Court File No.: T-168-17

No.

FEDERAL COURT

BETWEEN:

PHYTOS APOTHECARY AND WELLNESS CENTRE

PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Vancouver, February ____, 2017 Issued by:

_____

(Registry Officer)

Pacific Centre, 3rd Floor
701 West Georgia Street
Box 10065
Vancouver, BC V7Y 1B6

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TO: The Attorney General of Canada
Attention: William F. Pentney, Deputy Attorney General of Canada

THE CLAIMS OF THE PLAINTIFF

1. The Plaintiff claims as follows:

    a. A Declaration pursuant to s.52 (1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") that a constitutionally viable exemption from the provisions of the *Controlled Drugs and Substances Act* requires that persons for whom cannabis (including all "preparations and derivatives" as set out in Schedule 2 to the *CDSA*) provides medical benefit must have lawful reasonable access to their medicine including the right of the patient (or a person designated by the patient as a caregiver person responsible for the patient) to produce, possess and use cannabis and to have reasonable access to cannabis by way of obtaining it from medical cannabis dispensaries.

b. A Declaration, pursuant to s.52 (1) of the *Charter*, that sections 4, 5 and 7 of the *Controlled Drugs and Substances Act* including, but not limited to, the *Access to Cannabis for Medical Purposes Regulations* (*ACMPR*) promulgated under the *CDSA* and that came into force on August 24, 2016 are unconstitutional to the extent that:

    i. The possession by, and sale of medical cannabis to, persons who use cannabis for medical purposes is unlawful unless the patient and/or the provider of medical cannabis comply with the *ACMPR*;

    ii. The *ACMPR* unreasonably restrict the s. 7 *Charter* constitutional right of Canadian residents to reasonable access to their medical cannabis and;

    iii. are inconsistent with the s.7 *Charter* right and are not saved by s. 1 of the *Charter.*

c. A Declaration, pursuant to s.52 (1) of the *Charter*, that the limits in the *CDSA*, *Narcotic Control Regulations (NCR) and ACMPR* on possessing, selling or providing only certain limited types of cannabis derivative medicines violate section 7 of the *Charter* and are not saved by s. 1 of the *Charter,* in accordance with the principles and findings underlying the judicial decision in ***R. v. Smith*** 2015 SCC 34.

d. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *ACMPR* that restrict the amounts relating to obtaining, possessing and storing cannabis by patients violate section 7 of the *Charter* and not saved by s. 1 of the *Charter.*

e. An Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just final remedy that:

i. Sections 4, 5 and 7 of the *CDSA* as applied to cannabis possessed, trafficked and/or produced for medical purposes are invalid and of no force and effect; and/or,
ii. The *ACMPR* is invalid and of no force and effect.

f. Costs, including special costs and the Goods and Services Tax and Provincial Services Tax, on those costs, if appropriate; and

g. Such further and other relief as this Honourable Court deems appropriate and just in the circumstances.

THE PARTIES

2. The Plaintiff Phytos Apothecary and Wellness Centre is a registered Ontario non-profit corporation operating a medical cannabis dispensary in the City of Toronto.

3. Medical cannabis dispensaries such as the Plaintiff exist to provide reasonable access to cannabis to persons who consume it for medical purposes.

4. Medical cannabis dispensaries operate with a variety of different procedures and policies, the goals of which are to provide reasonable access to patients. The owners, operators and employees of these dispensaries are under constant threat of arrest, incarceration, seizure of property and severe deprivations of liberty as a result of providing patients with that reasonable access.

5. Persons or companies that lease property to medical cannabis dispensaries are under threat of various civil and potentially criminal sanction including, without limitation, forfeiture of their property, fines and the possibility of being criminally charged for aiding and abetting the operation of the dispensary and/or possession of property obtained by crime.

6. The Plaintiff brings these claims pursuant the *Federal Court Act* and *Rules* and ss.7, 15 and 24(1) of the *Charter of Rights and Freedoms*, on behalf of itself as a not-for-profit entity providing reasonable access to medical cannabis to patients, on behalf

of other similarly situated entities and persons and on behalf of Canadian residents who require and deserve reasonable access to medical cannabis.

7. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, is named as the representative of the Federal Government of Canada and the Minister of Health for Canada who is the Minister responsible for Health Canada and certain aspects of the *Controlled Drugs and Substances Act* including the *Narcotic Control Regulations* and the *Access to Cannabis for Medical Purposes Regulations*.

BACKGROUND

The *Controlled Drugs and Substances Act*

8. Cannabis, its preparations, derivatives and similar synthetic preparations are listed in Schedule II to the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, and amendments thereto (the "*CDSA*"). The production, possession, possession for the purposes of distribution or trafficking, and trafficking, as well as importing and exporting cannabis are prohibited by the *CDSA* and persons violating these restrictions face severe deprivations of liberty including the potential of mandatory jail terms and the maximum penalty of life in prison.

9. Section 56 of the *CDSA* permits the Minister of Health for Canada (the "Minister") or their designate, to exempt any person, class of persons, controlled substance or precursor of a controlled substance from the application of the *CDSA* or its Regulations if, in the Minister's or the designates opinion, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

13. As a result of the decision of the Ontario Court of Appeal in ***R. v. Parker*** (2000) 49 O.R. (3d) 481 (leave to appeal to the Supreme Court of Canada dismissed) recently reaffirmed in ***Her Majesty the Queen and Matthew Mernagh*** (2013) O.C.A 67 (February 1st, 2013) (leave to appeal to SCC dismissed July 25th, 2013), and ***R v. Smith***, 2015 SCC 236 and ***Allard v Canada***, 2016 FC 236, the Government of Canada is required, in order to ensure that the *Controlled Drugs and Substances Act* is in

compliance with the Canadian Constitution and in particular s.7 of the *Canadian Charter of Rights and Freedoms*, to put in place a constitutionally viable medical exemption to the CDSA that provides Canadian residents with reasonable access to medical cannabis.

14. The failure on the part of the government to provide reasonable access for medical purposes as an exemption to the general prohibition violates s.7 of the *Canadian Charter of Rights and Freedoms* in that the liberty of the provider and patient and the security of the person of the patient (and of the provider acting to assist the patient in exercising their security of the person right) is infringed in a manner that is inconsistent with the principles of fundamental justice and is not saved by section 1 of the *Charter*.

15. Initially the government, pursuant to s.56 of the *CDSA* issued an "Interim Guidance" document and processed exemptions under that section until ultimately on July 30th, 2001 the *Medical Marihuana Access Regulations* (*MMAR*) came into effect.

The *Medical Marihuana Access Regulations (MMAR)* SOR / 2001-227

16. The *MMAR* established a framework or scheme where an individual could apply to Health Canada with the support of their medical practitioner for an "Authorization to Possess" (ATP) "dried marihuana" in accordance with an authorization for medical purposes. The Regulations set out various categories 1 – 3 relating to symptoms of various medical conditions with the latter categories requiring the involvement of one or two specialists. The ATP was subject to annual renewal.

17. Despite there being no lawful supply of seeds or plants, the *MMAR* provided for the individual to obtain a Personal Use Production License (PUPL) to produce for themselves an amount of cannabis and to store and possess certain amounts depending upon a calculation derived from the medical practitioner's authorization of grams per day for the ailment.

18. In addition, the *MMAR* provide for a "Designated Person Production License" (DPPL) authorizing someone to produce dried marihuana for one patient.

19. All licenses were subject to annual renewal and specified the various conditions under which a PUPL and/or DPPL could produce cannabis.

20. Initially, these *MMAR* limited a DPPL to producing for one patient holding an ATP and there could only be three licenses of any type in one place. Furthermore, the *MMAR* limited the production and supply of cannabis to "dried marihuana" and no other form.

