s. 4 of the CDSA. After the MMAR came into force, the question therefore became whether the prohibition against possession of marihuana as modified by the MMAR was constitutional. If it was, then the

possession prohibition was in force. [Not BENO] If the MMAR did not solve the constitutional problem, then the possession prohibition, even as modified by the MMAR, was of no force or effect. [BENO]

[33] There was no need to amend or re-enact s. 4 of the CDSA to address the constitutional problem in Parker. That problem arose from the absence of a constitutionally adequate medical exemption. [BENO] As our order in Hitzig demonstrates, the prohibition against possession of marihuana in s. 4 is in force when there is a constitutionally acceptable medical exemption in force. [Not BENO]

[34] We would dismiss the appeal

116. On the basis of the evidence of a Bad Exemption, Plaintiff seeks a:

A) A Declaration pursuant to s.52 (1) of the Canadian Charter of Rights and Freedoms ("the Charter") for an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A2) And that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from prohibitions in the CDSA on marihuana for the Plaintiff's personal medical use.

C) Or, alternatively, damages in the amount of $300- for loss of patient's marihuana, plants and production site.

The Plaintiffs propose that this action be tried in the City of Toronto, Province of Ontario.

DATED at Toronto on Feb 26 2014

JC Turmel

For the Plaintiff:

Name: John C. Turmel

Address: 50 Brant Ave
Brantford ON N3T 3G7

Tel/fax: 519-753-5122

Email: johnturmel@yahoo.com

File No: _____

FEDERAL COURT

BETWEEN:

John C. Turmel

Applicant

and

Attorney General of Canada

Respondent

ACTION UNDER R.169 OF
THE FEDERAL COURT RULES

STATEMENT OF CLAIM

For the Plaintiff:
Name: John C Turmel
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Email: johnturmel@yahoo.com

File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

RECORD OF MOTION

1. Notice of Motion
2. Plaintiff's Affidavit
3. Plaintiff's Memorandum

For the Plaintiff:
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For the Respondent:
Attorney General for Canada
130 King St. W. Toronto

File No: T-488-14

FEDERAL COURT OF APPEAL

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

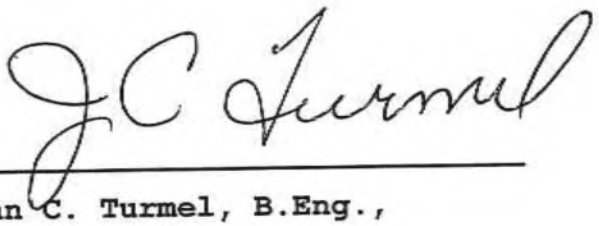
TAKE NOTICE THAT on Tuesday April 1 at 9:30am or as soon thereafter as can be heard the Plaintiff's urgent short notice motion at the Federal Court in Ottawa now that the Mar 7 2014 Direction of Chief Justice Crampton Ordering my motion stayed pending the determination of the Plaintiff's 'Motion' [not Matter] in T-2030-13 has ended with the Mar 21 2014 determination of the Motion in T-2030-13.

THE MOTION SEEKS an interim constitutional exemption from the prohibitions on marihuana in the CDSA for the Plaintiff's personal medical use pending trial of the Action.

THE GROUNDS ARE THAT the 36 major concerns raised about the medical marijuana regimes below were not heard in time to prevent Manson J. from imposing conditions based on fraudulent Health Canada survey data and testimony that would inflict on the group conditions of life calculated to bring about its physical destruction starting April 1 2014.

AND FOR ANY ORDER abridging any time for service or amending any error or omission which this Honourable Court may allow.

Dated at Brantford on Friday Mar 28 2014.



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TO: Registrar of this Court
Attorney General for Canada

File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL
Plaintiff

and

HER MAJESTY THE QUEEN
Respondent

NOTICE OF MOTION

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File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

AFFIDAVIT OF JOHN C. TURMEL, B.ENG.
(Expert in Mathematics of Gambling)

I, John C. Turmel, B. Eng., Canada's most-often court-accredited expert witness in the Mathematics of Gambling, make oath and give my expert opinion as follows:

A) 150-GRAM LIMIT FRAUD

1. The 150-gram personal possession limit imposed on Exemptees under the "Medical Marijuana Access Regulations" ("MMAR") and the "Marijuana for Medical Purposes Regulations" ("MMPR") under-medicates by a factor of 9 based on fraudulent surveys by Health Canada thus inflicting on the group conditions of life calculated to bring about its physical destruction in violation of S.318(2) of the Criminal Code of Canada.

2. On Feb 7 2014, Health Canada's Jeanine Ritchot swore in an Affidavit for the Federal Court case No T-2030-13 of Allard v. HMTQ in paragraphs 24-29 with regard to MMPR S.5, S.130, S.122, S.123 "must not possess or deliver more than 30 x Daily dosage or 150 Grams":

> 24. 36,797 ATPs up to December 11 2013.
> 25. 675,855 daily grams prescribed in 2013.
> 26. Average licensed indoor plants 101, outdoor 11.
> 27. Average daily amount 17.7g/day on Dec 12 2013.
> 28. According to Ex. A "Information for Health Care Professionals" at page 24 "Various surveys published in peer-reviewed literature have suggested that the majority of people using smoked or orally-ingested cannabis for medical reasons reported using between 10-20 grams of cannabis per week or approximately 1-3 grams [Average of averages 1-3 = average 2] of cannabis per day."
> 29. Individuals who purchase their dried marijuana from Health Canada have on average purchased 1-3 grams per day, [Average of 1-3 = 2] which is in line with daily dosages set out in the most current scientific literature referenced "Information for Health Care Professionals" Ex.A"

3. 675,855/36,797 = 18.37g/d. I'll use 18g/d from now on. 101 plants average is based on average 20g/d prescribed, a factor of 5. After two emails from me requesting the cited surveys and peer-reviewed journals, Health Canada has not been able to provide that information.

