Court File No. _____

_____ COURT OF _____

Criminal Division - _____ Region)

Between:

_____

Applicant/Accused

and

Her Majesty the Queen

Respondent/Plaintiff

RECORD OF APPLICATION TO QUASH

AND RETURN OF CONTROLLED SUBSTANCE

(C.C.C S.601 and C.D.S.A S.24, not the Charter)

TABLE OF CONTENTS

For the Applicant/Accused:

Name: _____

Address: _____

Tel: _____

Fax: _____

Email: _____

For the Respondent:

Ministry of Justice

_____

_____

Court File No. _____

_____ COURT OF _____

Criminal Division - _____ Region)

Between:

_____

Applicant/Accused

and

Her Majesty the Queen

Respondent/Plaintiff

NOTICE OF APPLICATION TO QUASH

AND RETURN OF CONTROLLED SUBSTANCE

(C.C.C S.601 and C.D.S.A S.24, not the Charter)

TAKE NOTICE THAT on _____, 20__ at _____ a Non-Constitutional Application pursuant to S.601 that raises no Constitutional Question will be heard by any Judge, not a Justice of the Peace, with leave if the Accused has pleaded, at the Courthouse at _____

THE APPLICATION IS FOR AN ORDER:

A) quashing Accused's marijuana charges as still unknown to law since the possession on marijuana in S.4 of the CDSA was invalidated in R. v. Parker [2000] and the production of marijuana in S.7 of the CDSA was invalidated in R. v. Krieger;

2) the seized Controlled Substance be returned to Applicant upon completion of the prosecution pursuant to S.24 of the CDSA.

AND FOR ANY ORDER abridging any time for service or amending any error or omission as to form, color, font, margins, content which the Honourable Justice may allow.

THE GROUNDS OF THE APPLICATION ARE that S.32(a) of the retation Act states that once the Ontario Court of Appeal quashed the possession charge in R. v. J.P. [2003] ruling that after their Hitzig v. HMQ [2003] ruling had declared the MMAR constitutionally defective, the R. v. Parker [2000] Order declaring the prohibition on marijuana in S.4 of the CDSA invalid came into force while the exemption was deficient. So too, the Smith Worse "Bad Exemption" [2015] by regulated Mis-Use of medication; and the Allard v. HMTQ [2016] decision that the MMPR was unconstitutional between April 1 2014 and Aug 24 2006 means there was "No Offence" in force after July 31 absent an acceptable medical exemption when the Accused herein was charged in 2002. This Court is bound by the Parker and Krieger declarations of invalidity as the judges in J.P. were.

JURISDICTION

1. S.601 states:
"Amending defective indictment or count
(1) An objection to an indictment preferred under this Part or to a count in an indictment, for a defect apparent on its face, shall be taken by motion to quash the indictment or count before the accused enters a plea...
Question of law
(6) The question whether an order to amend an indictment or a count thereof should be granted or refused is a question of law.
Definition of "court"
(10) In this section, "court" means a court, judge, justice or provincial court judge acting in summary conviction proceedings or in proceedings on indictment.

2. S.601 says an objection to amend a defective indictment must be made pre-plea to "a court" of first instance with power to amend the defective indictment so later judges only deal with valid counts. The indictment must be amended

before being sent to the Trial Court for plea and certainly before any evidence presented at a Preliminary Inquiry. Though it would be procedurally convenient to have the Trial Judge also rule on the S.601 amendments to the indictment, a Trial Judge is not even appointed until the Preliminary Inquiry judge has sent it further. Specific jurisdiction is only conferred upon one judge of the court once the Accused has pleaded before him. Until then, any other judge of the court may amend the indictment.

3. In R. v. J.P. (2003), Ontario Superior Court Justice Rogin noted that for that S.601 Quash Motion:

> **"[5] The Crown appeals to this court from this ruling. The Crown complains that notwithstanding that J.P.'s original application was not a Canadian Charter of Rights and Freedoms application... the factum specifically states that J.P. did not challenge the constitutionality of the regulations which Phillips J. found not to contain an offence."**

4. The Parker Charter Challenge ruled there was no prohibition absent a viable medical exemption. The Hitzig Charter Challenge ruled defects made the MMAR an unacceptably Bad Exemption. The J.P. non-Charter S.601 Quash Challenge ruled that the Hitzig Bad Exemption gave effect to the Parker invalidation of the Offence: Bad Exemption No Offence. The J.P. motion to quash was not a constitutional challenge all over again and neither is the Motion of the Accused herein.

