

**The Coalition against the Repeal of the *MMAR*-PPL/DGL's
January 20, 2015 - Update**

We are now just over a month away from the beginning of the trial in *Allard v. Canada*, our constitutional challenge to the Marihuana for Medical Purposes regulations (*MMPR*) for failing to preserve the rights of “medically approved patients” to produce their own medicine or if unable to do so to have a caregiver do so for them, as provided for in the now repealed Marihuana Medical Access regulations (*MMAR*) and for continuing to deny access to cannabis (marihuana), other than in its dried form (as is being challenged in the British Columbia case of *R v. Smith*, that will now be heard in the Supreme Court of Canada is the first medical marihuana case on **March 20, 2015**) and the imposition in the *MMPR* of the 150 gm limit on a patient entitlement to possess, other than at their storage or production site.

The trial is set to proceed on **February 23, 2015**, for 3 weeks until **March 13, 2015**, in the Federal Court Trial Division located at the Pacific Center on the 7th floor (although the assigned courtroom might be on the 8th floor and we will advise when known) **at 701 West Georgia St. in downtown Vancouver, BC**. It will take place before the Hon. Mr. Justice Phelan, as a “simplified action” under the Federal Court Act rules that enabled an expeditious trial on this issue. Unlike a traditional trial this trial proceeds by way of affidavits and cross examination on the affidavits followed by people submissions. To expedite matters the schedule was set requiring completion of various tasks before trial.

The Schedule of witnesses

The schedule of witnesses has been almost finalized, subject to some minor adjustments that we have agreed to by letter to the court on Tuesday, January 19, 2015. We expect the final schedule will look like this:

Date	Name & Type of Witness	Capacity/ Profession
Plaintiffs Witnesses		
February 23, 2015 (AM) Monday	DAVEY, Shawn (Plaintiffs' Factual)	Plaintiff Patient
February 23, 2015 (PM)	ALEXANDER, Brian (Plaintiffs' Factual)	<i>MMAR</i> Patient and Assistant to Mr. Davey
February 24, 2015 (AM) Tuesday	BEEMISH, Tanya (Plaintiffs' Factual)	Plaintiff Patient
February 24, 2015 (PM)	HEBERT, David (Plaintiffs' Factual)	Plaintiff <i>MMAR</i> DG for Spouse Plaintiff Beemish
February 25, 2015 (AM) Wednesday	ALLARD, Neil (Plaintiffs' Factual)	Plaintiff Patient
February 25, 2015 (PM)	WALSH, Zachary (Plaintiffs' Expert)	Psychology Professor and Researcher demographics of

		patients
February 26, 2015 (AM) Thursday	COLASANTI, Remo (Plaintiffs' Expert)	Cannabis Cultivator expert and Patient
February 26, 2015 (PM)	PATE, David (Plaintiffs' Expert)	Botany and Pharmacology expert
February 27, 2015 (AM) Friday	Overflow and Arising Matters	
February 27, 2015 (PM)	NOT SITTING	
March 2, 2015 (AM) Monday	CAPLER, Rielle (Plaintiffs' Factual) SHAW, Jamie (Plaintiffs' Factual)	Ph.D. Student and Coordinator and Project lead CANARY Study Pres. CAMCD re Dispensaries in Canada
March 2, 2015 (PM)	KING, Mike (Plaintiffs' Factual) LUKIV, Danielle (Plaintiffs' Factual) WILCOX, Jason (Plaintiffs Factual)	Update re MMPR LP's situation legal Assistant re <i>MMAR</i> complaints <i>MMAR</i> Coalition Coordinator re complaints received.

Defendants Witnesses (and some Plaintiff Rebuttal witnesses)		
March 3, 2015 (AM) Tuesday	KULA, Jocelyn (Defendant's Factual)	Health Canada Official
March 3, 2015 (PM)	ORMSBY, Eric (Defendant's Factual)	Health Canada Official
March 4, 2015 (AM) Wednesday	RITCHOT, Jeannine (Defendant's Factual)	Health Canada Official
March 4, 2015 (PM)	CAIN, Todd (Defendant's Factual)	Health Canada Official
March 5, 2015 (all day) Thursday	HOLMQUIST, Shane (Defendant's Expert)	Police Officer
March 6, 2015 (AM) Friday	Overflow and Arising Matters	
March 6, 2015 (PM)	NOT SITTING	
March 9, 2015 (all day) Monday	GARIS, Len (Defendant's Expert)	Fire Chief
March 10, 2015 (AM) Tuesday	MOEN, T. (Plaintiffs' Rebuttal Expert)	Fire Chief
March 10, 2015 (PM)	WILKINS, Scott (Plaintiffs' Rebuttal Expert)	Insurance Agent