21. Subsequent to ***Parker (supra)*** as a result of further litigation, in both civil and criminal cases, including, ***Wakeford v. Canada*** [1998] O.J. 3522; [2000] O.J.1479; [2002] O.J. No. 85, Ont.CA ***R. v. Krieger*** 2000 ABQB 1012, 2003 ABCA, 2008 ABCA 394**, *Hitzig v. Canada*** (2003) 177 OAC 321, issues were raised with respect to the lack of a legal source and safe supply thereof, and the government of Canada on July 8th, 2003 announced an "Interim Policy" whereby cannabis seeds and dried cannabis grown by Prairie Plant Systems (PPS) under contract for the government for research purposes would become available to individuals having an exemption under the *MMAR* or under s.56 of the *CDSA*. This policy was to be in place until further clarification was made by the courts.

22. Because of the Ontario Court of Appeal decision in ***Hitzig (supra)*** the Government of Canada on December 3rd, 2003 amended the *MMAR* to comply with that decision to some extent but re-enacted the provision permitting a designated producer to only produce for one patient in virtually identical terms. Consequently, while a government supply of cannabis became available to ATPs who did not have a PUPL or a DPPL, the DPPL was once again still limited to producing for only one person.

23. On June 29th, 2005, the Government of Canada made further amendments to the *MMAR* re-defining the types of applicants by merging categories 1 and 2 into category 1, requiring the declaration of only one physician, and merging category 3 into 2 and eliminating the requirement of a declaration from a specialist but still requiring a consultation with one.

24. On October 3rd, 2007, further amendments were made to the *MMAR* but still leaving the designated producer's ability to produce for only one person in place. However, because of the decision of the Federal Court of Appeal in ***Sfetkopoulos v. AG Canada*** 2008 FC 33 (FCTD) and 2008 FCA 328 (FCA), essentially following ***Parker*** and ***Hitzig (supra)*** that provision was struck down again as being a negative restriction violating s.7 of the *Charter* in that it was arbitrary and not in accordance with the principles of fundamental justice.

25. In response, the Government of Canada on May 14th, 2009 enacted a new ratio allowing a DPPL to produce for two authorized persons.

26. The 1:1 ratio and the *MMAR* limit of 3 licenses to one location were found to infringe s. 7 of the *Charter* in the case of ***R. v. Beren and Swallow*** (2009) BCSC 429 and the government's response to the striking down of the three-license-maximum section was simply to amend the *MMAR* and allow up to four licenses at one location.

The *Marihuana for Medical Purposes Regulations (MMPR)*

27. On June 19th, 2013, the *Marihuana for Medical Purposes Regulations (MMPR)* SOR/2013-119 came into effect. These Regulations ran concurrently with the *MMAR* until March 31st, 2014 when, by s. 267 of the *MMPR*, the *MMAR was* repealed and all PUPLs and DPPLs were to be terminated effective that date.

28. Litigation ensured and the decision of this Court in ***Allard v Canada*** 2014 FC 280, ordered an injunction preserving some, but not all, of the *MMAR* patients' rights to produce and possess cannabis. That injunction remains in place because of the decision of this Court in ***Allard v Canada*** 2016 FC 236.

29. On August 24, 2016, Justice Phelan of this Court rendered his decision on the *Charter* issues raised in ***Allard***. He confirmed that Canada has an obligation to provide patients with reasonable access to medical cannabis.

30. Justice Phelan further indicated that medical cannabis dispensaries, such as Plaintiff, are "at the heart of access" to medical cannabis.

31. The result in *Allard* was a declaration that the ***MMPR*** infringed section 7 of the ***Charter*** in a manner that was not in accordance with the principles of fundamental justice nor saved by section 1 of the *Charter*. This declaration was suspended for six months to allow Canada to respond. Canada did not appeal Justice Phelan's decision and, instead, implemented the *ACMPR*.

32. The *ACMPR* is a combination of the *MMAR* and *MMPR*. It provides patients with the option of applying for a "registration" to produce their own cannabis or to have a designated person produce cannabis for them. As with the *MMAR*, designated persons are limited to producing for a maximum of two patients and no more than 4 registrations may be located at any one physical site.

33. As with the *MMPR*, the *ACMPR* provides a complicated and burdensome scheme by which persons or companies may apply to Health Canada for a license to produce and sell dried cannabis, and a limited class of cannabis derivative products, by mail order only. These Licensed Producers (LPs) are strictly limited in the types, amounts and methods by which they supply patients with medical cannabis.

