File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

RECORD OF MOTION FOR SUMMARY JUDGMENT

1. Notice of Motion
2. Plaintiff's Expert Affidavit
3. Plaintiff's Memorandum

For the Plaintiff:
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For the Respondent:
Attorney General for Canada
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File No: T-488-14

FEDERAL COURT OF APPEAL

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

NOTICE OF MOTION FOR SUMMARY JUDGMENT

TAKE NOTICE THAT on _____ 2014 will be heard Plaintiff's motion at the Federal Court in Toronto.

THE MOTION SEEKS summary judgment:

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that came into force on June 19, 2013, (and run concurrently with the MMAR until March 31, 2014 when the MMAR will be repealed by the MMPR) are unconstitutional and not saved by S.1 of the Charter in that the s. 7 Charter constitutional right of a medically needy patient to reasonable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.

THE GROUNDS ARE THAT the 16 distinct defects raised about the MMAR medical marijuana regime including abuses raised in associated judicial reviews and the 20 distinct defects raised about the MMPR medical marijuana regime with 10 in common make both exemptions irreparably illusory and inflict on cannabis-needy group of patients conditions of life calculated to bring about its physical destruction.

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

Dated at Toronto on Dec 24 2014.

_____

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Email: johnturmel@yahoo.com

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
FOR SUMMARY JUDGMENT

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File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL

Plaintiff

and

HER MAJESTY THE QUEEN

Respondent

AFFIDAVIT OF THE EXPERT REPORT
OF JOHN C. TURMEL, B.ENG.
(Expert in Mathematics of Gambling)

I, John C. Turmel, B. Eng., residing at 50 Brant Ave, Brantford, Ontario, having also personal knowledge from having authored the associated judicial reviews, make oath as follows:

STATEMENT OF ISSUES

1. Given available US Government statistics showing zero deaths attributed to the use of the cannabis plant; Given preponderant available evidence from US insurance companies in states that have recently legalized marijuana showing that "high" drivers have less accidents;

Given the University of Saskatchewan's 2006 study showing cannabis use promotes neurogenesis, new brain cell growth, useful for Alzheimer's and dementia victims;
Given preponderant available evidence showing that marijuana oil kills cancer and with a rise in cancers from the Fukushima nuclear fallout we're being exposed to looming expected;
Given the preponderant available evidence forces Health Canada to allow the use of cannabis for so many varied illnesses,
Plaintiff claims dozens of distinct bureaucratic impediments in the MMAR-MMPR medical exemption regimes that reduce the chances of a patient's good health and survival making both regimes irreparably and unconstitutionally illusory pursuant to S.7 Charter Right to Life.

2. My expert report will conclude that if cannabis marijuana is good for you once you're sick, it was probably good for you before you got sick. Not using cannabis for prevention of all the illnesses it's good for once you get them before you get them reduces the chances of survival. And that the neurogenesis of new brain cells reported in the 2006 University of Saskatchewan study is a benefit too important to prohibit.

3. Out of the ten Canadians who die from epileptic seizures every day, four knew they were epileptic and could have been alive today if all epileptics had been granted the same protection of right to life as the Court of Appeal granted Terrance Parker to possess a joint. 13 years since the Parker decision, that's almost 20,000 epileptics who would have survived had their anti-seizure medication not been prohibited.

4. If it's beneficial when you get sick, not getting it on demand reduces your chances of survival. Health Canada has relegated the MMAR Exemption Applicants who died during the delay in application processing to their "Dormants File," the wrong word for 6 feet under. Once the Defendant elicits from Health Canada the number of "dormant" applicants to date whom they could not find alive, the reduction of their chances of survival due to the delay will have been established. In every case where cannabis has a life-saving effect, the bureaucratic delay in obtaining an exemption increases the chance of ending up in Health Canada's "Dormants" file.

QUALIFICATIONS FOR OPINION ON ISSUES

5. Schedule A is my curriculum vitae detailing my post-graduate studies after obtaining a degree in Electrical Systems Engineering from Carleton University as the Teaching Assistant of Canada's only Math 69:140 Mathematics of Gambling course for 4 more years.

6. A Google search for "Great Canadian Gambler" details how I have been a professional gambler for the past 40 years and was The Professor at the Taj Mahal in Atlantic City of Rounders movie fame; where else would the era's best poker movie be shot but America's premier Poker Room where I was The TajProfessor?

7. I am Canada's most-often court-accredited expert witness in my field including having been the Crown's expert witness in R. v. Booth et al [1989] and for Appellant Epel v. Queen [2003] in Federal Tax Court of Canada.

METHODOLOGY USED

8. By inference and deduction, and with an analysis of the preponderance of "anecdotal evidence" available, each constitutional violation alleged ("Tort") will be shown to harm the chances of health and survival more than help.

9. An honest anecdote is an honest datum. More and more honest anecdotes become more and more precise data. To say that the measurement of a preponderance of available data may be dismissed because it is "anecdotal" is to fail to grasp the whole purpose of statistics, to derive honest information from more and more anecdotal data.

10. It will be shown that the preponderance of newly-available data belies many of the canards flown by the prohibitionist establishment. How those lies got to be propagated as scientific analysis is a result of being allowed to compel proof of a negative.

11. "Mr. Expert, does your evidence show that marijuana does not cause Cancer?"
Expert: Anecdotal evidence would seem to indicate it cures Cancer but I have no evidence that it doesn't also cause Cancer too.
"Okay, put down: May cause cancer."

12. "Mr. Expert, can your evidence show that marijuana does not cause MS?"
Expert: Anecdotal evidence would seem to indicate it cures MS but I have no evidence that it doesn't also cause MS too.
"Okay, put down: May cause MS."

13. "Mr. Expert, can you prove marijuana does not cause Epilepsy?"
Expert: Anecdotal evidence would seem to indicate it prevents seizures within seconds but I have no evidence that it doesn't also cause Epilepsy too.
"Okay, put down: May cause Epilepsy."

14. "Mr. Expert, can you prove marijuana does not cause Freckles or Athlete's Foot?"
Expert: I've never heard that but I have no evidence that it doesn't cause Freckles and Athlete's Foot too.
"Okay, put down: May cause Freckles or Athlete's Foot to the list."

15. "Mr. Expert, can you prove marijuana isn't enticing an alien invasion to take it from us?
Expert: Never thought of that danger, but no, I have no evidence that it isn't enticing an alien invasion.
"Your Honor, given all these threats that marijuana may cause, it should remain prohibited until proof the threats do not exist."

16. "It is hereby Ordered that marijuana shall remain prohibited given it may pose such possible serious threats to health as Cancer, MS, Glaucoma, Epilepsy, Freckles, Athlete's Foot, and especially alien invasion."

17. Negative evidence is all that is backing up the prohibitionist canards that are now being exposed by the recent anecdotal and more-rigorous scientific data whose preponderance leads to obvious statistical conclusions that marijuana is a non-toxic non-impairing healthful herb.