March 11, 2015 (AM) Wednesday	SANDVOS, Catherine (Defendant's Factual)	Netherlands Office of Medicinal Cannabis Official
March 11, 2015 (PM)	BARUCH, Yehuda (Defendants Expert)	Doctor Israel
March 12, 2015 (AM) Thursday	MIKOS, Robert (Defendants Expert)	Law Professor USA
March 12, 2015 (PM)	GROOTENDORST, Paul (Defendant's Expert)	Economics Professor
March 13, 2015 (AM) Friday	NASH, Eric (Plaintiffs' Factual Witness and Rebuttal Expert Witness)	Cultivator

We have been advised that Canada does not propose to cross examine **Jamie Shaw** from CAMCD, **Mike King**, who provides an update with respect to the LPs under the MMPR based on their webpages, **Danielle Lukiv**, my assistant attaching numerous emails and statements from various patients impacted by the injunction and **Jason Wilcox**, who similarly provides numerous emails with respect to people impacted by the injunction. This, except for Jamie Shaw, is pretty well the same evidence; we attempted to introduce as new evidence into the Federal Court of Appeal on the appeal that that court did not allow. At that time, the governments legal counsel said she wanted to cross examine everyone in the attached materials before it could be admitted. This may cause some adjustments with respect to March 2, 2015.

While the defendant Canada has said that they do not propose to cross examine **Rielle Capler** with respect to the Canary Project (the impact of the *MMPR* on *MMAR* patients). They are planning to move to strike her affidavit as being in fact "an expert" and not a "fact" witness. We do not intend to elicit an opinion from Ms. Capler, but only to have her introduce the results of the survey that appear to indicate that people are dissatisfied with the LPs and are heading back to the dispensaries and Compassion clubs.

Also, there may be some adjustments in the lineup of the witnesses on March 11 and 12th with Prof. **Mikos** (USA situation) being moved to the morning of the 11th and Ms. **Sandvos** (the situation in the Netherlands) to the afternoon of the 12th.

There may be an issue with the evidence of **Tanya Beemish** as she may be in hospital. The court is willing to attend at the hospital for her cross examination, if necessary. Canada has expressed that they may simply wish to cross examine her spouse and caregiver the Plaintiff David Hebert and not her but presently we think that she should also give evidence, if at all possible.

You will note that we are not calling our "**Rebuttal Experts**" that provided affidavits regarding the Defendants Experts. The reason for this is that Canada advised that they did not wish to cross examine the following "Rebuttal Experts" that have provided

affidavits, specifically addressing the government of Canada witnesses indicated below. Consequently, we decided that it is unnecessary to cross examine their experts that are dealt with by our rebuttals. This way there experts do not get an opportunity and cross examination to comment upon our Rebuttal experts reports, and we are free to argue that they do indeed rebut the Defendants experts without having to cross examine them on the same material. Canada is free to argue that they do not. Usually, the credibility of an expert witness is not an issue unlike fact witnesses. This has enabled the above schedule to be condensed into the 3 weeks allocated in so far as the evidence is concerned.

Our Rebuttal experts rebut the following Defendant Canada experts:

1. **Jason Shut**, mold expert – rebutting **Dr. Miller** on the issue of mold and how to inexpensively control it;
2. **Robert Connell Clarke** – Author of Marijuana Botany (1981) and with mark Merlin the recent 2013 “Cannabis: Evolution and Ethnobotany” and through whom we not only attach that latest book but also the recent “Handbook of Cannabis” edited by Roger Pertwee that contains the most up to date information on medical cannabis and cannabis generally – to rebut **Dr. Kalant** and **Mahmoud ElSohly** from Mississippi. With respect to the latter he is also an author of the “American Herbal Pharmacopoeia 2014” that we have also introduced in evidence through **Neil Allard** and **Dr. Ferris** ;
3. **Thomas Bauman** –Prof. of Horticulture at the University of the Fraser Valley, an expert on not only horticulture, but also growing indoors and outdoors and in greenhouses – to rebut **Dr. Miller** to some extent, **Larry Dybvig**, the real estate appraiser and Constable **Holmquist** and Fire **Chief Len Garis** to some extent;
4. **Dr. Carolyn Ferris** – the practitioner with experience in dealing with cannabis clinics – to rebut **Dr. Daeninck** with respect to dosages and practice in relation to medical marijuana patients;
5. **Prof. Susan Boyd** – Author of “Killer Weed - Marijuana Grow Ops, Media Justice” to rebut **Constable Holmqvist and Fire Chief Garis**;
6. **Bob Boileau** - electrician and firemen – to rebut **Fire Chief Len Garis**;
7. **Paul Armentano** – US Norml, Research Director to rebut **L. Mehler** and Professor **Mikos** regarding the US situation (we still intend to cross examine **Prof. Mikos** with respect to what is actually going on in the US as things are changing day-to-day as well as **Dr. Baruch** with respect to Israel and **Ms. Sandvos** with respect to the Netherlands).

