File No: _____

FEDERAL COURT OF APPEAL

BETWEEN:

_____

Applicant

and

HER MAJESTY THE QUEEN

Respondent

RECORD OF MOTION

For the Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

For the Respondent:

Attorney General for Canada

Address: _____

File No: _____

FEDERAL COURT OF APPEAL

BETWEEN:

_____

Applicant

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION

TAKE NOTICE of the Applicant's motion in writing filed at the Federal Court of Appeal.

THE MOTION SEEKS an Order that:
1) extends the time to file a Notice of Appeal by a class member affected by Dec 30 2014 Amended Order of Federal Court Justice Manson;
2) Applicant's MMAR permits be deemed amended in the interim pursuant to changes described in Applicant's Affidavit;
3) Applicant's possession and shipping limit be capped as before at 30 times Applicant's personal daily dosage.

THE GROUNDS are that
1) Applicant in the class of patients affected by the Manson Order needs remedy for issues left unaddressed;

2) an Order deeming possess permits to be grandfathered with their grow permits or deeming valid permit changes for new data may easily be rescinded if necessary and is the only instant remedy available at the moment;
3) Justice Manson's 5 gram x 30 days = 150 gram possession cap is based on Health Canada's estimated 1-3 grams/day average though his ruling noted the actual prescribed average daily dosage they were attempting to estimate was 18 grams per day! 30 times Applicant's prescription would seem the more logical limit to impose.

AND FOR ANY ORDER abridging any time for service and filing or amending any error or omission which this Honourable Court may allow.

Dated at _____ on _____ 2015.

_____
Applicant's Signature:

Name: _____
Address: _____
_____
Tel/fax: _____
Email: _____

TO: Registrar of this Court
Attorney General for Canada

FEDERAL COURT OF APPEAL

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NOTICE OF MOTION

For the Applicant

File No: _____

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Respondent

APPLICANT'S AFFIDAVIT

I, _____, residing at

_____ make oath as follows:

1. #_____ is the Health Canada number of my MMAR permits that authorized me to possess and produce medical marijuana and am therefore in the class of patients affected by the Orders of Justice Manson in Allard et al v. HMQ [T-2030-13].

2. I am in the very same situation as Allard Appellant:

A: (___) Tanya Beemish in that I have a grandfathered Produce Permit but a lapsed Possession Permit;

B: (___) David Hebert in that failure to allow amending my permits denies me access to my medicine and I need my Authorization To Possess to be deemed changed as follows:

_____

_____

_____

_____

3. I only ask the Court to provide me with an Interim Order deeming both my permits amended to Oct 1 2013 and/or deeming the permit changes to be effected. I don't even need Health Canada to amend my permits. A court Order I can show an officer authorizing any change should well suffice.

_____

Name: _____

Sworn before me at _____ on _____2015.

_____

A COMMISSIONER, ETC.

FEDERAL COURT OF APPEAL

BETWEEN:

_____

Applicant

and

HER MAJESTY THE QUEEN

Respondent

APPLICANT'S AFFIDAVIT

For the Applicant

File No: _____

FEDERAL COURT OF APPEAL

BETWEEN:

_____

Applicant

and

HER MAJESTY THE QUEEN

Respondent

APPLICANT'S MEMORANDUM

PART I - STATEMENT OF FACTS

1. Applicant is an authorized medical marijuana patient in the class of 36,000 Exemptees Authorized to Possess marijuana affected by the Mar 21 2014 and Dec 30 2014 Orders of Manson J. in Allard v. HMQ that were carefully crafted to protect the viability of the Exemption regimes rather than the patients. Applicant moves for an extension of time to appeal and for interim remedy deeming the Authorizations to Possess and/or Produce amended to reflect the necessary changes detailed in Applicant's Affidavit.