5. In R. v. Marie-Eve Turmel [2016], Judge Desaulniers ruled her S.601 Motion to Quash was a constitutional question needing Notice to the provincial Attorneys General. A Notice of NO Constitutional question was served. On Nov 11 2016, Crown Attorney Moreau informed Judge Rosemarie Millar:

MS MOREAU: ... what was notified to the Attorney General is a Notice of no Constitutional question, in the sense from what I understand from the motion, is that Ms. Turmel isn't contesting the constitutionality. She's stating that it already is unconstitutional and of no force and effect, and therefore, the indictment should be quashed. So it's a motion by virtue of 601 of the Criminal Code, is what I understand, to quash the indictment on the basis that it's already unconstitutional. And it's been declared unconstitutional in other decisions, is what I understand. The Attorney General won't intervene because they don't understand it as a Constitutional question, and I'm prepared to proceed on the basis that it isn't.
COURT: Okay.

6. Under S.601, a typo in a wrong address may be amended by a judge of first instance. A defective count in the indictment may be quashed. It is not a question for the trial judge.

Dated at _____ on _____

_____
Applicant/Accused Signature

Name: _____

Address: _____

Tel: _____ Fax: _____

Email: _____

TO: The Registrar of the Court
TO: Ministry of Justice

Court File No. _____

_____ COURT OF _____

Criminal Division - _____ Region)

Between:

_____

Applicant/Accused

and

Her Majesty the Queen

Respondent/Plaintiff

APPLICANT'S FACTUM TO QUASH
AND RETURN OF CONTROLLED SUBSTANCE

PART I - FACTS

PARKER/KRIEGER: NO EXEMPTION = NO OFFENCE

1. In 1997, Justice Sheppard stayed possession and cultivation charges in R. v. Terrance Parker and granted an exemption from the offences.

2. On July 31 2000, the Ontario Court of Appeal in R. v. Parker declared the prohibition on possession of marijuana in CDSA s.4 to be invalid absent an adequate medical exemption (No Exemption = No Offence); said it would have also struck down the S.7 prohibition on production had it been before them; suspended 1 year for time to set up a viable

acceptable constitutional working medical exemption during which time Parker was exempted from the Cultivation and Possession prohibitions in the CDSA. Crown did not seek leave to appeal.

3. On Dec 11 2000, Alberta Superior Court Justice Acton adopted the reasons of the Ontario Court of Appeal to strike down the prohibition on cultivation in S.7! suspended 1 year; sustained by the Alberta Court of Appeal, Leave to Appeal to the Supreme Court of Canada denied.

4. On July 30, 2001, Health Canada issued the Marihuana Medical Access Regulations MMAR to comply with the requirement for an acceptable medical exemption to the prohibitions but with no time for Terry Parker to apply before his one-year exemption expired the next day.

5. On Aug. 1 2001, Terry Parker's court exemption lapsed without his being exempted in compliance with the Order of the Parker Court despite Health Canada's claim to have instituted a working exemption on time. A working application form was instituted on time for Parker, not a working exemption.

6. On Jan 2 2003, in R. v. J.P. (Youth) Ontario Provincial Court Judge Phillips quashed the charge for Possession of marijuana on the grounds the Accused's charge was laid in 2002 when the Parker invalidation of the S.4 prohibition on possession took effect when the MMAR did not provide a properly legislated medical exemption.

7. On Mar 18 2003, the Alberta Court of Appeal dismissed the Crown appeal. When the Crown did not obtain a stay from the the Court of Appeal or the Supreme Court, the Acton decision striking down the S.7 prohibition on production took effect. Leave to Appeal to the Supreme Court of Canada denied.

8. On May 16, 2003, Ontario Superior Court Justice Rogin dismissed the Crown's appeal. 4,000 marijuana charges laid while there was a Bad Exemption and No Offence starting on Terry Parker Day Aug. 1 2001 were stayed or withdrawn across Ontario.

9. On Oct 7 2003 in Hitzig v. HMQ, the Ontario Court of Appeal struck down the patients-to-grower and growers-to-garden caps in MMAR S.41 and S.54 that limited supply to the extent the exemption was illusory. Professor Alan Young had not asked to invoke the Parker and Krieger rulings to invalidate the prohibitions: Paragraph 170:

> **[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.**

10. But J.P. that same day had asked to strike the CDSA prohibition for absence of exemption! The Court of Appeal granted the Crown's appeal against the MMAR having been

improperly legislated but still sustained the quash of J.P.'s Possession Count because there was "No Offence" in force once their Hitzig ruling had established that a "Bad Exemption" made it absent.