CAVEAT

18. Patient affidavits will establish the level of harm actually suffered from each tort.

PARTICULARS OF RELATIONSHIP TO PLAINTIFF

19. I am a Plaintiff and have personal knowledge of all matters sworn herein.

FORM F GLITCH

20. Health Canada's Web page "Renewing your application without changes" instructs renewers that:

> **"Applications for a renewal of an Authorization to Possess are made using Form R, provided there are no changes that must be made to your Authorization or Licence."**

21. On April 11 2013, with no changes to be made, Ray Turmel's doctor mailed in Form R. Two weeks later, Ray received a rejection letter stating a Property Owner's Consent Form F had to be re-submitted yearly despite not being mentioned in the instructions.

22. With his Authorization expiring on May 31 2013, Ray Turmel submitted the same Form F signed by the same landlord by May 1, 2013. Expecting quick processing for only one no-change form, after four weeks, he called Health Canada to verify the status of his renewal and was told it would take even more weeks to process that one page form. Though he

pointed out S.65 mandated he destroy his stored marijuana and his plants until his renewal got to him and then have to start all over again, he was told told to just "follow the rules." He asked for a status report on my exemption renewal to show to any police officers who might visit. No. Just "follow the rules."

23. On May 31 2013, Federal Court Justice Roy granted a short notice hearing of an application T-977-13 for:

> **1) a personal constitutional exemption to use marijuana for medical purposes until the Respondent delivers the needed renewal, or, in the alternative,**
> **2) an extension of Applicant's expiring Exemption; or,**
> **3) an Order of Mandamus that Health Canada do its duty not to violate Applicant's right to life by allowing his exemption to expire before the renewal is issued and forcing him to destroy all his medicine and plants while he waits.**
> **The grounds for the motion are that taking more than 4 weeks to examine a Property Owner's Consent Form that has not changed and forcing the Applicant to choose between concern for the law and for his health was denounced in R. v. Parker.**

24. At the permit renewal hearing, Director General of Civil Litigation Alain Prefontaine explained how he'd contacted Deputy Minister Glenda Yeates who got Director of Medical Cannabis Dr. Stephane Lessard who could not explain what had happened, Authorizations are now processed in under a month and renewals far less! When Mr. Prefontaine suggested the "glitch" could be fixed on Monday morning, Justice Roy said: not good enough! and ordered Health Canada to attend court

on Saturday morning to explain why it took more than 4 weeks to process one page. "Has the department gone fishing? Get the Deputy Minister to expedite it or see me in the morning." Director of Health Canada's Bureau of Controlled Substances Louis Proulx processed it before midnight.

25. Priscilla Lavell's first renewal was caught on the Form F glitch. Then necessary amendments caused complications that again retarded her renewal. Her exemption expired on Mar 12 2013. When her amendment issues were resolved 5 weeks after expiry in mid-April, she was advised it would still take the standard 8-10 weeks to process her permits and to "follow the rules" until her renewal arrived and she plant a new crop. Same situation Ray faced. She suffered through 9 weeks of expired authorization dreading being raided while forced into being an outlaw. And it wouldn't have happened without the "glitch!" And shows they didn't mind "going fishing" with already-expired renewals!!! No doubt their database has some telling notes about stalling her 10 more weeks after she's already been expired 5!

26. After 4 weeks, the Form F Glitch causing applicants to submit papers to be automatically rejected for lack of the unmentioned form had not been taken down. With 30,000 exemptions needing to be renewed, that's 2,500 per month, 600 per week. 120 every day. Given the 3-week turnaround for my renewal rejection due to Form F, that would suggest that all 2,000 files sent in while the glitch remained unrepaired are right now sitting on the renewers' desks with those lacking the unmentioned form about to be processed for rejection.

27. Ray Turmel, before more rejections were sent out, moved for

1) a declaration that repetitive requirement for Form F is a superfluous unconstitutional violation of Applicant's Right to life on the grounds that once the renter submits the Property Owner's consent with his application for the site, another application for site should be presumed to have the owner's consent. If the owner had withdrawn consent, the renter wouldn't he applying for that site, would he? So the yearly requirement to prove what is inherently implied is a burden that the patients subject to this regime can no longer tolerate.

STALLING PROCESSING

28. Mike Spottiswood had been charged with cultivation of marijuana before being exempted and tried in London Superior Court of Ontario between June 17-21. On Saturday night June 22, Mike's no-change exemption was expiring with no renewal after 7 weeks! Though his permits were processed in a little over 2 weeks in 2012, his no-change renewal was still now hanging over his head going into his 7th week. And he hadn't even lost 2 weeks on the Form F glitch! When he complained to the judge at the opening of his trial, the Crown said his renewal had been issued May 24th, 2013. Mike answered: I don't have it, where is it after a month? No explanation other than it must have been lost in the (Priority) Post.

29. The Crown was informed Spottiswood would file for the same short notice relief as Ray Turmel had received if he did not get his renewed exemption by the next day. Before

court opened, the Crown informed him the Health Canada database showed his renewed permits had been processed and ready to go on May 24 2013 but mailing had been delayed until to June 22, after the new June 19th Regulations were published in the Canada Gazette. Though prepared a month earlier, it had been processed under the future June 19 Regulations limiting his grow term to March 31 2013 rather than to June 22 2014. He had been processed in the usual less-than-3 weeks but delayed delivery a month to process him under the new rules. Nevertheless, his permits had been mailed that very day on June 18 2013, the day before they were waiting for when new regulations came into force!!! Other people were similarly stalled until after June 19.

30. If Mike Spottiswood's exemption renewal was delayed until the very day after June 19, so too could others have been processed earlier and mailed after delay.

31. Peter Stock's renewal was mailed to Health Canada on April 19 2013. Like Spottiswood, it was probably processed in under 3 weeks by about May 5 and then delayed until June 19, almost 9 weeks to deliver! His renewal application was complete before Ray Turmel's but was processed far after and sent out after Ray Turmel's May 31 Renewal.

32. Wayne Robinson's renewal took 6 rather than the expected 3 weeks and was under the new June 19 regulations when he should have been renewed under the old.

33. Derek Collins' renewal was sent in April and his permit mailed out on June 24!

34. Paul Gatte sent his renewal in early March with his permit expiring on June 9 2013 but was dated June 24 and not received until July 3rd. This shows Health Canada not only stalled renewals but even allowed exemptions to expire to get them processed under the new rules!!

35. Henriette McIntyre's Authorization to Possess was post-dated to June 28 for processing after June 19 under the new rules but mailed out June 18, same day as Michael Spottiswood, one day too soon. Henriette's Authorization was ready to go by June 18 since it was mailed out on June 18. If they could mail it out the day before the new rules came into force, they could have issued it the day before too. But it was post-dated to look like it had been processed and issued under the new regulations even though they were not in force when her authorization was processed. So she was in the singular position of having her exemption but not being able to take her medicine until Friday June 28! She lost the benefit of the longer growing season under the old regs to be limited under the new and instead of obtaining her medicine at $1/gram, she'll now be able to pay the Government's licensed growers $10/gram 3 months sooner.

36. On Tuesday June 25 2013, Henriette McIntyre filed an Application for:

1) a personal constitutional exemption to use marijuana for medical purposes until the Applicant's Health Canada exemption AP-HMM-09-M55571140-54-13-A which was mailed June 18 but whose issuance was post-dated to June 28 2013, takes effect;

2) an Order that Applicant's Authorizations to Possess and to Produce be re-processed under the pre-June 19

regime they should have been processed under.