2. On Oct 1 2013, with the stated aim of shutting down self-grows, Health Canada instituted the MMPR and no longer accepted applications for ATPs under the MMAR which would be repealed on April 1 2014. Patients whose exemptions expired in the half-year before April 1 2014 could only remain legal by destroying all they had previously-grown and certainly cannot providing proof of purchase from one of only 6

Licensed Producers at the time. With very onerous security, packaging, labeling regulations, after a year, only 13 of the 1,000 applicants overcame the mountain of red tape to be approved will not be able to provide the last monthly prescribed dosage of 15,000Kg as of the end of 2013.

3. Deterred by prohibitively high MMPR prices, most Exemptees could not purchase to remain legal and continued to use their own now-illegal stock rather than destroying it and suffering without. Few of the 18,000 expiring exemptees destroyed all the medicine they had spent years producing when their permits expired so they could have proof of purchase from commercial producers to validate their exemptions. The Health Canada Destroy-to-Renew Order forced all but the rich into the Parker Predicament of having to choose between their health and the law. Most chose outlawry while awaiting court developments and some patients have since been busted for continuing their prescribed treatment.

4. Exemptee Stephen Burrows had cut his tumor in half with cannabis oil before his permits expired in January. Unable to afford the MMPR, he shut down and went outlaw with the rest of his stash hoping, like the others, he'd get his permits grandfathered back at the Allard hearing.

5. With all permits expiring less than 2 weeks later on April 1 2014, Robert Roy's permits were expiring on Mar 18 2014, the very day of the Motion Hearing in Allard before Federal Court Justice Manson for extension of the MMAR with no disruption at all if the MMAR were extended! They would remain exempted or not depending on the decision. But the

judge reserved his decision. And so Robert Roy's exemption expired the next day while awaiting the decision. Luckily, he wasn't raided.

6. On Mar 21 2014, 3 days later, Justice Manson ruled the medically-qualified group had the right not to be deprived of their medicine while the MMPR was not ready and carefully crafted an Order that grandfathered everyone's grow permits back to Oct 1 2013 but not their Possess Permits without which a Grow Permit is no good! Only those holding currently valid permits were extended and, by only 3 days, Robert Roy was Left Out of the relief with Stephen Burrows and the other half of the 36,000 exemptees whose permits had expired in that half year. Though Roy had sufficient medical need to have his permit extended on the date of the hearing, the court ruled he no longer had on the date of his decision only 3 days later. Robert Roy has since been raided.

7. No provision was made for ATPs needing to be amended from becoming voided thus Hebert, having had to move, was Left Out of the relief. If your Designated Grower dies, your permits die with him.

8. The Crown appealed any extension of patients' MMAR permits wanting everyone cut off from their medication, not just those 18,000 unfortunate enough to have expired in the previous half-year. The Allards cross-appealed for relief to:

a) expand the remedy to all patients by grand-fathering Possess permits with Production Permits;

b) allow permits to be amended.

9. On Dec 15 2014, the Federal Court of Appeal Justices Nadon, Webb and Boivin ruled:

> **[18] While the judge carefully crafted and tailored his order in a way that he considered minimally intrusive into the legislative sphere (judge's reasons at para. 121), it does not provide remedy to patients who held valid production licences on September 30, 2013 but whose authorizations to possess expired between September 30, 2013 and March 21, 2014 (the date of his order). The judge's choice of March 21, 2014 as the "cut-off" date has the effect of excluding Ms. Beemish and Mr. Hebert from his order.**
>
> **[19] With respect, the difficulty with the judge's finding is that although he provides a right (the interlocutory injunction) to the four (4) respondents - Mr. Allard, Mr. Davey, Ms. Beemish and Mr. Hebert - he does not, in contrast, explain why he deprives two (2) respondents - Ms. Beemish and Mr. Hebert - of a remedy. After careful reading of the judge's reasons, I am left to speculate as to his intention.**
>
> **[20] In these circumstances, I cannot address properly the determination the respondents are seeking as I am unable to understand whether the judge intended to exclude Ms. Beemish and Mr Hebert or simply forgot to deal with their situation. In other words, the judge's reasons do not allow this Court to perform its appellate function.**
>
> **[21] After considering making an assessment of the evidence, I believe that the wiser course is to return the matter to the judge with a direction that he specifically addresses the situation of Ms. Beemish and Mr Hebert.**

[23].. I would remit the matter back to the judge for determination solely on the issue of the scope of the remedy, more particularly with respect to Ms. Beemish and Mr. Hebert, in accordance with these reasons.