4. The "Information for Health Care Professionals" states:

> "Minimal therapeutic dose and dosing ranges
> Various surveys published in the peer-reviewed literature have suggested that the majority of people using smoked or orally ingested cannabis for medical purposes reported using between 10 - 20 g of cannabis per week or approximately 1-3g [Average = 2g] of cannabis per day. Footnote 165, Footnote 277, Footnote 350.

5. There is something inherently wrong with speaking of a 1-3 gram average. The average of the averages is 2 grams. Averages are not stated as ranges. They are a point, an average. The fact we're given a two averages suggests improper or incompetent statistical analysis.

6. Footnote 165:

> (1) Clark, A. J., Ware, M. A., Yazer, E., Murray, T. J. and others. (2004). Patterns of cannabis use among patients with multiple sclerosis. Neurology. 62: 2098-2100. The sample size was 144 was calculated to detect an estimated prevalence of 10% with a 2.5% standard error.

7. Clark's study only discusses "single-dose size" and says not a word about daily dosage at all and results with the sample of only Muscular Dystrophy patients is hardly indicative of the average dosage for all other illnesses. 25% of the mean is a pretty big error due to the small n. Significance was set at the 95% level, that 2 Standard Deviations according to the Statistics Rule of 66-95-99.7: (1SD: 66% 2SD: 95% 3SD: 99.7%).

8. Footnote 277,

> (2) Carter, G. T., Weydt, P., Kyashna-Tocha, M., and Abrams, D. I. (2004). Medicinal cannabis: rational guidelines for dosing. IDrugs. 7: 464-470: "In informal surveys from patients in Washington and California, the average reported consumption ranges between 10-20g raw cannab is per week or 1.42-2.86g/day..

9. Carter's study has informal surveys for its guestimate, not peer-reviewed at all.

10. Carter continues:

> Our recommended doses are further reinforced by two studies that utilized smoked cannabis in a well-documented dosing regime... (3) Chang and co-workers studied the effects of smoking 3.6 gram/day containing 15% THC... (4) Vinciguerra studied smoked cannabis dosed at 1.5 g/day.. These doses fall within the medical cannabis guidelines in the Canadian medical system.

11. Chang's study on 3.6g/day can't be found by Google but cannot tell us the average rams smoked by the general population. If everyone got 3.6 grams, that's the average they would sample. Neither can (4) Vinciguerra's study on the effect of 1.5g/day tell us the average smoked in the general population. If everyone got 1.5 grams, that's the average they would sample. So there's no way their "recommended doses are further reinforced by two studies that utilized smoked cannabis in a well-documented dosing regime." Fixed dosing regimes!!

12. Footnote 350.

> (5) Ware, M. A., Adams, H., and Guy, G. W. (2005). The medicinal use of cannabis in the UK: results of a nationwide survey. Int.J.Clin.Pract. 59: 291-295.

13. Ware's survey gives no dosage average at all, and even if it did, over half the survey quit for lack of access or affordability! With more than half having a hard time getting it, an artificially-low average would be expected.

14. On Feb 7 2014, Health Canada's Todd Cain's affidavit in the Allard proceeding at paragraphs 30-31:

> "30. Health Canada took significant steps to project demand and available supply for medical use. In anticipating demand, Health Canada took into account available information on numbers of individuals licensed to use dried marijuana for medical purposes, the upward trend in that number, the daily dosage amounts identified in the most current scientific literature and international practice around dosage, as set out in the "Information for Health Care Professionals" available online at http://hc-sc.gc.ca/dhp-mps/marihuana/med/infoprof-eng.php

15. It was fraudulent for Health Canada to "rely on the daily dosage amounts identified in the most current scientific literature and international practice around dosage" and not rely on the actual daily dosage prescribed from the available information on numbers of individuals licensed to use dried marijuana for medical purposes and total production licensed.

16. Todd Cain continues:

> 31. The "Information for Health Care Professionals" document, at page iii states that "following the most recent update to this document (Feb 2013) a study was published in the Netherlands tracking data obtained from the Dutch medical cannabis program over the years 2003-2010. The study reported that in a population of over 5,000 Dutch patients using cannabis for medical purposes, the average daily dose of dried cannabis (various potencies) used was .68 grams per day (Range 0.65-0.82 grams per day) (Hazencamp and Heerdink 2013).