34. Similarly, patients in the *ACMPR* that are unable or unwilling to produce for themselves or to have a designate produce for them are restricted to only purchasing their medicine from an LP in strict compliance with the restrictions set out in the *ACMPR*.

35. The combination of the *CDSA* and *ACMPR* creates significant and undue burdens on reasonable access to medical cannabis in a manner that does not comport with section 7 or 15 of the *Charter*, is inconsistent with the principles of fundamental justice and is not saved by section 1.

SECTION 7 OF THE *CHARTER*

36. Section 7 of the *Charter* protects life, liberty and security of the person.

37. The liberty interest is engaged in two distinct ways in this case.

38. First, the liberty interest protects the right not to have one's physical liberty endangered by the risk of imprisonment.

39. Second, the liberty interest protects the right to make decisions of fundamental personal importance.

40. The choice of medication, including cannabis, to alleviate the effects of an illness or chronic condition is a decision of fundamental personal importance.

41. The liberty interest is at risk for those, such as Plaintiff, that provide reasonable access to cannabis outside the *ACMPR*.

42. The liberty interest is also at risk for patients that obtain cannabis outside the *ACMPR.*

43. The liberty risk arises for anyone acting outside the *ACMPR* for any reason, including affordability, dosage and strain preference, inability to access a supportive allopathic physician, inability to acquire medicine in a timely manner, inability to acquire derivative cannabis medicines, inability to order cannabis via mail or to pay via credit or debit card and various other restrictions created by the *ACMPR* as the persons acting outside the *ACMPR* risk arrest, conviction and imprisonment plus potential civil and/or administrative penalties.

44. The liberty risk is also manifested if persons authorized to produce, provide or possess medical cannabis within the *ACMPR* if they stray outside the conditions set by the *ACMPR* including possession limits and restrictions on the types of derivative medicines available within the *ACMPR.*

45. The *ACMPR* scheme also stands between those who do or could benefit from reasonable access to medical cannabis and their decisional liberty interest in making this decision of fundamental importance unimpeded by state action.

46. Decisions of fundamental importance, particularly in the medical context, are central to autonomy and the exercise of that autonomy over decisions related to bodily integrity.

47. The *ACMPR* violates the right to patient self-determination in the context of their own medical care.

48. The *ACMPR* also prevents persons or entities such as the Plaintiff from facilitating patients' medical autonomy.

49. While the *ACMPR* does provide some patients with a means of access, the simple interference by Canada with decisions about bodily integrity and medical care trenches on liberty.

50. The *ACMPR* scheme itself stands between patients and their right to make decisions of fundamental personal importance because to not violate the criminal law, a patient and a person seeking to assist a patient with reasonable access to medical cannabis must undertake an onerous application process and comply with stringent conditions that are neither necessary nor reasonable.

51. The timeframe for obtaining registrations to produce one's own cannabis, or to have a designate produce for the patient, are excessive and unreasonable and result in insufficient access to medicine.

52. The difficulties in finding supporting allopathic physicians to register patients in the *ACMPR* create barriers to accessing medical cannabis are deny patients reasonable access.

53. The *ACMPR* application process for obtaining lawful authority to distribute cannabis to patients can and does take years, requires the expenditure of at least hundreds of thousands of dollars and more likely millions of dollars and contains internal barriers that are simply not able to be overcome by most applicants or would-be applicants.

54. The burdens in the *ACMPR* LP application process have resulted in a significant shortage of LPs, which has the effect of having a shortage of cannabis available to patients.

55. This lack of access caused by the insufficient numbers of LPs is exacerbated by the *ACMPR* regulations that make it difficult for patients to purchase from multiple LPs.

56. Meanwhile patients are subjected to shortages of medicine, unreasonable obstacles to accessing medicine and possible criminal charges for obtaining access outside the *ACMPR*.

57. Dispensaries, like the Plaintiff, who provide patients with reasonable access also face possible criminal charges and other sanctions for operating outside the *ACMPR*.