> **[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. 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. 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.**
>
> **[15] The order made by Lederman J. in Hitzig in January 2003 did not address the prohibition against possession in s. 4 of the CDSA. While, according to the ratio in Parker, supra, Lederman J.'s determination that the MMAR did not provide an adequate medical exemption meant that there was no constitutional prohibition against possession of marihuana in s. 4 of the CDSA, Lederman J. did not make that declaration...**
>
> **[16]... 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...

[32]... 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. 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.

[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. 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.

[34] We would dismiss the appeal. [of the Crown]

11. Absent Exemption means Prohibition invalid is repeated no less than eight times!! twice in paragraph [14], in [15], [16], [31], [32], and twice more in [33]. A Bad Exemption means No Offence. BENO.

12. On Dec. 3 2003, and after Leave to Appeal the J.P. decision to the Supreme Court of Canada was not sought and with the Prohibition on Possession to be deemed repealed, the Crown stayed all remaining 4,000 Possession charges across laid during the Hitzig BENO period of invalidity, after July 31 up until October 7, 2003, sick or not, but did not stay any remaining production charges due to the Krieger invalidation of the S.7. prohibition from Mar 18 to Oct 7 2003.

13. On Dec 10 7 2003, Health Canada re-imposed the same patient-to-grower and growers-to-garden caps that had been declared unconstitutional in Hitzig which again prompted constitutional challenges!

SFETKOPOULOS

14. On Jan 10 2008, in Sfetkopoulos v. Canada, the Federal Court struck down the re-imposed cap on patients-to-grower. Once again Professor Alan Young had raised the Parker and Krieger rulings to invalidate the prohibitions but Crown Attorney Sean Gaudet did mention it to the Supreme Court:

> **"[33] The Court in R. v. J.P. ruled that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence between July 31 2001 and Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig. Courts may construe the Federal Court of Appeal's decision as creating a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) was re-introduced into the MMAR."**

15. Once again, the Exemption was found to be unconstitutional but this time, no charges laid during the period of invalidity back to Dec 3 2003 were stayed.

BEREN

16. On Feb 2 2009, in R. v. Beren, the Court found that the S.54 cap on growers-to-garden unconstitutionally limited supply making the exemption illusory and not only did not follow Parker and Krieger to declare the prohibitions invalid during the period of the defective regime but found the Accused guilty of the invalid prohibition.

MERNAGH

17. In R. v Mernagh [2012], once Ontario Superior Court Justice Taliano had ruled that over 90% of doctors not participating in the MMAR made the exemption unconstitutionally illusory, he did follow the Parker and Krieger decisions to strike down the S.4 Possession and S.7 Production prohibitions as well. Absent Exemption, Invalid Prohibitions.

18. The decision was overturned by the Ontario Court of Appeal and sent back for failure to ask the patients why their doctors refused. They might have had good reasons. Before the patients could testify to the non-medical reasons they were refused, the Crown stayed the charge and mooted the issue.

R. V. SMITH [2015]

19. The Supreme Court of Canada in Owen Smith [2015] declared the Regulations to be a far more genocidal violation of the Right to Life than any caps on gardening ratios in Hitzig: Mis-Application by prohibiting optimal use and mandating use in its most dangerous form, smoking, has violated the right to life of many more corpses over the life of the regime than any supply flaw ever did.

20. Of all the regulations designed by Health Canada to impede access and maximize mortality, prohibiting the most effective use of a medication and mandating its most dangerous form of ingestion has to be it. Dried bud on a nose cancer won't work, nor will smoking. Topical application takes prohibited oil. All good citizens with cancer who obeyed their exemption regulations could not use it to cure their tumors.

21. Also, given a reduction from 5 or even 10 grams of bud down to each gram of oil, prescriptions based on presumed smoking are therefore inordinately insufficient. A patient with the Health-Canada recommended maximum of 5 smokable dried grams per day gets 1/2 a gram of oil to apply to a 3-inch tumor?

22. The unconstitutional prohibition on optimal use found in Smith has been a far more genocidal violation of the patient right to life than any gardener ratios for supply could ever be. But that Court didn't follow Parker and Krieger either. So the Accused must move this Court to construe the Supreme Court of Canada's decision in Smith as creating a similar period of retrospective invalidity dating back to Aug 1 2001 the date that the flawed MMAR was enacted.