17. Google doesn't find the Hazencamp and Heerdink 2013 survey in the Netherlands with the only mention being in Todd Cain's Affidavit, certainly not yet in any published journal. He continues:

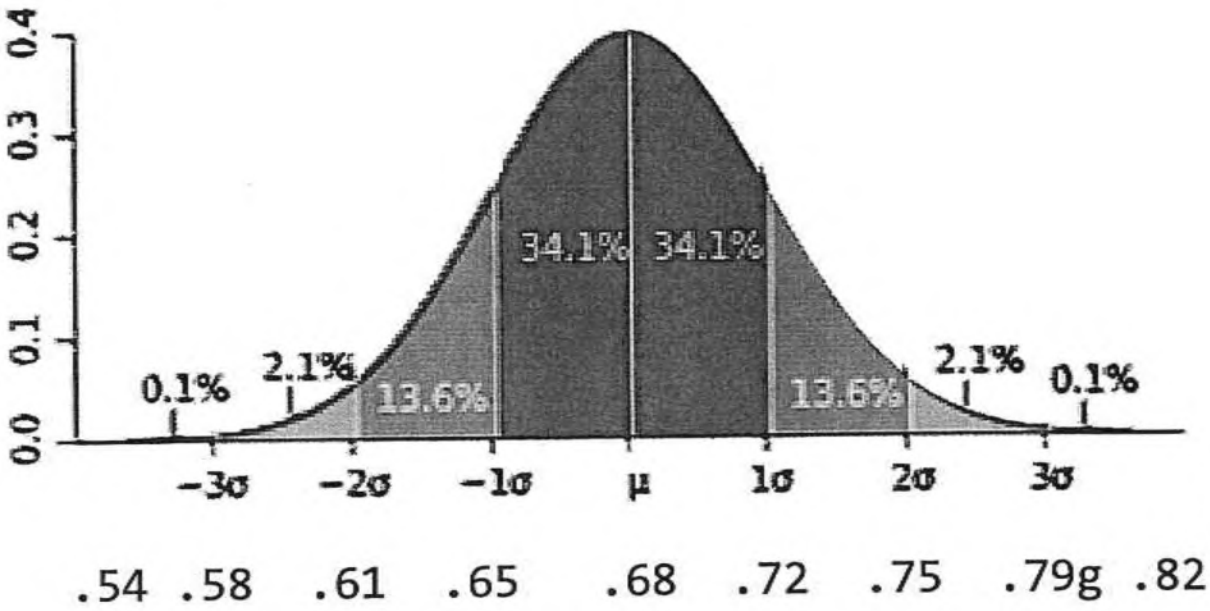
> In addition, information from Israel's medical marijuana program (7) suggests that the average daily amount used by patients was approximately 1.5 grams of dried cannabis per day in 2011-2012 (Health Canada personal communication)."

18. A "personal communication" from Israel ("Hey Izzy, suggest a number!") is not a survey in a peer-reviewed journal on Israel's medical marijuana program suggesting the average daily amount used by patients was approximately 1.5 grams of per day in 2011-2012.

19. Of the studies cited at Health Canada's "Information for Health Care Professionals" page (1) Clark discusses single doses; (2) Carter has "informal surveys" citing (3) Chang

who studies fixed 3.6g/day, not different daily dosages, and (4) Vinciguerra who studies fixed 1.5g/d, again, not different daily dosage; (5) Ware doesn't mention daily dosage at all; (6) Hazencamp isn't found; (7) Izzy's suggestion shouldn't count.