58. These restrictions on patient and provider conduct are not trivial and impede or block patients from making decisions of fundamental personal importance.

59. Due to the *ACMPR*, individuals are restricted to purchasing from a LP or, if possible given their individual circumstances, to personally producing cannabis or hoping to find a caregiver to do so for the patient. The decisions to sell and purchase cannabis from unlawful sources, such as a store front dispensary, could result in criminal prosecution for the patient and the provider as well as other civil and/or administrative penalties.

60. The maximum penalty for trafficking cannabis under 3 kilograms is 5 years in prison and the maximum penalty for trafficking cannabis over 3 kilograms is life in prison. The latter offence also carries with it the potential of mandatory terms of imprisonment. All trafficking offences also carry with them the potential of forfeiture of assets.

61. Operating a dispensary can and does also result in charges under the *Criminal Code* that carry substantial terms of imprisonment. These charges can also be levied against those that assist dispensaries including landlords that rent commercial space to storefronts.

62. Dispensaries and landlords are also subject to civil administrative sanctions imposed by municipal authorities because of the inability or unwillingness of municipalities to enact zoning, land use and business license bylaws due to the *CDSA*

prohibition. These persons and entities are also subject to *CDSA* and/or civil forfeiture provisions.

63. The *CDSA/ACMPR* scheme presents an impediment to access to cannabis by those who need it for their medical conditions. By putting these regulatory constraints on that access the *ACMPR* implicate the right to security of the person even without considering the criminal sanctions which support the regulatory structure.

64. Those sanctions apply to those who consume cannabis for medical purposes but do not have the ability to qualify pursuant to the *ACMPR* (including for factors unrelated to their medical need or the benefits they obtain from using medical cannabis) or who cannot comply with its conditions.

65. The sanctions also apply to anyone who assist patients with reasonable access unless that person or entity has met the limiting terms required to obtain an LP or a designated person registration.

66. A criminal sanction applied to a person who would assist an individual in a fundamental choice affecting his or her personal autonomy constitutes an interference with that individual's security of the person.

67. The *CDSA/ACMPR* scheme constitutes significant state interference with the human dignity of those who consume cannabis for medical purposes.

68. These constraints are imposed by the state as part of the justice system's control of access to medical cannabis and are therefore state actions sufficient to constitute a deprivation of the security of the person of those who do or could benefit from access to cannabis for medical purposes.

69. If a patient cannot cultivate for oneself or find a designate, the patient is unable lawfully obtain cannabis from a supplier, such as Plaintiff, that is not registered as a LP.

70. Because of the *ACMPR* restrictions, if one cannot access a LP for any reason that person’s security of the person is engaged as they have no access to their medication which causes physical and/or psychological suffering.

71. The Plaintiff says that all Canadians are entitled to a constitutionally viable exemption from the provisions of the *CDSA* to enable the medical use of cannabis and reasonable access to cannabis. This includes the right of the patient to access cannabis from dispensaries to ensure a timely, adequate, reasonably accessible supply of medicine without undue and unnecessary restrictions on that access and the corresponding right of a dispensary to provide patients with that access.

SECTION 15 OF THE *CHARTER*

72. The effect of the *CDSA/ACMPR* scheme is to treat disabled persons for whom cannabis provides therapeutic relief dramatically differently than disabled and non-disabled persons who obtain therapeutic relief from either conventional (eg, over-the-counter and/or prescription medicine) or alternative forms of treatment (eg, natural health products) not otherwise prohibited by the criminal law.

73. This distinction manifests itself in many way including, without limitation:

a. Requiring those persons to navigate a complex *CDSA/ACMPR* scheme to gain lawful access to cannabis in an environment that is hostile to the use of cannabis for medical purposes, including hostility created by the public statements of Health Canada;

b. Criminalizing the patient's choice of the type of cannabis they consume for medical purposes by imposing limits on the forms of cannabis derivative medicines lawfully available;

c. Prohibiting patients from producing their own medicine by threat of criminal sanction if they are unable to comply with the stringent *ACMPR* requirements in a way that is distinct from the treatment of virtually all other natural health products;

d. Preventing those who would supply patients with medical cannabis from doing so under threat of criminal sanction unless the supply takes place within the unduly restrictive conditions in the *ACMPR*.