23. By the time Smith declared the the MMAR unconstitutional, it had already been repealed by the new MMPR on April 1 2014. For the whole of the MMAR, it was not a valid medical exemption.

ALLARD V CANADA [2016] MMPR

24. On Feb 24 2016, the Federal Court of Canada issued the landmark Allard v. HMQ that declared the MMPR to be unconstitutionally flawed. Justice Phelan ruled:

> **VIII. Conclusion**
> **[289] For all these reasons, the Court has concluded that the Plaintiffs have established that their s 7 Charter rights have been infringed by the MMPR and that such infringement is not in accordance with the principles of fundamental justice or otherwise justified under s 1.**
> **IX. Disposition and Remedy Disposition and Remedy**
> **[290] For these reasons, I find that the MMPR regime infringes the Plaintiffs' s 7 Charter rights and such infringement is not justified.**

[291] In several decisions regarding the MMAR, the Courts have struck out either certain provisions or certain words in certain provisions, but otherwise left the structure of the regulation in place. Most of these decisions related to criminal charges where such narrow, feasible and effective excising was appropriate.

[292] In the present case, the attack has been on the structure of the new regulation. It would not be feasible or effective to strike certain words or provisions. That exercise would eviscerate the regulation and leave nothing practical in place. The Defendant has recognized the integrated nature of the MMPR provisions.

[293] It is neither feasible nor appropriate to order the Defendant to reinstate the MMAR (as amended by current jurisprudence). It is not the role of the Court to impose regulations. The MMAR may be a useful model for subsequent consideration; however, it is not the only model, nor is a MMAR-type regime the only medical marihuana regime, as experience from other countries has shown.

[294] The remedy considerations are further complicated by the fact that there is no attack on the underlying legislation. Striking down the MMPR merely leaves a legislative gap where possession of marihuana continues as a criminal offence. Absent a replacement regulation or exemption, those in need of medical marihuana - and access to a Charter compliant medical marihuana regime is legally required - face potential criminal charges.

[295] It would be possible for the Court to suspend the operation of the provisions which make it an offence to possess, use, grow and/or distribute marihuana for those persons holding a medical prescription or medical authorization. However, this is a blunt instrument which may not be necessary if a Charter compliant regime were put in place or different legislation were passed.

[296] The appropriate resolution, following the declaration of invalidity of the MMPR, is to suspend the operation of the declaration of invalidity to permit Canada to enact a new or parallel medical marihuana regime. As this regime was created by regulation, the legislative process is simpler than the requirement for Parliament to pass a new law.

[297] The declaration will be suspended for six (6) months to allow the government to respond to the declaration of invalidity.

[298] The Plaintiffs have been successful and have brought a case that benefits the public at large. They shall have their costs on a substantial indemnity basis in an amount to be fixed by the Court.

"Michael L. Phelan" Judge F.C.C.

Vancouver, British Columbia February 24, 2016

25. On Aug 24 2016, the declaration of invalidity of the MMPR from April 1 2014 to Aug 24 2016 took effect but Allard counsel John Conroy had not sought to follow Parker and Krieger in also striking down the S.4 and S.7 prohibitions.

26. The order made by the Supreme Court of Canada in Smith [2015] and that made by the Federal Court of Canada in Allard did not address the prohibitions against marijuana in the CDSA. While, according to the ratio in Parker, supra, the Supreme Court's determination that the MMAR did not provide an adequate medical exemption meant that there was no constitutional prohibition against marihuana in the CDSA, just as in Hitzig, the Supreme Court nor the Federal Court made that declaration. They hadn't been asked.

R V. MCCRADY

27. In R. v McCrady, et al [2011], the Court explained:

> **The Beno Argument**
>
> **[28].. These appeals are some of many cases that have recently found their way to this court either as conviction appeals or attempts at prerogative remedies. They all turn on an argument referred to by the appellants as BENO (Bad Exemption = No Offence)... It was only in Hitzig that the effect of the Bad Exemption was to retroactively render of no force and effect the s. 4 CDSA possession prohibition as it related to marihuana. That order gave effect to the order of this court in Parker (2000). In Parker (2000), this court gave Parliament a year to fix the problem identified in that case. The effect of Hitzig was to find that Parliament had not succeeded. Hence the order in Parker (2000) declaring s. 4 as related to marihuana of no force and effect, took effect, but only until October 7, 2003. Put another way, the BENO argument only applied to the period from July 31, 2001 to October 7, 2003.**

PART II - ISSUE

28. A)1) Shall this Court follow the Ontario Court of Appeal's Hitzig Order that striking down and deeming to be repealed the flawed sections of the MMAR exemption revived the prohibitions on marijuana in S.4 and S.7 of the CDSA that were not in force during the period of Aug 1 2001 to Oct 7 2003, or follow Parliament's Interpretation Act S.32(a) that says repealing something in one Act (MMAR) cannot revive anything no longer in force in another Act (CDSA)?