The grounds for the motion are that

1) my doctor never recommended that I should wait 10 days after I had been processed to start my medication, and the medical opinion of the bureaucrat who decided what date I could start was unprofessional and from the wrong profession; and what medical reason could there be for delaying my permits?

2) Under the much more onerous June 19 regulations, Applicant's grow license does not last one year but only 9 months terminating on March 31 2014, not June 28. That means that for 3 months, Applicant will not be able to have her 8-gram per day medication at a cost of about $1 per gram, $8 per day, but will be forced to purchase from a Government Grower at $10 per gram, $80 per day. The 3 months which would have cost me only $720 for medication will now cost me, due to the post-dated issuance of my exemption under the new regime, over $7,200, $6,500 more that I cannot afford, for only 3 months. Where I could have been paying about $3,000 per year, I will now have to pay $30,000 per year from my $12,000 disability pension. Math doesn't work any more.

37. On June 25, by the time of the Special Sitting granted by Federal Court Justice Annis two hours later, Health Canada had already re-issued her a new immediate Authorization and Permit dated June 25 2014. But she had been processed under the new June 19 regulations, the day after her permits were mailed out as completed.

38. Victoria Hollinrake received her permits post-dated to August 6 2013 and could not use her medicine until then.

39. So, now that Health Canada's intentional delivery delays stand totally exposed by the Crown admission that Spottiswood's ready-to-go-in-3-weeks permits were delayed 4 more weeks to put him under the new regulations, the database would not only show evidence of the crime committed against his person by this policy but also against all other patients whose medication was politically delayed. It is all recorded on their database for querying by the court!

AMENDMENT DELAYS

40. Ray Turmel took possession of a new residence on June 1 and had to be out of his previous tenancy by July 1 and sent in his Application to Amend his storage and home address. Nearing July 1, he called to find out it would still take time. On July 6, he received a letter informing him he had to file another Form F! for the site that wasn't changing. He filed a motion for:

> **1) an Order granting a constitutional exemption to store Applicant's supply at his new address 6 Des Noisetiers, Grenville-sur-la-Rouge until his exemption is amended;**
> **2) a declaration that the requirement for resubmission of data in the Exemption Amendment Form that is not being amended be struck as superfluous.**
> **3) a declaration that the requirement for yearly Property Owner Consent to be filed with a non-site change amendment is a superfluous unconstitutional violation of Applicant's Right to life.**

41. The Crown soon informed him his Amendment has been processed and was on the way.

42. Anthony Van Edig's doctor had sent in an increase in his prescription and after 4 weeks, he filed a motion T-1271-13 for:

> **1) a personal constitutional exemption to allow Applicant to follow his doctor's instruction to use 12gms/day of marijuana for medical purposes rather than 8gms/day until the Applicant's Health Canada Renewal of Authorization to Possess MMAD-93761-12 arrives;**
> **2) an Order declaring the non-instantaneous Marijuana Medical Access Regulations ("MMAR") invalid.**
> **The grounds are that:**
> **1) Applicant's doctor never recommended that he wait to start his increased prescription, and 4 weeks wait for a Renewal that is supposed to average under 3 weeks to process is an unconscionable delay violating the S.7 Charter Right to Life.**
> **2) the non-instantaneity of delivery of medication by requirement for a 8-10 week processing time in an era of instant communications with most other government departments is a violation of the S.7 Charter Right to Life.**

43. The next day, the Crown informed him his revised licenses were en route. But they had been post-dated to Aug 27, the end of his previous prescription. So despite his doctor changing his prescription on Jun 17, Health Canada decided he was going to have to wait a whole 10 more weeks to start!

44. After 6 weeks he had not been allowed to legally take his new prescription and expected to wait the full 69 days,

10 weeks, until Aug 27 2013, Applicant sought relief on short notice motion with his doctor's letter in support of starting right away for a) for a personal constitutional exemption to allow Applicant to follow his doctor's instruction to use 12gms/day of marijuana for medical purposes rather than 8gms/day until the Applicant's Health Canada Authorization to Possess MMAD-93761-12 takes effect on Aug 27 2013.

45. Elisha McDermott, like Tony Van Edig, received her amended prescription post-dated to Aug 16 when her old prescription expires! So she filed an application T-1308-13 with her doctor's support letter to start her medicine right away.

46. The Crown responded:

> **In response to your motion to the Court for "interim relief" (where, if I understand correctly, you ask for an Order that would authorize you to follow your doctor's latest prescription for marihuana - that being to use up to 6 grams of dried marihuana daily), I am pleased to advise that Health Canada is able to accommodate your request once you send them a letter requesting that your current Authorization to Possess (which currently authorizes you to use up to 4 grams of dried marihuana daily) be revoked... find attached a letter to you from Mr. Louis Proulx, the Acting Director of the Bureau of Medical Cannabis advising you that if "you wish to have the daily amount increase applied prior to your current ATP's expiration, you may submit a letter of revocation to the Program."**

47. Elisha wrote:

> **REVOKE!!!!! I authorize you to revoke my current authorization dated Aug 16 2013 as "right away" as possible.**

48. MMAP-PAMM responded:

> **Thank you for your emails of August 7, 2013, and August 10, 2013, in which you request to revoke your Authorization to Possess marihuana for medical purposes. We can confirm that, as per your request, your Authorization to Possess has been revoked. Additionally, we can confirm that your Authorization to Possess has been reissued. Your new authorization document has been mailed to you.**

49. Health Canada were making Anthony Van Edig wait 10 weeks and never told him about the merely emailling in a revocation of his old permit to get his increased prescription in only 5 days as Elisha was offered? They could have solved his problem in only 5 days and didn't tell him about the easy out they offered Elisha McDermott? Why did they tell Elisha and not Anthony?

50. Once Anthony found out, he forwarded Elisha's acceptance of revocation to Health Canada with his revocation:

> **I hereby authorize you to revoke my current authorization ending August 27th, 2013 and replace it as soon as possible with the new one as recommended by my doctor.**

51. Health Canada responded:

> **We are unable to proceed with a reply as there is**

insufficient information provided in your email to ensure we are communicating with the correct client. In order to ensure the protection of personal information submitted to the Program we require some additional information. If you desire a written response please reply with the following information:
your full name (first, middle and last);
your address;
your telephone number; and
your date of birth.

523. Anthony Van Edig responded:

I am starting to believe that Health Canada is giving me the run around for which reason I do not know, I provided you with my MMAD number which gives you all the pertinent information with my email address. The date of renewal is for August 27th, 2013, we are now the 19th, according to my doctor's letter I was supposed to start on my new prescription ASAP. I have been fighting for this right for over weeks now! Why make it difficult for me to get my pain relief medication. Following are the requested information.

53. He complained to Mr. Prefontaine:

Could you please help me expedite my request as it was done for Elisha McDermott (see the included emails). I am not getting any cooperation from Health Canada.

54. The next day, Health Canada wrote:

We can confirm that, as per your request, your Authorization to Possess has been revoked. Additionally, we can confirm that your Authorization to Possess has

been reissued. Your new authorization document has been mailed to you.