BELL CURVE #1



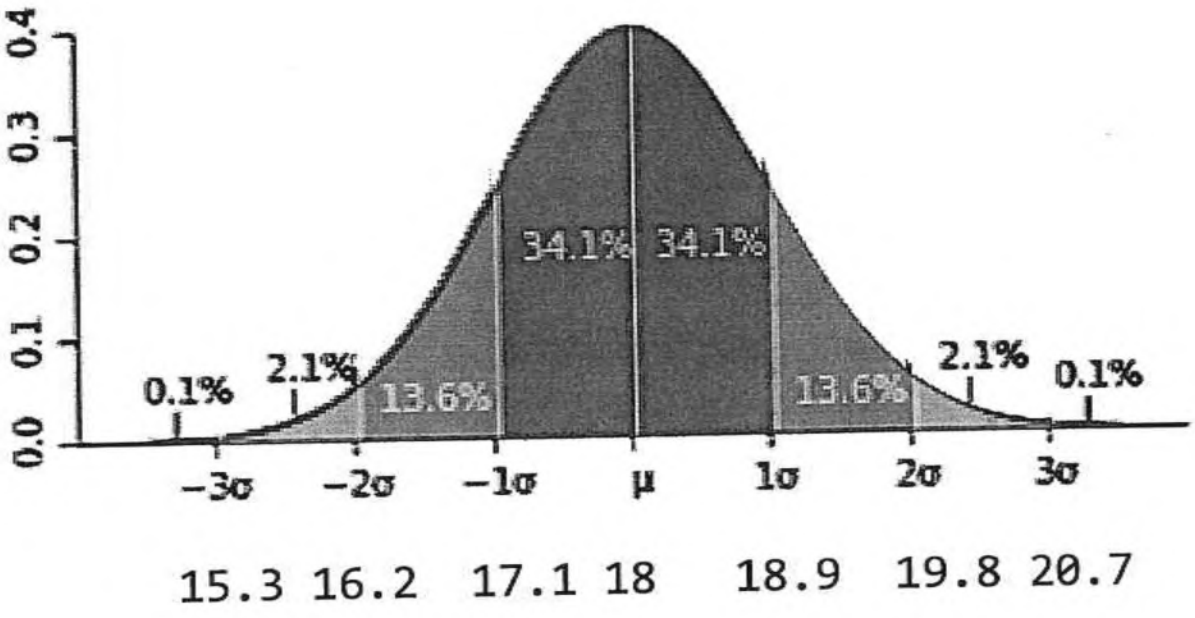
.54 .58 .61 .65 .68 .72 .75 .79g .82

20. Presuming the Hazencamp survey of 5,000 patients may exist, it stated the Standard Deviation Error for their Bell Curve range around their average of 0.68 was .065-0.72. Under the Bell Curve, half the results reported more and half reported less than 0.68g/d. Bell Curve #1 shows that 3,333/5,000 results (66%) fell between 0.65-0.72; and 4,750/5,000 results (95%) fell between 0.61-0.75. 4,985/5,000 (99.7%) fall within 0.575-0.785, and 4,999.7/5,000 (99.997%) fell within 0.54-0.82. It's 33,000:1 against a result exceeding 0.82g. It's millions to one against 0.9g/d. Billions to one against hitting 1g/d in that study.

21. Yet, Health cited the informal Israeli "survey" suggesting an average of 1.5g/d. For the Dutch 0.68 average survey to find someone consuming 1.5g/day is (1.50- someone notice the two polls contradicted each other? Reputable polls cannot have one poll with double the average of the other. It is completely improbable that both surveys could be honest random samplings of the general population consumption with the same parameters sought to define the 150g limit.

22. The actual Canadian mean of 18 is (18.0-.68)/.034 = 500 Standard Deviations that their Netherlands survey average!!! It cannot be an accurate representation of Canadian demand upon which to base the 150 gram limit! It would be a miracle that one, let alone the average of Canada's 40,000 users, should be so off the 0.68g/d average cited in the Netherlands survey.

BELL CURVE #2



23. Bell Curve #2 shows the actual known mean of 18 and presuming the same spread of 5% either side of the mean, that's 17.1-18.9g for 1SD, 16.2-19.8 for 2SD, 15.3-20.7 for 3SD and 14.4-21.6 for 4SD. For any surveys sampling a Canadian population with known mean of 18g to claim results with Bell Curves around averages of 3g [(18-3)/0.9 = 17SD] or 1g [(18-1)/0.9 = 19SD] cannot be taken as valid or honest. The fix was in. There were different parameters used.

24. So actually, not one of the studies cited in Health Canada testimony backs up the proposition that the proper estimated daily average of averages is 2 grams per day in the face of actual admitted evidence that it is 18 grams per day when self-produced. Not one article in any peer-reviewed journal suggesting daily dosage of 1-3g/d [Average = 2g] to validate the 5g/d, hence 150g per month, limit of 150 grams imposed by the new MMPR.

25. I had asked the court below to allow me to have our motion for the same relief on far more issues also heard before Justice Manson made his decision in Allard et al v. HMTQ, was refused. In his Mar 21 2014 decision, Manson J. stated:

> "iii. Speculation about the Effect of Limits on Personal Production
>
> [86] The Respondent also argues that the Applicants' concerns regarding the limits on personal possession under the MMPR are unfounded. The new limit of 150 grams limit was based on an average use of 1-3 grams [Average of 1-3 = 2] per day of medicinal marihuana by those being supplied

by Health Canada and reflects appropriate dosage amounts identified in scientific literature.

[87] As stated above, the harm alleged must not be hypothetical or speculative. It cannot be comprised of generalized assertions, unsupported by evidence and it must be real and substantial. However, harm that will occur in the future does not necessarily mean the harm is speculative. Instead, it is "...the likelihood of harm, not its futurity, which is the touchstone" (Horii v Canada, [1991] FCJ No 984 at para 13).

[88] Paragraph 59 in RJR-MacDonald also alludes to a wrinkle in interlocutory injunctions in the context of this motion. The ability to compensate in damages, a traditional measure of what constitutes reparable harm, is complicated in constitutional cases, as damages are presumptively unavailable against the government for enacting unconstitutional legislation in the absence of bad faith or an abuse of power (Mackin at paras 78-80). I consider the Applicants' citation of RJR-Macdonald at para 61 to be apt: "...it is appropriate to assume that the financial damage which will be suffered by an applicant following a refusal of relief, even though capable of quantification, constitutes irreparable harm.

[89] Turning to the evidence, I agree with the Respondent that there is inadequate evidence to show that there will be an insufficient supply of marihuana under the MMPR. Mr. Cain details in his affidavit the steps that Health Canada has taken to forecast consumer demand and the various contingencies put in place to deal with a

> shortfall, including stockpiling marihuana and arranging for imports, if necessary. The Applicants' argument with regard to supply amount to nothing more than speculative assertions.
> [91] The Applicants also have failed to prove that the 150 gram personal possession limit imposed by the MMPR would constitute irreparable harm.

26. Because our motion was not on the docket to point out Health Canada's fraudulent statistical evidence, Justice Manson has now based his ruling on Health Canada's perjured testimony. His 150g monthly limit derived from Health Canada's average 2g/d survey samples is actually 9 times too low! Given the true population mean is 18g, not 2g, a month's supply for the average patient would be 540g rather than 60g (30g-90g)! And given Health Canada's 2.5 safety factor for those dosages above average, that would be not 150 grams maximum per delivery but 1,350 grams shippable!! Health Canada offers supply 9 times too slow supply, an underestimate of 89%!