29. A)2) Shall this Court quash the charge as newly deemed to be repealed since the MMPR exemption in existence at the time of the charge was ruled unconstitutional in Allard between April 1 2014 and

Aug. 24 2016 so that the prohibitions on marijuana in S.4 and S.7 of the CDSA declared of no force and effect during the period after July 31 2001 to Oct 7 2003 are still deemed to be repealed repealed without re-enactment by Parliament?

30. A)3) In an era when both Possession and Production are no longer prohibited, would a charge of Trafficking in a legal substance bring the administration of justice into disrepute?

31. B) If the prohibitions are invalid, should the seized controlled substance be returned to the Accused?

PART III - ARGUMENT

A)1) POLCOA: Parliament Only Legislates, Courts Only Abrogate

32. The Parker and J.P. Courts did not say Prohibition Invalid Absent Exemption only once, it said "absent." Not one time only. Since Smith, we know the exemption was absent from inception to repeal. Since Allard, we know the next exemption was absent form inception to repeal. Now with the ACMPR, Accused may have to raise a constitutional motion that declares that regime deficient.

33. The Order took effect only once but once is enough. The Interpretation Act Section 5(3) states:

> **"For the purposes of this Act, an enactment that has been replaced is repealed and an enactment that has expired, lapsed or otherwise ceased to have effect is deemed to have been repealed."**

34. The Hitzig Court erred in ruling:

> **[170]... 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.**

35. Interpretation Act Section 32(a) states:

> **"Where an enactment is repealed in whole or in part, the repeal does not (a) revive any enactment or anything not in force or existing at the time when the repeal takes effect."**

36. Whether the MMAR was repealed in whole or in part, striking down parts S.41 and S.54 of the MMAR does not revive the prohibitions not in force at the time in the CDSA when the repeal of the MMAR unconstitutionalities takes effect!! Yet this Hitzig court-ordered resurrection of the prohibitions out-of-force the previous 2 years has been followed by the courts since then.

37. It is elementary constitutional law that Parliament puts up the laws and the courts strike the bad ones down. Courts re-enacting penal sanctions that have been struck down is acting above their jurisdiction. No court is bound by court dicta which usurp the role of Parliament.

38. After 4 Parker judges and 4 Krieger judges ruled that the prohibitions are invalid absent medical exemption, numerous courts have made declarations of invalidity of the medical exemption regimes but only the 5 J.P. and Mernagh's judge declared CDSA prohibitions invalid after striking down the exemption. Many other courts have not followed Parker and Krieger.

39. Only after J.P. did the Hitzig declaration result in charges being dropped across Canada. Most other declarations were then ignored and even laughed at. In Hitzig, caps on 1 patient per grower and 3 growers per garden were struck down. 2 months later, they were re-imposed. Then, in Sfetkopoulos, the 1 patient per grower cap was struck down again. Health Canada upped it to 2. In Beren, the 3 growers per garden cap was struck down again. Health Canada upped it to 4! After another round of winning constitutional challenges, they can up them to 3 and 5.

40. Though the judiciary have accepted that a statute deemed to be repealed was resurrected by the Courts without Parliament, the actual CDSA Possession and Production prohibitions which underpin all other marijuana prohibitions that were struck down in Parker and Krieger during the Hitzig period of MMAR invalidity have never been re-enacted by Parliament.

41. The order made by the Supreme Court of Canada in Smith [2015] and that made by the Federal Court of Canada in Allard did not address the prohibitions against marijuana in the CDSA. While, according to the ratio in Parker, supra, the Supreme Court's determination that the MMAR did not provide an adequate medical exemption meant that there was no constitutional prohibition against marihuana in the CDSA, just as in Hitzig, the Supreme Court nor the Federal Court made that declaration. They hadn't been asked.

42. But just as J.P. cited the Hitzig declaration of Bad Exemption to quash his charge laid while it was deficient, Accused herein cites the Allard and Smith declarations of Bad Exemption to quash any charge laid while it was deficient but with the greater certainty of the violation of the Right to Life of so many with the recent flaws. The facts are "on all fours" with J.P.