JUDICIAL REVIEWS NOW MOOTED

55. Someday, the database will be queried and we'll find out how many first renewals were caught on the "glitch" or evaded it by submitting the unmentioned Form F; how many licenses then fell into expiry before being again renewed; all the stats of the queried abuses are on their database now for eventual examination. Though, with the repeal of the MMAR, the judicial reviews of these abuses will no doubt be mooted, they do serve to show that not only did the MMAR regime malfunction, it malfunctioned at the hands of sadists!

56. Though I am a Plaintiff and have personal knowledge of all matters sworn herein, there can be no bias possible on the Expert Report when elementary mathematics used can be verified by anyone possessed of such elementary schooling.

ACTION FOR REPEAL

57. In Feb 2014, I started an action for a declaration that both the MMAR with 16 distinct flaws and MMPR with 20 flaws were unconstitutional and that the word "marijuana" must be struck from Schedule II of the CDSA absent a viable medical exemption, or for an Exemption from the CDSA to use it for prevention and neurogenesis. The Respondent is in Default of filing a Statement of Defence.

58. My action was stayed without leave of the court pending a constitutional challenge in Allard v. HMQ (T-2030-13) to 4 minor malfunctions in the the MMPR to which the Crown had presented a defence.

59. On Mar 21 2014, Justice Manson:

A) ruled that all Production Permits grand-fathered to Oct 1 2013 were extended pending trial of the action but only patients with current Authorizations To Possess Permits as of Mar 21 2014 were extended; two of the Allard Plaintiffs and those with permits just expired were Left-Outs;

B) failed to extend the MMAR infrastructure in support of extended exemptions including:

a) change garden or storage address;

b) change outdoor to indoor growing;

c) change indoor to outdoor growing;

d) change Designated Grower;

e) change dosage;

f) save their genetics.

C) imposed a limit on possession of 150 grams.

60. On Dec 15 2014, the Federal Court of Appeal ruled Justice Manson should remedy the irreparable harm now being done to the Left-Outs, there was no remedy for the missing infrastructure, the 150 gram limit on possession was sustained.

SUMMARY OF OPINIONS EXPRESSED

UNDER MMAR & MMPR

61. The following constitutional violations are alleged under both the MMAR and MMPR exemption regimes:

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-MMPR Hemp production stifled by Health Canada regulations rather than Agriculture Canada has resulted in a thousand-fold less production than much less-useful wheat.

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.

UNDER THE MMAR ALONE

62. The following constitutional violations are alleged u under the only the MMAR exemption regime:

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;

MMAR 17) Renewal Form F glitch gets first renewals rejected

MMAR 18) allows post-dated Exemptions

MMAR 19) allows post-dated prescription changes

MMAR 20) no MMAR infrastructure for amendments.

UNDER THE MMPR ALONE

63. The following constitutional violations are alleged under only the MMPR exemption regime not including the ten in common with the MMAR:

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 transferring the medical document back to the patient unreasonably restricting access;

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.

REASONS FOR OPINIONS EXPRESSED

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UNDER THE MMAR AND MMPR

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1) RECALCITRANT DOCTORS AS GATEKEEPERS

64. 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."

65. 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.

66. 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."**

67. 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.

68. 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)."

69. 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.

70. 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.

71. 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."

72. 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.

73. 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."**

74. 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.

75. 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.

76. 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.

77. 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.

78. 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?

79. That the doctor could believe he would be liable for criminal acts committed "under the influence" shows the silliness of some non-medical reasons.

80. 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.

82. 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.

83. 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."**

84. 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.

85. 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.

86. 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."**

87. 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.

88. 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

89. 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."**

90. 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 DOCUMENTS FOR PERMANENTLY ILL

91. 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;

92. 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.

93. 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

94. 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."

95. 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.

96. 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

97. 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;"

98. 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!

99 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!

100. Health Canada no longer cancels Exemptions for its own "reasonable grounds," it has delegated that onus onto the non-governmental Licensed Producer (LP):

101. 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."

102. 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.

103. 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

104. 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.

105. The Health Canada site itself deters doctors from participating by its constant repetition that it does not approve what the courts have found.

7) PROCESSING DELAYS

106. 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.

107. Without any infrastructure since April 1 2014, there is now not only delay but impossibility for those who need to amend their exemptions.

8) NO RESOURCES TO PROCESS LARGE DEMAND

108. 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 6 MMPR Licensed Producers on April 1 and 13 MMPR Licensed Producers to date, and most not up to production, the MMPR cannot and never could supply the last prescribed dosage under the MMAR.

9) HEMP PRODUCTION STIFLED BY HEALTH CANADA RED TAPE

109. Wheat acreage in Canada is about 25,000,000 acres. Canola is about 20,000,000 acres. Hemp has averaged 25,000 acres under the impediment of Health Canada red-tape.

Dealing with a prohibited plant causes inefficiencies that have kept hemp production a thousand-fold less than wheat. And though it has a seed yield comparable to other grains, it has a stalk that also is of untold uses. Yet, the most-useful plant of yore has been kept at minimum production that can only be attributable to Health Canada Regulations.

110. The most egregious such regulation is that hemp grown must contain less than 0.3% THC. With marijuana on the street containing 6-25% THC, making the threshold 20-fold less than necessary eliminates the use of any plants between 0.3% and 6% from being harvested for the tree, not the flower. The Canadian economy needs this most-beneficial source of biomass so badly that its suppression is causing detrimental effect on all the citizens of that economy.

10) NO EXEMPTION FROM CDSA S.5 TRAFFICKING

111. 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

MMAR 11) SPECIALIST REQUIREMENT

112. 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."**

113. 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.

114. 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

115. 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."

116. 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/GROWER (HITZIG, SFETKOPOULOS)

117. 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.."

118. 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/GARDEN (HITZIG, BEREN)

119. 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."

120. 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.

121. 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

122. MMAR 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..."

123. The limits on plants is inappropriate because different strains for different pains produce different gains of growth and only the stored amount should matter.

124. 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.

125. 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 PUPL EXEMPTEE

126. 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!

MMAR 17) FORM F GLITCH REJECTS 1ST RENEWALS

127. It is obvious that the Form F glitch puts many renewers clocks back several weeks so their exemptions may expire before receiving their renewals. And when it was pointed out, Health Canada refused to correct the instruction to prevent more from having their renewals glitched.

MMAR 18) POST-DATED EXEMPTIONS

129. It should be given that bureaucrats should not be able to delay medical treatment and post-dating medical treatment is what post-dating exemptions does.

MMAR 19) POST-DATED AMENDMENTS

130. There can be no reason for post-dating amendments than for abusive purposes. 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. "**

MMAR 20) NO MMAR INFRASTRUCTURE FOR AMENDMENTS

131. An Exemption regime that permits no amendments cannot be said to be working for all.

UNDER THE MMPR ONLY

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11) MMPR ATP VALID SOLELY AS "MEDICAL DOCUMENT"

132. MMPR 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).

133. Everyone's ATPs become ineffective without proof of purchase from a Licensed Producer. So while medical need goes on, tens of thousands fall into unconstitutional illegality.

134. MMPR CANCEL FOR BUSINESS REASON

135. S.117(4): "A licensed producer may cancel the registration of a client for a business reason."

136. "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.**

137. 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

138. 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."

139. 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 16) NO BRAND RIGHTS TO GENETICS

140. 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.."

141. 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.