27. As well, none of the Allard Plaintiff's are large users while Laurence Cherniak's latest prescription was for 200g/d. How could Justice Manson have explained a 150-gram limit to those with prescriptions greater than 150 grams per day if they had been there?

28. Justice Manson noted in Para.55 that despite a daily average of 18g/d total prescription, Health Canada's retail sales were 1-3g/d [Average = 2g/d]. To impose on the group a new limit based not on actual total volume prescribed but on retail sales with the home-grown production excluded was a serious mis-under-estimate of true demand.

29. Given Health Canada has no peer-reviewed surveys upon which to base their regularly-cited 2g/d average of averages when objective data was always available of the average being 18g/d, it is submitted that the 150 gram limit on the amount of cannabis possessed and shipped has been set 9 times too low based on false and misleading testimony and evidence.

B) POOR NO LONGER HAVE AFFORDABLE ACCESS TO SELF-GROW

30. Letting the MMAR expire has left all Canadians who cannot afford MMPR prices unable to grow an affordable supply for themselves legal and most will be compelled to face the Parker Predicament, Health or Jail?, which was ruled in violation of S.7 of the Charter. Failing to safety the sick among the poor with the sick among the rich inflicts on the poor group conditions of life calculated to bring about its physical destruction.

GENOCIDAL EFFECT

31. The Criminal code states:

> Definition of "genocide"
>
> 318. (2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,
>
> (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

32. Health Canada's fraudulently under-estimate of the average cannabis dosage required by MMAR and MMPR patients has induced Manson J. to "inflict on the group conditions of life calculated (89%) to bring about its physical destruction."

33. Failure to permit affordable self-production does the same.

34. The Health Canada MMAR and MMPR program officials responsible for this genocidal fraud are Director Stephane Lessard, former Director Jeanine Ritchot, Asst. Director Louis Proulx, staffer Todd Cain, Minister of Health Rona Ambrose and Prime Minister Stephen Harper.

This Affidavit is made in support of a motion for:
1) an interim constitutional exemption from the prohibitions on marihuana in the CDSA for the Plaintiff's personal medical use pending trial of the Action.

Sworn before me at TORONTO, ON on MARCH 28 2014.

Plaintiff

TAINA WONG
REGISTRY OFFICER
AGENT DU GREFFE

A COMMISSIONER, ETC.

File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL
Plaintiff

and

HER MAJESTY THE QUEEN
Respondent

AFFIDAVIT OF
JOHN C. TURMEL, B.ENG.
(Expert in
Mathematics of Gambling)

For the Plaintiff:
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Email: johnturmel@yahoo.com

File No: T-488-14

FEDERAL COURT OF APPEAL

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

PLAINTIFF'S MEMORANDUM

PART I - STATEMENT OF FACTS

1. The Plaintiff, as have others claiming declaratory and financial remedy for violations of rights under S. 7 of the Charter, seek an Order:

A1) that the Medical Marihuana Access Regulations (MMAR) that came into force on Jul 30 2001 and the Marihuana for Medical Purposes Regulations (MMPR) that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable access to his/her medicine by way of a safe and continuous supply consistent with the S.7 Charter right is unreasonably restricted by the impediments to access and/or supply in the MMAR and/or MMPR;

A2) And that, "absent a constitutionally acceptable medical exemption," the prohibitions on marihuana in the Controlled Drugs and Substances Act (CDSA) are invalid and the word "marijuana" be struck from Schedule II of the CDSA.

B) In the alternative, pursuant to S.24(1) of the Charter, for a permanent Personal Exemption from prohibitions in the CDSA on marihuana for the Plaintiff's personal medical use.

C) Or, alternatively, damages in the amount of $300 for loss of patient's marihuana, plants and production site.

2. This motion is for an interim constitutional exemption for personal medical use pending trial of the action.

3. In the Affidavit of John Turmel, expert witness in Mathematics of Gambling, in T-488-14, he explains how the 150 gram limit on personal possession and shipments suggested by Health Canada and imposed by Manson J. was based on fraudulent surveys that suggested no such thing and end up under-medicating the whole class by a factor of 9, thus inflicting on the group conditions of life calculated (8/9) to bring about it's physical destruction in violation of S.318(2) of the Criminal Code.

4. The Allard ruling's failure to extend the MMAR makes it impossible for all who cannot afford Health Canada retail prices to get a self-grow for their own personal use, again inflicting on the group conditions of life calculated to bring about its physical destruction.

PART II - POINT OF ISSUE

5. A) Does the the MMPR's 150-gram limit that under-medicates by a factor of 9 inflict on the group conditions of life calculated to bring about its physical destruction sufficient reason for interim relief?

6. B) Does eliminating access through self-production for whom the MMPR is unaffordable sufficient reason for interim relief?

7. C) Is "for personal medical use" sufficient limitation to comply with Justice Manson's demand in refusing Allard's motion for exemption "without limitation."

PART III - SUBMISSIONS

8. The recent decision in Allard represents the interests of the COALITION AGAINST MMAR REPEAL who possess Authorizations To Possess ("ATPs") under the Medical Marijuana Access Regulations ("MMAR"). They seek to declare the MMPR constitutionally invalid only to the extent that 4 minor cosmetic flaws to leave the regime constitutional:
a) prohibition on non-dried forms of cannabis,
b) prohibition on production in a dwelling;
c) prohibition on outdoor production;
d) prohibition on possessing and dealing more than 150g;
or for an extension of the MMAR and its associated privileges.