74. This differential treatment is exacerbated in the case of disabled persons because those persons are more likely than non-disabled persons to seek out alternative therapies including medicinal cannabis.

75. Even among alternative therapies, disabled persons choosing cannabis as medicine face arbitrary and/or unreasonable burdens and obstacles not faced by persons (disabled or otherwise) who use other non-conventional herbal treatment options.

76. So, for example, persons seeking to access non-conventional medicines such as St. John's wort, hydrolyzed collagen, lauric acid, echinacea, essential oils, vitamins, minerals, probiotics and a host of other substances can access these therapeutic agents without fear of criminal sanction, and persons wishing to distribute those non-conventional medicines to patients need not comply with the restrictions set out in the *ACMPR*.

77. Canada has established a comprehensive *CDSA/ACMPR* scheme applicable to all herbal remedies through the auspices of the *Natural Health Product Regulations* [S.O.R./2003-196] (the "*NHPR*") (promulgated pursuant to the *Food and Drugs Act*, R.S.C. 1985, c. F-27).

78. Cannabis, and all drugs scheduled pursuant to the *CDSA*, are specifically exempted from the *NHPR* despite that cannabis would otherwise fall squarely into the definition of a "natural health product" in the *NHPR*.

79. In practical terms, persons with disabilities that seek to use cannabis for medical purposes are criminals unless they comply with the stringent requirements of the *CDSA/ACMPR* scheme whereas persons with (or without) disabilities that seek to use other herbal medicines, including those with less evidence of therapeutic efficacy and safety, may produce and purchase these natural health products over-the-counter from distributors without any fear of criminal sanction to either the patient or the distributor.

80. The *CDSA* also fails to consider the disabled person's already disadvantaged position in society.

81. The effect of the *CDSA* on disabled persons is particularly detrimental.

82. Because disabled persons are more likely to use alternative treatment options than non-disabled persons, the *CDSA* has a disproportionate effect on the disabled in comparison to sick, but not disabled, persons.

83. In addition, the *CDSA* forces disabled persons unable to qualify for the *ACMPR* protections or unable to obtain reasonable access to cannabis within that scheme to choose between liberty and health resulting in substantially greater harm than, for example, the effect of the *CDSA* on non-disabled persons.

84. This distinction in treatment both imposes a discriminatory disadvantage on patients and providers and, to the extent that those persons do not wish to put their liberty at risk, denies them access to the proven therapeutic benefit of medical cannabis unless they and/or their suppliers can comply with the *CDSA/ACMPR* scheme.

85. The burdens imposed include the burdens identified in the section 7 claims, above including, without limitation:

a. the need to comply with an overly stringent application process to access the protection of the *CDSA/ACMPR* scheme;

b. the need to obtain medicine only from an arbitrarily limited group of preferred suppliers licensed by the government with the attendant restrictions on access that flow from the inability of most persons to become LPs in the *ACMPR*;

c. the restrictive types of cannabis derivative medicines that can be lawfully produced and provided to patients and the potential deprivation of liberty that flows from any inability to do so, or any inability to comply with the terms of the *CDSA/ACMPR* scheme.

86. These burdens violate the human dignity of medical cannabis patients, who are being treated unfairly premised upon the Defendant’s decision to enact an unduly

restrictive *CDSA/ACMPR* scheme based on circumstances that do not relate to the patient's individual needs, capacities, or merits.

87. The effect of the *CDSA/ACMPR* scheme is to marginalize medical cannabis patients as autonomous beings and to devalue their legitimate desire to consume cannabis for medical purposes.

88. Because of this, medical cannabis patients legitimately feel that their dignity and self-worth as a human being have been violated.

89. In addition to imposing unfair and discriminatory burdens on these persons, the *CDSA/ACMPR* scheme acts to deprive them of a benefit (reasonable access to safe and effective plant-based medicine) that is available to other members of society.