142. 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. With only 13 Licensed Producers who grow mainly propriety strains, the loss of genetics has to be massive.

17) UNAFFORDABILITY

143. 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."

144. 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.

145. 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.

146. The Allard rulings both cite accessibility as a function of affordability and the end of the MMAR puts everyone at the risk of penal jeopardy if they can't afford the new high prices.

MMPR 18) PROOF OF AUTHORITY TO POSSESS

147. 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."

148. 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

149. 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.

150. As of April 1 2014, 6 Licensed producers were not capable of producing the tonnage required to satisfy even the already-exempted users with an average of 18 grams per day and even the 13 LPs today could not grow enough for a working regime.

151. Over 1,000 LP applications have been filed and Health Canada reports that their red tape has successfully caused half of them to be rejected. Form-filling consultants are now a major expense. So the bureaucracy that managed to keep the number of exemptees down to thousands out of millions of medical users have managed to keep producers down from the possible thousand to an unlucky 13!

20) 150-GRAM LIMIT FRAUD

152. 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.

153. 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"

154. 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.

155. 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.

156. 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.

157. 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.**

158. 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%).

159. 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..**

160. Carter's study has informal surveys for its guestimate, not peer-reviewed at all.

116. 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.**

161. 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!!

162. 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.**

163. 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.

164. 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**

165. 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.

166. 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**

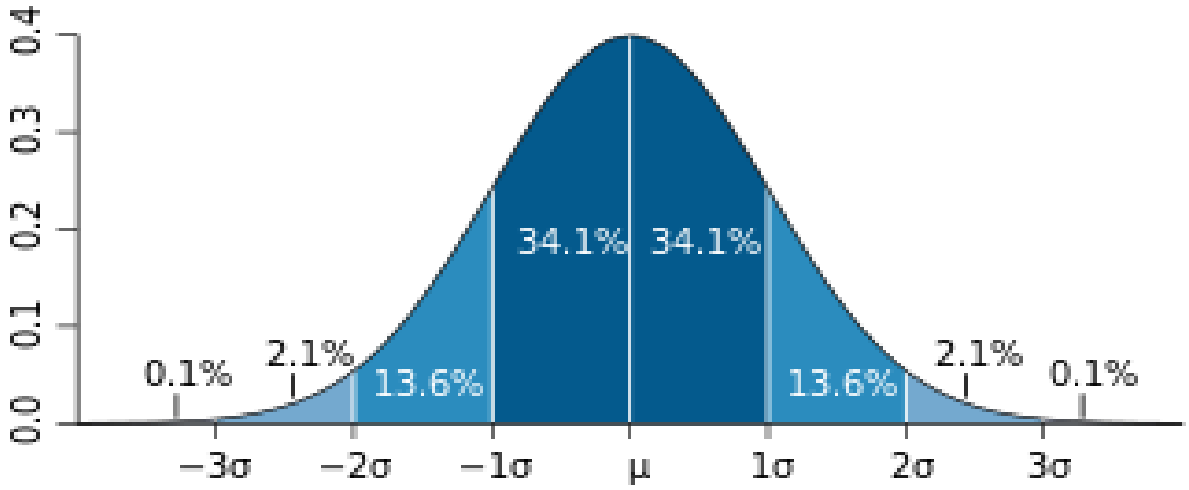
average daily dose of dried cannabis (various potencies) used was .68 grams per day (Range 0.65-0.82 grams per day) (Hazencamp and Heerdink 2013).

167. 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)."**

168. 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.

169. 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.



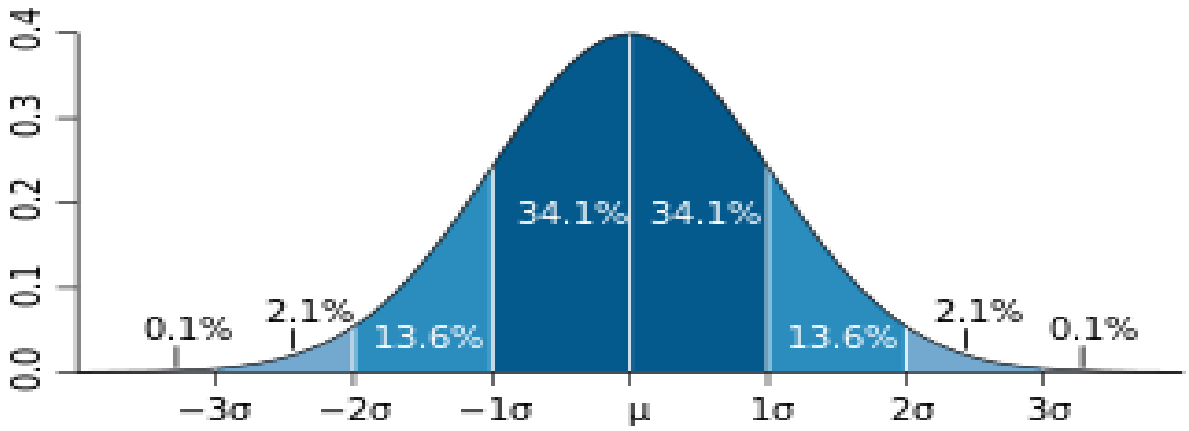
.575g .61 .65 .68 .72 .75 .785g

170. 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.

171. Yet, Health cited the informal Israeli "survey" suggesting an average of 1.5g/d. For the Dutch 0.68 average survey to find one 1.5g/day is (1.50-0.68))/.034 = 24 Standard Deviations off possible. Didn't someone notice the two polls contradicted each other? Reputable polls cannot have one poll with double the average of the other with such small standard deviations. 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.

172. The actual Canadian mean of 18 is (18.0-.68)/.034 = 500 Standard Deviations from 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.



15.3 16.2 17.1 18 18.9 19.8 20.7

173. 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.

174. 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.

175. Justice Manson was not alerted to the fraudulent evidence before his court and ruled at Para.55:

> **As of Dec 3, 2013, the average daily dosage is 17.7 grams per day. Despite this, the average amount used by those being supplied by Health Canada was between 1 and 3 grams.**
>
> **"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.

176. Justice Manson 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 17.7, 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 possession limit per delivery but 1,350 grams shippable!! Health Canada offers supply 9 times too slow supply, an underestimate of 89%!

177. As well, none of the Allard Plaintiff's are large users while Michael Pearce's latest prescription was Canada's highest: 260g/day. 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?

178. Justice Manson noted in Para.55 that despite a daily average of 17.7g/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.

179. 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.

180. The 150-gram limit makes the option of bulk discount buying impossible. Always only retail prices.

B) POOR NO LONGER HAVE AFFORDABLE ACCESS TO SELF-GROW

181. 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.

182. The 150-gram limit makes discount bulk buying impossible to maximize the cost of this unsubsidized medication.

GENOCIDAL EFFECT

183. 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.**

184. 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" as of April 1 2014. Failure to permit affordable self-production does the same.

A2) STRIKE "MARIJUANA" FROM SCHEDULE II

185. In 1997, Justice Sheppard stayed possession and cultivation charges against Terrance Parker and granted an exemption from the offences.

