File Number:

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

_____

Applicant

Appellant in appeal

And

Her Majesty The Queen

Respondent

APPLICATION FOR LEAVE TO APPEAL

_____, APPLICANT

(Pursuant to Rule 25 of the Supreme Court Rules)

For the Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

For the Respondent:

Attorney General for Canada

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_____, APPLICANT

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BETWEEN:

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Appellant in appeal

and

Her Majesty The Queen

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

_____, APPLICANT

(Pursuant to Rule 25 of the Supreme Court Rules)

TAKE NOTICE that Applicant seeks leave to appeal the decision of Federal Court of Appeal Justice _____ on _____ 2015 dismissing Applicant's motion for an extension of time to appeal the Dec 30 2014 decision of Federal Court Justice Manson in Allard et al v. HMQ.

AND FOR an Interim Exemption from the CDSA for the Personal Medical Use of marijuana by Applicant pending the appeal.

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

THE GROUNDS OF APPEAL are that Canadians affected by a Federal Court ruling should have a right of appeal.

Dated at _____ on _____ 2015.

_____

For the Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

ORIGINAL TO: THE REGISTRAR

NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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Applicant

Appellant in appeal

and

Her Majesty The Queen

Respondent

APPLICANT'S CERTIFICATE

_____, APPLICANT

(Pursuant to Rule 25 of the Supreme Court Rules)

I, _____, Applicant, hereby certify that there is no sealing order or ban on the publication of evidence or the names or identity of a party of witness in this case or subject to any limitations on public access.

Dated at _____ on _____ 2015.

_____

For the Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

ORIGINAL TO: THE REGISTRAR

COPY TO: Attorney General for Canada

File Number:

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(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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Applicant

Appellant in appeal

and

Her Majesty The Queen

Respondent

APPLICANT'S MEMORANDUM

_____, APPLICANT

(Pursuant to Rule 25 of the Supreme Court Rules)

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.

17. Applicant has been denied legal standing to file an appeal on the grounds first elucidated in Justice Eleanor Dawson's decision of April 14 2015 in Allan Jeffery Harris v. HMTQ:

> **i) In order to obtain an extension of tim an applicant must establish:**
> **(1) a continuing intention of pursue the appeal;**
> **(2) the appeal has some merit;**
> **(3) no prejudice arises from the delay; and**
> **(4) there is reasonable explanation for the delay.**
> **ii) The applicant has adduced no evidence with respect to the first and last criteria.**
> **iii) Nor has the applicant shown there to be some merit in the appeal. He was not party to the order under appeal and so lacks standing to bring the appeal.**
> **iv) As a result, the interests of justice do not require that that the extension be granted.**

PART II: ISSUES

16. The learned judge erred in:
A(1) expecting evidence of "continuing intention of pursue the appeal" before the appeal is even filed;
A(2) finding there was no reasonable explanation for the short delay after John Conroy failed to file an appeal for the affected group on time;
A(3) seeing no merit in the appeal though an identical appeal was filed late by Allard et al with no pre-trial challenge to the merits;
A(4) granting no standing to anyone in the affected group but Beemish and Hebert who aren't appealing.
B) Should Applicant be granted an Interim Exemption pending adjudication of this Application for Leave to Appeal?

III - ARGUMENT

A(1) MOVING TO START APPEAL SHOWS NO INTENT TO CONTINUE

16. The Court has decided that there has been no intention shown to continue the appeal before the appeal has commenced. How can Applicant show a continuing intention to pursue the appeal before it is even started? Applicant submits applying to commence an appeal is evidence of intent to continue such appeal rather lack of intent to continue what is moved to be commenced!

A(2) NO REASONABLE EXPLANATION FOR DELAY

17. The Applicant submits that waiting until John Conroy failed to file an apeal for the affected group on time before moving for an extension of time to file myself is completely reasonable.

A(3) NO MERIT IN THE APPEAL

18. Allard was not deemed without merit when granted an extension of time to appeal the same Manson decision before being discontinued. There is no reason to believe same arguments have any less merit when presented by a non-lawyer.

A(4) ONLY BEEMISH & HEBERT IN GROUP HAVE STANDING

19. In his March 21 2014 decision, Justice Manson identified the group whose rights were affected by his decision:

> **Analysis**
>
> **[117] The Applicants are representative of an identifiable group: medically-approved patients under the MMAR regime. I accept that this group reflects a public interest as was described in Parker at para 97: that patients should have legal access to medication reasonably required for the treatment of a medical condition. As discussed above, this group will be irreparably harmed by the effects of the MMPR.**

20. I am one of the group whose rights Justice Manson said will be irreparably harmed. Justice Dawson has ruled that only Beemish and Hebert have legal standing to appeal from the affected group and if they're not, violation of our rights may not be addressed. Any applications in Federal Court for relief are immediately stayed pending the outcome of Allard.

21. With John Conroy discontinuing the appeal of Beemish and Hebert, the whole affected group is left without any recourse from the continued violation of our confirmed rights.

B) PERSONAL MEDICAL USE INTERIM EXEMPTION PENDING APPEAL

22. The courts have thrice before granted an exemption from the CDSA on marijuana for Personal Medical Use as warranted for the Epileptic Terrance Parker and should also be granted for our group herein.

PART IV - ORDER SOUGHT

7. Applicant seeks:
A) leave to appeal the decision of Federal Court of Appeal Justice _____ on _____ 2015 dismissing Applicant's motion for an extension of time to appeal the Dec 30 2014 decision of Federal Court Justice Manson in Allard et al v. HMQ;
B) an Interim Exemption on the marijuana prohibitions in the CDSA for Personal Medical Use pending the Appeal.

Dated at _____ on _____ 2015.

_____

Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

To the Registrar of this Court

To the Respondent: Attorney General for Canada

File Number:

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Appellant in appeal

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APPLICANT'S MEMORANDUM

_____, APPLICANT

(Pursuant to Rule 25 of

the Supreme Court Rules)

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APPLICATION FOR

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FEE WAIVER REQUEST

_____, APPLICANT

(Pursuant to Rule 25 of the Supreme Court Rules)

I, Applicant, request that the filing fee be waived because I am on a Disability Support Program and the fee would be an onerous burden on my limited income.

Dated at _____ on _____ 2015.

_____

For the Applicant:

Name: _____

Address: _____

_____

Tel/fax: _____

Email: _____

File Number:

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