43. Crown Attorney Sean Gaudet to Supreme Court of Canada in Sfetkopoulos v. Canada:

> **"[33] The Court in R. v. J.P. ruled that the combined effect of Parker and Hitzig meant there was no constitutionally valid marijuana possession offence after 2001 to Oct 7 2003, the date the MMAR were constitutionally rectified by the decision in Hitzig. Courts may construe the Federal Court of Appeal's decision as creating a similar period of**

retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) was re-introduced into the MMAR." The Accused moves this Court to construe the Supreme Court of Canada's decision in Smith as creating a similar period of retrospective invalidity dating back to Aug 1 2001 the date that the flawed MMAR was enacted.

A)2) ALLARD BENO PERIOD OF INVALIDITY WHEN ACCUSED CHARGED

44. Should the Court reject that the Parker-Hitzig period of invalidity of the prohibitions never ended, Applicant submits the Allard decision declaring the MMPR unconstitutional has created a new period of invalidity from April 1`2014 to Aug 24 2016.

A)3) SECTION 5 TRAFFICKING

45. Failure of the legislation to reflect the invalidation of the prohibition on marijuana cultivation in S.7(1) by the Alberta Court of Appeal in R. v. Krieger in 2003 added to the already invalidated prohibition on marijuana possession in the S.4(1) by the Ontario Court of Appeal in R. v. Parker in 2001 should have also invalidated the prohibitions in all other related sections. Only their dead corpses are hanging there in the Code now.

46. S.4(1) says it is an offence to possess anything on "Schedule II of banned substances." S.7(1) says it is an offence to cultivate anything on "Schedule II of banned substances." S.5 says it is an offence to traffic anything on the "Schedule II of banned substances."

47. If the prohibitions on the possession and production of marijuana became invalid in 2001 and 2003, how was that reflected in the Criminal Code when the government didn't change anything? Since the Government did not enact the words

"except for marijuana" in S.4's prohibition of possession or S.7's prohibition of production, the only way left to effect the repeal of the prohibition would have been to delete "marijuana" from Schedule II of banned substances. Such deletion would make S.5 Possession for a Purpose as invalid as S.4 Possession and S.7 Production.

48. Applicant submits that prohibiting Traffic in an era when Possession and Production are not prohibited brings the administration of justice into disrepute.

B) RETURN OF CONTROLLED SUBSTANCE

49. Should this Court deem the prohibitions on marijuana in S.4 and S.7 of the CDSA remain repealed after July 31 2001, Applicant submits that the Accused's marijuana be returned under S.24 of the CDSA.

ORDER SOUGHT:

50. Applicant seeks an order that
A) the Accused's CDSA charges relating to marijuana be quashed as of no force and effect;
B) the seized Controlled Substance be returned to Applicant upon completion of the prosecution pursuant to S.24 of the CDSA.

Dated at _____ on _____20___.

_____
Applicant/Accused Signature

Name: _____

Address: _____

Tel: _____ Fax(if): _____

Email(if): _____

TO: Ministry of Justice
TO: The Registrar of the Court

SCHEDULE A

Authorities to be cited:

R. v. Krieger Ab.C.A. [2003] canlii.ca/t/5ck1
R. v. J.P. Ont.C.A [2003] canlii.ca/t/5290
R. v. McCrady Ont.C.A. [2012] canlii.ca/t/fpfkg
R. v. Smith S.C.C. [2015] canlii.ca/t/gjgtl
Allard v. Canada F.C.C. [2016] canlii.ca/t/gngc5
R. v. Marie-Eve Turmel [2016]

SCHEDULE B

Relevant legislative Provisions
Interpretation Act Section 5(3), 32(a) http://canlii.ca/t/8dcs

HER MAJESTY THE QUEEN **V.** **_____**

Plaintiff **Accused**

Court File No. _____

_____ COURT OF _____

(Criminal Division)

Between:

_____

Applicant/Accused

and

Her Majesty the Queen

Respondent/Plaintiff

AFFIDAVIT OF SERVICE

(used only if Crown won't sign)

I, _____,

did personally serve a true copy of this document on the Crown Attorney

at _____

on _____, 20____

_____

Affiant's Signature

Sworn before me at _____on _____, 20___

_____

A COMMISSIONER, ETC

RECORD OF APPLICATION TO QUASH

AND

RETURN OF CONTROLLED SUBSTANCE

(C.C.C S.601 and C.D.S.A S.24, not the Charter)

For the Applicant/Accused:

Address:_____

_____

Tel/fax(if):_____

Email(if): _____