186. On July 31 2000, the Ontario Court of Appeal ruled the prohibition on possession in S.4(1) to be invalid but suspended the decision 1 year granting Parker an exemption for the year. The Court agreed both possession and cultivation offences were unconstitutional but could only strike down possession because the Crown had not appealed Sheppard J.'s stay of the cultivation charge but said they would have if they could have.

187. On Dec 11 2000, Justice Acton in R. v. Krieger followed the Parker Court's lead and struck down the S.7(1) prohibition on cultivation that the Ontario Court of Appeal had not had the opportunity to strike down.

188. On July 30 2001, the Ministry of Health enacted the MMAR Exemption application process with no time for Terry Parker to apply before the one-year exemption expired.

189. 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. On time was instituted a working application form, not a working exemption.

190. On Sep 15 2001, 6 weeks too late, Health Canada granted Parker and former exemptees a 6-month extension to come up with their 2 or 3 specialist doctors' signatures, most failing.

191. On Mar 18 2003, the Alberta Court of Appeal dismissed the Crown appeal and the Acton decision took effect. The Crown did not obtain a stay from the Supreme Court.

192. In July 2003, the Ontario Court of Appeal dealt with 5 different appeals by Parker, two by Turmel, and Hitzig and J.P. A clear delineation of the issues involved is now important.

1) "PARKER" appealed Lederman J.'s refusal to declare that the Terry Parker Day invalidation of the S.4 CDSA possession offence took effect Aug 1 2001 when the MMAR failed to provide him access to his medicine on time. No working exemption for Parker meant No Offence for everyone.

2) TURMEL-PAQUETTE appealed the Lederman decision dismissing the motion for a declaration that the Terry Parker Day declaration had taken effect on Aug. 1 2001.

3) "TURMEL [2003]" appealed the MacLeod J. decision dismissing an application by John Turmel for prohibition of a S.5(2) charge of possession for the purpose of trafficking charge to the Prime Minister because "marijuana" could not remain on the Schedule II for all other CDSA sections since the words "except marijuana" were not added to S.4 possession prohibition to comply with the Parker Court ruling, thus arguing the whole grid of prohibitions was

shorted out by the failure of the MMAR to save the possession and cultivation offences.

4) "HITZIG" Crown appealed Lederman J.'s declaration that the MMAR was constitutionally flawed by S.43 limit of 1 patient per grower and S.54 limit of 3 gardeners per garden. Respondent Hitzig did not seek a declaration that the CDSA prohibitions were invalid once the MMAR had been proven defective.

5) "J.P." did had won that declaration. Crown appealed Rogin J. who quashed the S.4 possession charge ruling the Bad Exemption meant No Possession Offence since Aug 1 2001 Terry Parker Day when the MMAR exemption failed to be properly enacted by legislation rather than policy.

193. On Oct 7 2010, the Ontario Court of Appeal:

1) in PARKER and

2) in TURMEL-PAQUETTE dismissed the appeals for a declaration that the invalidation of the S.4 CDSA possession offence took effect on Aug 1 2001 Terry Parker Day because Parker had not been exempted on time;

3) in TURMEL 2, [2003], dismissed the appeal for prohibition ruling marijuana didn't have to come off the list of controlled substances to effect the Parker invalidation of the possession offence despite there being no "except marijuana" in the S.4 offence to possess anything on the banned list, judges would remember which laws in the non-reprinted Criminal Code really weren't valid and which still were.

4) in HITZIG, struck down the S.41 and S54 limits on supply to finally render the MMAR exemption constitutional; and added in paragraph 170 that people "who establish medical need are simply exempt."

5) in J.P.,

a) rejected that the MMAR could not be amended by policy rather than legislation but

b) quashed the possession offence pursuant to S.601 as no longer known to law pursuant to the ruling above:

> **[14].. 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...**
> **[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] 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. 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].. the prohibition against possession of marihuana**

in s.4 is in force when there is a constitutionally acceptable medical exemption in force."

c) over-ruled Justice Rogin who deemed the prohibition struck down as of no force and effect "to have been deemed repealed" pursuant to Interpretation Act S.2(2) and instead ordered that the invalidated prohibition be deemed "absent without a constitutionally acceptable medical exemption" until revived by their Hitzig ruling that rendered the exemption constitutional.

194. The CDSA possession offence was absent while the flaws found by Hitzig in S.41 and S.54 made the MMAR exemption deficient from Aug. 1 2001 Terry Parker Day to Oct 7 2003 Hitzig Day when the flaws in the MMAR were corrected; the last line of the judgment: "the prohibition against possession of marihuana in s. 4 is in force when there is a constitutionally acceptable medical exemption in force" completely explains the J.P. BENO Quash Test.

195. Courts that have accepted the revival of the CDSA prohibitions in 2003 with the amending of the MMAR have ruled the prohibitions have been valid since then. And then take note how the Beren decision struck down those very same rules once again in 2010. The CDSA prohibitions must be valid if the flaws in the MMAR were struck down not only once but twice.

196. How could the courts not realize that for the two flaws to be struck down in Hitzig and then re-struck down in Beren, they had to have been put back. How can courts accept that the flaws had to be struck down twice and yet the legislation remained valid between the two?

197. R. v. Spottiswood [2013] Crown Factum:
History of the Marijuana Medical Access Regulations
53.. The Court of Appeal's ruling resulted in a retrospective period of invalidity of the prohibition of marijuana possession dating back to July 31, 2001 (the date the Parker suspension expired) but made the offence of simple possession once again fully constitutional as of Oct 7 2003 (the date of the Hitzig Decision).

198. On Dec 3, the MMAR were amended to address the concerns identified in Hitzig."

199. On Dec 3 2003, Health Canada "addressed" the already-addressed concerns identified in Hitzig, concerns whose striking down by Hitzig had made the MMAR whole on Oct 7 2003. And then the same two concerns identified in Hitzig had to be re-addressed in Sfetkopoulos and Beren. What can "address the concerns" that have just been addressed really mean? They covered up the re-introduction of the two concerns struck down in Hitzig. "Address the concerns" really means "unaddressed the concerns!" And it has worked to hide the fact that once Hitzig had struck down the two flaws, for Beren to then be able to also strike down the same two flaws, someone must have put the same two flaws back up!

200. Crown Attorney Sean Gaudet's Memorandum to the Supreme Court of Canada adds:

> **"[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." Beren added: "since S.54(1) was re-introduced into the MMAR."

201. On Apr 23 2009, the Supreme Court dismissed the Crown application for leave to appeal the Sfetkopoulos ruling by the Federal Court of Appeal that the MMAR had once again been invalid since Dec 3 2003 until the cap was struck down. May 14 2009, Health Canada addressed the court's concern by imposing a new cap of 2 patients per grower, so much more economical than just 1.

202. On Jan 14 2010, the Supreme Court dismissed the Crown application for leave to appeal the ruling by the B.C. Court of Appeal in R. v Beren for the second re-introduced cap of 3 gardeners per garden creating a similar period of retrospective invalidity dating back to December 3 2003, the date that s.54(1) were re-introduced into the MMAR. Defence counsel Lawyer Kirk Tousaw did not move to follow the J.P. logic of Bad Exemption makes No Offence and let Beren be convicted.

203. On Mar 4 2010, the same two Hitzig concerns addressed in 2003 and then unaddressed by Health Canada had to be again addressed when Beren decision striking down the S.54(1) and S.43 flaws in the MMAR took effect.