9. We seek to have the MMPR declared invalid because of the many more fatal deficiencies to the point the regime is so full of holes, it is in effect invalidated. It is submitted

our larger list of constitutional violations alleged that those addressed in the Allard mini-list should be addressed before Mar 31 2014 when many Plaintiffs' Authorizations to Possess expire and before the group suffers too much damage. Those without ATPs and unhappy with the regime raise 16 other constitutional flaws to leave the regime in tatters:

1) Require recalcitrant doctor;
2) Not provide DIN (Drug Identification Number);
3) Require annual renewals for permanent diseases;
4) Require unused cannabis to be destroyed;
5) Refusal or cancellation for non-medical reasons;
6) Health Canada feedback to doctors on dosages;
7) Not provide instantaneous online processing;
8) Not have resources to handle large demand;
9) Prohibit non-dried forms of cannabis; * Allard a)
10) Not exempt from CDSA S.5.;
11) ATP valid solely as "medical document";
12) Licensed Producer may cancel for "business reason";
13) Prohibit return of medical document to cancelee;
14) Prohibit production in a dwelling; * Allard b)
15) Prohibits outdoor production; * Allard c)
16) Not protect rights to brand genetics;
17) Not remove financial barriers;
18) Not provide central registry for police verification;
19) Not have enough Licensed Producers to supply demand;
20) Prohibit processing > 150 grams. * Allard d)

10. Though the Coalition AGAINST MMAR repeal want it extended, those unhappy with the MMAR regime raise 6 additional concerns added to the first 10 in common with the MMPR to have it condemned:

MMAR 11) Require a specialist consultation;
MMAR 12) Require conventional treatments be inappropriate;
MMAR 13) Prohibit more than 2 licenses/grower;
MMAR 14) Prohibit more than 4 licenses/site;
MMAR 15) Number of plants limit improper;
MMAR 16) Not allow any gardening help.

11. There are a lot of ailing an angry Canadians who do not like the MMAR and do not want to pin our hopes on a 4-pea shooter to fix the regime when we all have our own 36-barrel Gatling-guns ready to blow them both full of holes.

13. A) It is brought to the Court's attention that a genocidal under-medication of a whole class of patients takes effect when Justice Manson's under-evaluated limit takes effect on April 1 2014. This is no April Fool's joke, Health Canada are about to kill people and must be prevented by the court from accomplishing it's deadly objectives. Plaintiff submits that the fraudulent surveys and perjured testimony used to convince the court in Allard to impose some genocidal conditions is of such urgency as to warrant the expeditious attention of the Court.

14. Given this question of genocide, and given the Ministry of Justice has had almost a month to study the statistics of the fraud, Plaintiff's only hope is for a constitutional exemptions from the CDSA for personal medical use.

15. B) It is submitted that Justice Manson has allowed the whole of the population who cannot afford Health Canada's retail prices to be able to self-produce at affordable prices and only an exemption for personal medical use is suitable remedy.

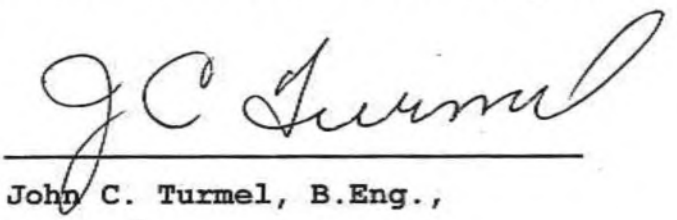
16. C) In Para. 124 of his decision, Justice Manson refused constitutional exemptions to Allard because "the relief sought would grant them exemption from the provisions of the CDSA without limitation." It is submitted that "for personal medical use" is a reasonable limitation on the exemption.

17. Though some Plaintiffs with ATPs may benefit from having their exemptions extended under the deficient MMAR, but whatever comes of the ATPs case has nothing to do with the motions of those without or those with who are not satisfied by the regime. After all, they are the Coalition AGAINST REPEAL and we are FOR REPEAL! And "absent a constitutionally viable medical exemption," the prohibitions against marijuana in the CDSA cannot have force or effect.

PART IV - ORDER SOUGHT

18. For these and other constitutional violations alleged in the Statement of Claim, Plaintiff seeks an Order for an interim constitutional exemption from the CDSA prohibitions on marihuana for Plaintiff's personal medical use pending trial of the Action.

Dated at Brantford on Friday Mar 28 2014.



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TO: Registrar of this Court
Attorney General for Canada

AUTHORITIES
No Authorities relied on

REGULATIONS CITED
No regulations cited.

File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL
Plaintiff

and

HER MAJESTY THE QUEEN
Respondent

PLAINTIFF'S MEMORANDUM

For the Plaintiff:
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File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL
Plaintiff

and

HER MAJESTY THE QUEEN
Respondent

RECORD OF MOTION

For the Plaintiff:
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THIS IS EXHIBIT "23" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

John Turmel
March 2, 2014 ·

Jct: Going in to Toronto tomorrow to file Terry Parker and Wayne Robinson and friends and am meeting another in Hamilton to join us. Anyone wanting to file tomorrow can meet us in Hamilton as we go by.
Let me know. 7 Copies of the Statement of Claim and 5 copies of the Record of Motion and your fee and you get a gold star proving you were in on the kill for your trophy wall.