10. Though the Court of Appeal could not even speculate why Manson J. had granted the class a Right but had then denied that right to half the patients now condemned to no relief for their pain or even deaths, rather than immediately expanding the relief themselves, they returned it to Justice Manson to explain if he'd forgotten to include them in the remedy he had ruled they had a right to.

11. On Dec 30, 2014, Justice Manson refused the Order of the Court of Appeal to reconsider his decision:

Upon having regard to the Federal Court of Appeal's decision dated December 15 2014...

THIS COURT ORDERS that:

[1] The Plaintiffs request a reconsideration of my decision of Mar 21, 2014, to

(i) order that all patients that held a valid Authorization to Possess (ATP) on March 21 2014, or in the alternative, September 30 2013, are covered by the Exemption Order I made, and to

(ii) order that all patients exempted by the Order, including Mr. Hebert and Ms. Beemish, and others similarly situated, can change their address form with Health Canada pending trial.

[2] As stated above, the Federal Court of Appeal remitted the issue of the scope of the interlocutory injunction for clarification only, to specify whether

the injunction applied to Ms. Beemish and Mr. Hebert. There is no reconsideration to be made and certainly no expansion of the scope of my decision to apply to anyone other than the plaintiffs in the proceeding.

[3] In considering the balance of convenience, I specifically chose the relevant transitional dates of September 30 2013 and March 21 2014 to limit the availability of injunctive relief to extend only to those individuals who held valid licenses to either possess or produce marijuana for medical purposes as of those relevant dates...

[4] Accordingly, only those plaintiffs who had a valid license on September 30 2013 could continue producing marijuana for medical purposes and only those plaintiffs who held a valid authorization to possess marijuana for medical purposes at the time of my decision on March 21 2014 could continue to so possess.

[5] In considering the balance of convenience, the remedy I granted was intended to avoid unduly impacting the viability of the Marijuana for Medical Purposes Regulations (MMPR) and to take into consideration the practical implications of the MMAR regime no longer being in force.

[6].. The fact they did not possess valid licenses as of the transitional dates was determinative of their inability to be covered by the injunctive remedy granted."

12. Justice Manson had rejected any expansion of relief ruling he had repeatedly pointed out he was protecting the market viability of the MMPR, if not the actual viability of the patients by forcing as many patients as possible off

their cheap home-grown source onto the Licensed Production market. Similarly, his decision was carefully crafted to further that goal by allowing no permit changes in order to force patients to buy from the regime when their Designated grower dies or they must move.

13. On Jan 6 2015, rather than immediately appealing for the Left-Outs to the higher court that seems not to have given regime viability much weight in their deliberations, attorney for Beemish and Hebert, John Conroy sought an adjournment of the Action for their permits to await the Supreme Court of Canada's Owen Smith decision challenging the prohibition on "dried" marijuana which does absolute nothing for Beemish nor Hebert nor other patients with now-invalid permits who were cut off for non-medical reasons. The motion to adjourn was dismissed.

14. On Jan 16, Conroy finally filed an appeal of Manson J.'s Dec 30 2014 Amended Order but failed to file a motion for immediate interim relief from the court above which had just ruled his clients had a Charter right for which no Charter remedy had been provided. Such high-probability immediate relief is not on Conroy's agenda.

15. On April 30 2015, John Conroy discontinued the appeal to the Court of Appeal with jurisdiction to expand relief in order to Apply to a judge of the Federal Court below without any such jurisdiction to vary a carefully crafted Order of a peer on the bench. Of course, Justice Phelan rejected that loser motion to vary Manson's Order citing 4 times that he could not vary a "carefully crafted" decision by his peer.