Canada has decided that it does want to cross examine our Rebuttal experts **Tim Moen**, a Fire Chief from Alberta and **Scott Wilkins**, the insurance agent with respect to fire and electrical safety and insurance risks generally and **Eric Nash** was both an expert and fact witness. His expertise goes to rebut all of the defendant witnesses with respect to fire, electrical and public safety and other issues and his “fact” evidence is

with respect to his efforts to have his company become an LP and the various problems encountered.

Adjournment application

An application was made to adjourn the trial to await the decision of the Supreme Court of Canada in *R v. Smith*, which is set to be heard on **March 20, 2015** in Ottawa. This case involves the extracts issue, which is one of the issues in our case, but also, in our opinion, the Supreme Court of Canada will have to do the section 7 and section 1 Charter analysis and coming to its final decision. This will be the first time that the Supreme Court of Canada has addressed the issue. Her application to adjourn was refused. Depending upon how things develop, and bearing in mind that there is a schedule for arguments post trial with the final oral submissions being made **April 30 and May 1** under the current schedule, it may be that we ask Justice Phelan to await the decision of the Supreme Court of Canada and to enable both sides to address it before he comes to final decision.

Under the current schedule, it is unlikely that there will be a decision in this case before **June, 2015**.

Changing the address of the production site

One cannot currently change one's production site address. We sought to address this issue on behalf of the Plaintiffs **Beemish and Hebert**, but Justice Manson, while finding that they met the injunction criteria did not address the issue on their behalf. Consequently, this was the subject of our cross-appeal to the Canada's appeal of the granting of the injunction. Canada's appeal was dismissed with costs to us in our cross-appeal was allowed without costs. The matter was remitted to Justice Manson. He explained that he did not intend to cover them. We have therefore written to the Court of Appeal requesting directions as to whether they will now make a decision on this issue or do we have to file a further appeal. We have filed a notice of appeal to protect the time limit and are awaiting directions from the court.

What if my ATP expired before March 21, 2014, but my PPL or DGL remain valid as of September 30, 2013.

This was also the subject of the cross-appeal as Manson J. simply picked that date as the date of his judgment and Ms. Beemish's ATP had expired in January 2014. We will see if the Court of Appeal deals with this question as well.

In the interim we have advised people in that position to go back to their doctors and obtain a section **53 Narcotic Control Regulations** authorization to cover their possession in accordance with similar or the same terms as our ATP. However, Health Canada has been advising the police when they called during investigations, which indicates they are still maintaining the database, that the patient has to have both a

valid ATP and PPL or DGL and otherwise that the site is not valid. There is a case in Edmonton that appears to be proceeding that may resolve this issue one way or the other. Of Canada does not appear to address the section 53 situation even though it was referred to by Manson J. in his injunction order reasons.

Fundraising

This case is being handled on a donations basis bearing in mind that many patients are on medical disability pensions. To date, we have raised a total of \$204,962.69 through both the Coalition against Repeal group organized by Jason Wilcox and by direct deposits via credit card or otherwise directly to Conroy and Company for this case. The Coalition group has forwarded the sum of \$95,000 to Conroy and company since January 2014 and has further funds in its community account of approximately \$18,000. Conroy and company has billed \$133,707.73 to date since October 2013 of which \$51,995.49 approximately has been paid to other lawyers assisting with the case (**Tonia Grace, Kirk Tousaw, Bibhas Vaze and Matthew Jackson**). We currently have \$71,254.96 in the firm trust account that we are holding back in part to ensure we have enough to cover all expenses through the trial. Mr. Conroy has unbilled time recorded in relation to this file, totaling \$307,808.56 in addition to the work performed above reflected in the billings to date. Many patients who are Plaintiffs in the class action suit over the privacy invasion relating to the Health Canada letter have completed pledge forms with respect to a percentage of their damages from that case, when it hopefully conclude successfully in the future. The pledge form has been put back up on the webpage so that others who wish to contribute in this fashion can do so.

Webpage and updates

To keep up-to-date and to see what work has been done and to determine the current stage the proceedings, readers are encouraged to go to www.johnconroy.com and click on the “MMAR constitutional challenge” link on the left and go to a page dedicated to this proceeding. There you will find the following:

- A. Various dated updates, either by video or document or in written form;
- B. The pleadings and proceedings in the main action, including the various deadlines and the evidence once filed and returned by the court. Plaintiffs affidavits were filed on January 9, and we are still awaiting their return from the court and will post them as soon as they are available. The Defendants affidavits are due this Friday, January 23. The Plaintiffs experts and Rebuttal experts to the Defendants experts are all posted;
- C. The proceedings and evidence filed in support of the injunction and the injunction decision and development since;
- D. The Appeal and Cross-Appeal proceedings and judgments and development since.

We are now working our list of documents due February 6th, 2015 that includes all the documents we wish to prove as well as those we wish to put to their witnesses in cross. We also have to finalize what discovery evidence obtained from the Defendants that we wish to put in as part of our case – and otherwise get prepared for trial.

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