204. On Mar 11 2010, 8 days later, the MMAR S.43 and S.54 limits were officially repealed in print with the new limits (plus one) imposed in S.32. Now those concerns need to be struck down again.

205. Back on Dec 8, 2003, not appealing to the Supreme Court of Canada within 60 days, the Crown complied with the J.P. ruling that the Parker invalidation of the Possession Offence had taken effect on Terry Parker Day by staying all 4,000 remaining marijuana possession charges laid between Terry Parker Day 2001 and Hitzig Day 2003.

206. On Dec 21, 2003, the Supreme Court dismissed the Crown's application for leave to appeal the Krieger invalidation of the cultivation offence by the Alberta Court of Appeal though the Crown never withdrew any remaining cultivation charges as were withdrawn with the Ontario Court of Appeal Parker ruling. Not even in Alberta.

207. At the same time, the court dismissed the Malmo-Levine application for leave to appeal the refusal to declare the prohibition invalid due to his recreational need as Parker had gotten the prohibition declared invalid due to his medical need. The Malmo-Levine decision has been repeatedly misconstrued by the Crown as having decided the constitutionality of the cannabis prohibition itself when all it did was affirm that Parliament's power to prohibitions are not trumped by recreational need as they were by Parker's medical need. So government could prohibit, not that it had prohibited since the offences had been invalidated in Parker(2001) and Krieger(2003).

208. In 2004, despite the constant failure of Johnny Dupuis' doctor to satisfy Health Canada's examining pharmacists as to his prescription for 5 years, Justice Chevalier accepted the doctor's evidence of his medical need and stayed his cultivation charge; the first court to follow Hitzig 170: "those who show medical need are simply exempt."

209. Arguments based on these cases are:
A) POLCOA: Parliament has not re-enacted the S.7 cultivation and S.4 possession prohibitions underpinning all other marijuana prohibitions in the CDSA since they were struck down by the Ontario and Alberta Courts of Appeal; POLCOA, Parliament Only Legislates, Courts Only Abrogate; or
B) BENO: if the prohibitions were somehow revived without Parliament, that the Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the date that s.41(b.1) and 54 were re-introduced into the MMAR pursuant to the Court in R. v. J.P.'s ruling that a Bad Exemption makes No Offence.

210. A) 1) POLCOA: The Ontario Court of Appeal in J.P. erred in ordering that the Interpretation Act not be obeyed. Any court judgment contradicting Parliament's Interpretation Act is in error. Parliament Only Legislates, Courts Only Abrogate (POLCOA). Justices Phillips and Rogin in R v. J.P. and Justice Chen in R. v. Masse, make very clear that when a statute has been invalidated by the courts as unconstitutional, it is deemed to have been repealed pursuant to the Interpretation Act S.2(2) and cannot be "resuscitated." Section 43(a) makes clear striking down a section in one act cannot revive any section in another act not in force and fixing the civil MMAR legislation could not

affect the criminal provisions in the CDSA struck down in Parker and Krieger.

211. The Court of Appeal's ruling has resulted in courts below not obeying Parliament's Interpretation Act to deem the prohibition repealed and in obeying the court's contradictory ruling to deem the prohibition only absent until concerns in the MMAR are addressed, and unaddressed, and addressed, and unaddressed, and now needing to be addressed again. The Interpretation Act says courts should deem any statute of no force "to have been repealed," the Ontario Court of Appeal says to deem it only "absent until fixed." The Interpretation Act rules.

212 B) BENO: Should this court uphold that the Parker and Krieger invalidations of the CDSA possession and cultivation prohibitions were not "repealed" but only "absent" until the Hitzig court fix of the MMAR, nevertheless, if the CDSA prohibition was "absent" during the Parker interval of MMAR malfunction, so too, the CDSA prohibition has once again been "absent" since Dec 3 2003 after the re-introduction of the very same two flaws that were declared to be the cause of the malfunction in the MMAR by the Hitzig Court in Oct 2003. Sfetkopoulos found Section 41(b.1) flawed the MMAR and R. v. Beren found S.41(b.1) and Section 54 flawed the exemption. Just as the J.P. ruling 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, so too, both the Sfetkopoulos and Beren decisions create a similar period of retrospective invalidity dating back to December 3 2003, the

date that s.41(b.1) and 54 were re-introduced into the MMAR and both defects were never fixed at the same time since the once when Hitzig struck them in 2003.

213. The MMAR remain unconstitutionally deficient since Mar 11 2010 when the new caps were re-installed in S.32(e) and (d) in the legislation.

241. Given the failure of the regimes to provide a viable medical exemption, the prohibitions on marijuana are invalid and the word "marijuana" should be struck from Schedule II of the CDSA.

215. This Affidavit Expert Report is made in support of a Motion for repeal of all cannabis marijuana prohibitions by striking "marijuana" from Schedule II of the CDSA on the conclusions that the myriad of defects highlighted all tend to reduce rather than increase patient chance of survival depending on access to and supply of their needed legal herbal treatment.

_____

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Sworn before me at Toronto on Dec 24 2014

_____

A COMMISSIONER, ETC.

SCHEDULE A

JOHN C. TURMEL, B. ENG.: CURRICULUM VITAE

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1974 at Ottawa: As an electrical engineering undergraduate student at Carleton University, I received an A+ in the first and only course of its kind in Canada, Math 69:140: the Mathematics of Gambling, given by Carleton University Mathematics Professor Walter Schneider, Ph.d. I got 100% in Physics, an A+ in Fourth Year Electronic Engineering, while the lesser grades in earlier years show the effect of too much card-playing in the student lounge.

1975-8: I was the Teaching Assistant of the Mathematics of Gambling course and became a professional gambler junketing on over 50 5-day junkets to Las Vegas casinos.

In 1975, I ran the first university-student card-counting team in Las Vegas with students from the Carleton gambling course; a decade before the later more-celebrated university teams.

1976 at Las Vegas: My Fourth Year Engineering Project titled "A APL Computer Analysis of Canadian Stud" which was presented to the Third Conference on Gambling at Ceasar's Palace.

1977 at Ottawa: After eventually being barred in Las Vegas as a too-successful Blackjack card-counter, with Blackjack now beatable by skill like no-rake Poker, U-May-Bank Blackjack should be legal like no-rake poker too and I started running U-Bank Blackjack games until busted and convicted.

In 1979, I first ran for Parliament to legalize gambling though reprogramming our world's banks to run like poker chips, interest-free, which became the main focus of my Guinness Record 77 Elections Contested and 76 Elections Lost, one called off, since then. "Super Loser," or "Winner at the tables, loser at the polls" the media like joke.

1980s: I hosted very public Ottawa Regional Holdem Poker tournaments which are completely legal as long the organizer nets no profit after expenses!

1984: I was featured in the Anthology of Canadian Canadian Characters and have been searchable as the "Great Canadian Gambler" since then.

1989 at Ottawa: Ontario Justice James Fontana ruled the Found-Ins charged at my game could not be guilty since U-Bank Blackjack was a fair game! Once he had ruled they had not been unfairly taken advantage of by the Keeper

possessing the bank all the time, Justice Lennox found I could not have kept an illegal gaming house if I had no extra advantage! So I was finally free to run U-Bank Blackjack with no-rake-off poker.