90. This is a benefit that Plaintiff provides to their clients and for which they could be charged with serious criminal offences and subjected to other sanctions.

91. Persons seeking conventional treatments for, by way of example, pain relief can easily access those treatments by either purchasing over-the-counter pain medications or by obtaining prescriptions for pharmaceutical agents from physicians who have knowledge of these medicines and are not generally uncomfortable or unwilling to prescribe them.

92. These persons can also order over-the-counter medications and natural health products online, or by telephone, or purchase them from storefront retail outlets that do not have to comply with the onerous requirements of the *ACMPR* and that do not face the prospect of civil sanctions, such as bylaw tickets, orders to close from municipalities and extra-judicial threats made by municipalities and/or police arising from the status of cannabis as a *CDSA* scheduled substance.

93. The *CDSA/ACMPR* scheme, thus, infringes s. 15 of the *Charter* in a manner not saved by s. 1.

94. Plaintiff, and other similarly situated persons or entities, that seek to ameliorate the harms caused by the unconstitutional scheme should not face the prospect of being convicted of criminal offences or otherwise sanctioned for doing so.

THE RELIEF

95. The plaintiffs claim as follows:

a. A Declaration pursuant to s.52 (1) of the *Canadian Charter of Rights and Freedoms* ("the *Charter*") that a constitutionally viable exemption from the provisions of the *Controlled Drugs and Substances Act* requires that persons for whom cannabis (including all "preparations and derivatives" as set out in Schedule 2 to the *CDSA*) provides medical benefit must have lawful reasonable access to their medicine including the right of the patient (or a person designated by the patient as a caregiver person responsible for the patient) to produce, possess and use cannabis and to have reasonable access to cannabis by way of obtaining it from medical cannabis dispensaries.

b. A Declaration, pursuant to s.52 (1) of the *Charter*, that sections 4, 5 and 7 of the *Controlled Drugs and Substances Act* including, but not limited to, the *Access to Cannabis for Medical Purposes Regulations* (*ACMPR*) promulgated under the *CDSA* and that came into force on August 24, 2016 are unconstitutional to the extent that:

i. The possession by, and sale of medical cannabis to, persons who use cannabis for medical purposes is unlawful unless the patient and/or the provider of medical cannabis comply with the *ACMPR*;

ii. The *ACMPR* unreasonably restrict the s. 7 *Charter* constitutional right of Canadian residents to reasonable access to their medical cannabis and;

iii. are inconsistent with the s.7 *Charter* right and are not saved by s. 1 of the *Charter.*

c. A Declaration, pursuant to s.52 (1) of the *Charter*, that the limits in the *CDSA*, *Narcotic Control Regulations (NCR) and ACMPR* on possessing, selling or providing only certain limited types of cannabis derivative medicines violate section 7 of the *Charter* and are not saved by s. 1 of the *Charter,* in accordance with the principles and findings underlying the judicial decision in ***R. v. Smith*** 2015 SCC 34.

d. A Declaration, pursuant to s.52 (1) of the *Charter*, that the provisions in the *ACMPR* that restrict the amounts relating to obtaining, possessing and storing cannabis by patients violate section 7 of the *Charter* and are not saved by s. 1 of the *Charter.*

e. An Order under s.24(1) of the *Canadian Charter of Rights and Freedoms*, as the appropriate and just final remedy that:

    i. Sections 4, 5 and 7 of the *CDSA* as applied to cannabis possessed, trafficked and/or produced for medical purposes are invalid and of no force and effect; and/or,

    ii. The *ACMPR* is invalid and of no force and effect.

f. Costs, including special costs and the Goods and Services Tax and Provincial Services Tax, on those costs, if appropriate; and

g. Such further and other relief as this Honourable Court deems appropriate and just in the circumstances.

The Plaintiffs propose that this action be tried in the City of Vancouver, Province of British Columbia.

DATED this 6th day of February, 2017 at the City of Duncan, in the Province of British Columbia

Kirk I. Tousaw
Solicitor for the Plaintiffs

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