Like Comment Share

11

1 share


Cheri Lin Shaw do you have a link to dl the kits? i'm goin blind and can't type as fast as you talk...i watched your video tho, tyvm

March 2, 2014 at 1:42pm · Like · 1


Diane Dobbs First 2 links at top:
http://johnturmel.com/kits.htm

> Fight your marijuana charges kits
> JOHNTURMEL.COM

March 2, 2014 at 3:02pm · Like


Gwen Anger wish i could meet with you in TO or Hamilton , and file to get a gold star , if we could do this by mail or fax i'm, in just email me papers to file gwen69er@hotmail.com- thanks John go get them bud

March 2, 2014 at 3:20pm · Like


John Turmel Everything needed is at the http://johntumel.com/kits.htm page.

March 2, 2014 at 3:40pm · Like · 1


John Turmel There will be an update by tomorrow morning though. Probably by later tonight with some Bell Curve graphs to prove the fraud even more but it doesn't matter what model you have.

March 2, 2014 at 3:40pm · Like · 1


Gwen Anger The requested URL "http://johntumel.com/kits.htm" cannot be found or is not available. Please check the spelling or try again later. thats what i get

March 2, 2014 at 3:41pm · Like


John Turmel http://johnturmel.com/kits.htm

> Fight your marijuana charges kits
> JOHNTURMEL.COM

March 2, 2014 at 3:44pm · Like · 1


Rebecca Raye Where are you meeting in Hamilton and at what time I have a few people including myself interested

March 2, 2014 at 9:05pm · Like


John Turmel Usually, Ancaster Tim's but we can always meet at the Tim's on King St. near the 403 or anywhere else near the 403 you can suggest.

March 3, 2014 at 1:55am · Like


John Turmel Jct: Why do I use "government levers" to pry open my rights, when as you say, I don't need permission to live my life the way I choose. Of course, living it in jail is not quite how I choose to live it. So I have to face reality, remain grounded in reality, evidently not something you're too good at. In 3 short sentences, you leave me concluding you're an ungrounded, unstable, illogical, and hallucinating lunatic. Sorry for the truth. Keep out of my world. "Sovereign under God" in your jail cell! Har har har!

How sovereign?

March 3, 2014 at 7:06am · Edited · Like

John Turmel Jct: Go hallucinate with someone else. I'm not into fiction.

March 3, 2014 at 7:26am · Like

Gary Pallister What time are you going to be there?Mamahawk n I were going to file today

March 3, 2014 at 7:26am · Like

John Turmel Jct: Didn't I ask you to go hallucinate somewhere else? I'm not interested in your pessimistic fictional ravings.

March 3, 2014 at 7:31am · Like

John Turmel Jct: No, I'm the one who believes they need a key from a real jail cell, you're the one hallucinating about permission from the fiction of your mind. To me, it's a real cell, no fiction involved. So a fictional solution really isn't fiting to a real world situation, is it? Oh right, you're not grounded in reality.

March 3, 2014 at 7:34am · Like

John Turmel Jct: I used it to make them drop 4,000 charges in 2003. I guess I'm not quite as inmcapacitated by the fictional hallucination as you are. Kind of fun hearing the fictional thinking of the mentally impaired.

March 3, 2014 at 7:35am · Like

John Turmel Jct; Finally, we agree, one of us is.

March 3, 2014 at 7:36am · Like

John Turmel Yes, I'm the King of reality, you're the one hallucinating the illusion.

March 3, 2014 at 7:37am · Like

John Turmel Jct: Getting 4,000 charges dropped means nothing "in fact?" Har har har. In your fragile mind, maybe.

March 3, 2014 at 7:38am · Like

John Turmel Jct: I've laughed at enough non-reality for one day. Go rave somewhere else.

March 3, 2014 at 7:42am · Like

Joshua Bertrand I enjoyed this video.. I am curious, could the same concept be applied to titles of Countries ? in that titles of countries are fictions as well, ie. "CANADA" is a corporate entity listed on the SEC as being in "DC" can the same arugment or logic in your video be applied in that manner ? ... example ... R v Parker = the people of canada / state v parker ... and I'm sure majority of people in canada would side with Terry Parker (lets not mention that we cannot fit 35 million people in the courtroom) ... another example would be say Parker vs Canada or Parker vs Her Majesty the Queen ... if the queen is not present at the trial etc.. how can that go forward at all ? anything in all capitals is representative of A "legal fiction" ... and Canada being listed on the SEC is evidence that "CANADA" is a legal fiction ..

March 3, 2014 at 10:06am · Edited · Like

Joshua Bertrand I was able to pull up the text file indicating further ... whats really interesting at play here is their "fiscal year end" being "0331" if you convert that by any Julian Calendar converter you will learn it = BCE 4713 November 27 12:00:00.0 UT Wednesday ... how is that even possible ? who was around in that period of time to confirm or verify thats our fiscal year end? Lol time travellers?

March 3, 2014 at 9:52am · Edited · Like

Joshua Bertrand watching this now.. thanks!
March 3, 2014 at 10:53am · Like

Joshua Bertrand good point.. here's a question
March 3, 2014 at 10:56am · Like

Joshua Bertrand say i revoke my status somehow as a corporate entity by filing paperwork to create my own society or whatever and such.. i move off the grid, and revoke all government assitance so much as that i refuse to pay taxes etc.. going with free man on the land here.. now i break my arm or get cancer for XYZ reasons.. how am i entitled to assistance if im not paying taxes so on and so forth ? how does that work ?
March 3, 2014 at 10:57am · Like

Joshua Bertrand like i file UCC 1 like @ http://loveforlife.com.au/.../steps-file-ucc1-financing...