Only an Appellate Court can overturn such carefully-crafted decision but Conroy has now foreclosed on that proper alternative.

16.Should anyone wish to start a similar Action for relief below, Justice Phelan has stayed all cases seeking similar relief until the final adjudication of Allard.

PART II - ISSUES IN QUESTION

17. The learned judge erred in:
1) making non-medical reasons determinative of medical need in a balance of convenience between the viability of the MMPR and the viability of the patients;
2) failing to consider high-dosage patients in imposing the 150 gram possession limit.

PART III - ARGUMENTS

1) NON-MEDICAL REASONS DETERMINATIVE OF MEDICAL NEED

a) Medical need determined by expiry dates

18. Though it was clear Justice Manson ordered expiry dates and permit changes to be made determinative of sufficient medical need to merit Charter Relief, the Court of Appeal couldn't to speculate as to his intention in granting the Right to Life for all but not granting a remedy to Left-Out Beemish and Changed-Out Hebert. But rather than expand the remedy themselves, the Court of Appeal sent it back below to find out if the judge had simply forgotten to grant half of

Canada's medicinal marijuana patients access to their medicine or whether he intended leaving them without any Charter remedy for their Charter Right to Life.

19. Justice Manson refused to reconsider grandfathering Possess Permits for all patients with grandfathered Grow Permits nor permitting any permit changes. The Court of Appeal had failed to consider the need to "avoid unduly impacting on the viability of the MMPR and to take into consideration the practical implications of the MMAR regime no longer being in force."

20. How would grand-fathering all possess permits with all grand-fathered grow permits or amending current permits be unduly impacting on the viability of the MMPR? What are the implications of extending the MMAR for amendments as well as for permits that are so inconveniently impractical?

21. Without making expiry dates determinative of medical need, the court would have had to cut everyone off which would have eliminated unduly impacting on the viability of the MMPR most completely. Though anguish and suffering may go unnoticed, loss of patient "viability" might be too large to be ignored.

22. Making expiry dates determinative of medical need offered the excuse to cut at least some patients off by distinguishing between those with still-valid ATPs whose medical need the Court had to acknowledge and those who failed to renew whose medical need the Court no longer had to acknowledge. Without such a non-medical criterium being

applied, there would be no "Some get their prescribed medication and others do not!" All would or all would not.

23. The judge did not consider why half the 36,000 Exemptees failed to renew their cherished permits, that Health Canada's Destroy-To-Renew Order and the prohibitive cost of the replacement commercial product had coerced them into outlawry with their unchanged medical need tided over while awaiting court developments by their now-illegal stock. Could the Court really believe that upon Health Canada's command, half the 36,000 patients who did not renew had been miraculously healed, Halleluiah, and now no longer needed any supply? that it was now safe and just to cut off 18,000 of Canada's sickest qualified patients permanently from any re-supply?

24. Robert Roy's ATP expired on Mar 18 2014, the very day of the Allard hearing. Had Judge Manson ruled that day, Roy's ATP would have been extended! But the judge taking only 3 days to write his decision resulted in Robert Roy no longer being deemed medically needy! Had the judge not taken the extra time, Robert Roy would still be exempted! Roy was Left Out with no more access nor continuing supply due wholly to Judge Manson's unfortunate 3-day delay.

25. It is submitted Robert Roy had as much a valid medical need on the day after as on the day of the hearing! There was no Halleluiah moment! Though indirectly preventing resumption of Robert Roy's re-supply may seem less damnable than directly cutting off his supply, the end result is the same.

26. Stephen Burrows cut his tumor in half but having been Left Out, may no longer lawfully continue his treatment. His access wasn't cut off, he was just coerced to stop growing and then not allowed to resume. David Shea succumbed to his cancer while his action for exemption was stayed below. There is the probability more of the thousands of patients who were deprived of access to their prescribed medication have similarly perished or suffered irreparable harm in silent anonymity.