1991 at Hull Quebec: I introduced Holdem Poker to Quebec at my 7-table Casino Turmel on "Main Street" in Hull (4 Blackjack, 3 Poker) and hosted the First Canadian Open Holdem Championship, and six more since then. "Operation Blackjack" by the Quebec Police shut down Casino Turmel.

1992 at Ottawa: Back in Ontario where I'd been acquitted, I introduced Holdem poker to Ontario at my 6-table (3 Blackjack, 3 Poker) Casino Turmel at Baxter Plaza in Ottawa. When I was left alone, I moved to a bigger 28-table (21 Blackjack and 7 Poker) Casino Turmel at Topaz Plaza.

1993: The Ontario Provincial Police "Project Robin Hood" raid shut down the Topaz Casino Turmel. I've submitted the Project Robin Hood Raid to the Guinness Book of Records as the biggest gambling house raid. In order to convict me after I'd been formerly acquitted, expanded the meaning of a word to convict winnings that had been formerly declared legal. The new definition is now in the Criminal Code: "Gain" - as used in S.197 para.(a), "gain" can include direct winnings. Consequently, where the accused was an exceptionally skilled professional gambler who supported the commercial gambling establishment and paid employees out of his large winnings, the premises fall within the meaning of "common gaming house" R. v. Turmel (1996) 109 C.C.C. (3d) 162 (Ont.C.A.)

I have been accredited expert witness status in matters related to the Mathematics of Gambling eight times.

1980 at Hull: Quebec Provincial Court Judge Charron.

1981 at Ottawa: Ontario Provincial Court Judge Hutton.

1981 at Ottawa: Ontario Provincial Court Judge White.

1980s at Hull: I was to be expert witness in Quebec Provincial Court and the charges were withdrawn.

1989 at Ottawa: Ontario Provincial Court Judge Fontana where I was the Crown's main witness and asked to be accredited by Defence which won.

1993 at Ottawa: Ontario Provincial Court Judge Wright;

1994 at Mississauga: Ontario Provincial Court Judge Rosemay;

2003 at Ottawa: Federal Tax Court Justice Diane Campbell in Epel v. The Queen 2003 TCC 707 (CanLII) who ruled Epel's non-professional gambling winnings were not taxable in Canada as Turmel's professional winnings were. Decision attached.

1995 United States & Atlantic City: I spent the next seven years playing professional poker in the United States where I became known as "The Professor" at the Trump Taj Mahal in Atlantic City whose poker room was featured in the movie "Rounders." I boast the highest hourly win rate in the world over the past 25 years. Among the piranhas mentioned in Rounders, the TajProfessor was The Great White Shark.

Since 2000, I have played poker professionally in Canada, for the past 10 years at the OLG Brantford Poker Room. I authored "Play Holdem Poker like a Bookie" and "How to deal 60 Holdem hands per hour" and have engineered many new Poker Power Tools to help up my world-record bets-per- hour win rate which I have published in instructional poker videos at http://johnturmel.com/tajprofessor.htm An online search would find I am the only Professor of Poker Systems Engineering or Professor of Banking Systems Engineering on the planet.

My expertise is the application of game theoretic analysis to determine the odds of real world physics.

Since 2000, I have devoted much of my attention to decriminalizing the safest herbal remedy known to man and opining how its prohibition results in the reduced chance of good health and survival by patients who would benefit from it but who cannot access it in least time. Then the patient witnesses how much pain or threat each tort in the MMAR caused them to suffer under.

Dated at Toronto on Dec 24 2014.

File No: T-488-14

FEDERAL COURT

BETWEEN:

JOHN C. TURMEL
Plaintiff

and

HER MAJESTY THE QUEEN
Respondent

AFFIDAVIT OF THE
EXPERT REPORT OF
JOHN C. TURMEL, B.ENG.
(Expert in
Mathematics of Gambling)

For the Plaintiff:
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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 Affidavit Expert Report details the myriad of defects in the MMAR and MMPR medical exemption regimes that render it irreparably unconstitutional and seeks a declaration that the MMAR and MMPR exemption regimes are unconstitutional.

2. On the basis of the R. v. J.P. decision that quashed the charge of the accused ruling a Bad Exemption means there was No Offence ("BENO"), Plaintiff has moved this Court to declare the prohibitions on cannabis marijuana in the CDSA to be invalid "absent the constitutionally acceptable medical exemption" by striking the word "marijuana" off Schedule II of the CDSA.

PART II - POINT OF ISSUE

5. Do the multiple impediments to patient access and supply make the MMAR and MMPR exemptions so irreparable they are unconstitutionally illusory in violation of the S.7 Charter Right to Life?

Should the Court declare the prohibitions on cannabis marijuana to be of No Offence "absent a constitutionally-acceptable medical exemption?"

PART III - SUBMISSIONS

8. The prohibition of cannabis and the stifling of marijuana and hemp production has been a catastrophe for both patients in need of medical marijuana and the Canadian economy in need of a valuable resource.

In examining all the defects in the regimes, there can only be the conclusion that there is no way to effectively provide access and supply for Canada's medically-needy under either regime. The formerly-deficient MMAR was extended to cover for the currently-deficient MMPR!

Given the prohibition inflicts on the group conditions of life calculated to bring about our physical destruction, this is of national importance.

PART IV - ORDER SOUGHT

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.

Dated at Toronto on Wednesday Dec 24 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

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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 SUMMARY JUDGMENT

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Dec 24 2014

Letter to the Federal Court Administrator
Fax: 416-973-2154

Dear Sir/Lady:

This Motion for Summary Judgment would have been filed whether Her Majesty had filed a Statement of Defence on time or not.

Had Her Majesty not been in default, there would have been no bar to the Motion for Summary Judgment being filed; that Her Majesty is now in Default should also be no bar to the Motion being heard.

I request a hearing date for the motion as soon as possible.

Yours truly,

_____

John C. Turmel

On Jan 5 2014, Justice Phelan ruled:

DIRECTION

A copy of the Plaintiff's Motion Record is to be retained on the Court file but not accepted.

The original is to be returned to Mr. Turmel with the notation that:

Pursuant to Justice Phelan's Direction, this motion is not accepted. The action has been stayed pending the decision in Neil Allard v. HMTQ. Further, there is no provision for Summary Judgment in a simplified action."

Jct: Guess Justice Phelan must have forgotten he changed struck "Simplified" from my Action on page 42 of the Transcript of the Apr 29 Big Event:

MR. J. TURMEL: Okay. The Crown says that the simplified action does bar us from doing certain things, and I agree. And I just have a motion here to amend, which I would like to bring up right now. When I originally came in to file my Statement of Claim, it was perfect. But Her Majesty the clerk said, "Under 50,000 bucks? That is a simplified action. You have got to add that there." So I wrote it in. But I guess she didn't know and I didn't know that constitutional issues preclude it.

JUSTICE PHELAN: I don't think you have to go very far. I understand your colleague, your friend is going to consent to that.

MR. J. TURMEL: Thank you.

JUSTICE PHELAN: So we have got that one off the table.

JCT: Off the table but not onto the Record that doesn't show his order granting my motion to change it. Then he forgot?