The Steps To File A UCC1 Financing Statement | Love for Life

LOVEFORLIFE.COM.AU

March 3, 2014 at 10:58am · Like

Joshua Bertrand okay well thats not what i intended you to interpret it as, but how can you get help ?
March 3, 2014 at 10:59am · Like

Joshua Bertrand gotcha
March 3, 2014 at 11:00am · Like

Joshua Bertrand lol i would have fun trying to persuade a dr. in that manner... i know what you are saying, it just seems unreasonable for a Dr. to entertain that, but i mean if you explained everything perhaps they'd express their sympathy towards you
March 3, 2014 at 11:02am · Like

Joshua Bertrand yeah have an ex dr on hand in your society etc..
March 3, 2014 at 11:02am · Like

Joshua Bertrand did you file a UCC1 ?
March 3, 2014 at 11:03am · Like

Joshua Bertrand it is applicable to Canadians as much as everyone else i believe,, correct?
March 3, 2014 at 11:04am · Like

Joshua Bertrand yeah exactly.. i understand that
March 3, 2014 at 11:06am · Like

Joshua Bertrand thanks for the help!
March 3, 2014 at 11:06am · Like

Joshua Bertrand i see i see.. the loveforlife link i think has all the info on that subject .. http://loveforlife.com.au/.../steps-file-ucc1-financing...

The Steps To File A UCC1 Financing Statement | Love for Life

LOVEFORLIFE.COM.AU

March 3, 2014 at 11:07am · Like

Joshua Bertrand yeah eh, those are all good points
March 3, 2014 at 11:11am · Like

Joshua Bertrand very well said I like that one... and your right that is true.. they cannot impose that
March 3, 2014 at 11:13am · Like

Joshua Bertrand great point

March 3, 2014 at 11:21am · Like

James Peter Gallant not everyone wants to be a Freeman , calling people down because they want to change the laws for those who chose to live within the system is quite arrogant.

March 3, 2014 at 1:13pm · Like · 1

Joshua Bertrand good point.

March 3, 2014 at 2:00pm · Like

James Peter Gallant Yup agreed , but it's not something to put others down for.

March 6, 2014 at 10:56am · Like · 1

THIS IS EXHIBIT "24" mentioned and referred to in the affidavit of LISA MINAROVICH SWORN before me by affiant in the City of Brampton, in the Regional Municipality of Peel, in the City of Toronto in the Province of Ontario this 31st day of MAY, 2022 in accordance with O. Reg. 431/20.

A COMMISSIONER FOR TAKING AFFIDAVITS

T-616-14 547

Federal Court Cour fédérale

Date: 20140310

Court File Numbers:

T-518-14	T-516-14	T-517-14	T-538-14
T-539-14	T-485-14	T-486-14	T-487-14
T-488-14	T-540-14	T-543-14	T-545-14
T-546-14	T-564-14	T-530-14	T-531-14
T-532-14	T-513-14	T-523-14	T-553-14
T-560-14	T-561-14	T-565-14	T-566-14
T-567-14			

Ottawa, Ontario, March 10, 2014

PRESENT: The Chief Justice

In the matter of numerous filings seeking a declaration pursuant to s. 52 (1) of *the Canadian Charter of Rights and Freedoms ("The Charter")*;

and

In the matter of numerous motions requesting interim or interlocutory relief pursuant to s. 24(1) of *The Charter* with regards to changes to the *Marihuana Medical Access Regulations ("MMAR") and the Marihuana for Medical Purposes Regulations ("MMPR".)*

AMENDED DIRECTION

1. **UPON** noting that the Federal Court Registry has received numerous filings seeking a declaration pursuant to s. 52 of *the Canadian Charter of Rights and Freedoms ('The Charter")* that the changes to the *Marihuana Medical Access Regulations ("MMAR")*

and the Marihuana for Medical Purposes Regulations ("MMPR") are unconstitutional ;

2. **AND UPON** noting that the Plaintiffs' on these filings have filed or are in the process of filing Motion Records seeking interim or interlocutory relief pursuant to s. 24(1) of *The Charter* with regards to changes to the M*MAR and the MMPR;*

3. **AND UPON** noting that the Court has already scheduled a hearing date on Tuesday, March 18, 2014 in Vancouver, in Court file no. T-2030-13 (NEIL ALLARD and others v. HMTQ) regarding the Plaintiffs' motion for interim and interlocutory relief, on the very same issues;

THIS COURT DIRECTS THAT:

1. The above captioned proceedings are stayed pending the determination of the Plaintiffs' motion in T-2030-13;

2. All other filings/Motions seeking the same or similar relief are also stayed pending the determination of the Plaintiffs' motion in T-2030-13;

3. These types of proceedings are not appropriate for General Sittings. If the stay mentioned above is lifted, any motion seeking the same or similar relief is to be scheduled by way of Special Sitting;

4. Until further notice from the Court, no further steps are to be taken on these matters.

5. A copy of this Direction is to be placed on all Court files relating to these specific types of Claims.

"Paul S. Crampton"
Chief Justice