27. But just how much is the viability of the program actually unduly impacted by a mere 36,000 self-producers among millions of potential cannabis users in Canada? That's 1% or 2% of the MMPR market at most. It wasn't worth the sacrifice to deprive 18,000 patients of their supply for hardly any extra viability of the MMPR.

b) Medical need determined by permit changes

28. The Court of Appeal ordered that the repeal of the MMAR with no infrastructure remaining to amend Hebert's permit be addressed. Justice Manson refused to reconsider his ruling explaining that the practical implications of a repealed MMAR precluded amending old permits. If a patient's moves, his permit can't. If his Designated Grower dies, his exemption dies with him. Again, there are no reasons why amending permits should occasion a change in medical need nor present Health Canada with so insurmountable practical implications that it is more convenient to deprive the patients of their permits.

29. Just what are the practical implications of extending the Health Canada MMAR Amendments Bureau while laying off the rest of the staff? Retaining some staff to process the odd permit change seems a bureaucratic mole-hill rather than the mountain of red-tape the court deemed too much of an inconvenience for Health Canada to surmount compared to the simply depriving the patients of permits for their medicinal supply. Besides, the Ministry of Transport updates permits in real time.

30 Making non-medical reasons like expiry dates and permit changes determinative of medical need allows some patients to be deprived. Since they couldn't deprive all patients to cause a complete catastrophe, expiry dates allowed a partial catastrophe that cut out the maximum number of past patients while no permit changes continues the catastrophe that cuts out the maximum number of patients from now on. Not all are cut off from their medication, only as many as possible!

31. Having a treatment determined by the state of one's permit and not on the state of one's health is not a medical decision though it has the same effect as if the doctor had cut off their prescriptions. Since the dictionary defines "viable: capable of living; Viability: capacity to live, it would seem that rather than the viability of the MMPR program, the viability of the patient should have been the court's major concern.

2) 150-GRAM CAP FAILS TO CONSIDER HIGH-DOSAGE PATIENTS

32. Given my current prescription, the 150-gram possession

limit too severely limits me in my life. How then can Exemptee Michael Pearce prescribed 260 grams/day "live" with the 150-gram possession cap? Having no highly dosed patients among the Allard Plaintiffs meant no one has been hurt enough by that limit to raise the plea for immediate relief.

33. The 150-gram cap has no bearing on market viability of the MMPR nor any practical implications; it only bears on the increased inconvenience of the patients!

34. And though Justice Manson based his 150-gram possession monthly cap on Health Canada's estimated average use of 1-3 grams per day, in the same decision Justice Manson cites an actual average prescribed dosage of 17.7 grams/day. A 540 gram cap might be the more accurate average number.

35. If the Allard Action is dismissed on Feb 23 2015 with the interim Order, it could leave everyone cut off. Applicant seeks expeditious relief from the Court of Appeal lest the worst happen below.

36. Mr. Conroy and the courts have left the many thousands of those of us condemned to the pain and death of the Manson Order no recourse but to appeal ourselves for the remedy Conroy discontinued seeking for us. We remain stalled without medicine by the Allard case that seeks nothing that can help with our need for amendments. And though we are directly affected by the Allard Orders, Conroy sabotaged our only route to this Court with jurisdiction to grant the remedy sought.

PART IV - ORDER SOUGHT

37. Applicant seeks an Order that:

1) extends the time to file a Notice of Appeal by a class member affected by Dec 30 2014 Amended Order of Federal Court Justice Manson;

2) Applicant's MMAR permits be deemed amended in the interim pursuant to changes described in Applicant's Affidavit;

3) Applicant's possession and shipping limit be capped as before at 30 times Applicant's personal daily dosage.

Dated at _____ on _____ 2015.

_____

Applicant's Signature:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

AUTHORITIES

No Authorities relied on

REGULATIONS CITED

No regulations cited.

FEDERAL COURT OF APPEAL

BETWEEN:

_____

Applicant

and

HER MAJESTY THE QUEEN

Respondent

APPLICANT'S MEMORANDUM

For the Applicant

File No: _____

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Applicant

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RECORD OF MOTION

For the Applicant:

Name: _____

Address: _____

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